



Tender Addendum No. 3

Request to Qualify and Quote (RQQ):

**ENGINEERING SERVICES FOR
ADMINISTERED HERITAGE SIGNAL
TOWERS RESTORATION FOR JOHN,
SCHOTT AND CHERRY STREET (USRC)**

Request Number: **RQQ-2018-RCDV-225**

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DEFINITIONS

1.0 Definitions

In this Request Document,

- 1.1 **“Addenda”/“Addendum”** is the formal release of additions, deletions, revisions, clarifications to this Request Document that form a part of the Contract as specified in Section 3.1.4 of Instructions to Proponents.
- 1.2 **“Business Day”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” - General Conditions.
- 1.3 **“Closing”** means, the deadline for Metrolinx to receive Submissions as specified in Section 3.1.1 (e).
- 1.4 **“Conflict of Interest”** means:
 - 1.4.1 in relation to this RQQ Process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of Metrolinx in the preparation of its Submission that is not available to other Proponents, (ii) communicating with any person with a view to influencing preferred treatment in this RQQ Process (including but not limited to the lobbying of decision makers involved in this RQQ Process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of this RQQ Process; or
 - 1.4.2 in relation to the performance of its contractual obligations contemplated in the Contract that is the subject of this procurement, the Proponent’s other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.
- 1.5 **“Consultant”** shall have the same meaning ascribed in Appendix “A” – Definitions of Appendix “A” – General Conditions.
- 1.6 **“Contract”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.
- 1.7 **“Contract Documents”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.
- 1.8 **“Corporate Firm”** means any one of the following: a) the Proponent, b) the Proponent and its Sub consultants, or c) the Joint Venture, responding to the Request Document.

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- 1.9 **“Deliverables”** shall have the same meaning ascribed in Schedule A – Definitions of the Appendix “A” – General Conditions.
- 1.10 **“EBS”** means Electronic Bid Submission.
- 1.11 **“E-Bid Authorized Signer”** is the designated individual in the Proponent’s organization who has the authority to bind the Proponent to each and every term, condition, article and obligation of the Request Document and any resultant Contract.
- 1.12 **“E-Bid Confirmation Number”** is the receipt received by a Proponent from MERX indicating that the Submission was uploaded successfully.
- 1.13 **“Evaluation Committee”** mean the representatives chosen to evaluate the Submissions based on the Evaluation Criteria outlined in this Request Document.
- 1.14 **“Evaluation Criteria”** means the criteria for scoring the Submission as stated in Section 5.2 – Request Evaluation Criteria, of Request Evaluation Criteria and Selection Process herein.
- 1.15 **“FIPPA”** shall have the same meaning ascribed in Section 3.11 of Instructions to Proponents.
- 1.16 **“Joint Venture”** means a business arrangement of two or more parties proposed for this RQQ Process further described in Section 3.6 of Instructions to Proponents.
- 1.17 **“Key Personnel”** shall have the same meaning ascribed to it in Section 2.7(a) of the General Conditions.
- 1.18 **“Metrolinx”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.
- 1.19 **“Option”** means a component of the Work that is to be exercised at the sole discretion of Metrolinx.
- 1.20 **“Participant in Charge”** shall have the same meaning ascribed in Section 3.6.3 of the Instructions to Proponents.
- 1.21 **“Parties”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.
- 1.22 **“Procurement Office”** means the Metrolinx Procurement and Contract Services office located at 277 Front Street West, 4th Floor, Mail Room, Toronto, Ontario, Canada, M5V 2X4.

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- 1.23 **“Procurement Representative”** means the following individual in the Procurement Services Department:

Kim Stuart, Procurement Officer	
Telephone number	(416) 202-5565
Email	Kim.stuart @metrolinx.com

- 1.24 **“Project Schedule”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.
- 1.25 **“Proponent”** means the legal entity that remits a Submission in response to this Request Document and who if selected for award shall execute the Contract with Metrolinx for provision of the Work.
- 1.26 **“Rates”** shall have the same meaning given in Section 1(a) of Schedule C – Financial Terms.
- 1.27 **“Request Document”** means this Request to Qualify and Quote document comprised of sections listed in the Table of Contents, issued by Metrolinx for the Services to be provided, and any Addenda thereto.
- 1.28 **“Request Document Forms”** means any sections of this Request Document which requires completion and must be included with the Submission.
- 1.29 **“RQQ Process”** means the Request to Qualify and Quote procurement process set out in the Request Document herein.
- 1.30 **“Scope of Work”** means the scope of work described in Appendix “B”.
- 1.31 **“Sub-consultant”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix A – General Conditions.
- 1.32 **“Submission”** means all documentation and other materials and information submitted by the Proponent in response to this Request Document or in respect of this RQQ Process.
- 1.33 **“Technical Submission”** means the Proponent’s response to Section 4.3 - Submission Content of Request Submission Requirements herein and any additional information requested by Metrolinx.
- 1.34 **“Vendor Performance Management”** shall have the meaning ascribed in Section 3.16.1 of Instructions to Proponents.
- 1.35 **“Vendor Performance Rating (VPR)”** is the average of a vendor's performance evaluation scores in a particular category (as assessed by or on behalf of

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Metrolinx) for a thirty-six (36) month period preceding the Closing. If a Bidder has not completed any work for Metrolinx in the three (3) years preceding the Closing, for the purpose of evaluating the Submission, the Bidder will be assigned a VPR which is the straight average of all the VPR's of all vendors in a particular category who have performed services for Metrolinx during the prior fiscal year.

- 1.36 **"Vendor"** means the Proponent identified on Page 1 of "Request Document Form and who, if notified of acceptance of its Submission by Metrolinx, shall execute the Contract with Metrolinx for provision of the Work.
- 1.37 **"Work"** shall have the meaning ascribed in Section 2.2 (a) of the Appendix "A" – General Conditions.
- 1.38 **"Working Day"** means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business. Each Business Day will end at 4:00 p.m. on that day.

INTRODUCTION

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2.0 Introduction

2.1 General

- 2.1.1 Metrolinx is issuing this Request to Qualify and Quote to retain a Proponent to provide the goods and/or services described herein. Metrolinx intends to award a Contract through an open, fair and competitive process.
- 2.1.2 You are invited to submit your Submission for **RQQ-2018-RCDV-225**, for Engineering Services for administered restoration and stabilization of the three (3) heritage interlocking towers located at Scott, John and Cherry Streets in the Union Station Rail Corridor (USRC). The Work shall include bringing each tower up to current buildings codes and standards to create a safe work environment as more particularly described in this Request Document as required by Metrolinx, which Work relates to Engineering Services for Administered Heritage Signal Towers restoration for John, Scott and Cherry Streets (USRC).

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3.0 Instructions to Proponents

3.1 Submission Instructions

3.1.1 General

- (a) The Request Documents shall be read as a whole. The Schedules, Appendices and Addenda, if any, constitute an integral part of this RQQ Process and are incorporated by reference. The documents included in this Request Document (with the exception of any Addenda that may be issued subsequently) include all documents noted in the Table of Contents.

(b) *****NOTE: ELECTRONIC BID SUBMISSION**

Your Submission for this opportunity must be made to Metrolinx through the use of **MERX EBS**. Proponents shall be solely responsible for the delivery of their Submission using MERX EBS by the Closing, in accordance with the Submission Instructions herein.

- (c) Your Submission is to be firm and irrevocable for one hundred and twenty (120) calendar days from the Closing.
- (d) Your Submission will be evaluated in accordance with the Request Evaluation Criteria and Selection Process as outlined in this Request Document.

(e) RQQ Timetable

Milestone	Date
Issuance of Request Documents	July 17, 2018
Mandatory Site / Information Meeting (further instructions below)	July 24 , 2018
Deadline to Submit Questions	August 1, 2018
Last day for issuance of Addenda	August 9, 2018
Closing	August 14, 2018 @ 3:00 p.m. Toronto, Ontario Time
Estimated Start of Work	October 16, 2018

Metrolinx may, without liability, cost or penalty and in its sole discretion amend the RQQ Timetable.

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3.1.2 Request Enquiries

- (a) All written enquiries and other communications prior to full Contract execution are to be directed solely to the Procurement Representative.
- (b) Any questions concerning the Request Documents, the contents herein, or the Services contemplated herein are to be directed, in writing, to Procurement Representative as specified in Section 1.23 prior to the deadline for submitting questions. No questions or requests for clarifications, changes or amendments of Request Documents shall be entertained after this time regardless of the reason.
- (c) All questions/requests for clarification related to the Request Documents are to be submitted via e-mail to the attention of the Procurement Representative using the Question and Answer Template which is a fillable file attached separately as:

Vendor Q and A Template_RQQ-2018-RCDV-225

In the above mentioned file, indicate for each question being submitted the page, drawing, section number (as applicable) and details of the specific question/clarification requested. For each set of questions submitted by the Proponent, a new copy of the above referenced Question and Answer Template should be submitted.

- (d) When necessary, revisions to, or clarifications of the Request Documents will be incorporated into a written addendum issued by the person identified herein. Information regarding the Request Documents or the Services, whether provided by the person identified herein, or from any other source, whether verbally or in writing, shall be considered informal and Metrolinx shall not be bound by, or liable for, any such information unless incorporated into a written addendum.

3.1.3 Mandatory Site / Information Meeting

- (a) Proponents shall attend a mandatory site/information meeting as follows:

Date	July 24, 2018
Time	Commence at 10:00 AM, Toronto, Ontario time and end at approximately 12:30 PM, Toronto, Ontario time
Location	First (1 st) Location 1: Cherry Street Signal Tower, Toronto, Ontario;

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	<p>Second (2nd) Location : Scott Street Signal Tower, Toronto, ON;</p> <p>Third (3rd): John Street Signal Tower, Toronto, Ontario</p>
Instructions	<ul style="list-style-type: none">• As the Mandatory Site / Information Meeting shall take place at all three (3) locations as set out herein, Proponents shall be expected to attend the site meeting at all locations in accordance with these RQQ Documents;• Proponents shall meet at the first (1st) location which is 385 Cherry Street Toronto, Ontario, in front of the Cherry Street Signal Tower. (The main intersection is Mill and Cherry Streets, Toronto, Ontario);• From there, Proponents shall reconvene at the second (2nd) location which is the Scott Street Signal Tower. Proponents can gain access from 14 Lower Jarvis Street;• From there Proponents shall reconvene at the third (3rd) and final meeting location which is Bremner Yard located at Bremner Boulevard and Simcoe Street (behind Convention Centre) at 226 Bremner Boulevard;• Proponents shall sign in at the first (1st) location and check in at the remaining two (2);• Proponents shall be responsible for providing their own transportation from one location to the next and finding a suitable parking spot;• Approximately forty five (45) minutes will be allotted for each Mandatory Site/Information Meeting for each location;• The anticipated travel time from one (1) location to the next is fifteen (15) minutes; however weather and traffic will be taken into account on the day; <p><u>Please note:</u> Meeting Instructions and details are</p>

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	<p>subject to change and Proponents shall be notified of any changes via an Addendum; and</p> <ul style="list-style-type: none">• PPE is Mandatory. See below for details.• Proponents will be expected to walk on uneven ground and climb stairs.
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- (b) Failure of a Proponent to attend the mandatory site/information meeting, be registered and be present for the entire meeting from the time the meeting is called to order until the meeting is adjourned shall automatically result in suspension of their eligibility to remit a Submission for the Work. Submissions by such Proponents shall be found non responsive and disqualified.
- (c) The scope and nature of the Work will be reviewed and a formal tour of the Site shall be conducted as appropriate.
- (d) **All Proponents, their employees, agents and Sub-consultants, shall wear appropriate safety wear at all times while they are on the site including hardhats, safety vests, six inch (6”) safety boots and protective eyewear that might be required. Failure to comply shall result in exclusion from the site. Proponents shall supply their own safety wear. Metrolinx shall not supply any safety wear.**

3.1.4 Addenda / Changes to the Request Documents

- (a) In the event that Metrolinx determines in its sole discretion, that clarification of, or revisions to the Request Documents are required, all Proponents who received copies of the Request Documents shall be advised of such clarifications or revisions during the period by written addenda. Such addenda shall become part of the Request Documents and the contents thereof shall be allowed for in the prices bid for the Work.
- (b) It is the Proponent's responsibility to ensure that they have received copies of all Addenda, and to ensure that the Addenda have been considered in their Submission. Addenda, if applicable, will be issued through MERX. Information concerning the number of Addenda issued and the date of issue of the most recent Addendum can be found at www.merx.com for this RQQ Process. Proponents are urged to select automatic notification of Addenda issuance when registering on MERX.
- (c) The Proponent, when ascertaining if copies of all Addenda issued have been received, shall be responsible for allowing sufficient time prior to the

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Closing to receive any missing Addenda and to review and allow for the contents thereof in the Submission.

- (d) The Proponent shall submit the Submission using the most current Request Document Forms as issued via Addenda. Failure to use the most current pages of the Request Document Forms may result in the Submission being found non-compliant and disqualified.

3.1.5 Request Submission

- (a) Proponents remitting a Submission to Metrolinx shall exercise extreme care when completing and submitting all Request Document Forms.
- (b) Proponents shall examine carefully the whole of the Request Documents and any data referred to therein. They shall make the necessary investigations to inform themselves thoroughly as to the character and magnitude of the Work.
- (c) The Proponent shall not claim at any time after the Closing and/or after notification of award of the Contract that there was any misunderstanding or uncertainty in regard to the Request Documents or any of the contents therein. No plea of ignorance of conditions which exist, or any conditions or difficulties that may be encountered, shall be accepted as a reason for failure to complete the Contract or as a basis for claims for additional compensation or extension of time.
- (d) Your Submission shall be completed fully in a clear and comprehensible manner.
- (e) Submissions shall be remitted electronically through MERX EBS only. Submissions sent in any other manner shall be deemed non responsive and automatically disqualified.
- (f) The Submission shall be submitted on the original Request Document Forms as issued by Metrolinx through the MERX website and except for designated sections where the Proponent is to enter information, the Request Document and Request Document Forms shall not be altered in any way including, but not limited to, write-ins, strike-outs of the pre-printed provisions or any other conditional or qualifying statements.
- (g) Any Submission which contains such conditional and/or qualifying statements shall be deemed non-compliant and disqualified unless such conditional and/or qualifying statements are withdrawn in writing by the Proponent, upon request by Metrolinx.

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- (h) If during the preparation of their Submission, the Proponent desires to make a change which requires correction, alteration or erasure to any information previously entered in a designated section of the Submission by the Proponent, documents that have been uploaded to MERX using EBS can be added, removed and/or re-submitted as often as required at any time, prior to Closing.

Any Submission documents that are attempted to be uploaded via MERX EBS after the Closing has occurred (as confirmed by the MERX Audit Report) shall be automatically rejected by Metrolinx, regardless of the reason for lateness.

- (i) All prices shall be firm and quoted in Canadian funds. The prices quoted in the Submission shall represent full payment for all such Work as is necessary for the proper completion of the Contract.
- (j) Submissions must be remitted on MERX by the Proponent's E-bid Authorized Signer.
- (i) NOTE: The Proponent can have only one (1) E-Bid Authorized Signer which is to be used for any EBS submission process.
- (ii) The E-Bid Authorized Signer does not have to be either the person placing the order for the Request Document on MERX, nor do they have to be subscribed to MERX. Once an E-Bid Authorized Signer has been setup, a letter will be sent via email to the E-Bid Authorized Signer.
- (iii) For the purposes of a Joint Venture, the E-Bid Authorized Signer of the Participant-in-Charge shall remit the Submission.
- (k) Submission must be remitted electronically through the MERX EBS system. For assistance in using MERX EBS, please watch the online Electronic Bid Submission tutorial at: <http://www.youtube.com/watch?v=To0fqSccw3M> . Alternatively, you can contact MERX directly at 1-800-964-MERX (6379) or visit the MERX website at www.merx.com for further instruction or assistance regarding EBS and/or E-Bid Authorized Signer registrations.
- (i) Please review the E-bid checklist on MERX as this will provide some general assistance regarding uploading of documents.
- (ii) It is the Proponent's sole responsibility to ensure that all required information for their Submission is uploaded to MERX via EBS. Failure of the Proponent to include all required items may result in

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the Proponent's Submission being deemed non-responsive and disqualified.

- (iii) The largest individual file size that can be submitted through MERX is 100MB, although there is no limit to the number of files that can be submitted. If any individual file size is over 100MB, the Proponent's submission can be split into multiple parts, and submitted as clearly labelled, multiple files once the submission has been broken up into files of 100MB or smaller.
- (iv) MERX places no restriction on file format and does not convert or zip files during the upload process.
- (v) In order to complete the Submission, the on-line authorization of the Proponent's E-Bid Authorized Signer will be required. It is the Proponent's sole responsibility to have an E-Bid Authorized Signer PIN number issued from Merx at least one (1) day prior to Closing. Visit [tenders.merx.com/Request EBS Pin](https://tenders.merx.com/RequestEBSPin) to request a PIN for the Proponent's E-bid Submission Authorized Signer.
- (l) Information contained in the most recent Submission remitted via MERX EBS and received prior to the Closing will take precedence over the information contained in previously received Submissions from the Proponent.
- (m) The Proponent may withdraw a Submission at any time prior to the Closing specified by Metrolinx by logging into MERX on the E-bid Submission screen locating the opportunity and clicking 'Delete' for the opportunity in question. Once deleted, an E-bid is given the status 'Not Submitted'

3.1.6 Submission Deadline

- (a) Submissions must be fully uploaded via MERX EBS by the Closing. Any Submission or portions thereof received after the Closing (as confirmed by MERX Audit Report) shall be deemed non-responsive and the entire Submission shall be disqualified regardless of the reason for lateness. The Proponent shall remit the Submission with sufficient time to ensure its arrival before the Closing.
 - (i) It is recommended by MERX to allow at least four (4) hours to remit the Submission via EBS, which shall provide the Proponent with the opportunity to upload all documents and resolve any potential issues that may arise. If you have many large documents or you are not running on high speed internet access you may want to give yourself additional time. If the problem persists, call

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MERX directly at 1-800-964-MERX (6379). Metrolinx staff will be unable to assist with any EBS related issues.

- (ii) If the Proponent attempts to remit their Submission, or portions thereof, after the Closing, such documents shall not be accepted by the MERX system.
- (iii) In the event that the MERX system allows late Submissions, this will not supersede any stipulations herein regarding late submissions.
- (b) Upon successful completion of the EBS process, the Proponent shall be provided with an E-bid Confirmation Number. All reports are kept on the Proponent's MERX account for seven (7) years after the Closing.
- (c) Notwithstanding the above, Metrolinx reserves the right to postpone the Closing at which time all potential Proponents shall be advised of the new Closing by way of Addenda.
- (d) After the Closing has occurred, all Submission received will be opened by Metrolinx staff. There shall be no public access to this opening. Upon execution of the final Contract, all Proponents that have remitted a Submission shall be notified in writing of the results of the award to the successful Proponent. Results of the award to the successful Proponent shall also be posted on the Metrolinx website at www.metrolinx.com/tenders under "Bid Award Results" (Request to Qualify and Quote) and/or the MERX website at www.merx.com/metrolinx (search "Metrolinx" or the Request Number and select "Awards").
- (e) All documentation received by Metrolinx with regards to this RQQ Process will be retained by Metrolinx and will not be returned to the Proponent.

3.1.7 Clarification of Submissions

- (a) Metrolinx reserves the right, within one hundred and twenty (120) calendar days following the Closing, to request that any Proponent clarify its Submission and such Proponents shall submit responses to such request within five (5) Business Days following receipt of such request or within such shorter time as Metrolinx may require. Metrolinx may, in its sole discretion, choose to meet with some or all of the Proponents to discuss aspects to their Submission. Metrolinx may require Proponents to submit information clarifying any matters contained in their Submission or Metrolinx may prepare a written interpretation of any aspect of a

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Submission and seek the respective Proponent's acknowledgement of that interpretation.

- (b) Such information accepted by Metrolinx, for purposes of clarification, and written interpretations which have been acknowledged by the relevant Proponent shall be considered to form part of the Submission of those Proponents.
- (c) After the Closing, only information specifically requested by Metrolinx for purposes of clarification shall be considered as additions to a Proponent's Submission.
- (d) Metrolinx is not obliged to seek clarification of any aspect of a Submission.

3.1.8 Proponent Qualifications

- (a) Refer to Request Submission Requirements for the required corporate qualifications and experience pertaining to this Request Document.
- (b) Refer to Schedule B - Consultant Personnel of Appendix A - General Conditions for the required Key Personnel qualifications pertaining to this Request Document.

3.1.9 Insurance

- (a) Workplace Safety and Insurance Clearance Certificate - The Proponent to whom this Contract is awarded must furnish a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Work of this Contract, as issued by the Workplace Safety and Insurance Board, within five (5) Business Days, of notification of acceptance of its Submission by Metrolinx. Failure by the Proponent to comply with this requirement shall result in the Contract award being declared VOID.
- (b) Liability Insurance
 - (i) As a condition of award of this Contract, the Proponent shall provide to Metrolinx certificates for the following types of insurance in the amounts specified within five (5) Business Days of notification of acceptance of its Submission by Metrolinx:
 - 1) Commercial General Liability Insurance in an amount of not less than five million dollars (\$5,000,000.00) per occurrence;

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- 2) Errors and Omissions/Professional Liability Insurance in an amount of not less than two million dollars (\$2,000,000.00) per claim; and
- 3) Automobile Liability Insurance for owned and non-owned vehicles in an amount of not less than five million dollars (\$5,000,000.00) per occurrence.
- 4) The Certificate of Commercial General Liability Insurance shall reference the Contract name and number and include the following as additional insured:
 - a) Metrolinx;
 - b) Bombardier Transportation Canada Inc.;
 - c) City of Toronto;
 - d) Toronto Transit Commission;
 - e) Canadian National Railway Company;
 - f) Canadian Pacific Railway Company;
 - g) Toronto Terminals Railway;
 - h) Ontario Hydro;
 - i) Toronto Hydro; and
 - j) Metro Toronto Convention Centre.
- 5) All certificates of insurance shall include a provision requiring the insurer to give Metrolinx thirty (30) calendar days prior written notice of any changes to, or cancellation of the required insurance policies and confirmation that all policies with the exception of Errors and Omissions, include a waiver of subrogation against Metrolinx.
- 6) Failure by the Proponent to comply with these requirements shall result in the award of the Contract being declared VOID.

3.1.10 Parent Company Indemnity

If requested by Metrolinx, as a condition of award of Contract, a subsidiary company shall be required to submit a 'Guarantee' from its parent company,

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included as Item No. 9 – Parental Guarantee, and provided for in Appendix “D” – Documents, or in a form satisfactory to Metrolinx and agrees to provide all the necessary financial and technical support for the proper completion of the said Contract and shall guarantee the performance of the said Contract in accordance with the terms and conditions, including timely completion thereof, and agrees to guarantee the Work for the warranty period(s) stipulated therein.

3.2 Nature of Agreement

The General Conditions set out in Appendix “A” and the Consultant’s Scope of Work set out in Appendix “B” attached hereto shall be included in and form part of the Contract. Remitting a Submission constitutes acknowledgement that the Proponent has read and agrees to be bound by such conditions.

3.3 Rights of Metrolinx

Metrolinx reserves the right, in its sole discretion:

- 3.3.1 to cancel this RQQ Process and/or any acceptance of a Submission prior to final execution of the Contract by Metrolinx, for any reason, without any obligation or any reimbursement to the Proponent;
- 3.3.2 to reject any or all Submissions. The Submission with the lowest price will not necessarily be accepted. Metrolinx' selection shall be based on which Proponent has provided a Submission which Metrolinx determines, to provide the greatest value based on the Evaluation Criteria contained in the Request Document;
- 3.3.3 to disqualify any Submission which contains misrepresentations or any other inaccurate or misleading information;
- 3.3.4 to waive any requirement of the Request Documents or request amendment where, in the sole opinion of Metrolinx, there is an irregularity or omission in the information provided, that is not material to the Submission unless a specific consequence has been identified herein for the commission of such an irregularity or omission;
- 3.3.5 to waive the requirement to check references;
- 3.3.6 to not respond to a Proponent’s questions;
- 3.3.7 to use its own experiences, and the experiences of any other third party, with the Proponent in previous contracts in order to evaluate the Proponent’s performance.
- 3.3.8 to award or not award based on submitted references and/or references independently obtained by Metrolinx;

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- 3.3.9 to award or not award based on the Proponent's experiences with Metrolinx or other departments or agencies within the Ontario government, if the Proponent:
- (a) was previously given a "Notification of Award" of contract by a department or agency within the Ontario government and defaulted in proceeding with the work of the contract;
 - (b) has submitted false or misleading information in this Submission;
 - (c) failed or refused to comply with any applicable federal, provincial or municipal law governing a bid or a prior contract with a department or agency within the Ontario government;
 - (d) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or
 - (e) is an affiliate of or successor to any corporation described in Sections 3.3.9(a) through (d) above, including any firm that is controlled within the meaning of the Ontario Business Corporations Act by the same person or group of persons who so controlled any corporation described in Sections 3.3.9(a) through (d) above
- 3.3.10 to reject any Proponent's Submission during this RQQ Process and any proponent submission from a procurement process, due to unsatisfactory performance history with Metrolinx;
- 3.3.11 to request a listing of all projects, regardless of scope, complexity or estimated value, completed for or terminated by Metrolinx within the past three (3) years or currently active;
- 3.3.12 to distribute via Addenda, copies of any Proponent's questions received and responses provided by Metrolinx, to all Proponents who received the Request Documents;
- 3.3.13 to postpone the Closing, at which time all Proponents who received Request Documents shall be advised of the new Closing via written Addenda;
- 3.3.14 within one hundred and twenty (120) days following the Closing, to request that any Proponent clarify its Submission and such Proponents shall submit responses to such request within five (5) Business Days following receipt of such request or within such shorter time as Metrolinx may require;
- 3.3.15 to prepare a written interpretation of any aspect of a Submission and require the relevant Proponent's acknowledgement of the accuracy of that interpretation;

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- 3.3.16 to request that a Proponent voluntarily withdraw its Submission without penalty where in the opinion of Metrolinx the Submission is substantially below internal budget estimates and therefore the Work would not be satisfactorily completed;
- 3.3.17 to correct arithmetical errors in any or all Submissions where such errors affect extended totals, the Estimated Contract Price, H.S.T. and/or Grand Total. Arithmetical corrections shall only be made based upon the unit prices submitted by the Proponent. Corrections to extension, sums, differences or other arithmetical operations based on the Estimated Contract Price submitted will be identified on the Request Document Forms (submitted by the Proponent) by Metrolinx and acknowledged in each instance by the initials of the Proponent's and Metrolinx's authorized signatories. Such corrections will become part of the Proponent's Submission. Failure of the Proponent to acknowledge such corrections shall result in its Submission being deemed non-responsive and disqualified;
- 3.3.18 to, upon failure of the Proponent whose Submission was accepted to fulfill the conditions of Section 3.4.2 herein, cancel award of Contract and consistent with industry practice, notify another Proponent who was determined to be qualified in accordance with the Request Evaluation Criteria stated herein and who submitted a responsive Submission; that its Submission has been accepted and, subsequent to the fulfillment of the conditions of Section 3.4.2 herein, that Proponent shall be deemed to be the successful Proponent and the Proponent to whom the Contract is awarded; and
- 3.3.19 to proceed with and to enter into a Contract with the Proponent for the provision of Work, as stated in Appendix "B" Consultant's Scope of Work, with the exception of Work listed as options to be exercised at the sole discretion of Metrolinx, including:
- (a) **Stage 4:** Assistance with the Procurement and Evaluation Process Work;
 - (b) **Stage 5:** Construction Supervision, Contract Administration, Field Administration and Engineering Work during Construction; and;
 - (c) **Stage 6:** Post Construction Work.

3.4 Contract to be Executed

- 3.4.1 Metrolinx shall notify the Proponent in writing of acceptance of its Submission by Metrolinx. Metrolinx will prepare the Articles of Agreement and bind it into the Contract Documents. Two (2) sets of Contract Documents will be forwarded to the Proponent for review and execution.

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3.4.2 The Contract Documents shall be executed by the Proponent and returned to Metrolinx within five (5) Business days of notification to the Proponent that Metrolinx has accepted its Submission. Failure by the Proponent to execute and return the Contract Documents with the required Insurance Certificates and Workplace Safety and Insurance Clearance Certificate and any other documents as may be required within the specified time, shall result in the cancellation of the Contract award.

3.4.3 There shall be no binding contract for the supply of the Work unless and until Metrolinx and the Proponent, whose Submission has been accepted, have executed the written agreements contemplated in this Request Document. The Proponent shall not start the Work before the Contract has been executed by the Proponent and Metrolinx and all documents required by this Request Document, as a condition of award of the Contract, have been delivered to Metrolinx.

3.5 Conflict of Interest

3.5.1 The Conflict of Interest declaration included in the Form of Request shall be completed and provided with the Submission.

3.5.2 Examples of Conflict of Interest include but are not limited to:

- (a) any director, officer, or employee or advisor of Metrolinx has any connection or relationship with, or any pecuniary interest in the Proponent or any Sub-consultant thereof;
- (b) the Proponent or any Sub-consultant thereof is in possession of confidential information relating to the Work; and
- (c) any director, officer or employee or advisor of Metrolinx who has knowledge of the Work has assisted the Proponent in the preparation of its Submission.

3.5.3 If, at the determination of Metrolinx in its sole discretion, a Proponent is found to be in a Conflict of Interest that cannot be resolved or the Proponent fails to disclose any actual or potential Conflict of Interest, Metrolinx may, at its sole discretion, disqualify the Proponent from the RQQ Process or terminate any agreement entered into with the Proponent pursuant to this RQQ Process.

3.6 Joint Ventures

3.6.1 If a Joint Venture is proposed, the Proponent shall state in its Submission the Joint Venture arrangements that form the basis on which the Joint Venture plans to carry out its obligations.

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- 3.6.2 The Joint Venture shall not change its Joint Venture arrangement without the prior written approval of Metrolinx in its sole discretion in accordance with the process set out in Section 3.15.
- 3.6.3 One of the Joint Venture participants shall be nominated as being in charge during this RQQ Process and, in the event of a successful Submission during finalization of the Contract (the “Participant in Charge”). The Participant in Charge shall be authorized by the other joint venture participants to incur liabilities and receive instructions for and on behalf of any and all participants of the joint venture.
- 3.6.4 Each Joint Venture participant shall demonstrate its authorization of the Participant in Charge by submitting with their Submissions a power of attorney, or similar document, signed by a legally authorized representative of the Joint Venture participant.
- 3.6.5 All participants of the Joint Venture shall be legally liable, jointly and severally, during this RQQ Process and during the Contract for carrying out the obligations pursuant to the Contract.
- 3.7 Prohibited Contacts and Lobbying Prohibition
 - 3.7.1 A Proponent, Proponent’s team members and all of the Proponent’s respective Sub-consultants, advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of this RQQ Process.
 - 3.7.2 Without limiting the generality of Section 3.7.1, neither Proponents or Proponent team members or any of their respective Sub-consultants, advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RQQ Process, any directors, officers, employees and advisors of Metrolinx, other than the Procurement Representative.
- 3.8 Media Releases, Public Disclosures and Public Announcements
 - 3.8.1 A Proponent shall not, and shall ensure that its advisors, employees, or representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press on the radio, television, internet, or any other medium) that relates to this RQQ Process, this Submission or any matters related thereto, without the prior written consent of Metrolinx.
 - 3.8.2 A Proponent, Proponent’s team members and all of the Proponent’s respective advisors, employees and representatives shall not make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Submission or to publicly promote or advertise its own qualifications, interest in or participation in the RQQ Process without

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Metrolinx's prior written consent, which may be withheld in Metrolinx's sole discretion. Notwithstanding this item, the Proponent, Proponent's team members and all of the Proponent's respective advisors, employees and representatives are permitted to state publicly that it/they are participating in the RQQ Process.

- 3.8.3 For greater clarity, this section does not prohibit disclosures necessary to permit the Proponent to discuss the Request Document with prospective sub consultants' participation in this RQQ Process.

3.9 Restriction on Communications Between Proponents – No Collusion

A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of its own Submission or the Submissions of other Proponents. Proponents shall prepare and submit Submissions independently and without any connection, knowledge, comparison of information or arrangements, direct or indirect, with any other Proponent. This obligation extends to all team members of a Proponent and all of the Proponent's respective advisors, employees and representatives.

3.10 Disclosure of Information

- 3.10.1 The Proponent hereby agrees that any information provided in its Submission, even where it is identified as being supplied in confidence, may be disclosed by Metrolinx where required by law, order of a court, or tribunal.
- 3.10.2 The Proponent hereby consents to the disclosure, on a confidential basis, of its Submission by Metrolinx to Metrolinx's advisors retained for the purpose of evaluating or participating in the evaluation of the Submissions.
- 3.10.3 Under Ontario's Open Data Directive, Metrolinx is required to publish certain procurement information. Accordingly, the Bidder acknowledges that, subject to any applicable FIPPA exemptions, Metrolinx may publish procurement data including but not limited to the names of the Bidders and the winning bid in accordance with Ontario's Open Data Directive. For more information, see: www.ontario.ca/page/ontarios-open-data-directive.
- 3.10.4 Disclosure of personal or confidential business information may be avoided if it would be significantly harmful to business interests or would be an unreasonable invasion of personal privacy. Accordingly, Bidders are encouraged to:
- (a) identify those portions of their Submissions which they are supplying in confidence and for which disclosure to others would be significantly harmful to their business, or would be an unreasonable invasion of their personal privacy, as defined in Section 17 of FIPPA; and

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- (b) be prepared to justify that determination if challenged to do so by someone who applies for access to the information.

3.11 Freedom of Information and Protection of Privacy Act (“FIPPA”)

Proponents are advised that Metrolinx may be required to disclose all, a part, or parts of a Proponent’s Submission and a part or parts of any Submission pursuant to FIPPA.

3.12 Submission to Be Retained by Metrolinx

Metrolinx shall not return a Submission or any accompanying documentation submitted by a Proponent.

3.13 Confidential Information of Metrolinx

All information provided by or obtained from Metrolinx in any form in connection with the Submission process;

3.13.1 is the sole property of Metrolinx and shall be treated as confidential;

3.13.2 shall not be used for any purpose other than replying to the Request Document and the performance of any subsequent agreement; and

3.13.3 shall not be disclosed without prior written authorization from Metrolinx.

