

THE P3 CANADA FUND FINANCIAL AGREEMENT FOR A COLLABORATIVE PROJECT

BETWEEN:

**PPP CANADA INC., as manager of the P3 Canada Fund
("PPP Canada")**

AND

THE CITY OF PORTAGE LA PRAIRIE

(the "Recipient")

WHEREAS PPP Canada is a Federal Crown Corporation mandated to work with the public and private sectors to encourage further development of Canada's public-private partnership market;

AND WHEREAS the Government of Canada created the P3 Canada Fund (the "**P3 Canada Fund**") as a vehicle to promote public-private partnerships in Canada by providing funding to eligible recipients;

AND WHEREAS PPP Canada has been created to improve the delivery of public infrastructure by achieving better value, timeliness and accountability to taxpayers through public-private partnerships to be funded by PPP Canada through the P3 Canada Fund;

AND WHEREAS the terms and conditions for the P3 Canada Fund Program include the ability to engage in projects which would build P3 capacity in the Recipient's organization to enable them to assess the usefulness of the P3 model for their capital procurement needs and thus support the market development objective of the P3 Canada Fund ("**Collaborative Projects**");

AND WHEREAS the Recipient has submitted to PPP Canada an application for funding from the P3 Canada Fund that qualifies for support under the P3 Canada Fund;

AND WHEREAS the Recipient has requested funding support and agrees to carry out the work related to the Collaborative Project and PPP Canada wishes to provide financial support ("**Collaborative Project Financing**") for said Collaborative Project, subject to the principles of value for tax payers, timeliness and accountability;

NOW THEREFORE, in accordance with the principles set out above, PPP Canada and the Recipient hereby agree as follows:

TABLE OF CONTENTS

1.1	Definitions	5
1.2	Entire Agreement	6
1.3	Schedules	7
2.	PURPOSE	7
2.1	Purpose of this Agreement.....	7
3.	COLLABORATIVE PROJECT FINANCING	7
3.1	Financial Contribution by PPP Canada.....	7
3.2	Commitments by the Recipient	8
3.3	Disclosure of Other Funding and Adjustments	8
4.	CONTRACT PROCEDURES	8
4.1	Awarding of Contracts.....	8
5.	CLAIMS AND PAYMENTS	8
5.1	Claims	8
5.2	Payment Conditions	9
6.	REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE RECIPIENT	10
6.1	Representations and Warranties	10
6.2	Covenants	11
7.	RECORD KEEPING	11
8.	AUDIT	11
8.1	Evaluation	11
9.	DEFAULT	12
9.1	Default	12
9.2	Remedies.....	12
9.3	Remedy Process	12
10.	DISPUTE RESOLUTION	13
11.	INDEMNITY AND LIMITATIONS	13
11.1	Indemnification	13
11.2	Limitations	13
11.3	Confidentiality	14
11.4	Communications	15
11.5	Interpretation.....	15
11.6	No Benefit.....	15
11.7	No Agency	16
11.8	No Authority to Represent	16
11.9	Assignment	16
11.10	Values and Ethics Code	16
11.11	Severability	16
11.12	Lobbyists and Agent Fees	16
11.13	Amendments	17
11.14	Notice.....	17
11.15	Applicable Laws / Forum.....	17
11.16	Further Assurances.....	18
11.17	Force Majeure	18
11.18	Language.....	18
11.19	Fees and Expenses	18
11.20	Counterpart Signature.....	19

SCHEDULE A – COLLABORATIVE PROJECT DESCRIPTION AND DELIVERABLES 20
SCHEDULE B – ELIGIBLE COSTS 25
SCHEDULE C – P3 BUSINESS CASE DEVELOPMENT GUIDE 27

INTERPRETATION

1.1 Definitions

A capitalized term in this Agreement has the meaning given to it in this section.

“**Action**” has the meaning given in subsection 11.15.

“**Agreement**” means this financial agreement and all accompanying Schedules.

“**Applicable Laws**” means all present and future laws, statutes, regulations, by-laws, treaties, judgments, decrees and binding judgments of relevant courts of law having the force of law, all present and future official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any Relevant Authority.

“**Approval Date**” means June 13, 2014.

“**Business Day**” means a day other than a Saturday, Sunday or a statutory holiday in the Province of Ontario; and “**Business Days**” shall have a corresponding meaning.

