

Project Term Sheet

This Project Term Sheet sets out information regarding:

- Step 2 of the RFP;
- the draft development phase agreement (“**Development Phase Agreement**” or “**DPA**”) that covers the work associated with the development phase (the “**Development Phase**”) of the Project and will be appended to Step 2 of the RFP; and
- the draft design build agreement (“**Design Build Agreement**” or “**DBA**”) that covers the work associated with the implementation phase (the “**Implementation Phase**”) of the Project and will be appended to the draft DPA.

This Project Term Sheet is provided to Proponents for information purposes only and constitutes the terms that the City currently anticipates being included in Step 2 of the RFP, the draft DPA and draft DBA, which may be subject to change. This Project Term Sheet is not binding on the City in respect of any future Request for Proposals, Development Phase Agreements or Design Build Agreements.

	<u>Item</u>	<u>Details</u>
Overview		
1.	Summary of Step 2 of RFP Process	After shortlisting a maximum of 3 Proponents from Step 1 of the RFP Process, the City will conduct Step 2 of the RFP Process with the Shortlisted Proponents. The Step 2 Process will have at least 1 bilateral Commercially Confidential Meeting (CCM) to discuss the terms of the DPA and parts of the DBA, at least 1 interview between each Shortlisted Proponent and the City, and will culminate with the submission of a Price Proposal. The Shortlisted Proponent with the highest score in Step 2 of the RFP Process will become the Preferred Proponent.
2.	Summary of Development Phase	At the conclusion of Step 2 of the RFP Process, the City and the Preferred Proponent (the “ Development Partner ”) will execute the DPA. The Development Partner will work collaboratively with the City to advance the design of the Project to the design level specified in the DPA and finalize the terms of the DBA. The Development Phase activities will be delivered on an open-book basis, where the City will reimburse the Development Partner’s actual eligible costs incurred, plus overhead and profit fees. At the conclusion of the Development Phase, the Development Partner will provide a fixed price for the Implementation Phase. If the price is agreed to by the City,

	<u>Item</u>	<u>Details</u>
		the City and Development Partner, now the design builder (the “ Design Builder ”), will execute the DBA.
3.	Timelines	The following are estimated timelines for the Project: <ul style="list-style-type: none"> • Implementation Phase Substantial Completion date: December 2030 • Implementation Phase Final Completion date: 2032 Additional project timelines are available in the Data Sheet.
4.	Funding and Budget	<p>On September 29, 2023 City Council approved a budget increase of \$482.288 million from the originally adopted budget of \$552.712 million, for an amended budget of \$1.035 billion CAD (inclusive of City’s overhead, financing, engineering, consultants and contingency).</p> <p>The Project has been approved for federal and provincial funding under the Investing in Canada Infrastructure Program.</p>
5.	Related Work by City prior to Implementation Phase	The City will complete work related to the Project that will mitigate risks and reduce the potential for delays to the Project. These works are anticipated to include: <p><u>Canadian Pacific Railway Crossings</u>: A surface crossing and underground pipeline crossings (via utilidor) are required to connect NEWPCC facilities in Parcel A and Parcel B. The design of, required permitting for, and construction of these crossings is anticipated to be completed prior to the execution of the DBA.</p> <p><u>Watermain</u>: The watermain from Parcel A will be extended into Parcel B prior to the execution of the DBA.</p> <p><u>Stormwater Drainage</u>: Drainage from Parcel B will be routed to Parcel A into a storage pond. The storage pond and the drainage piping in Parcel A connecting to Parcel B will be constructed prior to the execution of the DBA. The drainage piping within Parcel B will be the responsibility of Design Builder.</p>
6.	Tri-Party Agreements	The City and Design Builder will jointly engage: <ul style="list-style-type: none"> • an Independent Certifier for payment certification services; and • a Referee for dispute resolution services.
Proposal Submission for Step 2 of RFP		