3.14 Proponents Shall Bear Their Own Costs

The Proponent shall bear all costs associated with or incurred in connection with its participation in this RQQ Process, including, but not limited to, preparation of its Submission and preparation for and participation in presentations and interviews.

3.15 Changes to Proponent Key Personnel, Sub-consultants or Joint Venture

3.15.1 If after the Closing, but prior to the execution of the Contract, the Proponent wishes to request a change in a Key Personnel, Sub-consultant, or Joint Venture, the Proponent shall notify the Procurement Representative as soon as possible and the notification shall identify the proposed change in Key Personnel, Sub-consultant or Joint Venture and the proposed substitute, if applicable, and include sufficient documentation that the proposed substitute would have met or exceeded any applicable criteria applied during this RQQ Process.

3.15.2 In response to a request as per Section 3.15.1 above, Metrolinx may, in its sole discretion provide the Proponent with instructions as to the type of information required by Metrolinx to consider the proposed change to the Proponent’s Key Personnel, Sub-consultants or Joint Venture arrangements as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by Metrolinx.

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3.15.3 The Proponent shall provide any further documentation as may be required by Metrolinx to assess any proposed substitute or change. If Metrolinx, in its sole discretion, considers the proposed substitute to be acceptable, Metrolinx may consent to the substitution. Metrolinx's consent to such substitution, however, may be subject to such terms and conditions as Metrolinx may require. If the proposed substitute or change is not acceptable to Metrolinx, the Proponent shall propose an alternate substitute or change for review by Metrolinx in the same manner as the first proposed substitute.

3.15.4 Metrolinx may, in its sole discretion, disallow any actual or proposed change.

3.16 Vendor Performance Management Program

3.16.1 Vendor Performance Management ("VPM") Program means the Metrolinx system for monitoring, evaluating and recording vendor performance, as same may be amended or replaced from time to time. The Vendor Performance Management Program establishes a standard methodology for the incorporation of a vendor's past performance in a particular category as a criterion in assessing that vendor's submission for future work with Metrolinx.

3.16.2 Pursuant to Metrolinx's VPM Program, Metrolinx will be considering the Proponent's past performance under contracts with Metrolinx, in a particular category, in evaluating Submissions received in response to this Request Document.

3.16.3 The VPR is being applied as a component of evaluation for this RQQ Process in accordance with Request Evaluation Criteria and Selection Process.

3.16.4 A Proponent may access their VPR through an annual subscription on the Metrolinx MERX Portal. If a Proponent has questions regarding their VPR, they should contact the Procurement Representative in accordance with Section 3.1.2 of Instructions to Proponents.

3.16.5 Information regarding Metrolinx Vendor Performance Management System and how a Vendor Performance Rating is calculated can be found in the Metrolinx "Vendor Relationship Management Procedures and Guidelines v1.1 dated November 7, 2016", or most current version, accessed through the following link:
http://www.metrolinx.com/tenders/en/VendorRelationshipManagement_Guidelines.pdf

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3.16.6 The "Contract Performance Appraisal" applicable to any Contract resulting from this RQQ Process, can be found under Appendix "D" – Documents.

END OF SECTION

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4.0 Request Submission Requirements

4.1 Mandatory Requirements

4.1.1 Proponents must meet all mandatory requirements in order for their Submission to be considered further. Failure of a Proponent to meet all of the mandatory requirements listed below shall result in the Proponent's Submission to be deemed non-compliant and shall not be considered further.

4.1.2 The mandatory requirements for this Request Document are as follows:

- (a) The Form of Request must be submitted by the E-Bid Authorized Signer.
- (b) Pricing information must be completed and submitted using *"Attachment 1 - Contract Prices RQQ-2018-RCDV-225"*.
- (c) Proponents shall attend a mandatory site/information meeting per the instructions outlined in Instructions to Proponents. Failure of a Proponent to attend the mandatory site/information meeting, be registered and be present for the entire meeting from the time the meeting is called to order until the meeting is adjourned shall automatically result in suspension of their eligibility to issue a Submission for the Work. Submissions remitted by such Proponents shall be found non responsive and disqualified.
- (d) Proponents shall declare any conflicts of interest in Section 6.6 of "Form of Request". If Section 6.6 is left blank the provisions of Section 6.6.1 of "Form of Request" shall apply.
- (e) The proponent shall provide the information requested in *"Attachment # 3 – Key Personnel Curriculum Vitae and References"*.

4.2 Submission Format

Submissions must be submitted through MERX and should be in the following format:

4.2.1 Present information in Font Size 11 pt. on 8½ x 11 paper size.

4.2.2 Include a table of contents.

4.2.3 Organize information into sections which correspond to the Submission Content Requirements in the exact order described below.

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- 4.2.4 The entire content of the Proponent's Submission shall be submitted in writing, and the content of web sites or other external documents referred to in the Proponent's Submission will not be considered for evaluation unless submitted in their entirety as part of the Submission.

4.3 Submission Content

The Proponent's Submission shall include: a Technical Submission and a Price Submission. The information required in each Submission as well as the prescribed format in which it should be submitted is outlined below.

- 4.3.1 Technical Submission - The Proponent's Technical Submission should be comprised of the following sections in the following order and should contain a Table of Contents.

(a) **Technical Submission Section 1:**

- (i) Provide a completed "*Form of Request*". The Form of Request shall not be retyped, and entries shall be made directly on the Request Document Forms provided by Metrolinx.
- (ii) If submitting as a Joint Venture, attach a copy of the Joint Venture Agreement electing the Participant-in-Charge.

(b) **Technical Submission Section 2: Corporate Summary:**

The Proponent should provide a corporate overview of its structure, capabilities, qualifications and experience relevant to the Work, as outlined below.

Failure of the Proponent to satisfactorily submit the requirements related to Corporate Experience and Qualifications as detailed in this Section 2 in addition to Section 3 below, may result in the Submission being deemed non-responsive and being disqualified from any further consideration or evaluation at the sole discretion of Metrolinx.

The Proponent should demonstrate its Corporate Firm's previous experience in satisfactorily and competently performing Work similar in type, size, estimated value and complexity as the Work identified in Appendix "B" as set out below. The Proponent understands and agrees that Metrolinx may verify any information provided in any Submission.

- (i) **Corporate Summary: Corporate Firm**

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- 1) Provide a description of the make-up of the Proponent's Corporate Firm;
- 2) Identify the principal business of key Sub-consultants, professional advisors and subject matter experts it proposes to use in the performance of the Work, especially for major or critical pieces of the work. For each Sub-consultant listed, the Proponent shall provide the following:
 - a) Full corporate name and location of the Sub-consultant;
 - b) Which area of the Work the Sub-consultant shall be employed for;
 - c) The Sub-consultant's experience and qualifications relative to the Work it will be performing;
 - d) Previous instances of the Proponent and Sub-consultant working together including:
 - i) A description of the project and value;
 - ii) The client the services were performed for; and
 - iii) The parts of the services performed by the Sub-consultant.

(ii) Corporate Experience and Qualifications:

- 1) The Proponent should demonstrate its experience in performing work similar in type, size and complexity as the Work identified in Appendix "B" by including a summary of the Corporate Firms qualifications and experience relevant to the Work being contemplated, including but not limited to:
 - a) The necessary resources to sustain and complete the Work to the satisfaction of Metrolinx;

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- b) Ten (10) years demonstrated experience with Construction projects undertaken on an infrastructure or rail facility which continues to operate during Construction;
- c) Ten (10) years of experience in design, Construction support and project management of heritage designated buildings; and
- d) Ten (10) years of experience in design, Construction support and project management of transportation and/or rail facilities of similar scope and complexity as per this RQQ.

(c) **Technical Submission Section 3: Corporate References**

- (i) Reference Projects are intended to demonstrate the Corporate Firm's corporate capacity to perform and manage projects of a similar scope, complexity and estimated value as the Work.
- (ii) Corporate References Related to Current Scope:
 - 1) The Proponent should provide a list of three (3) references, for relevant projects completed within the past five (5) years or currently active, which demonstrate the Corporate Firm's experience and qualifications. The Proponent will include all projects of similar scope, complexity and estimated value that it has completed or is currently completing for Metrolinx as part of the three (3) reference projects provided by the Proponent. Failure of the Proponent to include the aforementioned reference projects completed for Metrolinx will affect the Proponent's score. The Proponent should, using the template provided in "*Attachment #2 – Corporate References*", provide the following information for each corporate reference project:
 - a) Name of the company for which the work was performed;
 - b) Project title;

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- c) Contact person's name, title, telephone number and e mail address; and
 - d) Start and completion date.
 - e) The proponent can attach up to an additional two (2) pages of information related to each reference project, including but not necessarily limited to the following:
 - i) List of any other Key Personnel and their project roles, if applicable; and
 - ii) Images and illustrations of the project
- (iii) Reference Checks: References will be checked using a standard uniform method. Opinions of previous clients regarding budget and schedule experience, dependability, attitudes of employees and/or Sub-consultants, concern for efficiency, economy and environment, sensitivity to community, and quality of service among others may be taken into account when evaluating reference projects.
- (d) **Technical Submission Section 4: Team Experience and Qualifications**
 - (i) **Functional Organization**
 - 1) Organizational Chart – Provide an organizational chart identifying the named Key Personnel assigned and dedicated solely to the project in their respective roles, for completion of the Work.
 - (ii) **Role and Responsibilities of Key Personnel**
 - 1) A brief description identifying the role and responsibilities of each Key Personnel, with respect to the Work requested;
 - 2) A statement describing the experience of the individual Key Personnel in working together on previous relevant projects;
 - 3) A statement indicating whether the Key Personnel is an employee of the Proponent or is a Sub-consultant; and

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- 4) A statement of availability of Key Personnel identified for each role indicating that the individual is available for the required Contract Term.

(iii) Key Personnel

Key Personnel Experience and Qualifications - For each of the individuals to be employed in the above Key Personnel roles, the Proponent should provide the following:

- 1) Curriculum Vitae – Provide curriculum vitae in accordance with Section 9.1 of *“Attachment #3 – Key Personnel Curriculum Vitae and References”* using the template provided therein.
- 2) Key Personnel References – Provide Key Personnel references in accordance with Section 9.2 of *“Attachment # 3 – Key Personnel Curriculum Vitae and References”* using the template provided therein.
- 3) Key Personnel Description of Reference Projects – Provide Key Personnel description of reference projects in accordance with Section 9.3 of *“Attachment # 3 – Key Personnel Curriculum Vitae and References”*

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4.4 Proponent Presentation

Not Applicable

4.5 Price Submission

- 4.5.1 A Submission shall include a Pricing Submission. Pricing information must be completed and submitted using the Excel template provided, entitled "*Attachment #1 – Contract Prices RQQ-2018-RCDV-225*". The pricing template must be submitted as a separate file preferably in Excel (.xlsx) format.

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5.0 Request Evaluation Criteria and Selection Process

5.1 Request Evaluation Methodology

5.1.1 Submissions shall undergo several phases of evaluation based on the information provided using the criteria and scoring as listed in the Request Evaluation Criteria Section below.

5.1.2 Each criterion is evaluated. Critical criteria will be rated pass or fail. All other Evaluation Criteria shall be assigned a score out of ten (10). The score is then multiplied by the weight (which indicates the relative importance of the criteria not deemed critical to Metrolinx) to determine the weighted score. The weighted scores are then added to determine the Total Evaluated Score for the Submission.

5.1.3 Submissions shall be evaluated in four (4) phases, as follows:

(a) **Phase One (I): Administrative Evaluation (Compliant/Non-Compliant)**

Submissions shall undergo an administrative evaluation to determine compliance with the mandatory requirements as stated in the Mandatory Criteria. Only those Submissions determined in the sole opinion of Metrolinx, to have fulfilled all the mandatory requirements shall be deemed compliant and shall proceed to Phase Two of the evaluation process. Submissions that do not meet administrative requirements shall be deemed non-responsive and shall be disqualified.

(b) **Phase Two (II): Technical Evaluation (70% weighting)**

Submissions proceeding to Phase Two (II) shall be evaluated by the Evaluation Committee in accordance with the Submission Requirements above and the Evaluation Methodology. Only those Submissions achieving a total minimum score of 70% (490 points out of 700 possible points) on Phase Two (II), as determined by the Evaluation Committee, shall proceed to Phase Three (III): VPR Evaluation and Phase Four (IV): Pricing Evaluation of the evaluation process.

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(c) Phase Three (III) : Vendor Performance Rating (VPR) Evaluation (5% weighting)

(i) VPR shall be evaluated for compliant Submissions which:

1) Achieve the minimum score of 70 % on Phase Two (II): Technical Evaluation.

(ii) Submissions proceeding to this Phase Three (III), in accordance with Section 5.1.3(c)(i) above shall be evaluated by Metrolinx as follows:

1) For this RQQ Process, “Performance Category” shall be defined as the “Design Engineering and Construction Administration” category.

2) For this RQQ Process, the Vendor Performance Rating (“VPR”) is the average of a vendor’s performance evaluation scores (as assessed by or on behalf of Metrolinx), in the Performance Category, for a thirty-six (36) month period preceding the Closing.

3) If a Proponent has not completed any work for Metrolinx for a thirty-six (36) month period preceding the Closing, for the purpose of evaluating the Submission, the Proponent will be assigned a VPR in the Performance Category, which is the straight average of all the VPR’s of all vendors who have performed Work for Metrolinx for a thirty-six month period preceding the Closing, in this Performance Category.

4) The legal name of the Proponent stated on the Form of Request will be used for determining the Proponent’s VPR score in the Performance Category. It is the responsibility of the Proponent to ensure that its proper legal name has been stated on the Form of Request and matches the legal name used by the Proponent in setting up its legal profile in the Metrolinx MERX Portal. Metrolinx will not accept any requests from the Proponent, after the Closing, to change the legal name provided.

5) In the case of a Joint Venture where multiple parties will sign the Contract, the VPR under the

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Performance Category, of each Joint Venture participant, will be added and the average will be applied as the VPR score.

- 6) If any member of the Joint Venture has not completed work for Metrolinx within a thirty-six (36) month period preceding the Closing, Section 5.1.3(c)(ii)3) above shall apply for that member.
- 7) The Proponent's VPR, at the time of evaluating this Phase Three (III), shall be the VPR used for evaluation purposes. The Proponent's VPR used in the evaluation of this Phase Three (III) can be obtained from the Procurement Representative at the conclusion of this RQQ Process.
- 8) Once VPR scores in the Performance Category are determined for each Submission proceeding to this Phase Three (III) evaluation, each Proponent's VPR shall be evaluated and scored as follows:
 - a) The following equation shall be applied to determine a score out of ten:
 - i) "Proponent's VPR Score (Expressed as a %) / 10 = score out of ten"
 - b) The score out of ten for VPR shall be multiplied by the weighting factor to determine the assigned score for VPR Evaluation.

(d) Phase Four (IV): Pricing Evaluation (25% weighting)

- (i) Attachment #1 – Contract Prices shall be evaluated for complaint Submissions which:
 - 1) achieve the minimum score of 70% on Phase Two (II): Technical Evaluation;
- (ii) Attachment # 1 - Contract Prices shall not be evaluated for those Proponents whose Submissions do not achieve the specified minimum score requirement to proceed to Pricing Evaluation.
- (iii) Pro-Rated

REQUEST EVALUATION CRITERIA AND SELECTION PROCESS

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- 1) An administrative evaluation shall be conducted of Attachment #1 – Contract Prices to determine compliance with the mandatory requirements as stated therein and in the Instructions to Proponents. The Estimated Contract Price of each Submission proceeding to Pricing Evaluation, shall be evaluated and scored as follows:
 - a) The Submission with the lowest Estimated Contract Price shall receive the maximum score of ten (10) points for Pricing Evaluation.
 - b) The following equation shall be applied to all other Submissions to determine a score out of ten:

$$\frac{\text{Lowest Estimated Contract Price}}{\text{Proponent's Estimated Contract Price}} \times 10 = \text{score out of ten}$$

The score out of ten for Price shall be multiplied by the weighting factor and added to the total score for Phase Two and Phase Three to determine Total Overall Score for the Submissions.

5.1.4 Total Overall Score

- (a) **Total Overall Score** = Phase Two (II): Technical Evaluation + Phase Three (III): VPR Evaluation + Phase Four (IV): Pricing Evaluation

5.1.5 Selection of Submissions

- (a) Metrolinx' selection shall be based on which Proponent has provided a Submission which Metrolinx determines in its sole discretion to provide the greatest value to Metrolinx based on the Evaluation Criteria contained in these Request Documents.

- (i) Total Overall Score

The award of the Contract shall be made to the Submission which has achieved the highest Total Overall Score.

REQUEST EVALUATION CRITERIA AND SELECTION PROCESS

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5.2 Request Evaluation Criteria

The Evaluation Criteria to be used for evaluation of the Proponent's Submission and the weighting assigned to each criterion are as follows:

Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
PHASE ONE (I): ADMINISTRATIVE EVALUATION (Compliant / Non-Compliant)			
PHASE TWO (II): TECHNICAL EVALUATION			
Technical Submission Section 1: Form of Request (Compliant / Non-Compliant)			
Technical Submission Section 2: Corporate Summary			
Corporate Firm	10	5	50
Corporate Experience and Qualifications	10	10	100
Subtotal Corporate Summary:		15	150
Technical Submission Section 3: Corporate References			
Description of Corporate Reference Project# 1 and Corresponding Reference	10	2	20
Description of Corporate Reference Project# 2 and Corresponding Reference	10	2	20
Description of Corporate Reference Project# 3 and Corresponding Reference	10	2	20
Subtotal Description of Corporate References:		6	60
Technical Submission Section 4: Team Experience and Qualifications			
Organizational Chart	10	1	10
Roles and Responsibilities of Key Team Members	10	5	50
Key Personnel Experience & Qualifications	-----	-----	-----
Project Manager	10	10	100
Construction Supervisor	10	5	50
Contract Administrator	10	5	50

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Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
Architect	10	5	50
Mechanical Engineer	10	5	50
Structural Engineer	10	5	50
Heritage Architect	10	8	80
Subtotal Team Experience and Qualifications:		49	490
Subtotal Technical Evaluation:		70	700
PHASE THREE (III): VENDOR PERFORMANCE RATING (VPR) EVALUATION			
VPR Score	10	5	50
PHASE FOUR (IV): PRICING EVALUATION			
Pricing	10	25	250
TOTAL EVALUATED SCORE:		100%	1,000

REQUEST EVALUATION CRITERIA AND SELECTION PROCESS

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Technical Submission Scoring Guidance – the Proponents Technical Submission will be evaluated using the above noted approach. The following outlines some guidance on how each line item will be scored:

Score	Description
10 = Excellent	Response is excellent and exceeds the requirements.
8-9 = Very Good	Response substantially meets and exceeds some of the requirements
7 = Good	Response meets the basic requirements.
5-6 = Satisfactory	Response is satisfactory and meets most of the requirements.
3-4 = Fair	Response is fair and meets some requirements.
1-2 = Poor	Response is poor. Information provided is too vague and does not clearly explain how requirements will be met.
0 = Non-relevant	No relevant response or simple statement of compliance with no substantiation.

END OF SECTION

ATTACHMENT LIST

Engineering Services for Administered Heritage Signal Towers Restoration-
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The Attachment List, comprised of the documents listed below, are included as separate fillable forms files as follows:

Section	Document Title	Evaluation Section Reference	File Format
6.0	Form of Request	Section 4.3 (a): Technical Submission Section# 1	MS Word fillable file titled <i>“Request Document Forms RQQ-2018-RCDV-225 Fillable”</i> , or as amended via Addenda, if applicable
7.0	Attachment # 1 – Contract Prices	Section 4.5: Price Submission	MS Excel fillable file titled <i>“Attachment 1 Contract Prices 2018-RCDV-225”</i> , or as amended via Addenda, if applicable.
8.0	Attachment # 2 – Corporate References	Section 4.3 (c): Technical Submission Section# 3: Corporate References	MS Word fillable file titled <i>“Request Document Forms RQQ-2018-RCDV-225 Fillable”</i> , or as amended via Addenda, if applicable
9.0	Attachment # 3 – Key Personnel Curriculum Vitae and References	Section 4.3 (d): Technical Submission Section# 4: Team Experience and Qualifications	

END OF SECTION

FORM OF REQUEST

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6.0 Form of Request

The following Form of Request is to be included as the first section within the Proponent's Technical Submission. The Form of Request must be remitted by the E-Bid Authorized Signer. The Form of Request shall not be retyped, and entries shall be made directly on the form provided by Metrolinx.

Request Number: RQQ-2018-RCDV-225

Request Description: Engineering Services for Administered Heritage Signal Towers restoration for John, Scott and Cherry Street (USRC)

6.1 Proponent Submission Checklist

The following checklist provides the Proponent with a consolidated listing of the requirements for the Submission. Proponents should review the checklist prior to Submission to ensure compliance.

Requirement	Confirmation (left click with your mouse in the box to select)
The Submission has been remitted by the E-Bid Authorized Signer.	<input type="checkbox"/>
Contact information for the individual responsible for the Submission has been included in the Form of Request.	<input type="checkbox"/>
The Proponent understands the requirements for Electronic Bid Submission and will comply with this Submission requirement.	<input type="checkbox"/>
The Proponent's Technical Submission has been prepared in accordance with the Instructions to Proponents (i.e. mandatory formats, templates and requirements) as outlined in the Request Documents.	<input type="checkbox"/>
The Proponent's Price Submission has been completed in full and has been included as a separate attachment in the Submission.	<input type="checkbox"/>
The Proponent has read through all the Request Documents including any Addenda that have been issued and these have all been considered in the Proponent's Submission.	<input type="checkbox"/>
The Proponent has reviewed the mandatory criteria and acknowledges that it meets all mandatory requirements in order for their Submission to be considered further.	<input type="checkbox"/>

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Requirement	Confirmation (left click with your mouse in the box to select)
The Proponent has reviewed the RQQ Timetable and understands all the dates and timelines associated with the RQQ Process.	<input type="checkbox"/>
The Proponent has attended the Mandatory Site / Information Meeting.	<input type="checkbox"/>
The Proponent has not included any qualifying statements in its Submission.	<input type="checkbox"/>
If a Joint Venture, attach a copy of the Joint Venture agreement electing the Participant-in-Charge.	<input type="checkbox"/>

6.2 Contact Information

- 6.2.1 Proponent's registered legal business name (or individual) and any other name under which it carries on business:

[Click here to enter text.](#)

- (a) If a Joint Venture, enter the registered legal business name of the Participant-in-Charge:

[Click here to enter text.](#)

- (b) If a Joint Venture, enter the registered legal business name of the other Joint Venture members:

[Click here to enter text.](#)

- 6.2.2 Proponent's (if Joint Venture, insert Participant-in-Charge information) address, telephone and facsimile numbers:

[Click here to enter text.](#)

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- 6.2.3 Name, title, address, telephone, e-mail and facsimile numbers of the contact person(s) for the Proponent (if a Joint Venture, insert Participant-in-Charge information)

[Click here to enter text.](#)

- 6.2.4 Name of the person who is primarily responsible for the Submission:

[Click here to enter text.](#)

6.3 Proponent Acknowledgments

- 6.3.1 In consideration of the mutual premises and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Proponent hereby offers to Metrolinx to furnish all necessary labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary to perform the following Work:

TO PROVIDE ENGINEERING SERVICES FOR THE PROVISION OF:
A FEASIBILITY STUDY; PRELIMINARY DESIGN; DETAILED
DESIGN; PREPARATION OF TENDER DOCUMENTS; ASSISTANCE
WITH THE PROCUREMENT AND TENDER EVALUATION
PROCESS; CONSTRUCTION SUPERVISION AND CONTRACT
ADMINISTRATION, FIELD ADMINISTRATION AND
ENGINEERING SERVICES DURING CONSTRUCTION; TESTING
AND COMMISSIONING; POST PROJECT CLOSEOUT, POST
CONSTRUCTION SERVICES AND MANAGEMENT OF THE
SERVICES FOR ENGINEERING SERVICES FOR ADMINISTERED
HERITAGE SIGNAL TOWERS RESTORATION FOR JOHN, SCOTT
AND CHERRY STREETS (USRC) AS SET OUT IN THE
CONSULTANT'S SCOPE OF WORK, ATTACHED AS **APPENDIX
"B"**.

- 6.3.2 The Proponent hereby undertakes to perform the Services in strict accordance with the full intent of the terms, conditions and requirements set forth in the following documents which form the Request Documents:

ANY ADDENDA ISSUED HERETO:
INSTRUCTIONS TO PROPONENTS
REQUEST SUBMISSION REQUIREMENTS
REQUEST EVALUATION CRITERIA AND SELECTION PROCESS
FORM OF REQUEST
ATTACHMENT #1 – CONTRACT PRICES
ATTACHMENT #2 – CORPORATE REFERENCES

FORM OF REQUEST

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ATTACHMENT #3 – KEY PERSONNEL CURRICULUM VITAE AND REFERENCES

APPENDIX “A” - GENERAL CONDITIONS

APPENDIX “B” - CONSULTANT’S SCOPE OF WORK

APPENDIX “C” - METROLINX’S WORK

APPENDIX “D” - DOCUMENTS

- 6.3.3 The Proponent acknowledges receipt of any and all Addenda issued hereto and that their Submission has been developed in consideration of the Addenda.
- 6.3.4 The Proponent’s Submission is hereby submitted on the full understanding that it is an irrevocable offer by the Proponent for a period of one hundred and twenty (120) calendar days from the Closing. The Proponent hereby covenants that it shall perform and execute the Work, in accordance with the Contract Prices quoted herein if it is notified in writing by Metrolinx within the one hundred and twenty (120) calendar days period that it is the successful Proponent.
- 6.3.5 The Proponent acknowledges that their Submission should be in the correct format using the appropriate Request Document Forms and instructions as provided herein. Failure to comply may result in the Proponent being found non-responsive and disqualified at the sole discretion of Metrolinx.
- 6.3.6 The Proponent acknowledges that by way of the E-Bid Authorized Signer remitting a Submission, the Proponent is agreeing to be bound to each and every term, condition, article and obligation of the Request Document and any resultant Contract.
- 6.3.7 The Proponent acknowledges that consistent with Section 3.1.9 of Instructions to Proponents, failure by the Proponent, whose Submission was accepted by Metrolinx, to execute and deliver the Contract with the required Insurance Certificates and Workplace Safety and Insurance Clearance Certificate shall result in the cancellation of the Contract award.

6.4 Requirements

- 6.4.1 The Proponent shall provide labour, superintendence, plant, tools, appliances, equipment, supplies and facilities necessary to provide engineering services for the completion of a feasibility study; preliminary design, detailed design, preparation of tender documents; construction supervision and field administration, engineering services during construction; testing and commissioning; post project closeout and management of the services for engineering services for administered heritage signal towers restoration for John, Scott and Cherry streets

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(USRC) in accordance with the Consultant's Scope of Work, attached as APPENDIX "B" (the "Work").

6.4.2 The Services are to be provided to the satisfaction of the Director, Rail Corridor Infrastructure, unless otherwise specified.

6.5 Consultant Personnel (Schedule B Template)

The Consultant Personnel roles shall be filled using Schedule B Template in accordance with the Contract Documents and in accordance with the requirements in respect of qualifications, experience and minimum years of experience as contained in **Schedule B – Consultant Personnel of Appendix "A"** - General Conditions.

6.6 Conflict of Interest

6.6.1 If the box below is left blank, the Proponent will be deemed to declare that (a) there was no Conflict of Interest in preparing its Submission; and (b) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the Request Document.

Otherwise, if the statement below applies, check ("X") the box.

(a) ☐ The Proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its Submission, and/or the Proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the Request Document.

(b) If the Proponent declares an actual or potential Conflict of Interest by marking the box above, the Proponent must set out below details of the actual or potential Conflict of Interest:

6.6.2 The following individuals, as employees, advisers, or in any other capacity;

(a) participated in the preparation of our Submission (whether as employees, advisers, or in any other capacity); and

(b) were employees, advisers or consultants of Metrolinx at any time within the twelve (12) months prior to the Closing:

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Name of Individual: Click here to enter text.
Job Classification: Click here to enter text.
Department: Click here to enter text.
Last Date of Employment with Metrolinx: Click here to enter text.
Name of Last Supervisor: Click here to enter text.
Brief Description of Individual's Job Functions: Click here to enter text.
Brief Description of Nature of Individual's Participation in the Preparation of the Submission: Click here to enter text.

6.6.3 (Repeat above for each identified individual)

The Proponent agrees that, upon request, the Proponent shall provide Metrolinx with additional information from each individual identified above in the form prescribed by Metrolinx.

6.7 **Harmonized Sales Tax**

In accordance with Section 11.1(k) of Appendix "A" – General Conditions, the Consultant represents, warrants and covenants to Metrolinx that the Consultant is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act and that the Consultant's registration number is: [Click here to enter text...](#)

A non-resident Proponent unable to provide a H.S.T. Registration Number at the time of Submission shall be required to provide a H.S.T. Registration Number within five (5) Business Days of acceptance of its Submission by Metrolinx. Failure to comply with this requirement may result in the Contract being declared VOID.

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6.8 Project Schedule

#	Milestone	Date
a.	Stage One – Commencement of Feasibility Study Work	October 9, 2018
b.	Stage One – Completion of Feasibility Study Work	November 2, 2018
c.	Stage Two – Commencement of Preliminary Design Work	November 5, 2018
d.	Stage Two – Completion of Preliminary Design Work	January 4, 2019
e.	Stage Three – Commencement of Detailed Design Work	January 7, 2019
	(i) Completion of Detailed Design – 25%	February 1, 2019
	(ii) Completion of Detailed Design – 50%	March 1, 2019
	(iii) Completion of Detailed Design – 95%	April 19, 2019
	(iv) Completion of Construction Tender Documents	May 3, 2019
f.	Stage Four – Commencement of Assistance with the Procurement and the Evaluation Process Work (Option to be exercised at the sole discretion of Metrolinx)	May 6, 2019
g.	Stage Four – Completion of Assistance with the Procurement and the Evaluation Process Work (Option to be exercised at the sole discretion of Metrolinx)	June 17, 2019
h.	Stage Five - Commencement of Construction Supervision, Contract Administration, Field Administration and Engineering Work During Construction (Option to be exercised solely at Metrolinx' discretion)	July 29, 2019
i.	Stage Five - Completion of Construction Supervision, Contract Administration, Field Administration and Engineering Work During Construction (Option to be exercised solely at Metrolinx' discretion)	November 1, 2019
j.	Stage Six – Commencement of Post Construction Work (Option to be exercised at the sole discretion of Metrolinx)	November 4, 2019
k.	Stage Six – Completion of Post Construction Work (Option to be exercised at the sole discretion of Metrolinx)	December 2, 2019

ATTACHMENT #1 – CONTRACT PRICES – **ADDENDUM NO. 2**

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7.0 Attachment # 1 – Contract Prices

7.1 Contract Prices

7.1.1 The Contract Prices (“Rates”) are hereby submitted on the full understanding that they form part of the Consultant’s Submission and as such constitute an irrevocable offer by the Consultant for a period of one hundred and twenty (120) calendar days from the Closing and the Consultant hereby covenants that it shall perform and execute the Work in accordance with the Rates quoted herein if it is notified, in writing, by Metrolinx within one hundred and twenty (120) calendar days that it is the successful Consultant.

7.1.2 Payment for Work rendered and goods supplied in accordance with the terms and conditions of the Contract shall be based on the following:

- (a) The Rates quoted shall be all inclusive costs associated with performance of the Work defined in the Consultant’s Scope of Work attached as Appendix “B”.
- (b) Cash Allowances shall be used and expended solely for purposes specified and at the sole discretion of Metrolinx. The Consultant cannot proceed with any work to be paid for under Cash Allowance without the written approval of Metrolinx.
- (c) The Rates quoted shall include all costs related to the Work including, but not limited to, Named Key Personnel identified, other technical positions, administrative positions, any Sub-consultants and specialized service providers required to complete the Work, any and all disbursements, travel, supervision, equipment, tools, supplies, General Requirements (as per Appendix “B”) and Management of the Work (as per Appendix “B”) as required in this Request Document.
- (d) No compensation will be due the Consultant for Stage Three, Stage Four, Stage Five or Stage Six of the Work should Metrolinx decide not to proceed with any of these Stages and/or not assign the provision of Work under Stage Three, Stage Four, Stage Five or Stage Six of the Contract.
- (e) **Stage Five** - Consultant’s Cost for Construction Supervision, Contract Administration, Field Administration and Engineering Work during Construction.
 - (i) Subject to Appendix “B” Consultant’s Scope of Work, the Consultant shall be paid on the basis of the estimated Fixed

ATTACHMENT #1 – CONTRACT PRICES – **ADDENDUM NO. 2**

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Weekly Fee defined as the weekly rate at which the Consultant will invoice Metrolinx for Construction Contract Administration, Field Administration and Engineering Work During Construction for the Stipulated Period of Construction (SPC) as defined under Item No.'s in Column E2 of the attached MS Excel spreadsheet.

- (ii) The Consultant's designated Field Administrator shall be required "Full Time" at the "Place of Work" for one hundred percent (100%) of the construction time for this Project.
- (iii) The Consultant agrees that the Fixed Weekly Fee will be the basis for compensation for any and all Construction Supervision, Contract Administration, Field Administration and Engineering Work during Construction to be provided under the Contract.
- (iv) The Consultant's Fixed Weekly Fee shall include the costs for "Full Time" Construction Supervision, Contract Administration, Field Administration and Engineering Work during Construction, including the Consultant's designated representative, Sub-consultants, specialized Work providers, engineers, project managers, principals and administration staff as well as all associated expenses.
- (v) Construction Supervisor (or assistant) is expected to be on site and available for all works associated with this contract.

- (f) **Stage Six** - Work of the Contract shall be provided by one (1) construction supervision team with each team comprised of the following: One (1) full-time Lead Construction Supervisor supervising a team of one (1) full-time Field Administrator, one (1) full-time Contract Administrator and one (1) part-time Engineer of Record (hereinafter referred to as the "Construction Supervision Team"). This team shall oversee all three (3) towers.