“**City**” and “**Recipient**” means The City of Portage La Prairie..

“**City Manager**” means the city manager of the City or their designate appointed by resolution by Common Council.

“**Claim for Payment**” has the meaning given in 5.1.

“**Claims**” means any actual or threatened loss, liability, cost, charge, interest, claim, demand, allegation, action, cause of action, proceeding, suit, assessment, reassessment, proposed assessment or reassessment, damage, demand, expense, levy, tax, duty, judgment, award, fine, charge, deficiency, penalty, court proceeding or hearing cost, amount paid in settlement, encumbrance, and/or tangible and intangible property right (including all costs and expenses relating to the foregoing, including legal and other professional adviser and expert fees and expenses), and whether arising by contract, at common or statute law, in tort (including negligence and strict liability), in equity, in property or otherwise of any kind or character howsoever, and howsoever arising; and “**Claim**” means any one of them.

“**Collaborative Project**” means, for the purpose of this Agreement, the preparation and delivery of a procurement options analysis and associated work products as described Schedule “A”.

“**Collaborative Project Financing**” means the contribution in respect of the Collaborative Project to be made by PPP Canada pursuant to this Agreement.

“**Confidential Information**” has the meaning given in subsection 11.3.

“**Contract**” means an agreement, contract, instrument or other commitment, whether written or oral, made between the Recipient and a Third Party, whereby the Third Party agrees to supply a product or service in respect of the Collaborative Project in return for consideration of any nature or kind.

“**Court**” has the meaning given in subsection 11.15.

“**Default**” has the meaning given in subsection 9.1.

“Dispute” means any dispute, controversy, Claim, disagreement or failure to agree arising out of, in connection with, or relating to the interpretation, performance or application of the Agreement.

“Effective Date” means the date this Agreement is signed by both Parties. If signed on different dates, the date of the last signature shall be the Effective Date.

“Eligible Costs” means those costs in respect of the Collaborative Project which are eligible for funding by PPP Canada under this Agreement, as described in Schedule “A”.

“Eligible P3 Business Case Costs” means those costs in respect of the Collaborative Project related to the P3 business case which are specifically included in Schedule “B”.

“Eligible Technical Work Costs” means those costs in respect of the Collaborative Project related to the technical work which are specifically included in Schedule “B”.

“Federal Crown” has the meaning given in subsection 11.3.

“Fiscal Year” means the period beginning April 1 of a year and ending March 31 of the immediately following year.

“Indemnified Parties” has the meaning ascribed thereto in Section 11.1.

“Losses” has the meaning ascribed thereto in Section 11.1.

“P3 Canada Fund” has the meaning given thereto in the recitals of this Agreement.

“Parties” means PPP Canada and the Recipient, and each is a **“Party”**.

“Proposal” means the Recipient’s application for funding in respect of the Project from PPP Canada through the P3 Canada Fund, submitted June 13, 2014.

“Relevant Authority” means any Canadian government, including any federal, provincial or municipal government, and any government agency, ministry, tribunal, commission or other authority including any regulated or other utility exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government.

“Senior Official” means that senior employee or officer appointed or duly authorized by the Recipient to act for the Recipient in connection with the Project.

“Third Party” means any individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, unincorporated organization or Relevant Authority, other than a Party to this Agreement, who participates in the implementation of the Collaborative Project; and **“Third Parties”** shall have a corresponding meaning.

1.2 Entire Agreement

This Agreement is made in respect of the P3 Canada Fund. This Agreement, including the Schedules hereto constitutes the entire agreement between the Parties with respect to the subject matter herein contained and supersedes all prior oral or written agreements.

1.3 Schedules

The following Schedules are attached to, and form part of, this Agreement:

Schedule “A” – Collaborative Project Description and Deliverables

Schedule “B” – Eligible Costs

Schedule “C” – Link to P3 Business Case Development Guide and Schematic Design Guide

2. PURPOSE

2.1 Purpose of this Agreement

This Agreement sets forth the terms and conditions upon which PPP Canada will make a contribution through the P3 Canada Fund to the Recipient in respect of the conduct and completion of the Collaborative Project.