	<u>Item</u>	<u>Details</u>
7.	Evaluation of Step 2	<p>The Step 2 evaluation will consist of the following, with the respective weightings in the overall evaluation noted below:</p> <ul style="list-style-type: none"> • Technical Submission – 70% <ul style="list-style-type: none"> ○ Consisting of: <ul style="list-style-type: none"> ▪ Key Individual Qualifications and Experience (including social procurement Key Individuals), and ▪ Project Management Methodology (including team organization and social procurement methodologies) ○ For clarity, there is no design evaluation as part of Step 2 • Price Proposal – 10% <ul style="list-style-type: none"> ○ See Items 9 and 10 below for further details • Scenario Based Interview – 20%
8.	Social Procurement	<p>The anticipated social procurement details are provided in Appendix E of RFP Schedule 2.</p>
9.	Price Proposal	<p>The Price Proposal for RFP Step 2 will consist of:</p> <ul style="list-style-type: none"> • rates for corporate overhead and profit (expressed as a percentage of reimbursable eligible costs) for the Development Phase; and • rates for corporate overhead and profit for the Implementation Phase (expressed as a percentage of actual implementation costs incurred).
10.	Eligible Costs	<p>For the Development Phase, eligible costs will represent costs reasonably and actually incurred by the Development</p>

	<u>Item</u>	<u>Details</u>
		<p>Partner in connection with the scope of work in the Development Phase such as:</p> <ul style="list-style-type: none"> • project team payroll; • financial costs (e.g., letter of credit); • insurance premiums for project related insurance; • corporate office's staff (principally engaged in the Project, e.g., 50% or greater); • project-specific recruitment costs; • labour only subcontracts; • project offices (rent, operations, repair, maintenance); • essential supplies; • hardware/software; and • security, phones, etc. <p>The corporate overhead costs will cover costs such as corporate office overheads, non-project specific staff costs (i.e. not principally engaged on the project), travel, accommodation and subsistence costs for site personnel and designated design team staff (beyond amount included in the salary payroll allowance), etc.</p> <p>Detailed tables of eligible costs and corporate overheads will be provided in the draft Development Phase Agreement in Step 2 of the RFP.</p>
11.	Proposal Submission Fee	<p>The City will offer a lump-sum Proposal Submission Fee in the amount of \$100,000 plus applicable taxes, which will be paid to Proponents who actively participate in the RFP Process and who submit a full and proper Step 2 Submission that meets any minimum scoring thresholds set out in the RFP.</p>
Development Phase Scope		
12.	Scope of Work	<p>The scope of work for the Development Phase will include:</p> <ul style="list-style-type: none"> • Development of Management Plans for both Development Phase and Implementation Phase • Design of the Biosolids facility with major submittals at the Preliminary (approx. 30%) and Intermediate

	<u>Item</u>	<u>Details</u>
		<p>(approx. 60%) design levels, including design reports, engineering drawings and construction specifications</p> <ul style="list-style-type: none"> • HIRA, HAZOP and Asset Criticality reviews • Special studies and models for the design • Additional site investigations as required • Implementation Phase schedule development • Implementation Phase cost estimates • Implementation Phase proposal • Stage Gates at major decision points
13.	Collaborative Workshops	<p>Collaboration between the City and Development Partner throughout the Development Phase is a key feature of this Project. The City and Development Partner will participate in several collaborative workshops during the Development Phase as the design progresses. The workshop topics could include:</p> <ul style="list-style-type: none"> • Technical design topics • Risk management • Cost modeling and estimates • Constructability • Value engineering • Construction schedule and sequencing • Commissioning planning • O&M topics • Implementation Phase pricing
14.	Site Investigations	<p><u>Subsurface Investigations:</u> In addition to existing geotechnical and hydrogeological data and reports, the City has carried out additional investigations. The reports from these investigations will be provided as part of the background information to the DPA.</p> <p><u>Environmental Investigations:</u> Soil samples from the above-mentioned subsurface investigations will be tested for contamination. The reports from these investigations will be provided as background information to the DPA.</p> <p><u>Archeological Investigations:</u> A Heritage Resource Impact Assessment has been carried out on the site. The reports</p>