ATTACHMENT #1 – CONTRACT PRICES – **ADDENDUM NO. 2**

Engineering Services for Administered Heritage Signal Towers Restoration-
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7.2 Completion of Pricing Schedules

- 7.2.1 Proponents shall fully complete the MS Excel file entitled “*Attachment # 1 – Contract Prices RQQ-2018-RCDV-225*” and insert a Unit Price into each space provided under the Contract Unit Price column.
- 7.2.2 Attachment #1 – Contract Prices, must be returned as a separate file in MS Excel format and may not be retyped or recreated. Failure to follow the submission instructions or format requirements may result in the Submission being found non-responsive and disqualified.
- 7.2.3 It is Metrolinx preference that Proponents submit the pricing using the appended Excel file format to facilitate the Metrolinx pricing evaluation process.
- 7.2.4 The Attachment #1 – Contract Prices is numbered, under the “Item No.” column to correspond with the following Phases, Stages and Steps of the Work:
 - (a) **Stage 1** - Feasibility Study Work
 - (b) **Stage 2** – Preliminary Design Work
 - (c) **Stage 3** - Detailed Design and Preparation of Tender Documents Work
 - (d) **Stage 4** – Assistance with the Procurement and Evaluation Process Work
 - (e) **Stage 5** - Construction Contract Administration, Field Administration and Engineering Work During Construction
 - (f) **Stage 6** - Post Construction Work
- 7.2.5 If a “0” is entered in any of the spaces where price information is to be provided, it shall be interpreted as meaning the Contractor shall provide the specified service to Metrolinx at no charge.
- 7.2.6 If any space is left blank or an entry of “N/C” or “N/A” or “—” is entered where price information should be entered then the Submission may be found non-responsive and disqualified consistent with the provisions of the Instructions to Proponents.

END OF SECTION

ATTACHMENT #2 – CORPORATE REFERENCES

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8.0 Attachment # 2 – Corporate References

- 8.1 The Proponent should, using the templates below, provide corporate reference information as indicated in this “*Attachment #2 – Corporate References*”. The Proponent shall ensure that all contact information provided for references is current and accurate in order to enable Metrolinx to obtain all necessary information for evaluation purposes in a timely manner. If Metrolinx is unable to contact any of the references provided in order to verify the Proponent’s qualifications and experience, the Proponent may, in Metrolinx’s sole discretion, receive no score for that reference.
- 8.2 Proponents should review the Request Submission Requirements Section to ensure compliance with the submission requirements.

ATTACHMENT #2 – CORPORATE REFERENCES

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Project Name and Location:	Click here to enter text.		
Role of Proponent:	Click here to enter text.		
Customer Name:	Click here to enter text.		
Customer Contact Person:	Click here to enter text.	Phone No.	Click here to enter text.
Customer Contact Email Address:	Click here to enter text.		
Contract Value (Estimated)	\$Click here to enter text.	Contract Value (Actual)	\$Click here to enter text.
Reasons for variances in contract value:			
Click here to enter text.			
Completion Date (Estimated)	Click here to enter text.	Completion Date (Actual)	Click here to enter text.
Reasons for schedule variances:			
Click here to enter text.			
Project Description (Provide a detailed description of the reference project and the Proponent's responsibilities for the reference project. The Proponent should specifically list below similarities between this reference project and the Work specified herein)			
Click here to enter text.			
Provide an overview of the scope of work:	Click here to enter text.		
List the major components of the work:	Click here to enter text.		

END of SECTION

ATTACHMENT #3 – KEY PERSONNEL CURRICULUM VITAE AND REFERENCES

Engineering Services for Administered Heritage Signal Towers Restoration-
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9.0 Attachment # 3 – Key Personnel Curriculum Vitae and References

9.1 Named Key Personnel

9.1.1 The Proponent has designated the following named individuals for each Key Personnel role:

Role and Required Experience and Qualifications	Name of Individual	Actual Years of Experience
<u>Project Manager:</u> <u>Minimum years of related experience and Qualifications & Experience:</u> Refer to Schedule B: Consultant Personnel of Appendix “A” General Conditions	Click here to enter text.	Click here to enter text.
<u>Construction Supervisor:</u> <u>Minimum years of related experience and Qualifications & Experience:</u> Refer to Schedule B: Consultant Personnel of Appendix “A” General Conditions	Click here to enter text.	Click here to enter text.
<u>Contract Administrator:</u> <u>Minimum years of related experience and Qualifications & Experience:</u> Refer to Schedule B: Consultant Personnel of Appendix “A” General Conditions	Click here to enter text.	Click here to enter text.
<u>Architect:</u> <u>Minimum years of related experience and Qualifications & Experience:</u> Refer to Schedule B: Consultant Personnel of Appendix “A” General Conditions	Click here to enter text.	Click here to enter text.
<u>Mechanical Engineer:</u> <u>Minimum years of related experience and Qualifications & Experience:</u> Refer to Schedule B: Consultant Personnel of Appendix “A” General Conditions	Click here to enter text.	Click here to enter text.

ATTACHMENT #3 – KEY PERSONNEL CURRICULUM VITAE AND REFERENCES

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<u>Structural Engineer:</u> <u>Minimum years of related experience and</u> <u>Qualifications & Experience:</u> Refer to Schedule B: Consultant Personnel of Appendix “A” General Conditions	Click here to enter text.	Click here to enter text.
<u>Heritage Architect:</u> <u>Minimum years of related experience and</u> <u>Qualifications & Experience:</u> Refer to Schedule B: Consultant Personnel of Appendix “A” General Conditions	Click here to enter text.	Click here to enter text.

9.2 Curriculum Vitae

The Proponent should, using the template below, for each proposed Key Personnel provide a Curriculum Vitae of up to three (3) pages for each Key Personnel, including biographical information, which clearly identifies:

- 9.2.1 Name of individual and proposed Key Personnel role;
- 9.2.2 Qualifications that relate to the proposed Key Personnel role, as specified in **Schedule B** of Appendix “A”, relative to the Work being requested;
- 9.2.3 Experience in performing the proposed Key Personnel role, as specified in **Schedule B** of Appendix A, relative to the Work being requested (include project names and brief project overviews);
- 9.2.4 Number of years in the proposed role on each project as well as the start date and completion date of each project;
- 9.2.5 Responsibilities on each project while performing the proposed role;
- 9.2.6 Details of accomplishments while performing the proposed role;
- 9.2.7 Education; and
- 9.2.8 Professional memberships and affiliations.

9.3 Key Personnel References

- 9.3.1 Immediately following the curriculum vitae for each proposed Key Personnel, the Proponent should use the template below to provide a list of three (3) references and contact information for relevant projects

ATTACHMENT #3 – KEY PERSONNEL CURRICULUM VITAE AND REFERENCES

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successfully delivered on-time and on-budget within the past five (5) years, while performing work in the same capacity as the proposed Key Personnel role.

9.3.2 The Proponent should ensure that all contact information provided for references is current and accurate in order to enable Metrolinx to obtain all necessary information for evaluation purposes in a timely manner. If Metrolinx is unable to contact any of the references provided in order to verify the Proponent's qualifications and experience, the Proponent may, in Metrolinx's sole discretion, receive no score for that reference.

9.3.3 The list of three (3) references submitted when combined should demonstrate that the named Key Personnel has the required qualifications and experience as stated in Schedule B – Consultant Personnel of Appendix "A" – General Conditions, and for work similar in size, scope and complexity to the Work to be provided herein.

9.3.4 Such references shall relate directly to the experience, responsibilities and details of project accomplishments noted above. The information should include:

- (a) Name of the company for which the work was performed;
- (b) Contact person's name, title, telephone number and e-mail address; and
- (c) Start and completion date of each reference project.

9.4 Key Personnel Description of Reference Projects – For each reference project listed under Section 9.3 above, the Proponent should include up to two (2) additional pages of information which includes but is not limited to:

9.4.1 Name of the company for which the work was performed;

9.4.2 Project description and project value;

9.4.3 Description of Work provided with reference to the applicable Key Personnel role and responsibilities for the work contemplated in this Request Document.

9.4.4 Identification of relevance of project reference to programmatic, strategic, innovation, sustainability or other design challenges the Proponent deems significant in their ability to understand and execute the Scope of Work being requested;

9.4.5 Project start and completion dates;

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- 9.4.6 List of any other Key Personnel that have worked on the same reference project and their project roles, if applicable; and
- 9.5 Proponents should review the Request Submission Requirements section in conjunction with this Attachment # 3 to ensure that all required information is being included as part of the Submission for evaluation purposes.

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Key Personnel Role:	Click here to enter text.
Name:	Click here to enter text.
Years of Experience in the Role:	Click here to enter text.
Education:	Click here to enter text.
Designation(s):	Click here to enter text.
Summary of Qualifications and Experience:	Click here to enter text.

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References:	Company Name	Project Title	Contact Person's Name / Title	Phone Number	E-mail Address	Start Date	Completion Date
	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

END OF SECTION

APPENDIX “A”
GENERAL CONDITIONS OF THE CONTRACT

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Appendix “A” – General Conditions

List of Contents

The following documents hereby form part of and are appended to the Request Document as Appendix “A” – General Conditions.

Item No.	Description	Respective Sections
13.1	Appendix “A” – General Conditions	Section 1 to Section 18.15
13.2	Schedule A – Definitions	”A” to “W”
13.3	Schedule B – Consultant Personnel	Section 1 to Section 3
13.4	Schedule C – Financial Terms	Section 1 to Section 18
13.5	Schedule D – Insurance	Section 1 to Section 1.8
13.6	Schedule E – Dispute Resolution	Section 1 to Section 6

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General Conditions

INTERPRETATION

1.1 Definitions

Capitalized terms used in this Contract shall have the respective meanings ascribed thereto in Schedule A – Definitions.

1.2 Time of the Essence

Time is of the essence in the performance of a Party’s respective obligations under this Contract.

1.3 Currency

All prices and sums of money and all payments made under this Contract shall be in Canadian dollars.

1.4 Units of Measure

All dimensions, quantities, performance specifications, calibrations and other quantitative elements used in this Contract shall be expressed in the International System of Units (SI), except where otherwise indicated.

1.5 Language

All communication between Metrolinx and the Consultant and between the Consultant and each of the Sub-consultants with regard to the Work shall be in the English language.

1.6 References

- (a) Each reference to a statute in this Contract is deemed to be a reference to that statute and to the regulations made under that statute, all as amended or re-enacted from time to time. Following any and all changes to Applicable Laws, the Consultant shall perform the Work in accordance with the terms of this Contract, including in compliance with Applicable Laws.
- (b) Any provision establishing a higher standard of safety, reliability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service.
- (c) Each reference, whether express or implied, to a Standard of any technical organization or Governmental Authority is deemed to be a reference, to that Standard as amended, supplemented, restated, substituted or replaced.

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- (d) Subject to any express definitions contained in this Contract, words and abbreviations which have well known technical or trade meanings are used in this Contract in accordance with such recognized meanings.
- (e) Where used in this Contract, “including” means including without limitation, and the terms “include”, “includes”, and “included” have similar meanings.
- (f) Each reference to an Article or Section within the Contract or Schedules shall refer to that Article or Section number in the Contract or the Schedule in which the reference occurs unless otherwise specified.
- (g) The division of this Contract into Articles and Sections, the insertion of headings, and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Contract.

1.7 Time

- (a) Unless otherwise specified, references to time of day or date mean the local time or date in Toronto, Ontario. When any period of time is referred to in this Contract by days between two dates, it will be calculated by excluding the first and including the last day of such period.
- (b) If, under this Contract, any payment or other event falls due on or as of a day that is not a Business Day, that payment or other event shall fall due instead on the next day that is a Business Day, unless expressly stated otherwise.
- (c) Unless otherwise specified, references to “day” shall mean calendar day.

1.8 Schedules

The following Schedules attached to this Contract shall constitute an integral part of this Contract and all expressions defined in this Contract shall have the same meanings in such Schedules:

Schedule A	Definitions
Schedule B	Consultant Personnel
Schedule C	Financial Terms
Schedule D	Insurance
Schedule E	Dispute Resolution

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PERFORMANCE

2.1 Term of the Contract

This Contract shall take effect on the Effective Date hereof and shall continue in full force and effect until the earlier of: (i) Contract Closeout; or (ii) the date that this Contract is terminated in accordance with its terms (the “Term”).

2.2 Performance of the Work

- (a) The Consultant shall carry out and complete the Work set forth in **Appendix “B” – Consultant’s Scope of Work** (the “**Work**”) to the satisfaction of Metrolinx in accordance with all the terms of this Contract.
- (b) The Consultant shall supply the Work diligently and continuously in accordance with the scheduling requirements set out in the Project Schedule. Without limiting the generality of the foregoing, the Consultant shall perform the Work so as to enable Metrolinx to meet any timelines imposed on it under any Third Party Contracts, provided that such timelines have been identified in the Project Schedule or otherwise expressly communicated to the Consultant.
- (c) The Consultant acknowledges and agrees that each of the Consultant’s Personnel shall be available to perform the Work in accordance with the required duration specified in Schedule B – Consultant Personnel. The Consultant further acknowledges and agrees that Metrolinx may, acting in its sole discretion, change the schedule including in respect of the timing of the provision of the Work and availability and number of the Consultant’s Personnel. Without limiting the generality of the foregoing, Metrolinx may from time to time, on prior written notice to the Consultant twenty (20) Business Days’, unilaterally extend or reduce the required duration with respect to the availability of any of the Consultant’s Personnel or direct the Consultant to increase the number of Consultant’s Personnel available. Metrolinx and the Consultant shall meet on a quarterly basis to discuss the progress of the Work and the anticipated scheduling needs with respect to the Consultant’s Personnel.
- (d) Metrolinx may, from time to time, in its sole discretion, but is not required to, direct the Consultant to cause specific Consultant Personnel to perform certain tasks or activities that form part of the Work in accordance with the scheduling requirements provided by Metrolinx. Any such instructions shall be provided by Metrolinx in writing to the Consultant no less than five (5) Business Days before the specified tasks or activities are required to be performed by the Consultant Personnel.

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- (e) The Consultant shall provide, at the sole cost and expense of the Consultant, save as otherwise provided in this Contract, all necessary equipment, goods, materials, analysis, transportation, accommodation, labour, staff and technical assistance and incidentals required in performing the Work and to undertake, perform and complete its undertakings, obligations and responsibilities provided for in this Contract.
- (f) The Work shall be provided in a professional, timely and economical manner according to the Required Standard of Care. Without limitation, the Consultant shall ensure that the Work is conducted in a manner that will maintain good relations with the general public and property owners.
- (g) The Consultant shall comply with and conform to all Applicable Laws, applicable to the Work to be provided by, and the responsibilities and obligations of, the Consultant under this Contract.
- (h) The Consultant shall not alter any part of a Joint Venture except with the prior written consent of Metrolinx in its sole discretion.

2.3 Sub-consultants

- (a) Other than the Sub-consultants identified in the Submission, the Consultant shall not subcontract the Work to any Person without the prior written consent of Metrolinx. No subcontracting by the Consultant shall relieve the Consultant of any responsibility for the full performance of all obligations of the Vendor under this Contract. Notwithstanding the approval of any Sub-consultants by Metrolinx, the Consultant shall be fully responsible for every Sub-consultant's activities, works, services and acts or omissions.
- (b) The Consultant shall be solely responsible for the payment of any Sub-consultants.
- (c) The Consultant shall co-ordinate the Work of all Sub-consultants employed, engaged or retained by the Consultant with Metrolinx and, without limiting the generality of any other provision of this Contract, the Consultant shall be liable to Metrolinx for costs or damages arising from errors or omissions of such Sub-consultants or any of them. It shall be the Consultant's responsibility to control and review the Work of its own forces and of all its Sub-consultants and to ascertain that all Services are performed in accordance with this Contract, all governing regulations and the Required Standard of Care.
- (d) In any subcontract, the Consultant shall ensure that the Sub-consultant is bound by conditions compatible with, and no less favorable to Metrolinx than, the conditions of this Contract.

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- (e) The Consultant warrants and represents that it and any of its permitted Sub-consultants and the respective workforce of each are fully qualified to perform the Work and perform this Contract and hold all requisite licenses, rights and other authorizations required by Applicable Laws.
- (f) The Consultant shall only employ, for the purposes of this Contract, such persons as are careful, skilled and experienced in the duties required of them and have the required Domain Expertise, and must ensure that every such person is properly and sufficiently trained and instructed. The Consultant shall ensure that all workers and persons employed by them or under their control or employed by or under the control of its Sub-consultants comply with the terms of this Contract and, in particular without limiting the foregoing, the responsibilities of the Consultant with respect to matters concerning safety, compliance with the Applicable Laws and the conduct of the Work.
- (g) The Consultant shall be an independent contractor with respect to the Work to be provided under this Contract and nothing contained in this Contract shall be construed as constituting a joint venture or partnership between the Consultant and Metrolinx. Neither the Consultant nor its Sub-consultants shall be deemed to be employees, agents, servants or representatives of Metrolinx in the performance of the Work hereunder.
- (h) The Consultant shall not remove or change any Sub-consultants, or materially reduce the responsibilities of any Sub-Consultants in relation to the provision of the Work except with the prior written consent of Metrolinx in its sole discretion. The proposed replacement Sub-consultant shall possess the requisite Domain Expertise and similar qualifications, experience and ability as the outgoing Sub consultant.

2.4 Consultant Personnel

- (a) The Consultant shall select and employ a sufficient number of suitably qualified and experienced Consultant Personnel to perform and provide the Work, as determined with reference to the requirements of the Work to be performed by each individual or otherwise as required pursuant to the Contract. All Consultant Personnel shall possess or, where permitted, shall be supervised by persons who possess, the professional accreditation required to complete the Work.
- (b) The Consultant shall provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.
- (c) The Consultant shall ensure that the Consultant Personnel assigned to perform the Work shall:

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- (i) act in a proper and professional manner in accordance with the standards generally used recognized by the industry; and
- (ii) comply with all applicable Metrolinx policies and procedures, provided that Consultant has been made aware of same.

2.5 Third Party Agreements

- (a) The Consultant acknowledges and agrees that Metrolinx is a party to, and may during the Term enter into, agreements with various third parties which may intersect with the Work. The Consultant shall reasonably cooperate with all such third parties and shall provide to them any reasonably requested information; provided, however, that Metrolinx acknowledges that such third parties may be required to enter into a non-disclosure agreement prior to the disclosure thereof. Cooperation with any such third parties in respect of any aspects of the Work shall not result in any increase in any associated costs or fees unless an amendment or change order documenting the Change has been executed by both Parties.
- (b) The Consultant shall reasonably cooperate with Metrolinx and any Third Party and shall co-ordinate the Work with any and all Third Party Work. Without limiting the generality of the foregoing, the Consultant shall not alter, unreasonably interfere with or make it difficult to access any Third Party Work, except with the express written consent of Metrolinx.
- (c) The Consultant shall make best efforts to coordinate with Metrolinx and all applicable Third Parties in order to minimize:
 - (i) any delays to or interference with any Third Party Work within the rail corridors;
 - (ii) costs resulting from any delays to or interference with Third Party Work; and
 - (iii) impacts on the operations of, or use of the rail corridors by, Third Party Operators, including any delays to rail passenger or freight service on the rail corridors.
- (d) When and as directed by Metrolinx, the Consultant shall participate with Metrolinx employees and any applicable Third Parties in reviewing their respective schedules and cause designated Consultant Personnel to attend such meetings with Third Parties as may be reasonably requested by Metrolinx from time to time.

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- (e) In the event that the proper performance of any part of the Work depends upon Third Party Work, the Consultant shall promptly inspect such Third Party Work and provide written notice to Metrolinx of any delays or defects in such Third Party Work that render such Third Party Work unavailable or unsuitable for integration with the Work.
- (f) Claims, disputes and other matters in question between the Consultant and Third Parties shall be dealt with in accordance with Schedule E – Dispute Resolution, provided that the Third Party has reciprocal obligations. The Consultant and Metrolinx shall be deemed to have consented to arbitration of any dispute with any Third Party whose contract with Metrolinx contains a similar dispute resolution provision that includes an agreement to submit to binding arbitration, provided that Metrolinx, at its sole and absolute discretion, shall be entitled to refuse to include any dispute with a Third Party from this Contract.

2.6 Non-Interference with Operations

- (a) The Consultant understands and agrees that:
 - (i) Metrolinx and Third Party Operators are in the business of moving large volumes of passengers and cargo through rail corridors safely, expeditiously and according to a fixed timetable;
 - (ii) the success of the businesses of Metrolinx and Third Party Operators depends on meeting the above objectives on a daily basis;
 - (iii) Metrolinx has contractual and statutory obligations to ensure the safety of all persons on the rail corridors and the property and facilities adjacent thereto; and
 - (iv) Third Party Operators operating in and through the rail corridors and Third Party Contractors working in the rail corridors have similar restrictions and requirements.
- (b) Notwithstanding any other term or condition set out in this Contract, the safety and non-disruption of all Third Parties operating in the rail corridors is of paramount importance. Consequently, the Consultant acknowledges and agrees that the safety of all trains, passengers, operating and maintenance personnel, goods and other transported cargos, as well as the Consultant Personnel and the public in general will take precedence over all actions or non-actions of the Consultant, whether mandated or not by any other terms and conditions of this Contract.

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- (c) The Consultant shall not disrupt the movement of any rail traffic in or through the rail corridors of either Metrolinx or the Third Party Operators except where it has obtained the prior written consent of Metrolinx to such disruption (which consent may be withheld in the sole discretion of Metrolinx).

2.7 Key Personnel

- (a) Schedule B – Consultant Personnel sets out the names and titles of the Consultant Personnel who will be involved in a material way in, and who are critical to, the performance of the Work (the “**Key Personnel**”). All Key Personnel will possess the requisite Domain Expertise.
- (b) The Consultant shall not, for the duration of the Term, require or request any Key Personnel to be involved in any other project on behalf of the Consultant or any Sub consultant if, in the opinion of Metrolinx acting reasonably, such involvement would have a material adverse effect on the Work. The Consultant will not remove any Key Personnel from the provision of the Work, or materially reduce the responsibilities of any Key Personnel in relation to the provision of the Work except with the prior written consent of Metrolinx (which consent shall not be unreasonably withheld).
- (c) Notwithstanding Section 2.7(a) but subject to Section 2.7(d), if at any time the Consultant, for reasons beyond its reasonable control, is unable to provide the Work of any Key Personnel, the Consultant shall provide a replacement person who possesses similar qualifications, experience and ability and possesses the requisite Domain Expertise; provided, however, that the Consultant shall first provide written notice to Metrolinx of the requirement to replace or substitute that person. For the purposes of this clause, only the following reasons will be considered beyond the reasonable control of the Consultant; death; sickness; maternity and parental leave; compassionate care leave; retirement; resignation; dismissal for cause; or termination of an agreement for default. The notice shall identify: the person being replaced; their role and responsibility in the performance of the Work; the reason why it is necessary to replace that person; and the replacement person’s name, *curriculum vitae* in the form set out in Schedule B - Consultant Personnel; and the replacement person’s available start date. Metrolinx in its sole and absolute discretion may choose to interview the proposed replacement person in Toronto. The nominated replacement person must be acceptable to Metrolinx. If the replacement person is acceptable to Metrolinx, Metrolinx shall give the Consultant written permission to make the replacement or substitution. In the event the nominated person is not acceptable to Metrolinx, acting reasonably, Metrolinx shall inform the Consultant in writing why that

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person is not acceptable and the Consultant shall nominate an alternate person pursuant to the process identified in this Section 2.7(c).

- (d) If Metrolinx determines in its sole discretion that it is in the best interests of Metrolinx that any Key Personnel be replaced, either permanently or temporarily, Metrolinx shall notify the Consultant, and, within thirty (30) days of receipt by the Consultant of such notice, the Consultant shall provide Metrolinx with relevant information on the proposed replacement, including the replacement person's name, rates, and *curriculum vitae* in the form set out in Schedule B – Consultant Personnel and the replacement person's available start date. Metrolinx in its sole and absolute discretion may choose to interview the proposed replacement person in Toronto. If the replacement person is acceptable to Metrolinx, Metrolinx shall give the Consultant written permission to make the replacement or substitution. In the event the nominated person is not acceptable to Metrolinx, acting reasonably, Metrolinx shall inform the Consultant in writing why that person is not acceptable and the Consultant shall nominate an alternate person pursuant to the process identified in Section 2.7(d). The Rates for the proposed replacement shall not exceed the approved Rate of the person being replaced.

2.8 Consultant's Representative

The Consultant shall assign a Consultant's Representative who will direct the provision of the Work. During the Term, the Consultant's Representative will maintain ongoing contact with Metrolinx to ensure that issues are dealt with in an efficient, effective and timely manner. The Consultant's Representative shall be the primary point of contact for Metrolinx for significant issues including commercial issues and Disputes and shall have overall responsibility for coordinating the performance of the Consultant's obligations under this Contract.

2.9 Metrolinx Responsibilities

- (a) Metrolinx shall:
- (i) designate an individual to act as its representative (the “**Metrolinx Representative**”) who will transmit instructions to, and receive information from the Consultant;
 - (ii) provide access to and where necessary, make available copies of existing plans, reports, studies, information and correspondence relevant to the Work;
 - (iii) use commercially reasonable efforts to ensure that all agreements between Metrolinx and external agencies relevant to the

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Consultant's provision of the Services are executed in a timely manner;

- (iv) provide the Consultant with contact names of the individual(s) who will be representing the railways, regions, municipalities, government agencies or other jurisdictional bodies; and
- (v) Arrange for necessary services from the applicable railways such as design approvals, inspection and flagging.

2.10 French Language Services

- (a) Insofar as this Contract relates to the provision of services directly to the public on behalf of Metrolinx, the French Language Services Act shall be applicable to the performance of the Work. A service for the purposes of the French Language Services Act refers to any service or procedure provided to the public. Work being provided in French must be equivalent to those offered in English, and must be available within the same timeframe and of the same quality.
- (b) The Consultant shall provide and perform the Work in a manner so as to comply with the requirements set out in the French Language Services Act.
- (c) Without limitation, Work and communications which must be provided in French in French Designated Areas may include:
 - (i) Consultations/Public Meetings: Presentation materials, displays, comments cards/feedback mechanism or other materials. Consultant must have at least one bilingual staff or interpreter on hand able to answer questions and discuss technical drawings/documents in French. As applicable, the Consultant shall compile and analyze the views of Francophones separately, as they may have different concerns.
 - (ii) Signage: Construction contracts may from time to time involve erecting temporary signage to redirect or warn the public of hazards. Such signage shall be bilingual.
 - (iii) Communications: Communication plans, customer impact documents, information bulletins, notices of service disruption and public relations information.

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2.11 Task Release Process for Work

- (a) Upon request of the Metrolinx Representative, the Consultant shall prepare a work plan (the “**Task Plan**”), clearly defining the work required by a specified Service (the “**Task**”), and setting out the following:
 - (i) description of the work required by the Task, and Task deliverables;
 - (ii) projected milestones and schedule for completion of the Task;
 - (iii) resources required for the completion of the Task;
 - (iv) calculation of fees;
 - (v) proposed list of staff for the Task; and
 - (vi) any other information or documents as required by the Metrolinx Representative.
- (b) The Consultant shall not proceed with the Task unless approved pursuant to Section 2.11(a) in the form of a “**Task Release**” and only to the upset limit or fixed price as indicated therein notwithstanding the total upset limit price established by the Contract.
- (c) The Consultant shall proceed with the Task and the fee will be established for each Task as agreed upon by the Parties using the rates identified in the Articles of Agreement.
- (d) The upset limit or fixed fee for each Task shall be in Canadian funds, not subject to adjustment unless agreed otherwise in writing, and shall be inclusive of all applicable costs.
- (e) Prior to finalizing each Task Plan, Metrolinx and the Consultant will establish either an upset limit on the fee if the Task is to be completed on a Time and Expense basis or a Fixed Fee basis:
 - (i) Time and Expense: The fee shall be calculated on the basis of the work actually performed for a Task based on the rates provided by the Consultant for Consultant Personnel.
 - (ii) Fixed Price: The fee shall be calculated for the completion of a Task based on the rates provided by the Consultant for Consultant Personnel. The Consultant shall submit an itemized cost breakdown of the various parts of the Task with its work plan, which together shall aggregate the total price for that Task.

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- (f) Metrolinx reserves the right to withhold payment for any Services performed by the Consultant or its Sub-consultants prior to the issuance of an authorized Task Release or outside the scope of a Task Plan approved by a Task Release.

2.12 Consultant Work Performance Rating

- (a) Metrolinx shall during the Term of this Contract, maintain a record of the Consultant's performance pursuant to this Contract. This information shall be used to complete a "**Contract Performance Appraisal**" report, a copy of which will be forwarded to the Consultant upon the termination or expiration of the Contract. Interim Contract Performance Appraisal reports may be issued, as deemed appropriate by the Metrolinx Representative, at any time during the Term of the Contract. A copy of the Contract Performance Appraisal template can be found under **Appendix “D” – Documents**.
- (b) The prior history of the Consultant in performing work for Metrolinx, including the Consultant's performance pursuant to this Contract, will be considered in the evaluation of future submissions from the Consultant for Metrolinx procurement processes.
- (c) Metrolinx reserves the right, during any procurement process, to reject any submission by the Consultant due to unsatisfactory performance history with Metrolinx.
- (d) Non-compliance with Contract requirements will be identified to the Consultant.
- (e) The information contained in the Contract Performance Appraisal reports may be provided to other ministries and agencies and such performance reviews may be relied upon by other ministries and agencies to reject the Consultant's submissions on any procurement processes.

HEALTH AND SAFETY

3.1 Occupational Health & Safety Act (“OHSA”)

- (a) The Consultant shall comply with OHSA, and any obligations of the Consultant as an "employer" thereunder, and with all regulations made under the OHSA.
- (b) The Consultant shall report to Metrolinx any non-compliance by a Sub-consultant in the performance of the Services with the regulations under the OHSA if and when brought to the attention of the Consultant.

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- (c) The Consultant acknowledges that lack of compliance with applicable provincial or municipal health and safety requirements will be and are intended to be documented and kept on file, and that such lack of compliance may cause:
 - (i) the Consultant's performance of the Work to be suspended; or
 - (ii) this Contract to be cancelled by Metrolinx.
- (d) The Consultant will be under an obligation to cease the Work, or any part thereof, if an authorized representative of Metrolinx so requires orally or in writing on the grounds that there has been any violation of the OHSA or any of the regulations under it, and thereafter the Services or affected part thereof shall not resume until any such violation has been rectified.
- (e) The Consultant shall be responsible for any delay caused by the Consultant in the progress of the Work as a result of any violation of provincial or municipal health and safety requirements by the Consultant, it being understood that such delay shall be not be a Force Majeure for the purposes of extending the time for performance of the Work or entitling the Consultant to additional compensation, and the Consultant shall take all necessary steps to avoid delay in the final completion of the Work without additional cost to Metrolinx, which shall not be responsible for any additional expense or liability resulting from any such delay.
- (f) Nothing in this Section 3.1 shall be taken as making Metrolinx the "employer" (as described in Section 3.1(a)) of any workers employed or engaged by the Consultant for the Work, either instead of or jointly with the Consultant.

3.2 Safety Requirements

- (a) Safety of Persons at or near the Place of Work and the public is of paramount concern to Metrolinx. In the performance of the Work, the Consultant shall not in any manner endanger the safety of, or unlawfully interfere with, Persons on or off the Place of Work, including the public.
- (b) The Consultant specifically covenants and agrees that:
 - (i) it shall comply with best industry practice respecting health and safety in a manner that recognizes and minimizes the risk to workers, other individuals, property and the operations of Metrolinx and any railways, to the extent that such practices are not inconsistent with an express instruction set out in this Contract or provided by Metrolinx;

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- (ii) it shall comply, and shall ensure that all Consultant Personnel comply, in all regards with the requirements of OHSA and/or the *Canadian Labour Code*, Part II, as applicable;
- (iii) it shall comply, and shall ensure that all Consultant Personnel comply, in all regards with the safety requirements set out in the Contract Documents;
- (iv) it shall maintain, strictly enforce and comply, and ensure that all Consultant Personnel comply, in all regards with the Consultant's own health and safety program, to the extent not inconsistent with this Contract and Metrolinx' health and safety program;
- (v) it shall comply, and shall ensure that all Consultant Personnel comply, with any and all safety-related directives or instructions issued by Metrolinx;
- (vi) it shall take all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under OHSA; and
- (vii) it shall make available, at Metrolinx' request, such policies and procedures relating to its occupational health and safety matters as Metrolinx may from time to time request, and hereby covenants that all Consultant Personnel have been properly trained and are knowledgeable with respect to these policies and procedures.

3.3 Railway Safety

- (a) If applicable, the Consultant acknowledges and agrees that:
 - (i) access to the rail corridors by the Consultant and any Consultant Personnel, shall at all times be subject to the direction of Metrolinx and/or the Maintenance Provider as to rail safety matters and any applicable railway operating rules; and
 - (ii) Any and all questions, matters or disputes which may arise affecting the safety of railway operations or the maintenance of the railways shall be referred to Metrolinx which shall in its discretion decide all such questions, matters and disputes.
- (b) The Consultant shall perform the Work, and shall ensure that all Consultant Personnel perform the Work, in accordance with the Canadian Rail Operating Rules from time to time approved by the Minister of Transport under the authority of the *Railway Safety Act* (Canada), the

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Standards, and all other applicable Transport Canada guidelines, railway standards, and practices.

- (c) In the event that the Work are the subject of an audit or inspection by any Governmental Authority, the Consultant shall at its own expense:
 - (i) provide notice of such audit or inspection to Metrolinx;
 - (ii) make available or cause to be made available such reasonable information and material as may be required and shall otherwise reasonably cooperate with Transport Canada officials;
 - (iii) provide Metrolinx with a copy of any audit or inspection report or
 - (iv) other results or recommendations issued by Transport Canada, as soon as practicable but in any event within five (5) Business Days of receipt thereof by the Consultant; and
 - (v) Take all steps necessary to rectify, in consultation with and as directed by Metrolinx, any issues identified by Transport Canada.

3.4 Workers' Rights

The Consultant shall at all times pay or cause to be paid any assessments or compensation required to be paid by the Consultant or its Sub-consultants pursuant to any applicable workers' compensation legislation, and upon failure to do so, Metrolinx may pay such assessments or compensation to the Workplace Safety and Insurance Board and may deduct such assessments or compensation from monies due to the Consultant. The Consultant shall comply with all regulations and laws relating to workers' compensation.

FINANCIAL TERMS

4.1 Financial Terms

All financial and payment terms applicable to this Contract and the Work are set out in Schedule C – Financial Terms.

CONSTRUCTION ACT

5.1 Construction Act

- (a) Metrolinx shall retain an amount equal to the amount required to be held back pursuant to the Construction Act from each sum otherwise payable to the Vendor under this Contract that is not a release of any monies so retained.