3. COLLABORATIVE PROJECT FINANCING

3.1 Financial Contribution by PPP Canada

(a) In respect of the Collaborative Project, subject to the terms and conditions of this Agreement, PPP Canada shall make a total financial contribution to the Recipient equal to the lesser of either:

(i) 50% of the total Eligible P3 Business Case Costs plus 25% of the total Eligible Technical Work Costs incurred by the Recipient following the Approval Date or;

(ii) \$450,000

For greater certainty, the Parties agree that under no circumstances whatsoever, and notwithstanding any other provision in this Agreement, will PPP Canada be required to contribute more than \$450,000 to the Collaborative Project.

(b) The Parties acknowledge that, in respect of recipients who have not yet built their own in-house capacity to develop the P3 model, PPP Canada’s role in the Collaborative Project, in addition to making a financial contribution through the P3 Canada Fund, will be to share information and best practices and provide guidance related to such capacity-building undertakings as, for example, the development of procurement options analyses, output specifications, risk workshops, and risk allocation analysis. However, such assistance and guidance is not to be construed as the supervision of any activities related to the Collaborative Project. Further, notwithstanding Section 3.2, PPP Canada will not have any role in supervising the performance of any experts, advisors or analysts or any other Third Party engaged by the Recipient in respect of the Collaborative Project.

The financial contribution provided for the Collaborative Project in no way commits PPP Canada to any additional funding under either this Financial Agreement in respect of the Collaborative Project, or any other agreement which the Parties may enter into.

3.2 Commitments by the Recipient

The Recipient is responsible for the complete, diligent, professional and timely implementation and completion of the Collaborative Project, in accordance with the terms of this Agreement, and for all costs thereof, net of PPP Canada's contribution pursuant to this Agreement;

The Recipient will ensure that any Third Party engaged by the Recipient to undertake work on its behalf in respect of the Collaborative Project after the Effective Date will be agreed to by PPP Canada prior to the entry into any Contract by the Recipient;

The Recipient will, in the development of its procurement options analysis, comply with the P3 Business Case Development Guide (electronic link to guide is attached in Schedule C);

The Recipient will submit a comprehensive and robust Business Case which complies with the P3 Business Case Development Guide (electronic link to guide is attached in Schedule C);

The Recipient will ensure that all Contracts entered into by the Recipient provide PPP Canada with full access to all information, data, analysis and recommendations, including unrestricted access to electronic financial models, electronic risk matrices, and all final approved documents in electronic workable format that result from the Collaborative Project; and

The Recipient will advise PPP Canada of any meetings or events that are relevant to the completion or review of the Collaborative Project and provide PPP Canada the opportunity to attend such meetings/events as PPP Canada deems appropriate.

3.3 Disclosure of Other Funding and Adjustments

The Recipient shall forthwith (and, in any event, within no more than ten (10) days) inform PPP Canada of any other financial assistance, including grants, loans, repayable contributions and non-repayable contributions by any Relevant Authority applicable to the Collaborative Project. If, at any time, the Federal Government of Canada's total direct or indirect financial assistance in respect of the Collaborative Project (which shall include contributions to be made by Crown corporations, including by PPP Canada hereunder) exceeds the amount identified in Section 3.1, PPP Canada may reduce its contribution under this Agreement by an amount equal to the excess.

4. CONTRACT PROCEDURES

4.1 Awarding of Contracts

The Recipient will ensure that all contracts related to the Collaborative Project are awarded and managed in accordance with its relevant policies and procedures, a copy of which will be provided to PPP Canada. The Recipient acknowledges that it is completely responsible for all procurement processes associated with the Collaborative Project.

5. CLAIMS AND PAYMENTS

5.1 Claims

The Recipient may submit claims for payment ("Claim for Payment"), in respect of Eligible Costs incurred, as set out in Schedule "B".

The amount of the Claim for Payment will be calculated as follows: the total Eligible P3 Business Case Costs less any Eligible Costs previously paid by PPP Canada or any Relevant Authority, multiplied by 50 percent; and

the total Eligible Technical Work Costs less any Eligible Costs previously paid by PPP Canada or any Relevant Authority, multiplied by 25 percent.

The resulting amount will constitute the amount of the applicable payment to be made.