	<u>Item</u>	<u>Details</u>
		<p>from these investigations will be provided as background information to the DPA.</p> <p><u>Subsurface Investigations during Development Phase:</u> The Development Partner will be allowed to conduct and coordinate additional subsurface investigations during the Development Phase as necessary to complete its design. An allowance for these additional investigations will be incorporated into the Price Proposal.</p>
15.	Cost Estimating	<p>The Development Partner will provide the City with open-book cost estimates at regular intervals during the Development Phase (using the overhead and profit rates from the Step 2 Price Proposal), and for the final Implementation Phase Proposal</p>
16.	Design Level	<p>The Development Partner will advance the design of the Project to at least the 60% design level for all design elements prior to providing their Implementation Phase Proposal.</p>
17.	Proposal for Implementation Phase	<p>At the end of the Development Phase, once the design has been advanced and accepted by the City, the Development Partner will provide the City with a proposal for the Implementation Phase. The proposal will include a fixed price to complete the design, construct the Project, and provide all required training and commissioning, and an acceptance of the terms of the DBA.</p> <p>Based on Commissioning Planning (See Item 23), a Cash Allowance may be used for some Commissioning services depending on the agreed upon risk allocation. In this case, the Development Partner will provide rates for these Commissioning services with their Implementation Phase Proposal.</p>
18.	Termination of DPA	<p>Consistent with market precedent in Canada, in the event the Development Partner and City cannot agree on a fixed price, construction schedule or terms and conditions of the DBA, either party will have the right to terminate the DPA.</p> <p>In the event this termination is invoked, the City will have the right to enter a separate contract with the designer to complete the design of the Biosolids Facility. The City's expectation is that if the DPA is terminated prior to execution of the DBA, the Development Partner, or a subcontractor of the Development Partner responsible for design work, would remain liable for the City's reasonable use of all deliverables produced during the Development Phase in accordance with</p>

	<u>Item</u>	<u>Details</u>
		<p>Good Industry Practice. The City acknowledges that Development Phase deliverables may not be complete nor finalized, may not be fully detailed and may not be ready for construction, and the City’s “reasonable use” of any of Development Phase deliverables will be interpreted accordingly.</p> <p>The City is open to discussions with Proponents during Step 2 regarding potential alternatives to a right to assignment of the design subcontract upon early termination of the Development Phase Agreement provided that any alternative is consistent with the City’s right to maintain the ability to have reasonable use of deliverables produced during the Development Phase.</p> <p>The City will agree to a commercially reasonable liability cap that is consistent with market precedent in respect of liability arising from the City’s reasonable use of the deliverables following termination of the DPA and intends to include an insurable standard of care in the DPA. In addition, the City confirms that the Development Partner will not be responsible for the City’s indirect losses, including consequential damages.</p>
Commercial Terms for Development Phase		
19.	Payments	Payments to Development Partner will be made monthly based on progress of work properly performed.
Technical Requirements for Implementation Phase		
20.	Baseline Site Conditions	At the beginning of the Development Phase, the City will have baseline site conditions, including a geotechnical baseline report (GBR), that will be based on background information including the various investigations described in Item 14. Working collaboratively through the Development Phase, including agreeing on additional site investigations, the City and Development Partner will agree on the risk allocation for the site conditions to take into the Implementation Phase.
21.	Preselected Equipment	The City will negotiate agreements with the following equipment suppliers for the purposes of preselecting equipment for this project:

	<u>Item</u>	<u>Details</u>
		<ul style="list-style-type: none"> • Cambi thermal hydrolysis process system; and • Ostara phosphorus recovery system. <p>During the Step 2 Process, Shortlisted Proponents will be provided identical pricing, commercial terms, warranty, and technical information from both suppliers for their Price Proposal.</p> <p>During the Development Phase, Development Partner will enter into subcontractor agreements with Cambi and Ostara to bring their designs up to approximately 60%, to help plan installation, commissioning, and training services, and to provide pricing for the Implementation Phase.</p> <p>During the Implementation Phase, Design Builder will enter into subcontractor agreements with Cambi and Ostara for the supply, installation, commissioning, and training of their equipment.</p>
22.	Performance Requirements	<p>Design Builder will be responsible for demonstrating that the Infrastructure meets the City’s performance requirements, subject to specific criteria established collaboratively during the Development Phase, and in relation solely to criteria and circumstances within the Design Builder’s control.</p> <p>Design Builder will be responsible for demonstrating that the Infrastructure can function as set out in the Design Build Agreement with the incoming sludge, subject to a predetermined range established collaboratively during the Development Phase.</p> <p>The Design Builder will not be responsible for biosolids product quality issues caused by the City’s prescribed equipment suppliers (Cambi and Ostara) or caused by the City or any City contractors. The Design Builder will be responsible for Cambi and Ostara’s equipment requirements (i.e. pressure, time, temperature, etc.).</p> <p>There will be no performance guarantees for consumption of electricity, natural gas, chemicals, etc.</p>
23.	Commissioning	<p><u>Commissioning Planning</u>: During the Development Phase, the City and Development Partner will engage in collaborative workshops to develop the scope, assign resources (including the Commissioning Lead), and determine risk allocation for Commissioning.</p> <p>During Commissioning in the Implementation Phase, the City will provide licenced operations staff and Design Builder will</p>