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- (b) Subject to Section 5.1(c), any holdbacks retained pursuant to Section 5.1(a) shall not be due and payable until after the expiry of the applicable period for preservation of Liens under the Construction Act, and provided that no Liens are preserved by persons supplying Work or materials to the Vendor.
- (c) Notwithstanding any provision of this Contract,
- (d) no sum shall be payable by Metrolinx to the Vendor pursuant to this Contract if, at the time such sum would otherwise be payable, there is outstanding and unsatisfied any claim for lien which has been preserved pursuant to the Construction Act by any person for goods and/or Work provided directly or indirectly to the Vendor to enable performance of any part(s) of the Work or Metrolinx has received a written notice of a lien; and
- (e) where any sum which would otherwise be payable by Metrolinx to the Vendor is not so payable because a claim for lien has been preserved pursuant to the Construction Act, or Metrolinx has received written notice of a lien, such sum shall be payable to the Vendor only at such time when all Liens or written notices of a lien which may be claimed against that sum have expired or been satisfied, withdrawn, discharged or vacated by an order made pursuant to a payment into court in accordance with the Construction Act.

RIGHT OF OWNERSHIP AND USE

6.1 Ownership of Metrolinx IP

- (a) Unless otherwise expressly agreed, Metrolinx is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property Rights) in and to all of the following Intellectual Property (collectively, the “**Metrolinx IP**”):
 - (i) all Metrolinx Materials;
 - (ii) all Deliverables;
 - (iii) all reports and other information created, generated, output or displayed by the Deliverables or as a result of the performance of receipt of the Work; and
 - (iv) All modifications or enhancements made to the items listed in Sections 6.1(a) (i) to (iii) hereof.
- (b) All right, title and interest, including all Intellectual Property Rights, in Metrolinx IP will vest in Metrolinx, following creation.

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- (c) The Consultant will acquire no rights to any Metrolinx IP other than the licence rights expressly granted in Section 6.3.
- (d) The Consultant:
 - (i) hereby assigns and transfers to Metrolinx; and
 - (ii) agrees (to the extent required in the future) to assign and transfer to Metrolinx, as and when created, all right, title and interest, including Intellectual Property Rights, throughout the world in and to all Metrolinx IP (to the extent any right, title, interest or Intellectual Property Right in Metrolinx IP does not automatically and immediately vest in Metrolinx).
- (e) The Consultant shall cause all Consultant Personnel to waive for the benefit of Metrolinx and its respective successors, assigns, licensees and contractors, their respective moral rights (and any similar rights to the extent that such rights exist and may be waived in each and any jurisdiction throughout the world) in and to the Metrolinx IP.
- (f) Metrolinx agrees that prior to providing any Deliverables to a third party, Metrolinx shall obtain from such third party a “non-reliance” letter addressed to the Consultant in which such third party will agree that (i) any Deliverable that is provided, or made available, to it was prepared for the sole benefit of Metrolinx and is not be relied upon by it and (ii) the Consultant accepts no responsibility or liability in respect of any advice, recommendations or other information contained in any such Deliverable. Metrolinx shall provide any such non-reliance letter to the Consultant promptly after its receipt.
- (g) For certainty, the Consultant shall not be precluded from independently developing for itself, or for others, materials which are competitive with the Deliverables, irrespective of their similarity to the Deliverables and the Consultant shall be free to use, without restriction, any Consultant Background IP and its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its business that are used or acquired in the course of providing the Work, so long as the Consultant does not disclose or use any Confidential Information, work product or proprietary information without Metrolinx’s express written consent.
- (h) Nothing in this Contract shall prevent the Consultant from providing similar services to other parties.

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6.2 Ownership of Consultant Background IP

- (a) The Consultant is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property Rights) in and to all Consultant Background IP.
- (b) Metrolinx will acquire no rights to the Consultant Background IP other than the license rights expressly granted in Section 6.4, or otherwise under or in respect of this Contract.

6.3 Grant of Licenses by Metrolinx to Consultant

- (a) Metrolinx grants to the Consultant, during the Term, a non-exclusive, non-transferable, royalty-free right and license to:
 - (i) access, use, copy, support, maintain and, to the extent reasonably necessary to provide the Services, modify, the Metrolinx IP solely for the purposes of fulfilling the Consultant’s obligations under this Contract;
 - (ii) Sublicense the Metrolinx IP to Sub consultants solely to the extent necessary to enable such Sub consultants to fulfill the Consultant’s obligations under this Contract.
- (b) Any exercise by the Consultant of the rights granted pursuant to Section 6.3(a) shall be subject to the terms and conditions of this Contract, including always the Consultant’s obligations with respect to Confidential Information set out in Article 10.
- (c) If the Consultant desires to use the Metrolinx IP other than as permitted under clause (a) hereof, such use must be set out in a separate license agreement (such license to require the approval of Metrolinx, which may be withheld at Metrolinx’ discretion).

6.4 Grant of Licenses by the Consultant to Metrolinx

- (a) The Consultant grants to Metrolinx a perpetual, irrevocable, fully paid-up, royalty-free, worldwide, non-exclusive right and license to access, use, copy, support, maintain, modify, sublicense, assign, distribute or otherwise exploit any Consultant Background IP that is integrated with, embedded in, forms part of or is otherwise required to access, use, copy, support, maintain, modify, sublicense, assign, distribute or otherwise exploit any Metrolinx IP; provided, however, that the foregoing license does not permit Metrolinx to use the Consultant Background IP in its standalone form or for any purpose other than as part of or in conjunction with the Metrolinx IP it is associated with.

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- (b) If the Consultant integrates with or embeds in any Deliverables any Intellectual Property provided by a third party Consultant, subcontractor, independent contractor, Sub-consultant or other person, the Consultant shall obtain for Metrolinx the same license rights for Metrolinx in respect of such Third Party IP as set forth in Section 6.4(a) hereof.

INSURANCE

7.1 Insurance Requirements

- (a) The Consultant agrees to purchase and maintain in force, at its own expense and for the duration of this Contract, the policies of insurance set forth in Schedule D – Insurance, which policies will be in a form and with an insurer or insurers acceptable to Metrolinx. A certificate of these policies originally signed by the insurer or an authorized agent of the insurer and copies of the policies must be delivered to Metrolinx prior to the commencement of the Work.
- (b) Statutory Holdback
 - (i) Metrolinx in its sole discretion shall determine whether the Work required by a Task are subject to the Construction Act.
 - (ii) If the Work required by a Task are subject to the Construction Act, Metrolinx shall hold back, from each payment to the Consultant, ten percent (10%) of the amount of the payment or such greater amount as may be required under the Construction Act (the “Statutory Holdback”), and any Statutory Holdback shall only be released in accordance with the provisions of the Construction Act.
 - (iii) For greater clarity, release of the Statutory Holdback under Section 7(b) may include payment where a subcontract is certified complete in accordance with the Construction Act, subject to any other conditions required by Metrolinx in its sole discretion. Notwithstanding any other term in the Contract, Metrolinx reserves the right to recover such payment(s) if the Consultant fails to comply with the required conditions.

CHANGES AND CASH ALLOWANCES

8.1 Changes Requested by Metrolinx

Metrolinx may, in writing, request changes or alterations to the Work, or request additional Work from the Consultant (any of the foregoing, “Changes”). Subject to this Article 8, the Consultant shall comply with and implement all reasonable

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Metrolinx Change requests, and the performance of such requests shall be in accordance with this Contract.

8.2 Changes Recommended by the Consultant

The Consultant shall promptly notify Metrolinx in writing if the Consultant considers that any notice, direction, requirement, request, correspondence, or other fact, event, or circumstance comprises, requires, or results in a Change, and seek instructions as to whether or not to proceed to implement such Change.

8.3 Change Management Process

- (a) Where a Change request is initiated by Metrolinx pursuant to Section 8.1, Metrolinx shall set out, in the Change request:
 - (i) the proposed prices for the contemplated changes;
 - (ii) the timing requirements for the implementation of the Change; and
 - (iii) any other information which may reasonably be required.
- (b) The Consultant shall respond to Metrolinx' Change request in writing within ten (10) Business Days.
- (c) Where a Change is initiated by the Consultant pursuant to Section 8.2, the Consultant shall set out in the Change request, conforming to Section 8.3(a):
 - (i) a description of the proposed Change;
 - (ii) the estimated cost of the proposed Change;
 - (iii) any proposals, designs or other details or information which may be reasonably required; and
 - (iv) The reasons for the proposed Change, including the benefits of the proposed Change and any consequences of not proceeding with the Change.
- (d) No Changes shall be implemented and no Change request shall become effective until an amendment or change order documenting the Change has been executed by both Parties, and such executed instrument shall be the final determination of any adjustments to the Contract price, the Project Schedule, or the terms and conditions of the Contract, as applicable, with respect to the Change set out therein.

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- (e) Where Metrolinx and the Consultant cannot agree as to whether or not a particular notice, direction, requirement, request, correspondence, or other fact, event, or circumstance comprises, requires, or results in a change to the scope of the Work, then either Party may refer the issue to dispute resolution in accordance with Article 16.

8.4 Cash Allowance Items and Task Assignment Process

- (a) The Consultant shall include all Cash Allowance Items in the Project Schedule and perform all Services related thereto within the Project Schedule. Where applicable, the Project Schedule shall take into account the time required to facilitate the Task Assignment Process described in this Section, including the time required to obtain Quotations pursuant to Section 14 of Schedule C – Financial Terms.
- (b) Cash Allowance Items shall be administered and authorized as follows (the “Task Assignment Process”):
 - (i) The Metrolinx Representative shall submit to the Consultant a request to proceed with a Cash Allowance Item.
 - (ii) Upon receipt of such request from Metrolinx, the Consultant shall, in respect of the identified Cash Allowance Item, provide to Metrolinx a response setting out:
 - (A) the estimated hours of Services and expected completion date;
 - (B) subject to Section 8.5, the Consultant Personnel, suppliers, Sub-consultants or specialized services providers which the Consultant proposes to perform the Work; and
 - (C) any requirements for testing and reporting.
 - (iii) As and if required, the Parties shall meet to review the requirements for the Cash Allowance Item.
 - (iv) Subsequent to the review meeting, and based on the results of the review meeting, the Consultant shall make its own determination of the Consultant’s work effort and fee cost to provide the Consultant’s scope of Work for the task.
- (c) No amounts shall be payable in respect of any Cash Allowance Items unless and until Metrolinx has approved such expenditure in writing, and shall be subject to Schedule C – Financial Terms.

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- (d) Upon the approval by Metrolinx of any Cash Allowance Item, the Consultant shall be responsible for the completion thereof in accordance with the terms and conditions set out in this Contract. For greater certainty, the Consultant’s responsibilities for Cash Allowance Items approved by Metrolinx pursuant to this Section are the same as for all other Work.

8.5 Performance of Changes and Cash Allowance Items

- (a) Metrolinx shall determine by whom and for what amounts the items included in each Change or Cash Allowance Item will be performed.
- (b) Metrolinx shall have the right, exercisable at its sole discretion, to require the Consultant to use a third party to perform or provide any Cash Allowance Items or any Work related to a Change. Metrolinx may exercise this right generally, by requiring the Consultant to provide the Work through a third party selected by the Consultant, or by requiring the Consultant to utilize a third party identified by Metrolinx.
- (c) The Consultant shall obtain prior approval of Metrolinx before entering into a subcontract, amending an existing subcontract or performing own forces work included in a Change or Cash Allowance.

ADDITIONAL RESOURCES

9.1 Additional Resources

- (a) In addition to, or in connection with, a request for additional or altered Work pursuant to Article 8, at any time during the Term, Metrolinx shall have the right in its discretion to require the Consultant to increase the number of Consultant Personnel upon twenty (20) days’ notice.
- (b) Unless otherwise agreed to in writing by Metrolinx, such additional Consultant Personnel shall be available to report for work any Place of Work designated by Metrolinx within twenty (20) days of receipt of a written request from Metrolinx pursuant to Section 9.1(a).
- (c) The hourly rate payable in respect of additional Consultant Personnel shall be as set out in the Articles of Agreement.

CONFIDENTIAL INFORMATION AND FIPPA

10.1 Confidential Information

The Consultant shall keep all Metrolinx Confidential Information confidential. Without limiting the generality of the foregoing, the Consultant shall:

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- (a) not disclose, reveal, publish, or disseminate any Metrolinx Confidential Information to anyone, except as permitted pursuant to this Contract;
- (b) shall use Metrolinx Confidential Information only in connection with this Contract and the performance of the Work;
- (c) shall take all reasonable steps required to prevent any unauthorized reproduction, use, disclosure, publication, or dissemination of the Metrolinx Confidential Information;
- (d) shall not copy, reproduce in any form or store the Metrolinx Confidential Information in a retrieval system or database, without the prior written consent of Metrolinx; and
- (e) shall immediately notify Metrolinx in the event that it becomes aware of any unauthorized disclosure of Metrolinx Confidential Information.

10.2 Permitted Disclosure

Notwithstanding the obligations set out in Section 10.1, the Consultant may disclose Metrolinx’ Confidential Information to those of its Sub-consultants and Consultant’s Personnel who need to know such Confidential Information in connection with this Contract, provided that such Sub-consultant or Consultant’s Personnel, as applicable, is subject to obligations of confidentiality substantially similar to those contained in this Article 10.

10.3 Exceptions

- (a) The obligations of confidentiality set out in Section 10.1 shall not apply to Metrolinx Confidential Information which:
 - (i) becomes generally available to the public through no fault of the Consultant;
 - (ii) prior to receipt from Metrolinx, was known to the Consultant on a non-confidential basis and is not subject to another obligation of secrecy and non-use, as documented by written records possessed by the Consultant;
 - (iii) was independently developed by the Consultant prior to receipt from Metrolinx, as documented by written records possessed by the Consultant; or
 - (iv) Becomes available to the Consultant on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.

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- (b) If the Consultant becomes compelled to disclose any Metrolinx Confidential Information pursuant to Applicable Law, the Consultant shall provide Metrolinx with prompt written notice of any such requirement and shall cooperate with Metrolinx in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the relevant Confidential Information is preserved. If such an order or arrangement is not obtained, the Consultant shall disclose only that portion of the Confidential Information as is required pursuant to Applicable Law. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Article 10.
- (c) Without limiting the generality of Section 10.3(a) and notwithstanding Section 10.3(b), the Parties acknowledge and agree that the treatment and disclosure of Confidential Information shall in all cases be subject to the requirements of FIPPA and the Construction Act.

10.4 Security Measures

- (a) The Vendor shall select, implement (prior to the commencement of the Work), use and maintain the most appropriate products, tools, measures and procedures to ensure the security of all Confidential Information, as determined with reference to and generally in compliance with Applicable Laws, Industry Standards, the security requirements specified in “Scope of Work” and best practices, or as otherwise prescribed by Metrolinx during the Term. Without limiting the generality of the foregoing, such practices shall include:
 - (b) privacy due diligence safeguards; and
 - (c) physical and electronic security measures and confidentiality enhancing technologies to guard against unauthorized disclosures, access and use, such as firewalls, encryption, the use of user identification and passwords, software or other automated systems to control and track the addition and deletion of users, and software or other automated systems to control and track user access to areas and features of information systems.
- (d) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which Consultant shall perform its obligations relating to this Section 10.4.

10.5 Intellectual Property Rights

- (a) Metrolinx, its Consultants, sub-consultants, consultants, advisors, agents, strategic business partners, and affiliates shall retain all right, title and

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interest, including all Intellectual Property Rights, in and to its
Confidential Information.

10.6 Damages

The Consultant acknowledges and agrees that any breach or threatened breach of this Article 10 or the obligations set out herein shall cause immediate and irreparable harm to Metrolinx for which damages alone are not an adequate remedy. The Consultant hereby acknowledges and agrees that Metrolinx shall be entitled to seek, in addition to any other legal remedies which may be available to it, such equitable relief as may be necessary and available to protect Metrolinx against such breach or threatened breach. No failure or delay by Metrolinx in exercising any right hereunder shall operate as a waiver hereof, or shall estop Metrolinx from obtaining permanent injunctive relief.

10.7 Return or Destruction of Confidential Information

- (a) Immediately upon expiration or termination of this Contract or at any other time upon the request of Metrolinx, and subject to Section 10.10 (Audit Rights) consultant agrees to:
 - (i) promptly return all Metrolinx Confidential Information (other than Contract Records) to Metrolinx; or
 - (ii) Promptly destroy the Metrolinx Confidential Information and all copies thereof in any form whatsoever under its power or control and provide Metrolinx with a destruction certificate signed by an appropriate officer of the Consultant certifying such destruction.
- (b) Notwithstanding the foregoing, the Consultant shall have no obligation to return or destroy:
 - (i) Metrolinx Confidential Information that is captured and retained within the Consultant’s routine computer systems backup processes, provided that (a) no specific effort is made to retrieve such archived Confidential Information for purposes that would violate the confidentiality obligations under this Contract and (b) the confidentiality obligations of under this Contract shall continue to apply to such archived Confidential Information for so long as such information is retained; and
 - (ii) Working papers or other documentation which it is required to retain pursuant to Applicable Law or any rules of professional conduct applicable to the Consultant or the Consultant Personnel.

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10.8 FIPPA and Personal Information

- (a) Metrolinx and the Vendor acknowledge and agree the collection, use, retention and disclosure of Personal Information is governed by FIPPA. Metrolinx acknowledges that the Vendor may also be subject to the requirements of PIPEDA. In the event of a conflict between the requirements of FIPPA and the requirements of PIPEDA or any other legislation governing the treatment of Personal Information, the more onerous provision shall apply.
- (b) The Vendor shall ensure that all collection, access, use, retention and disclosure of Personal Information under this Contract, whether through the performance of the Work or otherwise, complies with Applicable Laws including FIPPA, PIPEDA, Standards, and applicable requirements to collect, record and retain relevant consents pertaining to the collection, access, use, retention and disclosure of Personal Information in respect of the Work.
- (c) At Metrolinx’s request at any time during the Term, the Vendor shall fully participate in a Privacy Impact Assessment with respect to the performance of the Work. The Privacy Impact Assessment may be conducted by Metrolinx or external third party advisors to Metrolinx at various times throughout the Term. The Consultant and all Consultant Personnel shall cooperate with Metrolinx and/or its third party advisors to provide the resources required to facilitate and fulfill this assessment. The Consultant shall implement any recommendations resulting from the Privacy Impact Assessment process.
- (d) The Consultant shall ensure the security and integrity of any Personal Information collected by the Consultant and shall protect it against loss, unauthorized access, destruction, or alteration, in accordance with the following:
 - (i) The Consultant shall not directly or indirectly collect, use, disclose, store or destroy any Personal Information, or give, exchange, disclose, provide, or sell Personal Information to any third party, except as expressly permitted, and for a purpose(s) authorized, under this Contract or otherwise agreed to in writing by Metrolinx.
 - (ii) The Consultant shall ensure that access to Personal Information is restricted to those Consultant Personnel who have a need to know or use such information in the performance of the Work and who have been specifically authorized to have such access for the purposes of performing the Work. Access shall be limited to only that Personal Information which is required for the performance of the Work.

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- (iii) All Personal Information shall be kept in a physically secure location and separate from all other records and databases. The Consultant shall not place, input, match, insert or intermingle, nor shall it permit any Person to place, input, match or intermingle, any data or records in any form whatsoever into or with any records or database containing such Personal Information.
- (e) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which the Consultant shall perform its obligations relating to this Section 10.8.

10.9 FIPPA and Freedom of Information

- (a) The Consultant acknowledges that Metrolinx is a provincial crown agency subject to FIPPA, and acknowledges and agrees as follows:
 - (i) All FIPPA Records are subject to, and the collection, use, storage and treatment thereof is governed by FIPPA. The Vendor agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA. The Vendor acknowledges that all information, data, records and materials, however recorded, that are held by the Vendor and/or created by the Vendor in the course of performing the Work are considered to be FIPPA Records and subject to FIPPA.
 - (ii) Section 10.7 shall apply to all FIPPA Records, which shall be returned and/or destroyed in accordance with that section.
 - (iii) In the event of a conflict between the requirements of this Contract and the requirements of FIPPA, the requirements of FIPPA shall take precedence.
 - (iv) In the event that a request is made under FIPPA for the disclosure of any FIPPA Records, Metrolinx shall provide prompt written notice thereof to the Consultant and the Consultant shall provide any and all relevant FIPPA Records to Metrolinx on demand for the purposes of responding to an access request under FIPPA. In these circumstances, the Consultant shall provide all FIPPA Records requested to Metrolinx’s Freedom of Information Coordinator (or equivalent) within seven (7) business days of receipt of the request from Metrolinx. Notwithstanding anything to the contrary in this Agreement and subject to the Consultant rights of appeal pursuant to Section 28(9) of FIPPA, Metrolinx shall determine what FIPPA Records will be disclosed in connection with any such request, in accordance with the requirements of

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FIPPA (including, without limitation, the requirements with respect to affected persons set out in Section 28 thereof).

- (v) For the purposes of this section, “FIPPA Records” means all information, data, records and materials, however recorded, in the custody or control of Metrolinx, including Confidential Information and Personal Information (as defined in FIPPA). For the purposes of this definition, documents held by the Consultant in connection with this Contract are considered to be in the control of Metrolinx.
- (vi) Storage of FIPPA Records (including the Contract Records) at a location outside Canada shall only be permitted with Metrolinx’s express written consent.

10.10 Audit Rights

- (a) During the Term and for a period of seven (7) years thereafter, the Consultant shall, at its cost and expense, retain and maintain, in an organized, accurate and accessible mode and manner, all financial and other books, records and documentation relating or pertaining to the Contract and the performance of the Work, including: (i) original invoices and accounts, along with related records showing charges and expenses incurred, including but not limited to the rates and hours for all Consultant Personnel and all expenditures and commitments made by the Consultant in connection therewith; (ii) correspondence, e-mails, tenders, minutes of meetings, notes, reports, timesheets, memoranda and other documents associated with the Contract; (iii) records relating to any service level agreements and key performance indicators included in the Contract, and (iv) records related to matters of security and privacy (collectively, the “Contract Records”).
- (b) The Contract Records shall be retained and maintained in accordance with all generally acceptable accounting principles and Applicable Laws and Industry Standards, or as otherwise may be required to substantiate compliance with this Contract and/or any payment to be made to the Consultant under this Contract.
- (c) During the Term and for a period of seven (7) years thereafter, Metrolinx or any third party acting on behalf of Metrolinx, shall have the right, upon no less than twenty-four (24) hours’ notice in writing to the Consultant and during normal office hours, to inspect and audit, and to have access to, all Contract Records whether maintained by the Consultant or a Consultant Personnel, reasonably required to confirm the Consultant’s compliance with the terms of this Contract and Applicable Laws, and to make copies thereof. The Consultant shall make available or cause to be

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made available the Corporate Records that are requested by Metrolinx or that may be required given the scope of the audit (provided such scope is disclosed to the Consultant), and shall otherwise reasonably cooperate with Metrolinx and any third party acting on Metrolinx’s behalf, including by providing reasonable access to all of the Consultant’s premises and to the Consultant’s employees. Any such access shall be subject to the Consultant’s reasonable documented security policies and documented professional and confidentiality obligations to its other clients; such documentation shall be provided to Metrolinx upon request. Where access is needed to a Consultant Personnel’s employees or to Contract Records that are maintained by a Consultant Personnel, the Consultant shall use reasonable efforts to arrange for such access on a timely basis. Without limiting the generality of the foregoing, the rights set out in this Section 9.10 shall extend to any Governmental Authority exercising its right to audit pursuant to Applicable Law or any contract with Metrolinx. When selecting a third party to inspect and audit the Contract Records, Metrolinx shall consult with the Consultant and shall take into consideration any reasonable objections the Consultant may have. For the avoidance of doubt, Metrolinx shall have sole discretion in selecting the third party. The Consultant may require Metrolinx and/or any third party selected by Metrolinx to inspect and audit the Contract Records, to enter into a confidentiality agreement, containing reasonable terms and conditions, with the Consultant, before the disclosure of any Contract Records is made.

- (d) The Consultant shall maintain a competent and independent audit function to assess the internal controls over its environment and its compliance with Applicable Laws and Standards. The Consultant shall provide Metrolinx, upon request, the results of all internal controls and security audits performed by the Consultant’s auditors.
- (e) The Consultant shall upon advance written request, provided by e-mail or otherwise, provide Metrolinx with reasonable access to all premises that may reasonably be required to enable Metrolinx and/or Metrolinx’s agents to monitor the progress of the Work. Any such access shall be subject to the Consultant’s reasonable documented security policies and documented professional and confidentiality obligations to its other clients; such documentation shall be provided to Metrolinx upon request. Any such monitoring or verifications shall be without prejudice to any other rights of Metrolinx under this Contract and shall not relieve the Consultant from any of its obligations under this Contract nor shall such verification be used by the Consultant as evidence of effective control of quality.
- (f) The Consultant and Metrolinx shall meet to review each audit report promptly after the issuance thereof and to mutually agree upon the appropriate manner, if any, in which to respond to the changes suggested

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or issued identified by the audit report. Without limiting any remedies which may be available to Metrolinx, the Consultant shall promptly remedy any violations of this Contract of which it becomes aware, pursuant to any audit or otherwise.

10.11 Consultant Compliance

- (a) The Consultant shall advise all of its Consultant Personnel, all of its Sub-Consultant's, and all of its Sub-Consultant's Consultant Personnel of the requirements of this Article 9, and associated requirements set out elsewhere in this Contract, and take appropriate action to ensure compliance by such persons with the terms of this Article 10. In addition to any other liabilities of the Consultant pursuant to this Contract or otherwise at law or in equity, the Consultant shall be liable for all claims arising from any non-compliance with this Article 10 by the Consultant, any of its Consultant Personnel, any Sub-Consultant and of its Sub-Consultant's Consultant Personnel.
- (b) The Consultant warrants that each representative or Sub-consultant provided or engaged by the Consultant to provide the services pursuant to this Contract is under a written obligation to the Consultant requiring such person to comply with the terms of this Article 10.

10.12 Publicity

Neither Party may make any public announcement or press release regarding this Contract or any relationship between the Consultant and Metrolinx, without the other Party's prior written consent.

REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Representations, Warranties and Covenants of the Consultant

- (a) The Consultant covenants and agrees with and represents and warrants to Metrolinx, and acknowledges and confirms that Metrolinx is relying on such covenants, agreements, representations and warranties, as follows:
 - (i) the Consultant is validly existing under the laws of the location of its head office and the Consultant has all necessary power, authority and capacity to enter into this Contract and to perform its obligations hereunder;
 - (ii) the entering into of this Contract by the Consultant and the performance of its obligations hereunder has been authorized by all necessary corporate action;

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- (iii) the execution and delivery of this Contract, the consummation of the transactions contemplated herein and compliance with and performance of the provisions of this Contract does not and shall not:
 - (A) result in a breach of or constitute a default under, or create a state of fact, which after notice or lapse of time or both, or otherwise, would constitute a default under any term or provision of the constating documents of the Consultant, the by-laws or resolutions of the Consultant or any agreement or instrument to which the Consultant is a party or by which it is bound, or
 - (B) require the Consultant to obtain any Approval or action of any other Persons and, if required, any such Approvals have already been obtained as of the date of this Contract;
- (iv) this Contract constitutes a legally valid and binding obligation of the Consultant enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally, the principles of equity and that equitable remedies such as specific performance and injunction are available only in the discretion of a court of competent jurisdiction;
- (v) the Consultant has carefully reviewed the whole of this Contract, including all of the Contract Documents, and all other documents made available to the Consultant by Metrolinx, and, to the Consultant's knowledge, nothing contained herein or therein inhibits or prevents the Consultant from performing the Services in accordance with the Required Standard of Care so as to achieve and satisfy the requirements of this Contract;
- (vi) the Consultant has engaged and shall engage only Sub-consultants and Consultant Personnel that are qualified and competent to perform the portions of the Services they are responsible for and possess the requisite Domain Expertise;
- (vii) the Consultant has available the resources and personnel to complete all of its obligations under this Contract in a timely, efficient and professional manner in accordance with the Required Standard of Care;
- (viii) the Consultant is not aware of any legal action instituted, threatened or pending against the Consultant that could have a material adverse effect on its ability to perform its obligations under this Contract;

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- (ix) except as disclosed in the Submission, the Consultant is free of any actual or potential Conflict of Interest;
- (x) the Consultant is registered as an employer pursuant to the *Workplace Safety and Insurance Act* (Ontario) and has completed all filings and paid all assessments as required pursuant to that *Act* and the regulations thereunder;
- (xi) the Consultant is familiar with the obligations imposed on an "employer" as defined in OHSA, and that it has in place a health and safety program to ensure that it takes all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under that *Act*; and
- (xii) The Consultant represents warrants and covenants to Metrolinx that the Consultant is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act and that the Consultant's registration number is: _____.

11.2 Continuing Effect of Representations, Warranties and Covenants

The Consultant hereto agrees that its covenants, representations and warranties contained in this Article 11 are continuing covenants, representations and warranties and shall apply and be true and correct at all times during the Term.

11.3 Disclaimer

THE PARTIES AGREE THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT, THERE ARE NO OTHER WARRANTIES (EXPRESS OR IMPLIED) PROVIDED BY THE VENDOR WITH RESPECT TO THE PERFORMANCE OF THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

INDEMNITY

12.1 Indemnification

- (a) The Consultant shall at all times indemnify and save harmless Metrolinx, its officers, directors, employees, members, agents, representatives, successors and assigns (hereinafter the "**Indemnified Parties**"), from and against any and all Losses resulting from:
 - (i) any breach, violation or non-performance by or on behalf of the Consultant of any covenant, obligation or agreement of the Consultant contained in this Contract, including any warranty (express or implied);

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- (ii) any negligent acts, errors or omissions or wilful misconduct by or on behalf of the Consultant relating to the Work to be provided under this Contract;
- (iii) any acts performed or omitted to be performed by or on behalf of the Consultant beyond the authority of the Consultant hereby conferred;
- (iv) any inaccuracy in or breach of any of the representations or warranties of the Consultant contained in this Contract;
- (v) any preserved or perfected Lien or written notice of a lien under the Construction Act, filed, registered, given or made on account of the Work performed hereunder, provided that the Liens or written notices of a lien herein referenced are not the direct result of the default in payment by Metrolinx to the Consultant of amounts properly due under this Contract. The Consultant shall cause any such Lien or claim which may be filed, registered or made to be released, vacated or otherwise discharged within five (5) days of obtaining notice of the Lien or claim or from receipt by the Consultant of written notice from Metrolinx. The Consultant shall cause any such written notice of a lien which may be given to Metrolinx to be withdrawn or vacated within five (5) days of obtaining notice of the written notice of a lien or from receipt by the Consultant of written notice from Metrolinx. If the Consultant fails to release, vacate, withdraw or discharge any such Lien, written notice of a lien or claim as required by this paragraph, then Metrolinx may, but without obligation to do so, discharge, vacate or release the Lien, written notice of a lien or claim or otherwise deal with the Lien, written notice of a lien or claim, and the Consultant shall pay any and all reasonable costs and expenses, including but not limited to reasonable legal fees incurred by Metrolinx in so releasing, discharging, vacating or otherwise dealing with such Lien, written notice of a lien or claim
- (vi) any breach of the terms and conditions set out in Article 3 or arising as a result of any illness, injury or death of any employee of the Consultant or any Sub-consultant, including:
 - (A) any resulting expenses incurred by Metrolinx as a result of stoppage of the Work on account of failure by the Consultant to meet its obligations under and/or with respect to the OHSA; and
 - (B) any resulting fine(s) levied against Metrolinx as a result of any breach of the responsibilities of the employer for the

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work, to the extent attributable to the Consultant's failure to fulfil its obligations as described in Section 3.1; and/or

- (vii) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trade-mark, industrial design or other proprietary rights conferred by contract, common law, statute or otherwise in respect to the Services or any matter provided to Metrolinx or performed by the Consultant, or anyone else for whom at law it is responsible.
- (b) The Consultant shall pay all reasonable costs, expenses and legal fees that may be incurred or paid by the Indemnified Parties in connection with any demand, claim, execution, action, suit or proceeding with respect to a matter for which the Consultant is obligated to indemnify the Indemnified Parties pursuant to this Article 12, provided that the indemnity obligations of the Consultant under this Article 12 shall not extend to Loss attributable to the negligence or willful misconduct of any Indemnified Parties to the extent that such Indemnified Parties' negligence or willful misconduct caused the Loss.
- (c) In the event any Loss is asserted in respect to which an Indemnified Party is entitled to indemnification under this Article 12, and without prejudice to any other right or remedy Metrolinx may have, Metrolinx shall be entitled to deduct or withhold a reasonable sum on account of such claim, action, suit, execution or demand, including legal costs, from monies owed or payable by Metrolinx to the Consultant under this Contract pending the final determination or settlement of such claim, action, suit, execution or demand. In the event,
 - (i) the Consultant is, becomes, or is deemed to be bankrupt or an insolvent person pursuant to the *Bankruptcy and Insolvency Act* (Canada);
 - (ii) the Consultant makes a general assignment for the benefit of creditors; or
 - (iii) a receiver or interim-receiver is appointed with respect to some or all of the Consultant's business, assets, or property,

then Metrolinx shall be entitled, without prejudice to any other right or remedy Metrolinx may have, to further deduct or withhold a reasonable sum on account of such Loss, from any monies owed or payable by Metrolinx to the Consultant under any other agreement or account. The provisions of this Section 12.1(c) shall not apply in the event that such Loss is otherwise provided for under any insurance provided by the Consultant to or for the benefit of Metrolinx.

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LIMITATION OF LIABILITY

13.1 General Intent

- (b) It is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred by the non-breaching Party as a result of the breaching Party's failure to perform its obligations in the manner required by the Contract.

13.2 Limitations on Liability

- (a) Subject to Section 12.1(c), in no event shall either Party be liable for indirect, consequential, exemplary, punitive or special damages relating to the Contract even if such Party has been advised in advance of the possibility of such damages. The Vendor acknowledges and agrees that any damages awarded by a court of competent jurisdiction against Metrolinx as a result of a third party claim is to be considered direct damages
- (b) Subject to Section 12.1(c), each Party's aggregate liability to the other under the Contract for direct damages for all events giving rise to liability hereunder shall be limited to an amount equal to two times the Total Contract Price.
- (c) The limitations of liability set forth in Sections 13.2(a) and 13.2(b) shall not apply with respect to Losses:
 - (i) that are the subject of indemnification pursuant to Articles 12.1(a)(ii), (iii), (v), (vi) or (vii); or
 - (ii) Occasioned by a breach of Article 10.
- (d) Each Party shall have a duty to mitigate damages for which the Consultant is responsible.

TERMINATION

14.1 Termination for Cause by Metrolinx

- (a) Metrolinx may, by ten (10) days' written notice to the Consultant, suspend or terminate the whole or any part of the provision of the Work or this Contract for cause in the event that the Consultant is in breach of any of its obligations under this Contract, and thereupon:

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- (i) Metrolinx may appoint officials of Metrolinx or any other person or persons in the place and stead of the Consultant to perform the Work or any portion thereof;
 - (ii) the Consultant shall immediately discontinue the Work on the date and to the extent specified in the notice and place no further orders for materials or Work for the terminated portion of the Work;
 - (iii) Nothing contained herein shall limit the rights of Metrolinx to recover damages from the Consultant arising from the failure of the Consultant to perform the Work satisfactorily in accordance with the terms of this Contract.
- (b) If Metrolinx chooses to terminate this Contract in part under Section 14.1 or 14.2, a Change order or amendment will be prepared to reflect the partial termination and the charges payable under this Contract will be equitably adjusted to reflect that Work that is terminated.

14.2 Termination for Convenience by Metrolinx

- (a) Metrolinx may, by thirty (30) days' written notice to the Consultant, terminate this Contract for convenience, and thereupon Metrolinx shall be liable for payment to the Consultant for those monies attributable to the part of the Work performed to the satisfaction of Metrolinx to the date of termination stipulated in such notice. Metrolinx shall also be liable for any reasonable demobilization costs and the reasonable cost of cancellation of any contracts, but in no event will Metrolinx be liable for any loss of profits, loss of revenue or other consequential damages.

14.3 Publication of a Notice of Termination

- (a) Notwithstanding any other provision in the Contract, Metrolinx shall not be liable to the Consultant for any actual or alleged damages of any kind whatsoever (including without limitation indirect, incidental, special, consequential or other damages, including claims for loss of profits, loss of opportunity or loss of reputation) on account of the publication of a Notice of Termination pursuant to the Construction Act, and the Consultant waives any claim against Metrolinx related to or arising from the publication.

FORCE MAJEURE

15.1 Force Majeure

- (a) Neither Party shall be liable for Losses caused by a delay or failure to perform its obligations under this Contract where such delay or failure is

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caused by an event beyond its reasonable control (a “**Force Majeure Event**”). The Parties agree that an event shall not be considered beyond one’s reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of this Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event.

- (b) Without limiting the generality of the foregoing, the Parties agree that Force Majeure Events may include acts of God, natural disasters, acts of war, war-like operations, civil war, acts of foreign enemy, plagues, epidemics, insurrection and terrorism (provided that the conditions of Section 15.1(a) are met) but shall in no event include:
 - (i) shortages or delays relating to supplies or Work; or
 - (ii) On the part of the Consultant, lack of financing or inability to perform because of the financial condition of the Consultant.
- (c) A failure by Metrolinx to furnish instructions is not a Force Majeure Event until fourteen (14) days after a demand for such instructions has been made in writing by the Consultant and not then unless such claim is reasonable and justified to Metrolinx.

15.2 Process

- (a) If a Party seeks to excuse itself from its obligations under this Contract due to a Force Majeure Event:
 - (i) that Party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period thereof; and
 - (ii) the Party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligation for the period of time directly attributable to such Force Majeure Event.
- (b) This Section shall not apply or be available to a Party in respect of any event, or resulting delay or failure to perform, occurring more than fourteen (14) days before notice is given to Metrolinx pursuant to Section 15.2(a).
- (c) In the case of a continuing Force Majeure Event, only one notice shall be necessary.

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15.3 Metrolinx Rights

Without limiting any other rights available to Metrolinx under this Contract, Metrolinx reserves the right to contract any Work from a third party during any period of Force Majeure claimed by the Consultant.

DISPUTE RESOLUTION

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule E – Dispute Resolution.
- (b) The process set out in Schedule E – Dispute Resolution shall not be construed to prevent a Party from instituting, and a Party is authorized to institute, litigation earlier, but only if required to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors, or where a Party makes a good faith determination that a breach of the terms of this Contract by the other Party is such that the damages to such Party resulting from the breach shall be so immediate, so large or severe, and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

SET OFF

- (a) Metrolinx shall have the right to satisfy any amount from time to time owing by it to the Consultant under the Contract by way of a set-off against any amount from time to time owing by the Consultant to Metrolinx, including but not limited to any amount owing to Metrolinx pursuant to the Consultant’s indemnification of Metrolinx in this Contract.

GENERAL

18.1 Entire Agreement

- (a) This Contract constitutes the entire agreement between the Parties regarding the Work and supersedes any prior understandings, negotiations, representations or agreements, whether written or verbal.

18.2 Governing Law and Jurisdiction

- (a) This Contract shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws applicable therein, without regard to principles of conflicts of law that would impose the law of another jurisdiction. The Parties hereby irrevocably and unconditionally attorn and submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

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18.3 Survival

- (a) The obligations set out in Articles 1, 2, 3, 7, 8, 10, 11 and 12 and this Article 18 of this Contract shall continue to bind the Consultant notwithstanding expiration or termination of this Contract for any reason whatsoever or completion of the Work as contemplated hereunder.

18.4 Enurement

- (a) This Contract shall enure to the benefit of, and be binding upon the Parties and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

18.5 Assignment

- (a) The Consultant shall not be entitled to assign this Contract in whole or in part without the prior written consent of Metrolinx, which consent shall not be unreasonably withheld or delayed.

18.6 Independent Parties

- (a) This Contract does not create and is not intended to create an agency or employment relationship, partnership, joint venture or other similar association between the Parties. The relationship between the Parties is to be considered at all times as that of a purchaser and an independent contractor. Neither Party shall have the right to bind the other to any agreement with any third party or to incur any obligation or liability on behalf of the other Party. Except as expressly provided for in this Contract, neither Party shall represent, directly or indirectly by conduct, to any third party that it is an agent, employee, partner or joint venture of the other.
- (b) The Consultant Personnel and all other personnel providing the Work are solely the employees of the Consultant and applicable Sub-consultants (and not Metrolinx') for all purposes under this Contract, including for all purposes under any Applicable Laws. Accordingly, none of the foregoing personnel is entitled to any benefits respecting any pension or other benefit plan, program or policy of Metrolinx.

18.7 Third Party Beneficiaries

- (a) This Contract is made solely for the benefit of the Parties and, to the extent expressly and specifically stated, any other Parties made beneficiaries of this Contract. No terms of this Contract shall be deemed to confer upon any other third parties any claim, remedy, reimbursement or other right.

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- (b) The Consultant represents and warrants to Metrolinx that the Consultant is entering into this Contract solely on the Consultant’s own behalf and not as an agent for any other Person.

18.8 Joint and Several Liability

- (a) Where the Consultant comprises two or more Persons, each of them shall be jointly and severally liable for the obligations of the Consultant under this Contract.

18.9 Notice

- (a) Unless expressly provided elsewhere in the Contract Documents, every notice required or permitted under this Contract must be in writing and may be delivered in person, by courier or by fax to the applicable party at the address or fax number in the Articles of Agreement or to any other address, fax number or individual that a party subsequently designates by notice.
- (b) Any notice under this Contract, if delivered personally or by courier on a Business Day will be deemed to have been given when actually received, if delivered by fax before 3:00 p.m. on a Business Day will be deemed to have been delivered on that Business Day and if delivered by fax after 3:00 p.m. on a Business Day or on a day that is not a Business Day will be deemed to be delivered on the next Business Day. For greater clarity, notice shall not be given by email.

18.10 Amendments

- (a) Except as expressly provided in this Contract, no amendment, supplement or restatement of any provision of this Contract is binding unless it is in writing and signed by both Parties.

18.11 No Waiver

- (a) No provision of this Contract shall be deemed waived, amended or modified by either Party unless such waiver, amendment or modification is in writing and signed by the Party against whom it is sought to enforce the waiver, amendment or modification. The failure by a Party to exercise any of its rights, powers or remedies hereunder or its delay to do so does not constitute a waiver of those rights, powers or remedies. No waiver made with respect to any instance involving the exercise of any such right is to be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

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18.12 Severability

- (a) If any term or condition of this Contract, or the application thereof to the Parties or circumstances, is to any extent invalid or unenforceable in whole or in part, the remainder of this Contract shall continue in full force and effect, and the application of such term or condition to the Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

18.13 Further Assurances

- (a) Each Party agrees that it shall at any time and from time to time, at its own expense, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request for the purpose of giving effect to this Contract or carrying out the intention or facilitating the performance of the terms of this Contract.

18.14 Conflict of Interest Acknowledgement and Agreement

- (a) For the purposes of this Contract, a “**Conflict of Interest**” includes any situation or circumstances where, in relation to the performance of its contractual obligations in this Contract, the Consultant’s other commitments, relationships or financial interests:
 - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.
- (b) The Consultant acknowledges that participation (directly or indirectly) in any procurement process arising from or related to this Contract (the “Prohibited Procurements”) would constitute a Conflict of Interest with this Contract, and the Consultant agrees that it shall not, and shall take reasonable steps (including obtaining covenants substantially similar to those set out in this section) to ensure that its Sub consultants do not participate in or be involved with such Prohibited Procurements either directly or indirectly, including as a bidder or as a subcontractor or advisor to any bidder.
- (c) The Consultant shall:
 - (i) avoid all Conflict of Interest in the performance of its contractual obligations;

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- (ii) disclose to Metrolinx without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and
 - (iii) comply with any requirements prescribed by Metrolinx to resolve any Conflict of Interest.
- (d) In addition to all other contractual rights or rights available at law or in equity, Metrolinx shall have the right to immediately terminate this Contract, by giving notice in writing to the Consultant, where:
 - (i) the Consultant fails to disclose an actual or potential Conflict of Interest;
 - (ii) the Consultant fails to comply with any requirements prescribed by Metrolinx to resolve a Conflict of Interest; or
 - (iii) the Consultant’s Conflict of Interest cannot be resolved.
- (e) This section shall survive any termination or expiry of this Contract.

18.15 Counterparts

- (a) This Contract may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or electronic form, provided that the Party providing its signature in electronic form shall promptly forward to the other Party an original signed copy of this Contract which was so sent electronically.

[END OF SECTION]

SCHEDULE A – DEFINITIONS

1.0 IN THIS CONTRACT DOCUMENT

- 1.1 **“Acceptance”** or **“Acceptable”** or **“Accepted”** means the act of formal notification by Metrolinx of no further objections regarding content, construction or compliance.
- 1.2 **“Applicable Laws”** means all applicable laws, statutes, regulations, orders, by-laws, treaties, judgements, decrees and ordinances applicable from time to time and, whether or not having the force of law, all applicable Approvals, Standards, codes, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals, and policies of any Governmental Authority having or purporting to have jurisdiction or authority over a Party, property, transaction or event, including laws relating to workplace safety and insurance, occupational health and safety and employment standards.
- 1.3 **“Approvals”** means any permits, licenses, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorizations respecting the work undertaken as part of the Work as may be required from any applicable Governmental Authority or otherwise by the Consultant’s contract documents.
- 1.4 **“Business Day”** means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business. Each Business Day will end at 4:00 p.m. on that day.
- 1.5 **“Cash Allowance”** means a sum included in the Total Contract Price by Metrolinx as a predetermined allowance to cover the items identified in the Articles of Agreement.
- 1.6 **“Cash Allowance Items”** means those items, work and/or services identified in the Articles of Agreement as items to be paid for using the designated Cash Allowance.
- 1.7 **“Changes”** has the meaning ascribed to it in Section 8.1 of the General Conditions.
- 1.8 **“Construction Act”**, means the *Construction Act*, R.S.O. 1990, c. C.30.
- 1.9 **“Confidential Information”** means all information of a confidential nature (as determined with reference to its treatment by Metrolinx) which is provided, disclosed or made available (orally, electronically or in writing or by any other media) by Metrolinx (or its representatives) to the Consultant (including to employees, contractors, or other representatives thereof). For greater certainty, all Metrolinx Materials, construction documents, personal information (as defined in

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FIPPA), and anything else specifically marked or identified by Metrolinx as confidential or proprietary are deemed to be “Confidential Information” for the purposes of this Contract.

- 1.10 **“Conflict of Interest”** has the meaning ascribed to it in Section 18.14 of the General Conditions.
- 1.11 **“Consultant”** has the meaning ascribed to it in the Articles of Agreement.
- 1.12 **“Consultant Background IP”** means any methodologies, patterns, plans, procedures, Software, algorithms, computer code, documentation, tools, business processes, scripts, interfaces, commands, technical information, know-how, techniques, specifications, technologies and/or other Intellectual Property that is proprietary to the Consultant or which Consultant has the right and licence to use and make available to Metrolinx, in each case that was either: (a) created prior to the Effective Date; or (b) created, developed or produced independently of this Contract and/or the performance of the Services.
- 1.13 **“Consultant Personnel” or “Consultant’s Personnel”** means (a) with respect to the Consultant, all of the Consultant’s personnel, employees and independent consultants (including the Key Personnel and the Consultant’s Representative) engaged in the performance of the Services; and (b) with respect to each Sub-consultant, all of that Sub-consultant’s personnel, employees and independent consultants engaged in the performance of the Services.
- 1.14 **“Consultant Policies”** has the meaning ascribed to it in Schedule D – Insurance of Appendix “A” General Conditions.
- 1.15 **“Consultant’s Representative”** means the person identified by the Consultant, and Accepted by Metrolinx, as the Consultant’s authorized representative pursuant to Section 2.8 of the General Conditions.
- 1.16 **“Contract”** means this contract between the Consultant and Metrolinx pursuant to **Request No. RQQ-2018-RCDV-225** including the Articles of Agreement, the General Conditions and the Schedules thereto and the Contract Documents.
- 1.17 **“Contract Closeout”** means the date that the Work is complete as per the Construction Act.
- 1.18 **“Contract Documents”** means the Contract and those documents listed in Appendix “B” – Consultant’s Scope of Services and any written amendments thereto as agreed to by the Parties.
- 1.19 **“Contract Performance Appraisal”** has the meaning given in Section 2.12(a) of the General Conditions.

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- 1.20 **“Deliverables”** means the work product created by the Consultant and/or the Consultant Personal in connection with or as a requirement of the Services, including all reports, drawings, plans, designs, processes, tools, standards, registers, logs, updates, files, databases, Software, and documentation.
- 1.21 **“Dispute”** means all disputes, controversies, or claims arising out of or relating to: (a) this Contract; (b) the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Contract; and/or (c) the interpretation, enforceability, performance, application, or administration, breach, termination, or validity of this Contract or any failure to agree where agreement between the Parties is called for.
- 1.22 **“Dispute Notice”** has the meaning given in Schedule E – Dispute Resolution.
- 1.23 **“Domain Expertise”** means the required level of depth and breadth of qualifications and experience in respect of the tasks to be performed in connection with the Work, gained through a practical application of the knowledge underlying the tasks in an environment substantially similar to that of the Work.
- 1.24 **“Effective Date”** means the final date of execution of this Contract by both Parties.
- 1.25 **“Encumbrance”** means any mortgage, charge, pledge, hypothecation, Lien, security interest, hypothec, easement, right-of-way, right-of-first refusal, option, encroachment, building or use restriction, conditional sales agreement, personal property lease, licence, restrictive covenant, adverse claim, promissory right or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of any creditor a right in respect of any property that is prior to the right of any other creditor in respect of such property.
- 1.26 Not Applicable
- 1.27 **“FIPPA”** means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, Chapter F.31.
- 1.28 **“FIPPA Records”** has the meaning ascribed to it in Section 10.6 of the General Conditions.
- 1.29 **“French Designated Area”** means an area designated as such in the Schedule to the French Language Work Act. A map and complete listing of French Designated Areas is available at <http://www.ofa.gov.on.ca/en/flsa-mapdesig.html>.
- 1.30 **“French Language Services Act”** means the *French Language Services Act*, R.S.O. 1990, c.F.32.

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- 1.31 **“Governmental Authority”** means any domestic government, including any federal, provincial, territorial, municipal, regional or other local government, and any government established court, agency, tribunal, commission or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions respecting government; provided, however, **“Governmental Authority”** does not include Metrolinx.
- 1.32 **“Indemnified Parties”** has the meaning ascribed to it in Section 12.1 of the General Conditions.
- 1.33 **“Intellectual Property”** means all intellectual and industrial property, including all Software, patents, patent application rights, rights to file patents, inventions, trade-marks (whether registered or not), trade-mark applications, rights to file trade-marks, trade names, copyrights (whether registered or not), design registrations, trade secrets, confidential information, industrial and similar designs, rights to file for industrial and similar designs, processes, methodologies, techniques and know-how, and all Intellectual Property Rights therein.
- 1.34 **“Intellectual Property Rights”** means any right to Intellectual Property recognized by law, including any Intellectual Property right protected by legislation or arising from protection of information as a trade secret or as confidential information.
- 1.35 **“Joint Venture”** is the business arrangement of two or more parties proposed as identified in the Proponent’s Submission.
- 1.36 **“Key Personnel”** has the meaning ascribed to it in Section 2.7(a) of the General Conditions.
- 1.37 **“Key Responsibilities”** means the main responsibilities and tasks to be performed by each category of Consultant Personnel, as identified in Schedule B – Consultant Personnel.
- 1.38 **“Lien”** means any statutory lien, or claim, in relation to this Contract and constituting a charge against the statutory holdback and any other amounts, all as defined in the Construction Act.
- 1.39 **“Losses”** means claims, actions, suits, executions, and demands and all loss, liability, judgments, costs, charges, damages, liens and expenses of any nature whatsoever and howsoever caused.
- 1.40 **“Metrolinx”** means Metrolinx, a provincial crown agency continued under the *Metrolinx Act*, S.O. 2006, Chapter 16, and its successors and assigns.
- 1.41 **“Metrolinx IP”** has the meaning ascribed to it in Section 6.1 of the General Conditions.

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- 1.42 **“Metrolinx Materials”** means: (a) all materials, images, reports, Software, audio or video recordings, specifications, performance requirements, software development tools, technologies, content, data (including all information whether or not contained in or on any database or electronic information storage system or media owned by or in the custody or control of Metrolinx), technical information, and any other recorded information, in any form and on any media, that are proprietary to, or controlled or licensed by, Metrolinx and provided to the Consultant; (b) all procurement documents issued by Metrolinx; (c) all documentation or source materials (including source code) related to any of the foregoing; and (d) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Metrolinx Materials by Metrolinx or any third party not performing work under this Contract.
- 1.43 **“Metrolinx Representative”** or **“Metrolinx’s Representative”** has the meaning ascribed to it in Section 2.9 of the General Conditions.
- 1.44 **“Outcome”** has the meaning ascribed to it in Section 2.11(b) of the General Conditions.
- 1.45 **“Parties”** means both of Metrolinx and the Consultant and a **“Party”** means either one of them.
- 1.46 **“Person”** means any individual, sole proprietorship, partnership, limited partnership, corporation or company (with or without share capital), trust, foundation, joint venture, Governmental Authority or any other incorporated or unincorporated entity or association of any nature.
- 1.47 **“Place of Work”** is the designated site or location of the Services.
- 1.48 **“Product”** means any goods, machinery, equipment, fixtures and Software (including any components of any of the foregoing) forming part of the Deliverables, but does not include machinery and equipment used solely to perform the Work.
- 1.49 **“Professional Engineer”** means an engineer licensed to practice engineering in the Province of Ontario.
- 1.50 **“Project Schedule”** means the scheduling requirements identified in Section 8 of the Form of Request or otherwise provided by Metrolinx to the Consultant from time to time.
- 1.51 **“Quotation”** has the meaning given in Section 15 of Schedule C – Financial Terms.
- 1.52 **“Rates”** has the meaning given in Section 1(a) of Schedule C – Financial Terms.

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- 1.53 **“Required Standard of Care”** means: (a) using the Standards, practices, methods and procedures to the highest commercial standards of practice and professionalism as understood in the Province of Ontario; (b) confirming to Applicable Laws and all rules of professional conduct applicable to the Consultant or the Consultant Personnel; (c) exercising that degree of skill and care, diligence, prudence and foresight which would be expected from a leading Person or professional performing work similar to those called for under this Contract; and (d) using only proper materials and methods as are suited to the function and performance intended.
- 1.54 **“Scope of Work”** describes the general and detailed requirements of the Work.
- 1.55 **“Software”** means any set of machine-readable instructions that directs the performance of specific operations, including computer programs, computer code, software programs (whether executable or not executable), system software, application software, embedded software, databases, data, middleware, GUI’s, objects, firmware, components and modules and related documentation.
- 1.56 **“Standards”** means, at a given time, those standards, specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care.
- 1.57 **“Statutory Holdback”** has the meaning ascribed to it in Section 7 of Schedule C – Financial Terms.
- 1.58 **“Sub-consultant”** means an individual, firm, partnership, corporation or design professional having a direct contract with the Consultant or another Sub-consultant to perform a part or parts of the Services as identified in the Submission.
- 1.59 **“Submission”** means all documentation and other materials and information submitted by the Proponent in response to Request No. **RQQ-2018-RCDV-225**.
- 1.60 **“Task”** has the meaning ascribed to it in Section 2.11(a) of the General Conditions.
- 1.61 **“Task Assignment Process”** has the meaning ascribed to it in Section 8.4(b) of the General Conditions.
- 1.62 **“Task Release”** has the meaning ascribed to it in Section 2.11(b) of the General Conditions.
- 1.63 **“Taxes”** means all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including, income, capital (including large corporations), gross receipts, consumption, sales, use, transfer,

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goods and services or other Value Added Taxes, excise, customs or other import, anti-dumping, countervail, net worth, alternative or add-on minimum, windfall profits, stamp, registration, franchise, payroll, employment insurance, Canada Pension Plan, worker's compensation, health, education, school, business, property, local improvement, environmental, development and occupation taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and charges) together with all fines, interest and penalties in respect thereof or in lieu of or for non-collection thereof.

- 1.64 **“Term”** has the meaning ascribed to it in Section 2.1 of the General Conditions.
- 1.65 **“Third Party”** or **“Third Parties”** means any Third Party Contractors or Third Party Operators.
- 1.66 **“Third Party Contract”** means a contract between Metrolinx and any other Person which is in any way related to, impacts or is impacted by the Services and/or the Consultant's acts or omissions, whether expressly identified to the Consultant or not.
- 1.67 **“Third Party Contractors”** means contractors, suppliers, service providers, utility owners or any other third party (excluding the Consultant and any Sub-consultants and Consultant Personnel) performing work and/or providing products and services in, or in respect of, the rail corridors, where such work, products or services (a) are on behalf and for the benefit of Metrolinx or (b) are being undertaken to enable work, products or services on behalf of and for the benefit of Metrolinx.
- 1.68 **“Third Party Operators”** means (a) any third party providing products and/or services in the rail corridors on their own behalf, pursuant to rights granted by Metrolinx, including VIA Rail Canada Limited, Canadian Pacific Railway Company and Canadian National Railway Company; and (b) any third party who otherwise has a right to occupy, access, or use property or facilities on or adjacent to the rail corridors.
- 1.69 **“Third Party Work”** means work and services conducted or provided by Third Parties.
- 1.70 **“Value Added Taxes”** means such sum as shall be levied upon amounts payable to the Consultant under this Contract by any Governmental Authority that is computed as a percentage of the amounts payable to the Consultant (including all other Taxes but excluding Value Added Taxes), and includes the HST, and any similar tax, the payment or collection of which, by the legislation imposing such tax, is an obligation of the Consultant.
- 1.71 **“Vendor Indemnified Parties”** means the Vendor, its affiliates and each of their respective officers, directors, employees, agents, successors, and assigns.

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- 1.72 **“Vendor Personnel”** or **“Vendor’s Personnel”** means (a) with respect to the Vendor, all of the Vendor’s personnel, employees and independent contractors (including the Key Personnel and the Vendor’s Representative) engaged in the performance of the Work; and (b) with respect to each Subvendor, all of that Subvendor’s personnel, employees and independent contractors engaged in the performance of the Work.
- 1.73 **“Work”** has the meaning ascribed to it in Section 2.2(a) of the General Conditions.

END OF SCHEDULE

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SCHEDULE B – CONSULTANT PERSONNEL

1.0 KEY PERSONNEL

The following roles shall be filled by the Vendor in accordance with the following requirements in respect of qualifications, experience, and minimum years of experience. Each individual performing one of the roles below shall perform Key Responsibilities listed below as well as any other responsibilities as requested by Metrolinx in accordance with the Contract for the duration specified in the table below.

1.1 Rate Category: Managers

Role	Qualifications and Experience	Required Duration
Project Manager	<u>Experience</u> <ul style="list-style-type: none">• Fifteen (15) Years of Experience. <u>Qualifications</u> <ul style="list-style-type: none">• Professional and educational experience in project management, design and construction contract administration of transportation infrastructure;• Knowledge of Regional Infrastructure Market;• Experience in construction of Design-Build projects;• Experience with structural concrete structures will be considered an asset.• Professional Engineer (P. Eng.) licensed to practice in the Province of Ontario;• PMP would be considered an asset	Entire Term of the Contract

1.2 Rate Category: Technical Specialists

Role	Qualifications and Experience	Required Duration
Contract Administrator	<u>Experience</u> <ul style="list-style-type: none">• Fifteen (15) Years of Experience. <u>Qualifications</u> <ul style="list-style-type: none">• Educational and on-site Construction administration experience in Construction projects of similar size, scope and magnitude including Construction administration and supervision of transportation infrastructure• Experience with pre-cast concrete structures;• Knowledge of Regional Infrastructure Market; and• Experience in Construction of Design-Build	Entire Term of the Contract

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Role	Qualifications and Experience	Required Duration
	projects.	
Architect	<u>Experience</u> <ul style="list-style-type: none"> Fifteen (15) Years of Experience. <u>Qualifications</u> <ul style="list-style-type: none"> Member of the Ontario Association of Architects (OAA); Professional and educational experience in design and Construction of projects of similar size, scope and magnitude; and Experience with presenting designs to professional audience. 	Entire Term of the Contract
Mechanical Engineer	<u>Experience</u> <ul style="list-style-type: none"> Fifteen (15) Years of Experience. <u>Qualifications</u> <ul style="list-style-type: none"> Professional Engineer (P.Eng.) licensed to practice in the Province of Ontario; or working under a limited license as granted by PEO; Professional and educational experience in the design, site installation and building operations of projects of similar size, scope and magnitude; and HVAC system, automation, fire protection and plumbing system design. 	Entire Term of the Contract
Structural Engineer	<u>Experience</u> <ul style="list-style-type: none"> Fifteen (15) Years of Experience. <u>Qualifications</u> <ul style="list-style-type: none"> Professional Engineer (P.Eng.) licensed to practice in the Province of Ontario; Or working under a limited license as granted by PEO; Professional and educational experience in the design and site review of Construction of projects of similar size, scope and magnitude; Experience with pre-cast concrete structures; and Experience with structural steel structures. 	Entire Term of the Contract
Heritage Architect	<u>Experience</u> <ul style="list-style-type: none"> Fifteen (15) Years of Experience. <u>Qualifications</u>	Entire Term of the Contract

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Role	Qualifications and Experience	Required Duration
	<ul style="list-style-type: none">• Architect licensed to practice in the Province of Ontario;• Professional and educational experience in the design and site review of Construction of projects of similar size, scope and magnitude; and• Professional Membership within the Canadian Association of Heritage Professionals.	

1.3 Rate Category: Support Staff

Not Applicable

2.0 Replacement of Key Personnel

2.1 Where the Vendor is proposing the replacement of Key Personnel, the Vendor shall provide the following documentation to the designated Metrolinx representative for review and approval:

(a) Curriculum Vitae

(i) The Vendor should, for each proposed Key Personnel, provide a Curriculum Vitae of up to three (3) pages for each Key Personnel, including biographical information, which clearly identifies:

- (A) Name of individual and proposed Key Personnel role;
- (B) Qualifications and experience that relate to the proposed Key Personnel role as specified in this Schedule E, relative to the Work being requested;
- (C) Experience in performing the proposed Key Personnel role relative to the Work being requested (include project names and brief project overviews);
- (D) Number of years in the proposed role on each project as well as the start date and completion date of each project;
- (E) Responsibilities on each project while performing the proposed role;
- (F) Details of accomplishments while performing the proposed role;

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(G) Education; and

(H) Professional memberships and affiliations.

2.2 Key Personnel References

- (a) Immediately following the curriculum vitae for each proposed Key Personnel, the Vendor shall provide a list of three (3) references and contact information for relevant projects successfully delivered on-time and on-budget within the past five (5) years, while performing work in the same capacity as the proposed Key Personnel role.
- (b) The Vendor shall ensure that all contact information provided for references is current and accurate in order to enable Metrolinx to obtain all necessary information for evaluation purposes in a timely manner.
- (c) The list of three (3) references submitted when combined should demonstrate that the named Key Personnel has the required qualifications and experience as stated in this Schedule B herein, and for work similar in scope, magnitude, and complexity to the Work to be provided herein.
- (d) Such references shall relate directly to the experience, responsibilities and details of project accomplishments noted above. The information should include:
 - (i) Name of the company for which the work was performed;
 - (ii) Contact person's name, title, telephone number and e-mail address; and
 - (iii) Start and completion date of each reference project.

3.0 Format of Curriculum Vitae

- 3.1 The format and layout of each curriculum vitae provided by the Consultant shall be consistent and shall include:
- (a) Name of individual;
 - (b) Proposed position;
 - (c) Qualifications that relate to the proposed position;
 - (d) Experience in performing the proposed position, include project names and brief project overviews;

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- (e) Number of years in the proposed position on each project as well as start date and completion date of each project;
- (f) Responsibilities on each project while performing the proposed position;
- (g) Details of accomplishments while performing the proposed position;
- (h) Education;
- (i) Professional memberships and affiliations; and
- (j) References and contact information for projects of a similar complexity, successfully delivered on-time and on-budget while performing in the same capacity. Such references shall relate directly to the experience, responsibilities and details of project accomplishments noted above.

END OF SECTION

SCHEDULE C – FINANCIAL TERMS

1.0 Payment

- 1.1 Metrolinx will pay the Consultant for the Work performed by the Consultant pursuant to this Contract, in the amounts and manner, at the rates set out in the Articles of Agreement (the “Rates”) and at the times, set forth in the Articles of Agreement and this Schedule C – Financial Terms.
- 1.2 The Consultant shall perform all of the Work notwithstanding that the value of the time spent by the Consultant in performance thereof may exceed the maximum amount payable to the Consultant pursuant to Section 3 of this Schedule C – Financial Terms.

2.0 Limitation of Expenditure

- 2.1 It is understood that the Contract is based on reimbursement for actual Work requested by Metrolinx and performed by the Consultant, to the satisfaction of Metrolinx.
- 2.2 Metrolinx does not guarantee any minimum or maximum of work.

3.0 Estimated Contract Price

- 3.1 Subject to Sections 8.1, 8.2 and Article 9 – Additional Resources of the General Conditions, Metrolinx and the Consultant acknowledge and agree that Estimated Contract Price set out in the Articles of Agreement is the maximum amount payable in respect the provision of the Work; provided, however, that the foregoing is not an entitlement to, nor a guarantee that the Consultant will be paid the full amount of, the Estimated Contract Price.
- 3.2 The Estimated Contract Price includes all Cash Allowances identified in this Contract.

4.0 Rates for Work

- 4.1 The Consultant acknowledges and agrees that the Rates are inclusive of all labour and materials, insurance costs, disbursements and all other overhead including any fees or other charges required under Applicable Laws. Without limiting the generality of the foregoing, the Rates include costs for the coordination, administration of the provision and management of the Work necessary to achieve compliance with external agencies and Governmental Authorities as required to obtain any Approvals, provided, however, that the specific costs associated with application and permit fees in respect of the Approvals shall be paid directly by Metrolinx.

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- 4.2 Metrolinx shall not reimburse the Consultant for any hospitality, food or incidental expenses incurred. Subject to the prior consent of Metrolinx, Metrolinx shall reimburse the Consultant for reasonable traveling expenses incurred in connection with the performance of the Work, such reimbursement to be made in accordance with the Government of Ontario’s Travel, Meal, and Hospitality Expenses Directive.
- 4.3 As part of the Services, the Consultant shall also be responsible for obtaining and registering all of the Software licenses and long term support agreements, as and if applicable, on behalf of Metrolinx, and any costs incurred by the Consultant in connection thereto shall be included in the Rates set out in the Articles of Agreement.

5.0 Taxes

- 5.1 The Total Contract Price and all amounts payable under the Contract shall be inclusive of all Taxes (except for HST) in effect as at the date of this Contract. Unless otherwise expressly specified in this Contract or otherwise required by Applicable Law, the Consultant shall be responsible for remittance of any and all Taxes due and payable in respect of the Work.
- 5.2 Any amount to be levied against Metrolinx in respect of the HST or any similar successor tax levied under the *Excise Tax Act* and applicable to the Work, is to be shown separately on all invoices for Work performed by the Consultant. The Consultant shall remit any HST paid or due to Revenue Canada Customs & Excise in accordance with Applicable Laws, and shall, at the request of Metrolinx, provide evidence of payment of same.
- 5.3 In the event that Metrolinx is entitled to a rebate under the *Retail Sales Tax Act* (Ontario) or the *Excise Tax Act* in whole or in part, for Value Added Taxes paid under this Contract, the Consultant shall show on each invoice, and in the manner directed by Metrolinx, either the actual Value Added Taxes paid by the Consultant by category or the portion of the Consultant’s fees eligible under Applicable Law for the rebate.
- 5.4 Certain payments to non-resident corporations or individuals may be subject to withholding taxes, under the Income Tax Act. Non-residents can apply in advance to Revenue Canada, Taxation, for a waiver or reduction of the withholding tax requirement. Unless Metrolinx is provided with a copy of the written information as a result of the waiver application to the Tax Services Office of Canada Customs and Revenue Agency, taxes will be withheld as determined under the Income Tax Act. The Consultant shall be responsible for investigating whether they are subject to the withholding of taxes under the Income Tax Act and obtaining the necessary waiver or reduction as needed.