	<u>Item</u>	<u>Details</u>
		<p>bring experienced process commissioning resources to form a team under the supervision of the Commissioning Lead.</p> <p>The scope of the Commissioning is expected to be:</p> <ul style="list-style-type: none"> • demonstrating correct installation (Equipment Checkout) • electrical load testing and testing equipment with clean water (Functional Testing) • testing systems with the process flows, loads and process sludge (System Operational Testing). • A full test of the entire facility (Performance Testing) <p>Successful completion of Commissioning will be a condition of Substantial Completion.</p> <p>Some aspects of Commissioning may be paid to Design Builder through unit rates described in Item 17.</p>
24.	Existing NEWPCC Site	<p>It is not currently envisioned that retrofitting of existing buildings or facilities on Parcel A, for purposes of this Project, is necessary. Piping and tie-ins to connect commodities including but not limited to water, sludge, chemicals, electricity, and automation fibre will be needed to connect the Project to the existing NEWPCC site.</p>
25.	Warranty Period	<p>The City will require a 2 year Warranty on all work that will commence on Substantial Completion, subject to customary exclusions.</p>
26.	Permits	<p>Design Builder will be required to obtain the standard permits relating to the design and construction of the Project. The City will obtain any permits relating to work in Item 5 (e.g. permits for the CPR crossings).</p> <p>A Cash Allowance will be used for the cost of the main building permit for the Project.</p> <p>The City will be responsible for updating the provincial environmental license.</p>
27.	Permanent Utilities	<p>Design Builder will be responsible for coordinating directly with Manitoba Hydro for the natural gas connection.</p> <p>An enabling project was completed in 2023 to upgrade the electrical supply ready for the Biosolids Facility. Design Builder will coordinate with the City for electrical connection, telecommunication connection and one of the potable water connections from Parcel A (see Item 5).</p>

	<u>Item</u>	<u>Details</u>
		Design Builder will coordinate with the City for an additional potable water connection from Ferrier Street.
Commercial Terms for Implementation Phase		
28.	Payments	<p>Payments to Design Builder will be made monthly based on progress of work properly performed. The monthly Progress Payments will be certified by an Independent Certifier.</p> <p>Progress Payments will have an advance payment for long-lead procurement items.</p> <p>For some Commissioning services, Design Builder may be paid under the Cash Allowance as described in Item 17.</p>
29.	Insurance	<p>The Project will require a combination of an Owner-Controlled Insurance Program (OCIP) and insurance obtained by Design Builder.</p> <p>The following will be part of the OCIP:</p> <ul style="list-style-type: none"> • Wrap-up liability insurance • Broad form builder's risk insurance • All risks property insurance • Equipment breakdown <p>Design Builder will obtain the following insurance:</p> <ul style="list-style-type: none"> • Commercial general liability insurance • Project specific professional liability insurance • Contractor's pollution liability insurance • Automobile liability insurance • Property insurance for equipment and tools • Evidence of worker's compensation coverage <p>Requiring all Subcontractors to have comparable insurance depending on their operations as described above</p>
30.	Contract Security	<p>Contract Security will be required from Design Builder as follows:</p> <p><u>Performance Bond</u>: 50% of Contract Price</p> <p><u>Labour and Material Payment Bond</u>: 50% of Contract Price</p> <p><u>Legislated Holdback</u>: 7.5% based on <i>The Builders' Liens Act</i>.</p>

	<u>Item</u>	<u>Details</u>
		<u>Warranty Letter of Credit</u> : \$5 million, submitted as a condition of Substantial Completion.
31.	Acceleration Payment	The DBA will include a financial incentive for early achievement of Substantial Completion date. The Acceleration Payment will be capped.
32.	Limits of Liability	The limit of liability will be \$100,000,000, applicable to both the City and Design Builder, subject to customary exclusions.