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6.0 Invoicing and Payment Process

- 6.1 The Consultant shall submit an invoice for payment for Work completed no less than ten (10) Business Days following the end of the month in respect of which the related Work were rendered. The invoice shall be in form and substance satisfactory to Metrolinx acting reasonably and shall set out with sufficient particularity the Services performed in the previous month and the total time spent by each category of Consultant Personnel multiplied by the applicable Rate.
- 6.2 The aggregate amount invoiced by the Consultant shall not exceed the Total Contract Price, unless such additional amount is agreed by the Parties pursuant to the change management process set out in Article 8 of the General Conditions.
- 6.3 Unless there is a Dispute with respect to the content of an invoice and subject to the other provisions of this Schedule C, Metrolinx shall make payment to the Consultant no later than thirty (30) Business Days following receipt of the invoice for payment from the Consultant, unless otherwise provided or permitted in the Contract.

7.0 Statutory Holdback

Subject to the provisions of the Construction Act, Metrolinx shall hold back, from each payment to the Consultant, ten percent (10%) of the amount of the payment or such greater amount as may be required under the Construction Act (the “**Statutory Holdback**”), and any Statutory Holdback shall only be released in accordance with the provisions of the Construction Act.

8.0 Withholding of Payment

- 8.1 Notwithstanding any other term in the Contract Documents, Metrolinx shall not be obligated to make payment to the Consultant if at the time such payment was otherwise due:
- 8.2 there is a Lien or other Encumbrance arising from the performance of the Work, whether valid or not and whether preserved or perfected, in relation to, or otherwise affecting, the Work or the Place of Work; or
- 8.3 written notice of a Lien arising from the performance of the Work has been given to Metrolinx or an owner, mortgagee or other entity with an interest in the Work or a claim for Lien arising from the performance of the Work and otherwise affects the Work.

9.0 Substantial Performance

- 9.1 When the Consultant considers the Contract to be substantially performed, as defined by the Construction Act, and prior to submission of the application for

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substantial performance, the Consultant shall prepare and submit to Metrolinx a comprehensive list of activities or service items to be completed or corrected and shall apply for a review of the list by Metrolinx. Failure to include an item on the list does not alter the responsibility of the Consultant to complete the item or the Work.

9.2 Within seven (7) Business Days of receipt of the Consultant’s application for substantial performance, Metrolinx shall satisfy itself as to whether or not the Contract has been substantially performed as required by the Construction Act and the Contract Documents. Then:

- (a) if Metrolinx determines that the Contract has been substantially performed as required by the Construction Act, Metrolinx shall issue a certificate of substantial performance which shall state the date of substantial performance; or
- (b) if Metrolinx determines that the Contract has not been substantially performed as required by the Construction Act, Metrolinx shall advise the Consultant in writing of the reasons for which such a certificate is not being issued.

9.3 Immediately following the issuance of a certificate of substantial performance, the Consultant, in consultation with Metrolinx, shall establish a reasonable date for expeditiously finishing the Work.

10.0 Release of Statutory Holdback Upon Substantial Performance

10.1 After the issuance of the certificate of substantial performance in accordance with Section 9 of this Schedule C – Financial Terms and the Construction Act, the Consultant shall:

- (a) satisfy the requirements of the Construction Act with respect to publication of a copy of the certificate of substantial performance;
- (b) submit an application for payment of the Statutory Holdback amount;
- (c) submit documentary proof of compliance with Section 10(a)(i) of this Schedule C – Financial Terms; and
- (d) submit a sworn statement that all accounts for indebtedness which may have been incurred by the Consultant in connection with the performance of the Work and for which Metrolinx might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback.

10.2 After receipt of an application for payment of the Statutory Holdback amount, pursuant to Section 10(a) of this Schedule C – Financial Terms, from the

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Consultant and the other documents required to be provided under this Contract, Metrolinx shall issue a certificate for payment for the Statutory Holdback amount.

10.3 Provided that the Consultant has satisfied the requirements of Section 10(a) of this Schedule C – Financial Terms, the Statutory Holdback amount authorized for payment under the certificate for payment of the Statutory Holdback amount is due and payable on the day following the expiration of the holdback period stipulated in the Construction Act.

10.4 Notwithstanding the foregoing, Metrolinx may retain out of the Statutory Holdback amount any sums required by law to satisfy any Liens against the Work or, if permitted by the Construction Act, such other third party monetary claims against the Consultant which are enforceable against Metrolinx or any other claims by Metrolinx against the Consultant.

11.0 No Progressive Release of Holdback

There will be no release of holdback prior to substantial performance of the Contract.

12.0 Final Payment Certificate

12.1 When the Consultant considers that the performance of the Services is completed as defined in the Construction Lien Act, the Consultant shall submit an application for final payment.

12.2 Metrolinx shall review the record of the Services performed to verify the validity, or otherwise, of the application after the receipt of the Consultant’s application for final payment. Metrolinx shall review the record of Work performed within ten (10) Business Days of receipt of the Consultant’s application and shall issue, no later than seven (7) Business Days after reviewing the record of Work, a final payment certificate in the amount applied for or a regular certificate for payment in such other amount as Metrolinx determines to be properly due. If Metrolinx amends the application, Metrolinx shall promptly notify the Consultant in writing giving reasons for the amendment.

12.3 Subject to the provisions of this Contract and the Construction Act, Metrolinx shall make payment to the Consultant on account no later than thirty (30) days following the receipt of a final payment certificate issued by the Metrolinx pursuant to Section 12(b) of this Schedule C – Financial Terms, provided that:

- (a) the Consultant has provided Metrolinx, in a form acceptable to Metrolinx, a sworn statement that all accounts for indebtedness which may have been incurred by the Consultant in connection with this Contract and for which Metrolinx might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback;

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(b) the Consultant has provided the documents required to demonstrate compliance with applicable workers compensation legislation; and

(c) the Consultant has satisfied all requirements set out in this Contract.

12.4 Subject to the same conditions as listed in Section 10(a) of this Schedule C – Financial Terms, Metrolinx shall make the final release of Statutory Holdback retained on payments made after the date of substantial performance, on the day following the expiration of the holdback period stipulated in the Construction Act.

13.0 Cost of Changes

13.1 Changes shall be implemented by the Consultant without any additional charge, unless Consultant is able to demonstrate (with supporting documentation) that the Change causes the Consultant to incur additional costs.

13.2 The Consultant shall implement all Changes for a reasonable price in accordance with the same pricing principles and price levels as originally agreed in the Articles of Agreement. Where Rates apply to Consultant Personnel, those same Rates shall apply with reference to the applicable level of experience and/or expertise.

13.3 With respect to any Changes that (in whole or in part) require the Work of a third party, Metrolinx (at its sole discretion) shall have the right to require the Consultant to provide three (3) quotes to Metrolinx in respect of such third party Work, in accordance with Section 14 of this Schedule C – Financial Terms.

13.4 Metrolinx shall have the right to request such documentation and other supporting information as it reasonably requires to confirm and substantiate the costs associated with any Change request, and the Consultant shall provide same to Metrolinx within five (5) Business Days of the request therefor.

14.0 Expenditure of Cash Allowance

14.1 Where the expenditure of a Cash Allowance has been approved by Metrolinx, the value of completed or delivered Cash Allowance Items may be claimed as part of the Consultant's monthly application for payment, in accordance with Section 6 of this Schedule C – Financial Terms. Cash Allowance expenditures must not exceed the Total Contract Price.

14.2 The Consultant is not entitled to any extra payment on account of a specified Cash Allowance Item and is not entitled to any unexpended Cash Allowance amounts.

14.3 A Cash Allowance is in no way a guarantee of monies and shall only be expended for the portion of the Cash Allowance Items specified in the Articles of

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Agreement and authorized by Metrolinx pursuant to Section 8.4 of the General Conditions.

- (a) The Cash Allowance shall cover the net cost of performing all Cash Allowance Items, excluding Consultant’s overhead and profit which shall be included in the Rates, exclusive of the Cash Allowance. Should the cost of performing the Cash Allowance Items be less than the identified amount of the Cash Allowance, the Consultant shall only be compensated for the actual cost of performing the Work.
- (b) In the event that the Consultant reasonably anticipates that the cost of performing the Work under the Cash Allowance will exceed the amount of the Cash Allowance, the Consultant shall immediately notify Metrolinx and the matter shall be addressed pursuant to the change management process set out in Article 8 of the General Conditions. The Consultant shall not be compensated for any amount exceeding the Cash Allowance unless and until same has been authorized in writing in accordance with Article 8 of the General Conditions.
- (c) All expenditures by the Consultant under the Cash Allowance must be substantiated with appropriate documentation clearly documenting the amount of the expenditure and the goods and/or services to which it relates. The Consultant shall only be compensated for expenditures under the Cash Allowance that are substantiated.

15.0 Quotations - Changes and Cash Allowance Items

15.1 With respect to any Changes or Cash Allowance Items (or any part thereof), the Consultant shall, upon request by Metrolinx (at its sole discretion), submit up to three (3) quotes detailing the estimated cost of the applicable Change or Cash Allowance Item (each a “**Quotation**”). Where Metrolinx has not provided the names of third parties from which quotations should be obtained, the Consultant shall have the right to choose which third parties shall provide quotations. Subject to any instruction to the contrary issued by Metrolinx pursuant to Section 8.5 of the General Conditions, where a Cash Allowance Item includes work that the Consultant proposes would be most efficiently performed by the Consultant’s own workforces, the Consultant shall include as one of the three (3) quotes the price proposal for having its own workforce perform the work.

- (a) Any and all costs incurred by the Consultant for providing a Quotation or obtaining quotations from third parties, shall be borne by the Consultant.
- (b) All Quotations shall be prepared on the Consultant’s letterhead and in a format agreed to by Metrolinx and the Consultant. The Quotation shall at a minimum contain the following information:

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- (i) a description of the work required by the Work;
- (ii) Curriculum Vitae for each required position and two (2) references for each individual;
- (iii) estimated hours of work for each identified key role;
- (iv) any requirement for additional positions other than those listed in Schedule B of Appendix “A”;
- (v) required Sub-consultants; and specialized service providers;
- (vi) any requirements for testing and/or reporting;
- (vii) detailed breakdown of costs;
- (viii) detailed work schedule which complies with completion date provided by Metrolinx (as required by Metrolinx); and
- (ix) any other requirements/instructions.
- (x) The Consultant shall, upon request, disclose to Metrolinx the originals of all bids, quotations and other price related information received from suppliers or Sub-consultants.
- (xi) Metrolinx reserves the right to accept or reject a Quotation, in whole or in part.

16.0 Metrolinx Property

All tangible property purchased and charged to Metrolinx’ account is and shall be deemed and shall remain the property of Metrolinx.

17.0 Records and Audit

17.1 The Consultant agrees to keep and maintain full and complete records and accounts of all costs in accordance with Metrolinx' requirements. All such records, including timesheets, correspondence, receipts and memoranda pertaining to the Work shall be available for inspection by any authorized employee or agent of Metrolinx at all reasonable times for the purpose of auditing the Consultant' reasonable costs and the Consultant shall provide every reasonable assistance for that purpose including, but not limited to, making the records available for inspection at the Consultant’s office during normal business hours and acting reasonable to observations made by Metrolinx or its auditors. The results of the audit will be maintained as confidential to be used for the purposes of and as contemplated by this Contract or as otherwise required by Applicable Laws. Such records shall be kept for a period of seven (7) years after termination of this Contract.

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- 17.2 During the Term and for a period of seven (7) years thereafter, Metrolinx or any other Person acting on behalf of Metrolinx, shall have the right, upon no less than 24 hours' notice in writing during the Term, and on no less than five (5) Business Days' notice in writing during the seven (7) year period following the Term, to the Consultant and during normal office hours, to inspect and audit, and to have access to, all relevant premises, sites, books, records, payrolls, accounts and documentation of the Consultant relating to this Contract, and to take extracts therefrom. The Consultant shall make available or cause to be made available such reasonable information and material as may be required and shall otherwise reasonably cooperate with Metrolinx and any other Person acting on Metrolinx' behalf. Without limiting the generality of the foregoing, the rights set out in this Section shall extend to any Governmental Authority exercising its right to audit pursuant to Applicable Law or any contract with Metrolinx.

18.0 Substituting Forms of Statutory Holdback

- 18.1 The Consultant may, at any time, submit an application in writing to Metrolinx requesting that all or any Statutory Holdback being retained by Metrolinx in the form of funds be replaced with one or more of the following forms of holdback: a letter of credit (in the form prescribed by the Construction Act), a demand-worded holdback repayment bond (in the form prescribed by the Construction Act) or any other form of holdback prescribed by the Construction Act.
- 18.2 If Metrolinx agrees to a request made by the Consultant under Section 18(a) of this Schedule C – Financial Terms, Metrolinx shall notify the Consultant that it agrees to the Consultant's request and the Consultant shall then proceed to obtain and provide to Metrolinx the agreed upon substitute form(s) of holdback. Once the Consultant has provided the agreed upon substitute form(s) of holdback to Metrolinx and Metrolinx has satisfied itself that the substitute form(s) of holdback are in the appropriate form and are consistent with the form agreed upon by the Parties, Metrolinx shall release to the Consultant the Statutory Holdback funds retained.
- 18.3 Notwithstanding any other provision in the Contract, Metrolinx is under no obligation whatsoever to agree to any request made by the Consultant under Section 18.1 of this Schedule C – Financial Terms. For greater certainty, Metrolinx has sole, absolute and unfettered discretion in determining whether or not to accept or reject a request made by the Vendor under Section 18.1 of this Schedule C – Financial Terms.

END OF SCHEDULE

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SCHEDULE D: INSURANCE

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SCHEDULE D – INSURANCE

1.0 CONSULTANT INSURANCE REQUIREMENTS

The Consultant shall, at its own expense, obtain and maintain for the entire Term minimum insurance coverage as follows:

1.1 Commercial General Liability

The policy shall provide a policy limit of not less than five million (\$5,000,000) per occurrence for all claims arising out of bodily injury (including death), personal injury, damage to property of others. Such policy shall not contain any exclusions that conflict with the Work required to be performed under this Contract. The Consultant shall cause the interest of Metrolinx, and such other Person as Metrolinx may determine at its sole and absolute discretion, to be noted on the Consultant Policies hereof as “Additional Insured”. The policy shall contain a waiver of subrogation, cross liability and severability of interest.

1.2 Automobile Liability Insurance

The policy shall provide coverage for liability arising out of the use of owned, non-owned, leased or hired automobiles in connection with the performance of the Work. Coverage shall consist of a combined single limit of not less than five million (\$5,000,000) per occurrence. Alternatively, for Work that do not require the use of owned, non-owned, leased or hired automobile, the Consultant shall provide a written confirmation within five (5) business days of contract award, stating same, in place of the insurance coverage.

1.3 Errors and Omissions Insurance

The policy shall provide errors and omissions insurance including coverage for privacy, infringement of trademark and copyright covering the Work rendered by the Consultant, any Sub-consultants or any Consultant Personnel, including personnel on loan to the Consultant who perform normal Work of the Consultant under this Contract. The policy shall have a limit of liability of not less than two million (\$2,000,000) per occurrence and in the policy aggregate. The policy shall be maintained throughout the Term, plus thirty-six (36) months after the termination or expiration of this Contract.

Any other valid or collectible insurance available to Metrolinx shall not apply to any loss until the coverage and limits available under the insurance policies maintained by the Consultant in accordance with this Contract have been exhausted.

1.4 Additional Coverage

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- (a) Without prejudice to any other provisions of this Contract (including Section 1.1 of this Schedule D – Insurance), the Consultant shall, at all relevant times and at its own expense, obtain and maintain, or cause to be obtained and maintained (during the Term plus coverage for an extended reporting period of not less than thirty-six (36) months):
 - (i) those insurances that are reasonable for the performance of the type and scope of Work set out by this Contract (including, as applicable, insurance as would typically be required by prudent designers or consultants); and/or
 - (ii) those insurances that the Consultant is required to obtain and maintain, or cause to be obtained or maintained, by Applicable Law.

1.5 Requirements for Insurance

- (a) All of Consultant’s policies of insurance, as required under this Contract (the “**Consultant Policies**”), shall be taken out with insurance companies licensed to transact business in the Province of Ontario with an AM Best rating of no less than A.
- (b) Any deductible or self-insured retention amounts are the responsibility of the Consultant. Notwithstanding the foregoing, such deductibles or self-insured retention must be consistent with standard commercial practice and acceptable to Metrolinx, acting reasonably.
- (c) All Consultant Policies shall be kept in full force and effect during the Term, including any requirements for the period following Contract Closeout.
- (d) In the event that the Consultant fails to obtain and/or maintain in full force and effect any such insurance as aforementioned, then Metrolinx shall have the right as the Consultant’s true and lawful attorney to do all things necessary for this purpose. The Consultant shall be responsible, and shall reimburse Metrolinx, all amounts paid by Metrolinx for insurance premiums and any and all costs incurred by Metrolinx in connection with this Contract. Without limitation, any premiums due on any insurance policy under this Schedule D – Insurance, but not paid by the Consultant may be paid directly to the insurer(s) or broker(s) by Metrolinx, which shall be entitled to deduct the amount of same along with its reasonable costs in so doing from any monies otherwise due to the Consultant by Metrolinx either under this Contract or otherwise.
- (e) All Consultant Policies shall be endorsed to provide Metrolinx with not less than thirty (30) days’ advance written notice of cancellation.

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- (f) Irrespective of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the Consultant, or the failure of any such insurance company to pay claims that occur will not be held to waive any of the provisions hereof.

1.6 Proof of Insurance

- (a) The Consultant shall, prior to the commencement of the Work and thereafter upon request, provide to Metrolinx original signed certificates of insurance for the Contractor Policies, confirming that the required coverage has been placed and maintained. In addition, at least fifteen (15) days prior to the expiry date of any policy, the Consultant shall provide original signed certificates evidencing renewals or replacements of such policy to Metrolinx, without notice or request by Metrolinx.
- (b) The Consultant shall, upon request, provide evidence to Metrolinx that the premiums associated with the Consultant Policies have been paid; however, receipt by Metrolinx of the above information will in no way constitute confirmation by Metrolinx that the insurance complies with the requirements of this Contract. Responsibility for ensuring that the insurance coverage outlined in this Contract is in place rests solely with the Consultant.
- (c) The Consultant also agrees to provide Metrolinx with proof of errors and omissions insurance maintained by any Sub-consultant, where such Sub-consultant is under a professional obligation to maintain the same, and with proof of such insurance to be provided to Metrolinx no later than the execution of this Contract by the Consultant and to be in a form and with an insurer acceptable to Metrolinx.

1.7 Consultant's Liability Preserved

The provisions of this Contract as they relate to insurance do not diminish, limit or otherwise affect the liability of the Consultant to Metrolinx under or in relation to any other provisions of this Contract.

1.8 Workplace Safety & Insurance Board Protection

- (a) With respect to the WSIB coverage as required under the *Workplace Safety and Insurance Act* (Ontario), the Consultant unconditionally guarantees to Metrolinx full compliance with the conditions, regulations and laws relating to workplace safety insurance by itself and by all Sub-consultants.
- (b) Without restricting the indemnity obligations of the Consultant in Article 12 of the General Conditions, the Consultant shall produce, at the commencement of this Contract, from time to time as may be required by

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SCHEDULE D: INSURANCE

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Metrolinx and prior to issuance of the Final Payment Certificate, a valid Workplace Safety and Insurance Clearance Certificate, issued by the WSIB, for the premium rate class, subclass or group appropriate to the Work.

- (c) If the Vendor is WSIB exempt, it shall provide evidence of Employer's Liability or equivalent, to the satisfaction of Metrolinx, in lieu of a Workplace Safety and Insurance Clearance Certificate.

END OF SCHEDULE

APPENDIX “A” - GENERAL CONDITIONS
SCHEDULE E: DISPUTE RESOLUTION

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SCHEDULE E – DISPUTE RESOLUTION

1.0 Bona fide efforts to resolve

The Parties shall at all times during the Term make bona fide efforts to resolve any and all Disputes arising between them by amicable negotiations and to have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in the balance of this Schedule E – Dispute Resolution.

2.0 Continuance of the Work During Dispute

Unless expressly directed otherwise by Metrolinx, the Consultant shall not stop or delay the performance of the Work, in whole or in part, on account of a Dispute between the Consultant and Metrolinx or between the Consultant and any other Person. Without limiting the generality of the foregoing, at all times during the course of a Dispute, the Consultant shall:

- 2.1 continue with the Work in a diligent manner and without delay;
- 2.2 conform to Metrolinx' decisions and directions; and
- 2.3 be governed by all applicable provisions of this Contract.

The Parties acknowledge and agree that the Consultant's compliance with this Section 2 shall not operate to waive any claim or contention that the Consultant may have in relation to any Dispute.

3.0 Tiered-Dispute Resolution

The Parties agree that any Dispute which cannot be resolved to the satisfaction of both Parties by direct discussions between staff members of the Parties, may be referred for negotiation between senior management of both Parties by delivery from one Party to the other Party of notice in writing requesting dispute resolution, which notice shall set out the Dispute in reasonably sufficient detail (a “**Dispute Notice**”).

4.0 Negotiation

- 4.1 In the event a Party issues a Dispute Notice to the other Party, the Vice President, GO Capital Infrastructure at Metrolinx (or if that position no longer exists at the time the Dispute Notice is issued, the person performing an equivalent function) and an authorized representative of the Consultant, of equivalent seniority and duly appointed to represent the Consultant in this regard, shall meet and make a good faith effort, on a without prejudice basis, to resolve the Dispute as set out in the Dispute Notice in a prompt manner and, for the purpose of same, each Party shall provide its representative with full and timely disclosure of all relevant facts information and documents as may be reasonably required or may be reasonably

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requested by the other Party, on a without prejudice basis, to facilitate such negotiation.

- 4.2 Negotiations under this Section 4.0 shall be commenced within ten (10) Business Days of delivery of a Dispute Notice and shall, unless otherwise agreed by the Parties, be concluded within fifteen (15) Business Days of their commencement. In the event that a resolution satisfactory to all Parties is achieved through such negotiations, the Parties shall issue a joint statement detailing the manner in which the Dispute has been resolved.

5.0 Mediation

- 5.1 If a Dispute has not been resolved through high-level negotiation as contemplated in Section 4.0, either Party may refer the Dispute to be resolved through mediation.
- 5.2 The Parties shall mutually agree to the appointment of the mediator within thirty (30) Business Days, or within such other time as the Parties may agree, of any Party issuing a supplementary Dispute Notice requesting mediation.
- 5.3 If the Parties cannot agree on the appointment of a mediator, the appointment of a mediator shall be determined by the Ontario Superior Court of Justice following an application by either Party.
- 5.4 The mediator shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and the mediation skills to mediate a Dispute.
- 5.5 Unless the Parties otherwise agree, the mediation shall proceed in accordance with the following procedures:
- (a) Each Party shall prepare a summary of the issues in dispute, with the Party's position with respect to those issues. The summary shall be delivered to the mediator and the other Parties, at least seven (7) Business Days before the first mediation conference.
 - (b) The goal of the mediation is to reach an agreed upon settlement and, therefore, all individuals with the appropriate authority to agree to the settlement terms and conditions shall be present at the mediation.
 - (c) A Party may be represented at the mediation by counsel or another representative at the sole cost of such Party.
 - (d) The mediator, the Parties and their counsel or representatives shall keep confidential all matters relating to the mediation, except where disclosure of

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a settlement agreement is necessary to implement or enforce that agreement and except as otherwise required by Applicable Law.

(e) In all respects, the mediation is deemed to be a “without prejudice” proceeding.

- 5.6 The costs of the mediator shall be apportioned equally between the Parties unless otherwise agreed under any settlement reached under this Section 5.
- 5.7 If the Parties achieve a resolution of the Dispute, the mediator shall confirm the resolution in writing, which will be signed by the Parties. If the Parties do not resolve the Dispute, the mediator shall provide a written confirmation that the Parties were unable to resolve the Dispute.
- 5.8 Both Parties acknowledge and agree that they may not refer a Dispute for resolution by arbitration under Section 6 prior to attempting to resolve such Dispute through mediation pursuant to this Section 5.

6.0 Arbitration

- 6.1 Any Party may, within ten (10) Business Days of the delivery of the mediator’s confirmation that the Parties were unable to resolve their Dispute, issue a supplementary Dispute Notice requesting arbitration. Subject to Applicable Law, if such a supplementary Dispute Notice is issued, the Parties shall proceed to arbitration in the manner described below.
- 6.2 If the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within ten (10) Business Days of the submission of a Dispute to arbitration under this Section 6. If the Parties are unable to agree on an arbitrator, each Party shall appoint an arbitrator, and the two arbitrators so chosen shall select a third arbitrator acceptable to both of them within ten (10) Business Days of their selection.
- 6.3 The arbitrator(s) shall be independent of and at arm’s length to the Parties and shall be a person who by training and experience has the qualifications and arbitration skills to arbitrate a Dispute.
- 6.4 The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, except to the extent they are modified by the express provisions of this Schedule E – Dispute Resolution or unless the Parties otherwise agree.
- 6.5 If the issue in dispute is particularly time sensitive, the Parties shall, in good faith, take such reasonable steps as may be required to expedite the arbitration process in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute.

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- 6.6 The arbitrator(s) has the jurisdiction to deal with all matters relating to a Dispute.
- 6.7 Unless otherwise agreed, the arbitration shall be conducted in the City of Toronto, Province of Ontario at the location determined from time to time by the arbitrators, but the arbitrators may meet in any other place the arbitrators considers necessary for consultation, to hear witnesses, experts or other parties, or for the inspection of documents, goods or other property.
- 6.8 In addition to the examination of the Parties by each other, the arbitrator(s) may examine, in the ordinary course, the Parties or either of them and the witnesses in the matter referred to the arbitrator(s), and the Parties and witnesses, if examined, shall be examined on oath or affirmation.
- 6.9 The language of the arbitration shall be English.
- 6.10 The arbitrator(s) shall, after full consideration of the issues in dispute, the relevant facts and Applicable Law, render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than thirty (30) Business Days after argument of the issue to the arbitrator(s), which decision shall be final and binding on the Parties and not subject to appeal or challenge, except such limited relief provided under Section 45(1) (appeal on a question of law, with leave) or Section 46 (setting aside award) of the *Arbitration Act, 1991* (Ontario).
- 6.11 The costs of the arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under Applicable Law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) consider appropriate in the circumstances. The submission to the arbitrator(s), and any award made in pursuance of it, may, at the instance of either of the Parties and without notice to the other of them, be made an Order of the Ontario Court (General Division), pursuant to the *Arbitration Act, 1991* (Ontario) and the *Courts of Justice Act* (Ontario).

END OF SCHEDULE

APPENDIX “B”
CONSULTANT’S SCOPE OF WORK

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Appendix “B” – Consultant’s Scope of Work

LIST OF CONTENTS

The following documents hereby form part of and are appended to this Request Document as the Appendix “B” – Consultant’s Scope of Work

ITEM NO.	DOCUMENT TITLE
1.	Abbreviations and Definitions
2.	Project Overview
3.	General Requirements
4.	Management of the Work
5.	Scope of Work

APPENDIX “B”

CONSULTANT’S SCOPE OF WORK

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Abbreviations and Definitions

In this Appendix “B”:

- 1.1 “Acceptance into Service” means the act of Metrolinx allowing Products and/or Work, subject to Commissioning, to enter operational service.
- 1.2 “APEC” means Areas of Potential Environmental Concern.
- 1.3 “Applicable Laws” means all applicable laws, statutes, regulations, orders, by-laws, treaties, judgments, decrees and ordinances applicable from time to time and, whether or not having the force of law, Standards, codes, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals, and policies of any Governmental Authority having or purporting to have jurisdiction or authority over a Party, property, transaction or event, including laws relating to workplace safety and insurance, occupational health and safety and employment standards.
- 1.4 “Approval(s)” means any permits, licenses, concepts, approvals clearances, orders, ordinances, registrations, filings or other authorizations respecting the Work as may be requested from any applicable Government Authority or otherwise by the Contract Documents,
- 1.5 “ARS” means Adaptive Reuse Study,
- 1.6 “Best Industry Practice” means using Standards, practices, methods and procedures to the highest commercial international standard, conforming to Applicable Laws and exercising that degree of skill and care, diligence, prudence and foresight which would be expected from a leading Person performing similar work in the railway industry, including work related to design and Construction of signalling systems,
- 1.7 “CaGBC” means Canadian Green Building Council,
- 1.8 “CAHP” means Canadian Association of Heritage Professionals,
- 1.9 “Cash Allowance Items” means those items, work and/or Work identified in the Articles of Agreement as items to be paid for using the designated Cash Allowance,
- 1.10 “Cash Allowance” means a sum included in the Estimated Contract Price by Metrolinx as a predetermined allowance to cover the items identified in the Articles of Agreement Cash Allowance Items,
- 1.11 “CAD” means Computer Aided Design.

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- 1.12 “CCDC” means Canadian Construction Document Committee.
- 1.13 “Change” means any contractual or operational change, including requested changes to the Work or requests for additional Work.
- 1.14 “CHER” means Cultural Heritage Evaluation Report.
- 1.15 “CHSR” means Cultural Heritage Screening Report.
- 1.16 “CCTV” means Closed Circuit Television.
- 1.17 “CMO” means Construction Management Office.
- 1.18 “CMP” means Compliance Monitoring Program.
- 1.19 “CN” means Canadian National Railway Company.
- 1.20 “CP” means Canadian Pacific Railway Company.
- 1.21 “CPTED” means Crime Prevention through Environmental Design.
- 1.22 “Commissioning” or “Commission” is the execution of final tests, completion of which permit Acceptance into Service, necessary to confirm that Work is safe, fit-for-purpose, and compliant with the Contract Documents and all Standards and Approvals.
- 1.23 “Construction Documents” means the Drawings and operational, technical, functional, and performance Specifications that are prepared by the Consultant/TA based upon and in accordance with the Contract Documents, which are signed by the Consultant/TA and reviewed and Accepted by Metrolinx at any time after execution of the Articles of Agreement.
- 1.24 “Constructor” means the role defined in the OHSA.
- 1.25 “Contract” means the undertaking by the Parties to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents and represents the entire agreement between Parties.
- 1.26 “Contractor” means a company awarded a Construction contract for the Project.
- 1.27 “CROR” means Canadian Rail Operating Rules.
- 1.28 “CSMP” means Construction Safety Management Plan.
- 1.29 “DMU” means Diesel Multiple Unit.

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- 1.30 “Decommissioning” means activities required to safely facilitate physical removal of track and/or related signals, temporarily or permanently.
- 1.31 “DRM” means Metrolinx’s Design Requirements Manual.
- 1.32 “GO Transit” means GO Transit, a division of Metrolinx.
- 1.33 “HVAC” means Heating, Ventilation and Air Conditioning.
- 1.34 “IFC” means Issued for Construction.
- 1.35 “IT” means Metrolinx’s Information Technology department.
- 1.36 “LEED” means Leadership in Energy and Environmental Design.
- 1.37 “LID” means Low Impact Development.
- 1.38 “Maintenance Provider” means the entity or entities responsible for the provision of maintenance Work for all signalling, electrical, communications tracks systems within a defined area.
- 1.39 “MTCS” means Ontario Ministry of Tourism, Culture and Sport.
- 1.40 “MTO” means Ministry of Transportation of Ontario.
- 1.41 “NFPA” means National Fire Protection Association.
- 1.42 “NPC” means Noise Pollution Control.
- 1.43 “NTP” means Notice to Proceed.
- 1.44 “OBC” means Ontario Building Code.
- 1.45 “OEM” means Original Equipment Manufacturer.
- 1.46 “OHSA” means the Ontario Occupational Health and Safety Act.
- 1.47 “OLS” means Ontario Legal Surveyors.
- 1.48 “OPSD” means Ontario Provincial Standard Drawings.
- 1.49 “OPSS” means Ontario Provincial Standard Specifications.
- 1.50 “Owner” means Metrolinx.
- 1.51 “POP” means Point of Purchase.

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- 1.52 “Parties” means both of Metrolinx and the Consultant/TA.
- 1.53 “Party” means Metrolinx or the Consultant/TA.
- 1.54 “PCA” means Potentially Contaminating Activity.
- 1.55 “Person” means any individual, sole proprietorship, partnership, corporation or company (with or without share capital), trust, foundation, joint venture, Governmental Authority or any other incorporated or unincorporated entity or association of any nature.
- 1.56 “PIN” means Property Identification Number.
- 1.57 “Project” means the Contract for Engineering Work and Environmental Assessment for Scott, John and Cherry Signal Towers.
- 1.58 “Project Manager” means Project Coordinator for Metrolinx.
- 1.59 “PA System” means Public Address System.
- 1.60 “RGC” means Registered Graphic Consultant.
- 1.61 “Re-commissioning” means activities required to put track and/or related signals back in service.
- 1.62 “RER” means Regional Express Rail.
- 1.63 “RFI” means Request for Information.
- 1.64 “ROW” means Right of Way.
- 1.65 “SCD” means Snow Clearing Device.
- 1.66 “SCP” means Strategic Conservation Plan.
- 1.67 “Site” means Scott, John, Cherry Signal Towers.
- 1.68 “Subsystem” means a combination of Products that work together to perform a specific function or functions.
- 1.69 “System” means group of interacting Subsystems or Products.
- 1.70 “TA” means Technical Advisor.
- 1.71 “Tester in Charge” means the competent person in charge of the Testing and Commissioning of a new or altered signalling system.

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- 1.72 “Testing and Commissioning” means the end-to-end process of Verifying and Validating the operation of the Products, the Subsystems, the Systems through a structured approach consistent with the System hierarchy.
- 1.73 “TSSA” means Technical Safety Standards Association.
- 1.74 “Track” or “Railway track” or “Railroad track” means the structure consisting of the rails, fasteners, railroad ties and ballast, plus the underlying subgrade.
- 1.75 “TTR” is Toronto Terminals Railway Company.
- 1.76 “TVM” means Ticket Vending Machine.
- 1.77 “UP Express” means Union-Pearson Express.
- 1.78 “UPS” means Uninterrupted Power Supply.
- 1.79 “USRC” means Union Station Railway Corridor.
- 1.80 “Work” means all Work, in whole or in part, required by the Contract Documents herein.

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Project Overview

- 2.1 Metrolinx is undertaking renovation, restoration, rehabilitation and state of good repair works on the John, Scott and Cherry Street Interlocking Towers within the Union Station Rail Corridor. The Interlocking Towers contain sophisticated equipment which governs signaling and movements of trains within the Union Station Rail Corridor.

(a) **Background and Relevant Studies**

The Cherry, John and Scott Street Interlocking Towers have been deemed to be Provincial Heritage Properties of Provincial Significance by the Metrolinx Heritage Committee. As such, any removal or demolition of Tower features will require the Consent of the Minister of Tourism, Culture and Sport. Any work impacting the Towers must undergo a Heritage Impact Assessment which requires approval by the Ministry of Tourism, Culture and Sport.

The purpose of this assignment is to complete necessary rehabilitation work to preserve the integrity of the Towers and their functional use and to do so in a manner that complies with all applicable law, industry best practices and sound heritage preservation fundamentals.

- (i) The following documents are provided for information purposes, implementation and/or review but shall not be limited to:
- (A) CHER
 - (B) HIA;
 - (C) Strategic Conservation Plans
 - (D) Mx Interim Heritage Management Process;
 - (E) Standards and Guidelines;
 - (F) Structural Evaluations
 - (G) DSS;
 - (H) BCA.

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- 2.2 Construction-Enabling Works (Option exercisable solely at Metrolinx’s discretion)
- (a) The Consultant/TA may be required to prepare an early Tender for Construction-Enabling Works. This option may be exercised in order to expedite Project delivery.
 - (b) The Scope of Construction-Enabling Works includes but shall not be limited to:
 - (i) Cross Sections, Typical Sections, Civil Details
 - (ii) Design Submissions
 - (iii) Specification Traffic control and signage plan
 - (iv) Property improvements
 - (v) Site plan
 - (vi) Municipal road ROW detour
 - (vii) Obtain permits and approvals
 - (viii) Utility Relocation/Protection
 - (ix) Temporary Shoring
 - (x) Construction Staging and Access Plans
 - (xi) Preparation of Engineers Estimate
 - (xii) Preparation of Construction Schedule
 - (xiii) Preparation of Specifications
 - (xiv) Preparation of Construction Tender Documents
 - (xv) Front-end tender document
 - (xvi) Tender Form (item list, quantity take-off, 100% Engineering Estimate)
 - (xvii) Pre-bid meeting
 - (xviii) Assistance with Procurement and Evaluation Process

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2.3 Project Scope to be Designed

- (a) The Consultant shall provide the Scope of Work as herein defined for the Project. The Consultant’s Scope of Work is summarized as follows:
 - (i) **Stage One:** Feasibility Study Work
 - (ii) **Stage Two:** Preliminary Design Work
 - (iii) **Stage Three:** Detailed Design and Preparation of Construction Tender Documents Work (inclusive of Environmental Investigation Studies)
 - (iv) **Stage Four:** Assistance with the Procurement and Evaluation Process Work;
 - (v) **Stage Five:** Construction Supervision, Contract Administration, Field Administration and Engineering Work During Construction; and
 - (vi) **Stage Six:** Post Construction Work

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Consultant’s General Requirements for the Work

3.1 The Consultant shall adhere to the general requirements for the Work as defined herein. The Consultant’s General Requirements for the Work are summarized as follows:

(a) Study Organization and Approach

(i) Drawings, Diagrams and Documents

(A) The Consultant/TA shall provide but is not limited to (if required):

- I) Metrolinx with “record” Construction Drawings both on hard copy and respective computer (CAD) files, as specified herein.
- II) Hard copy of “record” construction Drawings shall bear the Consultant’s/TA’s stamp over signature. 1 SET 11x17 on BOND PAPER.
- III) Hard copy documents shall be forwarded in an appropriate size format and with black text on white background, such that they readily reproduce a clear, sharp and readable image on standard recycled photocopy stock using standard photocopy equipment.
- IV) Operating System: WINDOWS 7 or above.
- V) Software Program: WORD for Windows.
- VI) Font: Times New Roman, 12pt.
- VII) Storage Media: CD ROM / DVD / USB flash drive.
- VIII) All Drawings are to be produced and submitted on a CAD system.
- IX) Computer CAD files shall be encoded with the Consultant’s/TA’s stamp and signature (Storage Media).
- X) Specification headers and footers to be consistent, including any Sub-Consultant sections.
- XI) Drawings title block to be consistent, including any Sub-Consultant sections.

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- XII) A File Transfer Protocol (FTP) site to the Metrolinx Project Team which will allow for the transfer of documentation for the duration of the Project.

3.2 Site Hazards

- (a) The Consultant/TA acknowledges and agrees that prior to starting Work which may disturb designated substances or other hazardous materials, the Consultant/TA shall review the information detailed in this document, including the designated substances reports, regarding locations and estimated quantities of designated substances and other hazardous materials. The Consultant/TA shall take appropriate health and safety precautions to protect human health and the environment, including recommending additional investigations or sampling if deemed appropriate by the Consultant/TA. Such recommendations are subject to Acceptance by Metrolinx.
- (b) Hazards due to presence of designated substances. The following reports are provided in Appendix “D” and contain information on designated substances found within the proposed alignment:
 - (i) Contaminants may exist in soil and groundwater at the Site, or other debris present in subsurface materials. Contaminants may include but not be limited to petroleum hydrocarbons (PHCs), volatile and semi-volatile organic compounds (VOCs and SVOCs), metals and inorganic parameters, polycyclic aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs). Some designated substances are components of these contaminant groups.

3.3 Design Guidelines

- (a) Background
 - (i) Design guidelines are prescribed in Metrolinx’s Design Requirements Manual (DRM) and incorporate Metrolinx guiding principles, operational considerations, and customer needs.
 - (ii) Web address:
http://www.gosite.ca/engineering_public/DRM_Manual.pdf
 - (iii) The DRM, GO and CP Track Standards, and Metrolinx Bridge Design Guidelines have a combination of performance requirements, as well as detailed Specifications and standard Drawings, for specialty items.

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- (iv) Metrolinx may also provide other standard Drawings which are not within the DRM.

- (b) Requirements

- (i) The Consultant/TA shall:
 - (A) Review and become familiar with all applicable design standards based on authorities having jurisdiction.
 - (B) Review specific site and Project conditions to determine potential areas of incompatibility with the standards set out in Metrolinx Standards or CP Standards and formally request variance approval from Metrolinx.
 - (C) Design the proposed Project in accordance with the all applicable sections of the GO Track Standards, Metrolinx Bridge design Guideline, AREMA standards, CP Red Book of Track and Structures Requirements, as well as Specifications and requirements of authorities having jurisdiction.
 - (D) Verify existing site conditions by physically visiting the site and be aware of any obstructions.

3.4 Accessibility and Barrier Free Design

- (a) Background

- (i) Metrolinx is committed to barrier-free design and at least one defined accessible route at all stations and facilities.
- (ii) Metrolinx utilizes a “best practice” approach in the provision of enhanced equipment or station features when there is not a readily acceptable solution common to the transit environment available to address each and every disability.

- (b) Requirements

- (i) The Consultant/TA shall:
 - (A) Review with Metrolinx any proposed change from the enhanced equipment and station features identified by Metrolinx or required by the Ontario Building Code (“OBC”). The TA shall obtain approval in writing from Metrolinx before proceeding with any change.

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- (B) The Consultant’s/TA’s design shall be in accordance with the OBC and Metrolinx’s most current accessibility plan entitled GO Accessibility Plan.

3.5 Sustainability and performance Oriented Design

(a) Background

- (i) It is Metrolinx’s intention to continually reduce operating and maintenance costs associated with its stations and facilities through energy efficient design and low maintenance building materials.
- (ii) Metrolinx also wants to ensure that we are embedding sustainability into our culture, processes, policies and decision-making process. The Metrolinx Sustainability Strategy (2015-2020) focuses on how Metrolinx can plan, build and operate to achieve meaningful progress towards sustainability in areas that are not addressed in existing Metrolinx strategies and plans.

(b) Requirements

- (i) For all elements of this Project, the Consultant/TA shall consider performance orientated design principles aimed at reducing the energy and maintenance resources required to operate the station or facility.
- (ii) Performance oriented design principles may include, but not be limited to:
 - (A) Passive solar lighting and/or solar power generation;
 - (B) Energy efficient appliances and light fixtures;
 - (C) Reduced lighting cycles;
 - (D) Electrification requirements;
 - (E) Low maintenance building materials; and,
 - (F) Lighting design shall be completed in a manner which minimizes glare and light trespass to adjacent lands.

- (c) The Consultant/ TA will design all GO station buildings and facilities to achieve LEED Gold as per practice of the CaGBC, where practically and economically responsible.

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- (d) Where the design scope does not meet LEED Minimum Program Requirements (MPR), the Consultant/TA will implement LEED principles and initiatives where practically and economically possible. Measures to implement LEED principles shall be documented and discussed with the Metrolinx Project Manager for final approval.
- (e) The Consultant/TA shall ensure consistency of the project with the Sustainability Strategy (http://www.metrolinx.com/en/aboutus/sustainability/Sustainability_Strategy_2015-2020_EN.pdf) through the integration of sustainability considerations into EA mitigation measures and project design. The EPR will include sections describing the Sustainability Strategy and assessing the project’s consistency with it.

3.6 Work Site Safety

- (a) For the purposes of the Work contained herein, the Consultant shall:
 - (i) Under the provisions of the Occupational Health and Safety Act and subsequent Regulations, act as agent to Metrolinx.
 - (ii) Be equipped with all appropriate safety wear while attending the work site for inspections and/or any site meeting. Failure to comply with this requirement shall result in the Consultant’s removal from the site until such time the proper equipment is obtained.
 - (iii) Act as the Hot Work Authority as required under Metrolinx’s Corporate Safety Procedure SS-0501-08 Hot Work Permit.
 - (iv) Monitor the Contractors compliance to the Occupational Health and Safety requirements as set out in the appropriate codes, regulations, Metrolinx’s Guidelines for Contractors, Consultants and Project Coordinators and the Contractor’s own Safety Program developed for the Project.
 - (v) Take appropriate and immediate actions to bring observed and/or reported unsafe acts/conditions to the attention of the Contractor. These could range from requesting an immediate corrective action plan in writing to stopping Work until Metrolinx is satisfied with the Contractor’s corrective measures.
 - (vi) Promptly notify the Project Manager of above findings and actions at a time frame as agreed to be appropriate to the situation.

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- (vii) Participate in random and pre-planned Safety Inspections of the “Work Site” with Metrolinx’s System Safety Office designates and/or the Project Manager as required. The frequency and scope of these inspections is to be established and agreed upon at the pre-Construction meeting.
- (viii) Ensure the Contractor provides copies of all safety related correspondence as per Section 8.3 of the Metrolinx Guidelines for Contractors, Consultants and Project Coordinators, as agreed to by all parties at the pre-Construction meeting, or as requested by Metrolinx or others.
- (ix) Maintain one copy of the Contractor’s Construction Safety Document as part of the Consultant’s records along with a second copy to be maintained on site for review, at any time, by Metrolinx or others.
- (x) Ensure that the Safety Performance section of the “Contractor’s Performance Report” is complete and accurate.

3.7 Provide Railway Flagging Protection

- (a) The Consultant shall be responsible for the planning and monetary payment of railway flagging protection for all field investigation Work from a Metrolinx Prequalified Railway Flagging Contractor. Where the Consultant’s staff is directly undertaking work as part of the Contract scope, this flagging shall be deemed to be included in the applicable Stage of work.

3.8 Where field investigations are included in a Cash Allowance the cost of flagging protection shall be assumed to be included in the quoted price for the Cash Allowance, whether or not directly stipulated in the Cash Allowance quotation. Where additional field investigations are found to be necessary through the course of design work, the cost of flagging protection shall be assumed to be included in the quoted price for the cash allowance, whether or not directly stipulated in the contingency release quotation.

(a) Rail Right-of-Way Safety Requirements

The Consultant shall:

- (i) Adhere and comply to all applicable municipal, provincial, federal safety acts, regulations, laws, codes and requirements including, the Ontario Occupational Health and Safety Act, the Canada Labour Code, Part II, and the subsequent Regulations to each when On or

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adjacent to any CN, CP and/or Metrolinx Right-of-Way including rail station platforms and track infrastructure.

- (ii) Comply with the requirements of Metrolinx’s Guidelines for Contractors, Consultants and Project Coordinators booklet;
- (iii) Ensure that when on or adjacent to any CN/CP/Metrolinx property, arrange to have their companies and their employees who will be entering upon CN/CP/Metrolinx property registered as to having taken the course “GO-Safe Railway Orientation” available at www.gotransitcontractor.com;
- (iv) Comply with the most recent requirements of “Metrolinx Guidelines for Contractors, Consultants and Project Coordinators”.
- (v) Have a “GO-Safe Railway Orientation” sticker affixed to their hardhats, carry on their person the “GO-Safe Railway Orientation” photo ID wallet card; and
- (vi) Register all vehicles which will be brought onto Metrolinx property on the GO-Safe Railway Orientation web site, www.gotransitcontractor.com and print off parking passes for each vehicle.

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Consultant’s Management of the Work

4.1 The Consultant/ TA shall:

- (a) Assign a principal and a project manager who will direct the provision of the Work. The principal and/or the project manager will maintain ongoing contact with the Metrolinx Project Manager to ensure that issues arising during the terms of the Contract are dealt with in an efficient, effective and timely manner.
- (b) Maintain communications contact as may be necessary to keep Metrolinx properly informed and up to date on the progress of the Project.
- (c) Provide to Metrolinx a list identifying the Consultant’s/TA’s and all Sub-Consultants’ employees assigned to the Project.
- (d) Be responsible for coordinating and interfacing with other disciplines it retains to perform the Work under the Project.
- (e) Coordinate the preliminary design for EA purposes with Metrolinx, external agencies and authorities having jurisdiction including local utilities.
- (f) Arrange, coordinate and chair in a number of meetings with Metrolinx and/or external authorities in connection with the Project, as required.
- (g) Arrange, coordinate, chair meetings and liaise with Sub-Consultants and support Work as required.
- (h) Maintain a system to identify and report changes in the design scope of the Work to be provided and immediately notify Metrolinx in writing of any proposed changes that will affect the design schedule or costs regardless, if the changes are initiated by the Consultant/TA, Metrolinx or third parties. Only changes approved in writing by Metrolinx will be reflected in the design, schedule and Project cost for this Contract.
- (i) The Consultant’s/TA’s cost for each Stage of the Work as stated in the “Articles of Agreement” for this Contract shall not be exceeded without written authorization from Metrolinx. The Consultant/TA must monitor its work effort and related cost thereof and manage the provision of each phase of the Work. Request for adjustment of costs and schedules must be submitted in writing for consideration by Metrolinx.

4.2 Progress Reports and Minutes of Meetings

- (a) Chair regularly scheduled progress meetings and record, prepare and distribute meeting minutes, within three (3) working days of the meeting date (for all meetings associated with the Project).

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- (b) Prepare and submit to Metrolinx an updated “Consultant’s/TA’s Monthly Status Report” (provided in Appendix “D”) within seven (7) working days after the reported month.

4.3 Permits and Approvals

- (a) Arrange and attend meetings with appropriate regulators and authorities as necessary and assist Metrolinx with permit application and approvals related to the Project.
- (b) Metrolinx, as a Provincial Crown Agency, is not subject to the Ontario Municipal Act, the Planning Act or the Development Charges Act. The Work and infrastructure of Metrolinx are developed, however, in partnership with local municipalities. When developing plans for new or expanded infrastructure, Metrolinx will keep the affected municipality informed of progress and cooperate with municipal staff to ensure infrastructure is constructed to meet municipal requirements to the greatest extent possible.
- (c) Submissions relating to building permits and site plan approvals for Metrolinx projects are made in the spirit of co-operation and to provide the municipality with an opportunity to comment. Metrolinx will compensate the municipality for any direct cost of their review of the submissions for approval. Consultant’s/TA’s Scope of Work.
- (d) The Consultant shall make its own determination of the actual scope and magnitude of the Project to be undertaken. The Work shall be complete in all respects, and shall ensure that the proposed Construction will be performed in a safe, cost effective and efficient manner.
- (e) The Consultant shall make arrangement in the early stage of design to determine the presence of existing utilities and assess the impacts to the overall design. This may include retaining Work to locate underground utilities, piping, abandoned services.
- (f) At all times, the Consultant shall communicate and coordinate with GO Transit Rail Operations to agree on the rail operation plan if the intended work will interrupt the train services.
- (g) At all times, the Consultant shall communicate and coordinate with GO Rail Corridors office for all safety and work coordination matters.
- (h) Services and Costs Related to coordinating with External Agencies and
- (i) Authorities Having Jurisdiction

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- (j) The Consultant’s Scope of Work shall include coordination and administration of the provision of Work necessary to achieve compliance with external agencies and authorities having jurisdiction as required to obtain approvals for the Project.
- (k) The Consultant’s Fee for the Work shall include costs for the coordination, administration of the provision and management of the Work outlined in Appendix “B” – Consultant’s Scope of Work, herein. The specific costs for approval, application, permits fees or charges of the external agencies and/or authorities having jurisdiction, will be paid for by Metrolinx under Cash Allowance and shall accordingly be excluded from the Consultant’s fee.
- (l) Where the Consultant provides a quotation for work under a Cash Allowance or contingency release, the scope of the work shall be assumed to include all revisions to the Drawings, Specifications and pricing schedule that are related to the scope of the Cash Allowance or contingency release respectively.

4.4 Project To Be Designed

- (a) Major components of the project shall include, but are not limited to the following:
 - (i) To complete necessary rehabilitation work to preserve the integrity of the Towers and their functional use and to do so in a manner that complies with all applicable law, industry best practices, provided reports, documentation and sound heritage preservation fundamentals.

4.5 Design Completion Milestones

- (a) Design completion milestones are to have associated milestone payments and be identified as a line item in the progress certificates.
- (b) Design completion milestones are to include, 25%, 50%, and 95% (of the 30% preliminary design) for the development of the Design-Build Proposal Documentation and Drawings Package, and Metrolinx Project Team Reviews as follows:
 - (i) 25% submission to include identification of key project elements including site constraints, external Agencies and Utility requirements, site concept layouts meeting functional requirements, design of basic engineering systems; site Work, major structural components, architectural layouts and elevations, civil works, conceptual mechanical, electrical, signals, etc.

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- (ii) 50% design completion key elements which are to be broken down include but are not limited to: progressed details and interdependencies; estimate consisting of rough quantities based on submission document outlined in this Appendix “B”, completed site plans, detail architectural and structural documents and draft specifications.
 - (iii) 95% design completion shall provide details for Design-Build tendering which includes, but shall not be limited to: tender check set documents, specifications; estimate based on detailed quantities for all aspects of the Project and submission documents.
- (c) Review and approval of the associated deliverables will follow Metrolinx standard protocol. They include:
 - (i) Meeting with clients and stakeholders, as determined by the Project Manager;
 - (ii) Design drawings and specifications, as available;
 - (iii) Updated Consultant’s estimate; and
 - (iv) Updated Project schedule.

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Consultant’s Scope Of Work

5.1 The Consultant/TA shall:

- (a) Assign a principal and a Project Manager who will direct the provision of the Work. The principal and/or the project manager will maintain ongoing contact with the Metrolinx project manager to ensure that issues arising during the terms of the Contract are dealt with in an efficient, effective and timely manner.
- (b) Maintain communications contact as may be necessary to keep Metrolinx properly informed and up to date on the progress of the Project.
- (c) Provide to Metrolinx a list identifying the Consultant’s/TA’s and all Sub-Consultants’ employees assigned to the Project.
- (d) Be responsible for coordinating and interfacing with other disciplines it retains to perform the Work under the Project.
- (e) Coordinate the preliminary design for EA purposes with Metrolinx, external agencies and authorities having jurisdiction including local utilities.
- (f) Arrange, coordinate and chair in a number of meetings with Metrolinx and/or external authorities in connection with the Project, as required.
- (g) Arrange, coordinate, chair meetings and liaise with Sub-Consultants and support Work as required.
- (h) Maintain a system to identify and report changes in the design scope of the Work to be provided and immediately notify Metrolinx in writing of any proposed changes that will affect the design schedule or costs regardless, if the changes are initiated by the Consultant/TA, Metrolinx or third parties. Only changes approved in writing by Metrolinx will be reflected in the design, schedule and Project cost for this Contract.
- (i) The Consultant’s/TA’s cost for each Stage of the Work as stated in the “Articles of Agreement” for this Contract shall not be exceeded without written authorization from Metrolinx. The Consultant/TA must monitor its work effort and related cost thereof and manage the provision of each phase of the Work. Request for adjustment of costs and schedules must be submitted in writing for consideration by Metrolinx.

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5.2 Project Reports and Minutes of Meetings

- (a) Chair regularly scheduled progress meetings and record, prepare and distribute meeting minutes, within three (3) working days of the meeting date (for all meetings associated with the Project).
- (b) Prepare and submit to Metrolinx an updated “Consultant’s/TA’s Monthly Status Report” (provided in Appendix “D”) within seven (7) working days after the reported month.

5.3 Permits and Approvals

- (a) Arrange and attend meetings with appropriate regulators and authorities as necessary and assist Metrolinx with permit application and approvals related to the Project.
- (b) Metrolinx, as a Provincial Crown Agency, is not subject to the Ontario Municipal Act, the Planning Act or the Development Charges Act. The Work and infrastructure of Metrolinx are developed, however, in partnership with local municipalities. When developing plans for new or expanded infrastructure, Metrolinx will keep the affected municipality informed of progress and cooperate with municipal staff to ensure infrastructure is constructed to meet municipal requirements to the greatest extent possible.
- (c) Submissions relating to building permits and site plan approvals for Metrolinx projects are made in the spirit of co-operation and to provide the municipality with an opportunity to comment. Metrolinx will compensate the municipality for any direct cost of their review of the submissions for approval. Consultant’s/TA’s Scope of Work.
- (d) The Consultant shall make its own determination of the actual scope and magnitude of the Project to be undertaken. The Work shall be complete in all respects, and shall ensure that the proposed Construction will be performed in a safe, cost effective and efficient manner.
- (e) The Consultant shall make arrangement in the early stage of design to determine the presence of existing utilities and assess the impacts to the overall design. This may include retaining Work to locate underground utilities, piping, abandoned services.
- (f) At all times, the Consultant shall communicate and coordinate with GO Transit Rail Operations to agree on the rail operation plan if the intended work will interrupt the train services.

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- (g) At all times, the Consultant shall communicate and coordinate with GO Rail Corridors office for all safety and work coordination matters.
- (h) Work and Costs Related to coordinating with External Agencies and
- (i) Authorities Having Jurisdiction
- (j) The Consultant’s Scope of Work shall include coordination and administration of the provision of Work necessary to achieve compliance with external agencies and authorities having jurisdiction as required to obtain approvals for the Project.
- (k) The Consultant’s Fee for the Work shall include costs for the coordination, administration of the provision and management of the Work outlined in Appendix “B” – Consultant’s Scope of Work, herein. The specific costs for approval, application, permits fees or charges of the external agencies and/or authorities having jurisdiction, will be paid for by Metrolinx under Cash Allowance and shall accordingly be excluded from the Consultant’s fee.
- (l) Where the Consultant provides a quotation for work under a Cash Allowance or contingency release, the scope of the work shall be assumed to include all revisions to the Drawings, Specifications and pricing schedule that are related to the scope of the Cash Allowance or contingency release respectively.

5.4 Project to be designed:

- (a) Major components of the project shall include, but are not limited to the following:
- (b) To complete necessary rehabilitation work to preserve the integrity of the Towers and their functional use and to do so in a manner that complies with all applicable law, industry best practices, provided reports, documentation and sound heritage preservation fundamentals.

5.5 Design Completion Milestones:

- (a) Design completion milestones are to have associated milestone payments and be identified as a line item in the progress certificates.
- (b) Design completion milestones are to include, 25%, 50%, and 95% (of the 30% preliminary design) for the development of the Design-Build Proposal Documentation and Drawings Package, and Metrolinx Project Team Reviews as follows:

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- (i) 25% submission to include identification of key project elements including site constraints, external Agencies and Utility requirements, site concept layouts meeting functional requirements, design of basic engineering systems; site Work, major structural components, architectural layouts and elevations, civil works, conceptual mechanical, electrical, signals, etc.
 - (ii) 50% design completion key elements which are to be broken down include but are not limited to: progressed details and interdependencies; estimate consisting of rough quantities based on submission document outlined in this Appendix “B”, completed site plans, detail architectural and structural documents and draft specifications.
 - (iii) 95% design completion shall provide details for Design-Build tendering which includes, but shall not be limited to: tender check set documents, specifications; estimate based on detailed quantities for all aspects of the Project and submission documents.
- (c) Review and approval of the associated deliverables will follow Metrolinx standard protocol. They include:
- (i) Meeting with clients and stakeholders, as determined by the Project Manager;
 - (ii) Design drawings and specifications, as available;
 - (iii) Updated Consultant’s estimate; and
 - (iv) Updated Project schedule.

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Stage One: Feasibility Study Work

- 6.1 The Consultant shall make its own determination of the actual scope and magnitude of the Project to be undertaken. The Work shall be complete in all respects, and shall ensure that the proposed project for construction work can be constructed in a safe, cost effective and efficient manner.

Stage Two: Preliminary Design Work (25%)

- 7.1 The preliminary design forms the basis for the next stages of detailed design. At the completion of the preliminary design stage, the Consultant shall have completed the following:
- (a) Obtained and reviewed all applicable Drawings, legal surveys, documents, reports, data, regulations, standards, by-laws, directives and agreements and other relevant materials required to carry out the design;
 - (b) Carried out investigations, environmental investigations to have sufficient details to support the designs;
 - (c) Properly formatted Drawings and Specifications that are consistent with the documents provided by Metrolinx, showing all existing features;
 - (d) Meeting with all relevant stakeholders to familiarize with relevant operational and detailed design requirements;
 - (e) Liaison, correspondence, and meetings with external agencies and authorities having jurisdiction to identify requirements and documentation necessary for applicable permits and approvals;
 - (f) Statement of work demonstrating adequate understanding of the scope of the project and all the vital considerations for proceeding to the next stage of detailed designs;
 - (g) Design Criteria report sufficiently outlining the inputs and expected outputs of the design of each technical discipline area, including design basis and relevant assumptions;
 - (h) Environmental Management Plan documenting methods for storage, handling, and disposal of tower rehabilitation materials during Construction;
 - (i) Meeting attendance, coordination and completion of meeting minutes resulting from the formal preliminary Design review meeting, involving all relevant stakeholders;

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- (j) Preliminary Design quantities and corresponding Cost Estimate with a margin of 30% accuracy, for review by Metrolinx based on the Preliminary Design Drawings and Specifications;
- (k) Submit the design and tender documents to Metrolinx for a general review and approval at the 25% completion stage as follows:
 - (i) At the 25% design review, the engineering plans will be prepared and basic engineering systems outlined;
 - (ii) Submit for review and approval General Arrangement Drawings at each tower site clearly indicating the proposed rehabilitation strategy, including details of new/restored tower components and rehabilitation outline for components designated to remain sufficient to clearly communicate to Metrolinx the intent of the design;
 - (iii) Provide a cost estimate for each option noted above in item (l) for review and approval of Metrolinx before proceeding with detail design Work; and
 - (iv) Evidence of completed review, comment, and approval by Metrolinx of all documents, reports, design, Drawings, Specifications, and Cost Estimate.

7.2 Site Development

- (a) Begin the Site development design using the digital base plan showing existing conditions, indicating existing surface and below grade structures and elements, municipal/regional roads, property lines, utilities, grade elevations and other salient features. Prepare a Site Development design of a sufficiency necessary to illustrate and demonstrate the Site’s functional requirements and conformance with the conditions imposed by the authority having jurisdiction.
- (b) Prepare a Project development preliminary design of a sufficiency necessary to illustrate and demonstrate the Site’s functional requirements and conformance with the conditions imposed by the authorities having jurisdiction.
- (c) Prepare a Master Station Development Plan incorporating all existing and proposed design components. Prepare an interim Master Plan showing site components during the Construction phase.
- (d) (Provide an overall site development design that considers initial and ultimate facility layouts, configurations and site boundary conditions.

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- (e) Site Work for water, sanitary, hydrant, storm, connection to municipal services and utilities, gas, hydro, telephone, primary services should be part of site development.
- (f) (Obtain Metrolinx’s approval of the Site development design prior to proceeding with the balance of design. Distribute the approved base plans as required for use by other disciplines retained to perform Work under this Contract.

7.3 Architectural

- (a) The Architectural design shall be based on the latest Metrolinx Design Requirements Manual and Static Signage Catalogue, the Ontario Building Code, local Municipality By-laws and Regulations, all current codes, standards and specifications relevant to the proposed work.
- (b) The architectural design shall include, but is not limited to:
 - (i) Space planning programming; zoning/development approval as applicable;
 - (ii) Design in context to the Scope of Work outlined in Appendix B, Section 4.4 -“Project to be Designed”
 - (A) Building Code analysis
 - (B) Preparation of perspective sketches, renderings and/or presentation model
 - (C) Facility accessibility review
 - (D) Energy efficiency and sustainable design considerations
 - (E) Security considerations
 - (F) Ergonomic design assessment
 - (G) Material selection
 - (H) Related civil Work and storm water management
 - (I) Related structural Work
 - (J) Related environmental Work

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- (iii) GO station buildings, parking structure and facilities should aim to incorporate LEED driven initiatives where practically and economically possible.
- (iv) Where LEED certification is not available for the design scope, LEED principles and initiatives should be implemented, where practically and economically responsible.

7.4 Electrical

The Electrical design shall include, but is not limited to:

- (a) Prepare preliminary photometric distribution layout to determine the lighting requirements for achieving the illumination levels prescribed in the DRM and LEED and to satisfy requirements of region and municipality.

7.5 Mechanical

The Mechanical design shall include, but is not limited to:

- (a) Prepare preliminary mechanical design for the Signal Towers, including but not limited to HVAC systems.
- (b) Design shall include station building HVAC requirements including ducts, dampers, vents, and other equipment or control devices.
- (c) Prepare preliminary mechanical plan to satisfy LEED and requirements of region and municipality.

7.6 Landscaping

- (a) Prepare a landscaping plan to 100% completion and including fencing requirements. The plant materials shall be salt resistant, sustainable and have minimum maintenance requirements.
- (b) Landscaping drawings shall include tree-planting, shrubs, sod as required by Metrolinx and external agencies having jurisdiction.
- (c) Provisions shall be made for an automated sprinkler system serving the gardens and lawns surrounding the station building, parking lot, and platform. System shall be designed to Metrolinx’s approval.

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Stage Three: Detailed Design (inclusive of Environmental Investigation Studies) and Preparation of Construction Tender Documents Work (50%, 95% And Construction Tender Documents at 100%)

8.1 Review

- (a) The Detailed Design shall take into account Metrolinx’s and VIA Rail’s operational requirements, and ensure that the train services remain fully protected during the Construction period. The Construction shall be staged in order to minimize disruptions to commuter service on the rail line.
- (b) The Consultant shall design the proposed Project in accordance with industry best practices, as well as, codes, standards and Specifications of authorities having jurisdiction.
- (c) Undertake site detail inspection and become familiar with all site conditions and constraints. Verify existing conditions and field dimensions when working on exterior of buildings/towers.
- (d) Obtain and verify all utility and railway services located on and surrounding the site.
- (e) Meet with Metrolinx rail corridors departments and operations staff to become sufficiently familiarized with relevant design requirements and operating procedures.
- (f) Arrange and meet with external agencies and authorities having jurisdiction and incorporate their requirements into the design. Agencies include but are not limited to: City of Toronto, and Ministry of Tourism, Culture and Sport, and external stakeholders.
- (g) Be responsible for coordinating and interfacing with other disciplines as it retains to perform the Work under the Project.
- (h) Produce and maintain an Information Distribution Table, to track the flow of information conveyed to parties regarding this Project. Table headings to include the name of the person contacted, all correspondence sent and the reply received. Additional headings may be added as required.
- (i) All track, signal and flagging work within the Metrolinx right-of-way shall be performed by the applicable pre-qualified contractors.
- (j) Submit the design and tender documents to Metrolinx for a general review and approval at the 50% and 95% completion stages.

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- (k) At the 50% design review, the Drawings will be developed to level of detail normally sufficient to apply for permits and approvals. Specifically, the 50% design shall have completed the following:
- (l) The Consultant should have all feedback from internal and external stakeholders and completed Drawings and Specifications that have sufficient details, including project sequencing and phasing plan for the application of permits and approvals.
- (m) Submit documents of completed review, comment and approval by Metrolinx regarding all reports, design Drawings, traffic staging plans, Specifications, schedule and cost estimates.
- (n) At the 95% review will represent the tender documents, as they are ready to be submitted for tender to allow for final comments and changes. These shall include all of the documents to be submitted at the 100% stage as outlined below.
- (o) The 100% is the final stage of Construction documentation inclusive of all comments from the 95% review and shall include the following completed documents:
- (p) Provide detailed cost estimates with an accuracy of +/-10%. This is crucial for the accurate forecasting of project costs. Substantial deviation from the estimated cost will substantially impact the Consultant’s performance rating.
- (q) Provide detailed Drawings, Specifications, quantities, and tender document required by Metrolinx for use in tendering of the Construction Contracts.
- (r) Meeting with the stakeholders to gain approvals regarding the final design stage requirement, cost sharing agreement based on the preliminary cost estimates
- (s) Submit documents of completed review, comment and approval by Metrolinx regarding final design Drawings, traffic staging plans, Specifications, schedule and cost estimates.
- (t) Submit to Metrolinx a minimum of three (3) copies of the Specifications and Drawings at each review stage as outlined above.
- (u) Update the preliminary Construction schedule and Construction cost estimate for review and approval by Metrolinx along with the 50% design review Tender and prior to completion of the tender documents.
- (v) Incorporate any final comments into the tendered document package.

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8.2 Environmental Investigation Studies

- (a) It is anticipated by Metrolinx that this Project is exempt from Ontario Regulation 231/08 as the Work is not required to increase the commuter rail service on an existing rail corridor, but rather for maintenance purposes. The Consultant shall confirm this and advise Metrolinx in writing of its findings and of any additional environmental due diligence Work required as part of the Project.
- (b) All work of Environmental Investigation Studies shall be made under Cash Allowance as stated in the form of tender and is subject to the conditions associated with such payment.
- (c) The Consultant shall not proceed with work under this item which is to be recommended by the Consultant without prior approval from Metrolinx.
- (d) The Consultant shall undertake site inspections and become familiar with existing site conditions and constraints, verify existing conditions and field dimensions, and confirm surveys and geotechnical information, as deemed necessary.
- (e) The Consultant shall determine any potential environmental impacts by proceeding with the Project and address any requirements for the mitigation measures in the design phase and Construction tender documents. The Consultant shall incorporate comments and requirements of external agencies and authorities having jurisdiction for environmental mitigation measures.
- (f) Unless specified otherwise under the deliverable specific description, Environmental Investigation Studies work shall be applicable to all sites in this project.
- (g) As specified, the Consultant will carry out environmental studies/ Work to comply with permitting and approval requirements.
- (h) Designated Substance and Hazardous Materials Survey
 - (i) The Designated Substance and Hazardous Materials Survey (DSHMS) will provide an overall assessment of the existing hazardous materials/substances throughout the structures and shall include, but is not necessarily limited to, the following:
 - (i) Conduct a site inspection/walkthrough of the property.
 - (ii) Identify the presence of any designated substances including but not limited to, asbestos, lead, acrylonitrile, arsenic, benzene, coke oven

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emissions, ethylene oxides, isocyanates, mercury, silica, and vinyl chloride.

- (iii) Sample suspect lead & asbestos materials, if any.
- (iv) Collect bulk samples for mould analysis (tape lifts & swabs), if visible.
- (v) Complete a visual inspection of all accessible areas of the structures for any other hazardous elements (i.e., PCBs, CFCs, ODS, mould, pest feces etc.)
- (j) The DSHMS report shall include, but not be limited to, the following:
 - (i) Executive summary.
 - (ii) Description of the property and background information.
 - (iii) Sample methodology.
 - (iv) Report findings and analysis.
 - (v) Maps and figures shall be included which outline the areas which were sampled and their respective locations, the type of material obtained, a description of the material and condition and whether the material contains a designated or hazardous substance.
 - (vi) The relative extent/quantity of the designated or hazardous substance. An estimated cost to abate or dispose of the hazardous material shall be included as well. (This should be included in the recommendations letter under separate cover.)
 - (vii) Tables are to be included which summarize laboratory results.
 - (viii) Photo documentation of the site and the materials encountered. Photos of suspect materials shall also be included in the report.
 - (ix) All tables, figures and other diagrams presented within the report shall be clear and detailed.
- (k) Conclusions
 - (i) Recommendations shall be provided under separate cover and present enough information and alternatives that may be useful for decision-making purposes.

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8.3 Special Considerations, as applicable:

- (a) Care must be taken when sampling for materials in a way that will not affect the integrity of the existing structures.
- (b) Where the action of removing samples adversely affects the durability/aesthetics of components designated to remain, the affected areas shall be restored with suitable patching material that is consistent in appearance with the surrounding unaffected areas.
- (c) A sampling plan must be submitted and approved prior to performing any field work.
- (d) The Consultant will create an Environmental Mitigation and Monitoring Plan (EMMP) for Metrolinx approval, to be submitted at 50% and 95% detail design.
- (e) The EMMP will include any potential environmental impacts or approval requirements that arise during detailed design and during additional environmental investigation studies, as required. The EMMP should include relevant mitigation measures and requirements for potential environmental impacts and include a list of the required permits and approvals for the Project.
- (f) Once permits and approvals are received for the Project, or findings from additional environmental studies are received, the Consultant will be responsible, upon Metrolinx approval, for updating the EMMP to include any additional mitigation measures or requirements. Any new monitoring or reporting requirements shall also be reflected in the EMMP.
- (g) The Consultant will be responsible to implement the requirements of the EMMP during detailed design and Construction. This includes providing environmental monitoring services and adhering to reporting requirements as detailed in the EMMP, providing instruction to the design team and Contractor as required, and issuing preventive and/or corrective action requests as required. For items that pertain to Construction, the Consultant is to include relevant language into the tender Specification package.
- (h) The EMMP is to include a procedure for preventive and corrective action in the event of findings of non-compliance during environmental monitoring, as well as follow up and reporting procedures.
- (i) The Consultant is responsible to acquire any permits or undertake any necessary additional environmental studies that have been identified within the EMMP. If reporting to regulatory authorities is required, the Metrolinx Project Manager is to be included in the review and approval must be

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sought prior to submission to the governing agencies. The Metrolinx Project Manager should be notified in advance of any activities that may result in environmental impacts and possible complaints.

- (j) At project completion the Consultant is to provide a final Environmental Summary Report confirming that all identified EMMP requirements have been implemented. The Report is to include all actions taken to mitigate any environmental issues and/or non-compliances with the EMMP that arose during the design and Construction stages. This document shall be submitted to Metrolinx as part of the Project Close Out.

8.4 Landscaping

- (a) The Consultant shall prepare a detail site restoration landscaping plan to restore the site including fencing requirements. The plant materials shall be salt resistant, sustainable and have minimum maintenance requirements.

8.5 Permits and Approvals

- (a) The Consultant shall investigate the relevant codes, regulations and by-laws applicable to this Project and shall advise Metrolinx on permits and approval requirements by the Authorities having jurisdiction. Applicable authorities could include, but not be limited to:
 - (i) MOECC
 - (ii) Provincial Approvals and Agreements
 - (iii) MTCS
 - (iv) Local Utilities
 - (v) Compliance with Provincial Plans and Policies
 - (vi) Canadian Transportation Agency
 - (vii) Other Potential Responsible Authorities
 - (viii) Municipal Approvals and Agreements
 - (ix) City of Toronto
 - (x) Conservation Authorities
 - (xi) Other potential authorities

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- (b) Arrange and attend meetings with appropriate authorities necessary and assist Metrolinx, the Contractor and TTR Railworks Inc. for permit application and approvals related to the Project, for example to develop traffic staging plans for the Road Occupancy Permits or round the clock weekend noise by-law exemptions.
- (c) Metrolinx, as a Provincial Crown Agency, is not subject to the Ontario Municipal Act, the Planning Act or the Development Charges Act. Metrolinx’s services and infrastructure are developed, however, in partnership with local municipalities. When developing plans for new or expanded infrastructure, Metrolinx will keep the affected municipality informed of progress and cooperate with municipal staff to ensure facilities are constructed to meet municipal requirements to the greatest extent possible.
- (d) For instance, tenders relating to a Building Permit and Site Plan Approvals for Metrolinx projects are made in the spirit of co-operation and to provide the Municipality with an opportunity to comment. Metrolinx will compensate the municipality for any direct cost of their review of the Tenders.
- (e) Prepare the required Specifications and Drawings associated with all work elements. Drawings shall be sealed and signed by the appropriate Engineer discipline and complete for Construction and building permit/site plan application if necessary.
- (f) The Consultant shall include the Work required to assist Metrolinx in obtaining the necessary approvals required for project of this type. Work shall include meetings with external authorities and preparation of submittals for approval.

8.6 Design Calculations and Supporting Material

- (a) Prepare and maintain a record of design calculations for all elements of the tower design for each engineering and specialized services discipline. Submit design calculations and supporting material to Metrolinx upon request.
- (b) Prepare all supporting material necessary for furtherance of the design and use for discussion purposes at design review meetings with Metrolinx and/or with external authorities.

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8.7 Construction Estimate and Schedule

- (a) Prepare and submit to Metrolinx Construction estimates and schedule based upon the completed Detailed Design prior to tendering. This estimate shall have an accuracy of $\pm 5\%$.
- (b) The Consultant shall work with Metrolinx staff to determine how Construction shall be phased.

8.8 Preparation of Construction Tender Documents

- (a) All original, plans, Drawings, Specifications, designs, computer files (including CADD files), data and documents, prepared by the Consultant shall be and remain the property of Metrolinx. The Consultant may retain a copy of such documents for record purposes only, and shall not use, nor permit the use thereof, for any other purpose without the prior written consent of Metrolinx.
- (b) Completed Construction Drawings shall be sealed and signed by the appropriate discipline (Engineer/Architect) and complete for tendering.
- (c) The form of Construction Contract to be utilized by Metrolinx for this Project is the CCDC4 – 2011 document, Agreement Between Owner and Contractor.
- (d) The Consultant shall familiarize itself with Metrolinx’s standard Construction tender document, to be provided by the Project Manager, and shall take all necessary steps to avoid duplication of information contained within the general requirements listed in sections 00000 through 01800. The Consultant shall only add information as needed to front end and shall obtain the Project Manager’s input prior to doing so. The Consultant shall amend Metrolinx Standard Division 01000 in a transparent manner so that it is consistent with the remaining document.
- (e) The Consultant shall follow Metrolinx guidelines for preparation of Construction Project documents, as provided in Appendix “C” – Documents.
- (f) Where a name brand or trademark is specified for a particular product or service, costing in excess of \$10,000, the Consultant shall add “or approved equivalent” next to the identified product/service, unless specifying a product/service provided by an Original Equipment Manufacturer (O.E.M.) or from Metrolinx’s approved Corporate Standard product/service listing.

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- (g) Where an O.E.M. is identified, the Consultant must provide the contact information for the specified O.E.M., including mailing address, phone, fax and contact person.
- (h) All Cash Allowances included within the Construction tender document’s Form of Tender, must be identified as such in the Specifications and reciprocally within the Form of Tender (i.e., Reference specific section of Specifications/Drawings for each Cash Allowance).
- (i) The Consultant shall identify when any standards such as Ontario Provincial Standard Drawings (OPSD) and Ontario Provincial Standard Specifications (OPSS) are referenced within the tender documents, and if not provided in hard copy it must indicated that the standards have been “Incorporated by Reference”.

8.9 Format of Construction Tender Documents

- (a) Metrolinx uses the MERX system to advertise and distribute Construction Project documents for tender to prospective bidders. Merx is a federal, provincial and municipal Canadian public tender website.
- (b) Bidders are required to register with MERX;
- (c) The final version of Construction Project documents shall be provided to the Project Manager in the following format:
- (d) All Drawings are to be in both Adobe (.pdf) and AutoCAD (.dwg; .dxf) format.
- (e) File names for each drawing are to be the actual drawing number.
- (f) Specifications are to be in MS Word format as follows:
- (g) Operating System: WINDOWS XP
- (h) Software Program: WORD for Windows
- (i) Font: Times New Roman, 12pt.
- (j) Metrolinx employs the use of SharePoint software for document management. As such, file naming of all construction documents prepared by the Consultant must not contain the following characters anywhere in the file name:
 - (i) tilde ~
 - (ii) number sign #

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- (iii) percent %
- (iv) ampersand &
- (v) asterisk *
- (vi) braces () {} []
- (vii) back slash \
- (viii) forward slash /
- (ix) colon :
- (x) semi-colon ;
- (xi) question mark ?
- (xii) pipe |
- (xiii) quotation mark “
- (xiv) period.

8.10 Pricing Information

- (a) Pricing information shall not be requested in the Construction Specifications or Drawings and shall only be included in the form of tender of the Construction tender document. Pricing information shall be submitted on the Metrolinx issued standard template spreadsheet which will be provided to the successful proponent.
- (b) Two (2) CD’s, of final Construction Project documents, shall be forwarded to Metrolinx, containing Construction Drawings, Construction Specifications, pricing information including cash and contingency allowance descriptions and amounts.
- (c) The CD shall include a main folder entitled “English” and two subfolders entitled “Drawings” and “Specifications”.

8.11 Main Folder

- (a) The main folder is to be titled “English”.

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8.12 Drawings Folder

- (a) Drawings must be submitted in both Adobe (.PDF) and AutoCAD (.dwx or .dwfx) format.
- (b) Each Drawing must be saved in its own file and is limited to one (1) page per file, with an unlimited number of files permitted.
- (c) File names for each Drawing shall be the actual drawing number.

8.13 Specifications Folder

- (a) Specifications must be submitted in MS Word (.doc) format.
- (b) Each section of Specification shall be saved in its own file and can be an unlimited number of pages. An unlimited number of files shall be permitted.
- (c) File names for each Specification section shall be the actual Specification Section number.
- (d) Pricing information shall be included in the Specifications folder and shall be entitled “Section 00300”.

8.14 Requirements of Construction Project Documents

- (a) Produce and submit to Metrolinx up to twenty (20) full-size, bound sets of Construction Tender Drawings and ten (10) reduced size, bound sets of same.
- (b) Produce and submit three (3) hard copies of Constructions Specifications.
- (c) Make edits to Specifications and Drawings as required by Metrolinx.
- (d) Upon submission of Specifications and Drawings at 100% completion, allow for three (3) further edits with a forty-eight (48) hour turnaround time at each submission by Metrolinx.

9. Stage Four: Assistance With Procurement and Evaluation Process Work (option exercisable solely at Metrolinx’s discretion)

9.1 Assistance during Tendering Period, the Consultant shall:

- (a) Assist Metrolinx during the tendering period of the proposed Construction work by receiving and answering technical questions that may arise

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regarding the Tender Documents or regarding the Site of the proposed Construction Contract.

- (b) Attend at the mandatory site visit for Bidders as scheduled.
- (c) Prepare a record of questions asked by Bidders and the responses given. Prepare all Drawings and text required for the addenda to be issuing in response to such questions.
- (d) All verbal or written technical enquiries received by the Consultant during tendering, shall be responded to in writing via addenda. The Consultant shall provide all responses in writing via e-mail or facsimile to Metrolinx’s Engineering and Procurement representatives. Metrolinx’s Procurement representative shall solely be responsible for the issuance of all addenda.
- (e) The Consultant shall provide twenty-four (24) hour turnaround on all responses to the questions received.
- (f) All clarifications provided during tendering shall reference the applicable Specification Section and/or Drawing. (i.e. Delete Section 2(a)(i) of Section 02701, Aggregates: General).
- (g) Where a requested clarification does not apply to a particular Specification(s) and/or Drawing(s), a detailed and concise response shall be provided by the Consultant in writing via e-mail or facsimile to Metrolinx’s Procurement and Engineering representatives. The Consultant shall respond using the same Q & A template the question(s) was provided on.
- (h) Where there is a change in the scope of work that affects unit pricing, in a CCDC4-2011 contract format, the Consultant shall submit a revised and complete Form of Tender to Metrolinx’s Procurement representative.
- (i) Verbal communication between the Consultant and Bidders shall be limited to the Consultant directing the Bidder to a particular section of the Specifications and/or Drawings for clarification. Information requested by a Bidder, not contained within the tender documents must be conveyed to all Bidders in writing via Addenda.
- (j) When responding to questions for issuance of Addenda, the Consultant shall ensure the following:
 - (i) Questions and responses shall be issued in the following format:
 - (ii) Q1.
 - (iii) Q2.

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- (iv) All clarifications shall reference the applicable Specification Section and/or drawing. (For example, “Refer to Sub-section 2(a)(i) of Section 02700, Aggregates: General”).
- (v) If the response to a question in any way alters a Section of the Specification(s) and/or Drawing(s), the Consultant shall revise the Specification(s) and/or Drawing(s) accordingly and provide details as to what was revised. (For example, “Refer to revised Section 2(a) of Specification 02701 Aggregates: General”).
- (vi) Provide details of revisions to Specifications and Drawings to the Project Manager, pointing out specific Sections of the Specification(s) and/or Drawing(s) that have been revised and what the revisions pertain to. (For example, “Refer to revised Section 2(a), 2(b) and 3(a) of Specification 02701 Aggregates: General was revised to reflect addition of.....”).
- (vii) Detailed and concise responses shall be provided by the Consultant in writing via e-mail to the Project Manager. Should the Project Manager feel the response is lacking in clarity and detail the Consultant shall revise their response within twenty-four (24) hours or less.
- (viii) Prepare all revisions, additions and deletions required to Construction Drawings, Specifications and pricing for any Addenda to be issued in repose to such questions.
- (k) Prepare mark ups to the Form of Tender soft copy using track changes. The Consultant shall only use the latest version of the Tender Document.
- (l) The Consultant shall direct all Bidders verbally requesting clarifications during tendering to submit their questions in writing in order to receive a response.
- (m) The Consultant shall not release budgetary information about the Project to any party outside of Metrolinx’s Procurement and Engineering department.
- (n) Where revisions to the Tender Document affects the schedule of Unit Prices in the Form of Tender, in a CCDC-4-2011 unit price format, the Consultant shall submit a revised and complete marked-up schedule of unit prices to the Project Manager.
- (o) Prepare and submit a revised Construction cost estimate twenty-four (24) hours prior to the Construction Tendering Closing taking into account any Addenda, changes to market conditions and any other factors influencing the Construction cost.

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- (p) All questions be received after the Last Day for Questions date shall be considered for response.
- (q) The Consultant shall not communicate with any Bidder after the Closing of tendering. Enquiries received by the Consultant from a Bidder after such time shall be directed to Metrolinx’s Procurement representative.
- (r) Should additional information be required from a Bidder after the Closing of tendering, the Consultant shall request permission from Metrolinx’s Procurement Department to meet with or enter into verbal and/or written communications with the Bidder.

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9.2 Assistance with Tender Evaluation Process Work

- (a) the Consultant shall:
 - (i) Analyse the tenders received by Metrolinx for compliance with the technical aspects of the tender documents.
 - (ii) Investigate the qualifications and prior performance of the Bidders, and determine their ability to execute the work defined in the tender documents. Document the investigation for record purposes.
 - (iii) Submit a tender evaluation analysis and a contract award recommendation letter identifying and qualifying Bidders directly to Metrolinx’s Engineering Representative.
 - (iv) Report any issues or concerns to Metrolinx’ Project Manager immediately upon discovery.

9.3 Award of Contract - Construction Documents

- (a) the Consultant shall:
 - (i) Upon receipt of notification from Metrolinx that the Contract has been awarded, submit to Metrolinx three (3) sets of “Issued for Construction” Contract Drawings and Specifications.

10. **Stage Five: Construction Supervision, Contract Administration, Field Administration and Engineering Work during Construction (option exercisable solely at Metrolinx’s discretion)**

10.1 Consultant Work during Construction

- (a) Metrolinx reserves the right, at its sole discretion, to proceed or not to proceed with the Construction of this Project.
- (b) Should Metrolinx enter into a Construction contract and proceed with the Construction for this Project, the Consultant shall, upon receiving written direction and authorization from Metrolinx, provide Work for Construction Supervision and Engineering Work during Construction.
- (c) Construction supervision shall include the Work to be provided at the Site by the Consultant’s designated resident representative, sub-consultants, specialized services providers, engineers, Project managers, principles and administrative staff during the Construction of the Project.

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- (d) Subject to this Contract, applicable building codes and standards of external agencies and authorities having jurisdiction, provide administration and supervision of the Construction contract to ensure conformance with any requirement of such external agency or authority.
- (e) The form of Construction contract to be utilized by Metrolinx for this Project is the CCDC4-2011 Document, which shall form a part of the Consultant’s scope of Work, in addition to other requirements contained herein, pertaining to Construction supervision, contract administration and engineering Work during Construction, as amended by the Construction tender document “Supplementary General Conditions” provided for in Appendix “C” – Documents.
- (f) The Consultant shall:
 - (i) Assign necessary field staff to perform such field operations necessary in the provision of the foregoing Construction supervision and Engineering Work;
 - (ii) Have the Authority to act on behalf of Metrolinx to the extent provided in the Construction contract documents, unless otherwise modified by amendments to this Contract and the Construction contract documents;
 - (A) The authority to act on behalf of Metrolinx is solely in the capacity of a representative, and in no way infers Agency. The Consultant does not have the authority to execute agreements, Contracts or otherwise on Metrolinx’s behalf.
 - (iii) Provide sufficient competent on-site supervision to ensure that the work of the Construction contract is proceeding and is being performed in general conformity with the Construction contract documents and any amendments thereto, and that the work of the Construction contract is proceeding as expeditiously as possible and with the minimum interference or impact on the day-to-day operations of Metrolinx, Via Rail, and if applicable, Metrolinx station facilities on the rail line;
 - (iv) Ensure that the customer service considerations outlined in Section 6(e) hereinafter applied, and specifically ensure that the contractor responds to emergent conditions (weather, scheduling changes, unexpected site conditions, etc.) to maintain good conditions for all users of the facility;
 - (v) Coordinate Construction staging with the contractor to minimize impact on GO commuters and station operations;

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- (vi) Assist Metrolinx to prepare necessary notices or public relation information package for advising and updating commuters concerning the progress of the Work;
- (vii) Chair, record and distribute minutes for all meetings site associated with this Contract, the Construction contract and the Construction of the work as required;
- (viii) Carry out all quality assurance and quality control functions to confirm contractor's adherence to the Construction contract documents;
- (ix) Review and make recommendations regarding the contractor's quality of work, Construction progress, schedule, payment application, requests for supplemental instruction, change orders, change directives, substantial performance and total performance of the work and claims;
- (x) Prepare and distribute progress, incident, and other reports as required during Construction, including reports to external agencies and authorities having jurisdiction;
- (xi) Review Construction contractor's submittals, including shop Drawings, any and all necessary revisions, product data, and samples, as provided in the Construction contract and/or as requested by Metrolinx;
- (xii) Prepare necessary justifications, associated with cost estimates, and recommendations in support of changes to the Construction contract;
- (xiii) Calculate and record quantities, and prepare progress and final payment of certificates prescribed by Metrolinx;
- (xiv) Compile survey notes, diaries, records, photos, and reports substantiating such certificates during Construction and on completion of the work of the Construction contract;
- (xv) Coordinate and carry out testing during Construction of the work of the Construction contract to verify acceptability according to the Construction contract Specifications;
- (xvi) Coordinate Construction staging with the Contractor to minimize impact on GO commuters. Prepare necessary notices or public relation information package for advising and updating commuters concerning the progress of the work. These packages shall be updated monthly and/or as requested by the GO Project Manager, and shall

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include but are not limited to pictorial and written information on what the project consists of, identifying key dates, work activities weekend track closures etc;

- (xvii) Carry out surveys of the place of work and the Construction work. Verification of the work and compliance with the Construction contract requirements;
- (xviii) Carry out substantial and final inspection at the conclusion of the Construction contract, distribute a list of deficient work, and expedite completion of all work of the Construction contract in conformance with the Construction contract;
- (xix) During Construction, ensure an updated as-built record is kept current. All deviations from the original design shall be recorded on black line white prints. All reports on deviations from the original design shall be provided to Metrolinx so that an adequate assessment of the infrastructure can be made to ensure that the project deadlines are not compromised due to infrastructure inadequacies;
- (xx) Prior to installation of electrical, mechanical, underground and telecommunication systems, an accurate assessment of the infrastructure can be made and recorded; and
- (xxi) Prepare and submit to Metrolinx three (3) complete sets of revised Construction contract Drawings showing the ‘record’ Project.
- (xxii) Ensure that recommendations and commitments as outlined in the EMMP are implemented as applicable during Construction; this includes providing environmental monitoring services and adhering to reporting requirements as detailed in the EMMP, providing instruction to the Contractor as required, and issuing preventive and/or corrective action requests as required. The Consultant is required to document and maintain a record of all monitoring activities and mitigating measures that were implemented during Construction and shall provide this documentation to Metrolinx. Additionally, Metrolinx may perform regular site visits and complete Environmental Site Inspection Reports (ESIR) during Construction. Any findings of non-compliance will be communicated to the Consultant to provide instruction to the Contractor for preventive and/or corrective action.
- (xxiii) Acquire any permits or undertake any additional environmental studies that have been identified within the EMMP. If reporting to regulatory authorities is required, the Metrolinx Project Manager is to be included in the review and approval must be sought prior to

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submission to the governing agencies. The Metrolinx Project Manager should be notified in advance of any activities that may result in environmental impacts and possible complaints. The Metrolinx Project Manager should be notified immediately of all environmental incidents or issues that arise during Construction.

10.2 Engineering Work during Construction:

- (a) The Consultant is to assume all responsibilities and roles for engineering Work during Construction as the ‘engineer of record’;
- (b) The fee payment for engineering Work during Construction shall be as stated in the Articles of Agreement between Metrolinx and the Consultant for this Contract;
- (c) The Consultant’s weekly fee includes the costs for “Full Time” engineering Work. Engineering Work during Construction includes the Work to be provided by the Consultant’s designated resident representative, sub Consultants, specialized services providers, engineers, project managers, principals and administrative staff to support the Consultant’s during the Construction of the Project;
- (d) The Consultant has the authority to act on behalf of Metrolinx to the extent provided in the Construction Contract Documents, unless otherwise modified by amendments to this Contract and the Construction contract documents;
- (e) Engineering Work during Construction shall include:
 - (i) Review Construction contractor’s submittals, including shop Drawings, product data, and samples, as provided in the Construction contract and/or as requested by Metrolinx.
 - (ii) Attend site meetings as requested.
 - (iii) Prepare and issue revised design Drawings required due to Metrolinx and/or external stakeholder requirements, as well as unforeseen site conditions.
 - (iv) During Construction, ensure an updated as-built record is kept current. All deviations from the original design shall be recorded on black line white prints. All reports on deviations from the original design shall be provided to Metrolinx so that an adequate assessment of the infrastructure can be made to ensure that the project deadlines are not compromised due to infrastructure inadequacies.

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- (v) Prepare and submit to Metrolinx three (3) complete sets of stamped Drawings showing the ‘As- Built’ Project.
- (vi) Prepare and submit an evaluation of the Contractor and Subcontractor’s work performance.

10.3 Testing and Commissioning

- (a) Prepare a plan for testing and commissioning including detailed procedures, such as:
 - (i) applicable codes and standards;
 - (ii) safety issues and risks assessments; and
 - (iii) Submit all testing and commissioning procedures to Metrolinx for review and coordination, and incorporate Metrolinx comments before implementation.

11. Stage Six: Post Construction Work (Option Exercisable Solely at Metrolinx’s Discretion)

1.1 Handover and Post Project Report

- (a) At the conclusion of the Project the Consultant shall prepare and submit (3) three copies of a Post Project Report for Metrolinx’s review and comment.
- (b) The Post Project Report shall include a brief summary of the following:
 - (i) A detailed description of the Project;
 - (ii) A detailed description of the Consultant’s scope of Work provided under the Project;
 - (iii) A detailed description of the processes and methodologies used by the Consultant during the Project;
 - (iv) An assessment of study (etc.) findings and recommendations provided under the Project;
 - (v) A narrative on the key issues which impacted in a positive and/or negative way the provision of, and scheduling of Consultant Work;
 - (vi) Recommendations for improvements in facilitating the future delivery of engineering Work and Construction contracts of this kind including:

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- (A) key objectives, issues and results;
 - (B) lessons learned;
 - (C) future actions; and
 - (D) Outstanding deficiencies and the timeline and associated cost for completion.
- (vii) Environmental Summary Report confirming that all identified EMMP requirements have been implemented. The Report is to include all actions taken to mitigate any environmental issues and/or non-compliances with the EMMP that arose during the design and Construction stages.
- (viii) The Consultant shall comply fully with the Metrolinx handover protocol, and provide signed originals of all handover documents.
- (ix) The following documents shall constitute part of the Work of this Stage and shall be submitted by the Consultant as applicable:
- (A) Warranties;
 - (B) Project Commissioning Checklist;
 - (C) Record Drawings:
 - I) Record Drawings shall be created to accurately reflect as-constructed, as-built, or as-fabricated conditions and shall be sealed by a professional engineer employed by the Consultant after verifying that the document is accurate.
 - II) Record Drawings shall have no disclaimers, exclusions or qualifications. The Consultant shall ensure that the level of supervision and inspection undertaken throughout the Construction Supervision And Field Administration and Engineering Work During Construction Stage is adequate to provide Record Drawings without disclaimers, exclusions or qualifications. All Drawings submitted with disclaimers, exclusions or qualifications may be rejected at the sole discretion of Metrolinx, and upon such rejection shall be resubmitted by the Consultant without disclaimers, exclusions or qualifications.
 - III) Contractor Performance Evaluation; and

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IV) Consultant Performance Evaluation.

END OF SECTION

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Appendix “C” – Metrolinx Work

Metrolinx shall:

- (a) provide the Consultant with general direction in the provision of the Work;
- (b) Designate an individual to act as its Representative, who shall transmit instructions to, and receive information from the Consultant. The designated Metrolinx Representative will be accountable for all project expenditures relative to design, procurement and construction activities;
- (c) provide access to and where necessary, make available copies of existing plans, reports, studies, information and correspondence relevant to the Project;
- (d) Make available registered land plans, legal documents and surveys, where necessary, defining the property limits of land affected by the project, following acquisition. (Note that the Consultant is to determine requirements for initial and additional surveys);
- (e) attend with the Consultant at public presentations and information centres and at liaison meetings with Metrolinx in-house Offices, CN and CP Rail, all affected external, federal, provincial, municipal, utilities and other governing agencies as required to obtain concurrence with design;
- (f) arrange and chair pre-design meeting with Metrolinx architectural, mechanical, electrical and communications engineering disciplines to establish design input and liaison requirements throughout the Project;
- (g) arrange and chair a separate pre-design meeting with the Metrolinx User Group(s) to define operational requirements as related to facility design;
- (h) provide a Preliminary Project Schedule outlining required major milestones of the work;
- (i) ensure that all Agreements between Metrolinx and external agencies are executed in a timely manner;
- (j) provide the Consultant with contact names of the individual(s) who shall be representing the railways, regions, municipalities, government agencies or other jurisdictional bodies;
- (k) facilitate arrangements and provisions for the Consultant’s entry to property (public and private) as well as the site of the Project, as necessary to enable it to perform its Work;

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- (l) review final contract package prior to submission to ensure that the drawings and specifications have addressed Metrolinx engineering, operational and procedural requirements;
- (m) arrange for public advertisement:
 - (i) for notification of public meeting,
 - (ii) for submission in accordance with Metrolinx’s Procurement & Contract Services Policies and Procedures;
- (n) attend meetings with the contractor(s) as required;
- (o) arrange for necessary services from the applicable railways such as design approvals, inspection and flagging;
- (p) arrange for the necessary information bulletins to inform the public of any potential service disruptions or inconvenience that will occur as a result of the Project;
- (q) Ensure that valid changes to the contract receive approvals in a timely manner. Final analysis of change(s), based on Consultant’s justification including cost benefit, will be undertaken by Metrolinx prior to approval;
- (r) receive and approve all invoices and payment certificates, submitted by the Consultant or by the contractors through the Consultant; and

END OF SECTION

DOCUMENTS

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Appendix “D” – Documents

The following Documents form part of, and are appended to this Request Document.

ITEM NO.	DOCUMENT TITLE
1.	Metrolinx Safety Guidelines For Consultants, Contractors and Project Coordinators
2.	CCDC2/4 Supplementary General Conditions
3.	MTC – Standards & Guidelines for Conservation of Provincial Heritage Properties
4.	USRC Towers CHR Vol 1
5.	USRC Towers CHR Vol 2
6.	USRC Towers CHR Vol 3
7.	USRC Cherry Street SCP Vol I DRAFT
8.	USRC Cherry Street SCP Vol II Appendices Draft
9.	USRC HIA Cherry Street
10.	USRC HIA John Street
11.	USRC HIA Scott Street
12.	USRC John Street SCP Col 1 DRAFT
13.	USRC John Street SCP Vol 2 Appendices DRAFT
14.	USRC Scott Street Appendices Vol 2 Reduced
15.	USRC Tower Assessments – Cherry Street Tower - AECOM
16.	USRC Tower Assessments – Scott Street Tower - AECOM
17.	USRC Tower Assessments – John Street Tower - AECOM
18.	Drawings
19.	Contractor Performance Appraisal – RQQ-2018-RCDV-225
20.	Sample Articles of Agreement - below
21.	Parental Guarantee
22.	New / Update Existing Vendor Form

APPENDIX “D” ADDENDUM NO. 3**DOCUMENTS**

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ITEM NO.	DOCUMENT TITLE
23.	Scott Street: “USRC Scott Street SCP Vol II Appendices Final 2014.11.21 (THA 1390)”; “USRC SCP Scott Street Final 2014.11.21 (THA 1390)
24.	Cherry Street Heritage Report: “USRC Cherry Street Tower Vol II Appendices Final 2014.11.21 Final and “USRC SCP Cherry Street Final 2014.11.21 (THA 1390)
25.	John Street Heritage Report: “USRC John Street SCP Vol II Appendices Final 2014.11.21 (THA 1390)”; “USRC SCP John Street Final 2014.11.21 (THA 1390)

END OF SECTION

SAMPLE ARTICLES OF AGREEMENT

These Articles of Agreement are made as of the ● day of ●, 20●

B E T W E E N

METROLINX, a corporation established pursuant to the Metrolinx Act, 2006

- and -

●

(hereinafter the “Consultant”)

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Metrolinx and the Consultant agree as follows:

1. Contract

- (a) The following documents and any amendments relating thereto form the contract between Metrolinx and the Proponent (the “Contract”):
 - (i) these Articles of Agreement;
 - (ii) any Addenda issued hereto;
 - (iii) the Form of Request;
 - (iv) Attachment #1 – Contract Prices;
 - (v) the document attached hereto as Appendix “A” and entitled “General Conditions”;
 - (vi) the document attached hereto as Appendix “B” and entitled “Consultant’s Scope of Work”;
 - (vii) the document attached hereto as Appendix “C” and entitled “Metrolinx Work”; and
 - (viii) the document attached hereto as Appendix “D” and entitled “Documents”.
- (b) In the event of discrepancies, inconsistencies or ambiguities of the wording of these documents, the wording of the document that first appears on the above list shall prevail over the wording of a document subsequently appearing on the list.

2. Date of Completion of Work and Description of Work

The Consultant shall, between the date of these Articles of Agreement and the ● day of ●, perform and complete with care, skill, diligence and efficiency the work that is further described as follows:

- (a) The Consultant shall provide labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, Work and facilities necessary to carry out ●, in accordance with the Consultant's Scope of Work, attached as APPENDIX "B" (the "Work").
- (b) The Work is to be provided to the satisfaction of the ●, unless otherwise specified.

3. Contract Price

- (c) ●

Subject to the terms and conditions of the Contract and in consideration for the Work, Metrolinx shall pay to the Proponent:

If the Consultant is a corporation:

●(Company's Full Legal Name)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Corporation

If the Consultant is a partnership:

(Partnership's Full Legal Name)

by its General
Partner,

(Name of General
Partner)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

If the Consultant is a Joint Venture or a Consortium:

Joint Venture/Consortium
Participant-in-Charge

(Company's Full Legal Name)

Per
:

Name:
Title:

Joint Venture/Consortium
Member

(Company's Full Legal Name)

Per
:

Name:
Title:

Joint Venture/Consortium
Member

(Company's Full Legal Name)

Per
:

Name:
Title:

**If the Consultant is an
individual:**

)

)

)

)

Witness

)

Name:

In witness whereof, the above signed has executed this agreement, this ____ day
of _____, 20____.