5.2 Payment Conditions

PPP Canada shall not have an obligation to make a payment to the Recipient unless and until PPP Canada has received and is satisfied with a written request for disbursement from the Recipient accompanied by:

A written certification from a Senior Official of the Recipient confirming that, to the best of such official's knowledge after due inquiry, as of the date of making the written request for the Claim for Payment:

- a) the Third Party has been paid the Claim for Payment pursuant to the Contract;
- b) the Eligible Costs claimed by the Recipient have been actually and properly incurred as demonstrated by copies of invoices and cancelled cheques as proof of payment;
- c) the representations and warranties confirmed or made in this Agreement by the Recipient are true and correct with the same effect as though such representations and warranties have been made on and as of the date of the written request for payment;
- d) all covenants and other obligations of the Recipient pursuant to this Agreement to be performed or complied with as of the date of the making of the Claim for Payment have been performed or complied with as of the date of the written request for payment;
- e) no act or thing does or may materially and adversely affect the Collaborative Project or the ability of the Recipient to perform its obligations under this Agreement; and
- f) no Default has occurred and is continuing.

If in PPP Canada's opinion, acting reasonably, the requirements in Section 5.2 of this Agreement have been fulfilled, PPP Canada will make the Payment to the Recipient within thirty (30) days of receipt of the Claim for Payment.

The work must be completed and received by PPP Canada by August 31, 2016. The associated invoices for the completed work must be received within the following 60 days.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE RECIPIENT

6.1 Representations and Warranties

The Recipient represents and warrants that:

- a) The City of Portage la Prairie is incorporated under the provisions of The Municipal Act, 1997, an Act of the Legislative Assembly of the Province of Manitoba, and has the legal power and authority to enter into, and perform its obligations under, this Agreement and the Collaborative Project;
- b) this Agreement has been duly authorized and executed by it and constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms;
- c) neither the making of this Agreement nor the compliance with its terms and terms of the Collaborative Project will conflict with or result in breach of any of the terms, conditions or provisions of, or constitute a default under any indenture, debenture, agreement or other instrument or arrangement to which the Recipient is a party or by which it is bound, or violate any of the terms or provisions of the Recipient's constating documents or any license, approval, consent, judgment, decree or order or any Applicable Laws applicable to the Recipient;
- d) the Recipient is not subject to any restructuring order under any applicable statutory authority;
- e) no litigation, arbitration or administrative proceedings are current or pending or have been threatened, and so far as the Recipient is aware no claim has been made, which is likely to have an adverse effect on its performance of the Collaborative Project or its compliance with its obligations under this Agreement;
- f) all factual matters contained in the Proposal were and continue to be true and accurate, and all estimates, forecasts and other related matters involving judgment contained therein were prepared in good faith and to the best of its ability, skill and judgment;
- g) the Recipient co-owns all rights, title and interest, including all intellectual property rights, in and to all reports and other documents prepared in connection with this Agreement or the Collaborative Project by or on behalf of the Recipient and/or has the authority to transfer an interest in such rights to PPP Canada as specified in this Agreement. Any person involved in the preparation of such reports and other documents has executed and delivered to the Recipient a written agreement which effects the assignment to the Recipient of all right, title and interest therein, including all intellectual property rights, and provides that such person has waived all its non-assignable rights (including moral rights) therein; and
- h) it has covenants with its Third Parties which require that no report or other document prepared in connection with this Agreement or the Collaborative Project by the Third Party infringes upon any of the intellectual property rights of any other person and the Recipient has not received any charge, complaint, claim, demand, or notice alleging any interference, infringement, misappropriation or violation of the intellectual property rights of any other person, nor does the Recipient know of any valid grounds for any bona fide claims based on a report or other document prepared in connection with this Agreement or the Collaborative Project.

6.2 Covenants

The Recipient covenants and agrees that:

- a) it will consider any contribution from PPP Canada as contemplated hereunder as reimbursement for payments made for the Collaborative Project;
- b) it shall provide to PPP Canada status reports, if requested with respect to the Collaborative Project; and
- c) that upon receipt of payment of amounts under this agreement to which it is entitled, it hereby grants PPP Canada a perpetual, non-exclusive, non-transferable and royalty-free license to use, reproduce, distribute, modify, adapt, change formats, display and translate all reports, documents or other information which is prepared and/or delivered by or on behalf of the Recipient to PPP Canada pursuant to this Agreement in furtherance of the goals and objectives of PPP Canada and/or the P3 Canada Fund. PPP Canada will give the Recipient 15 days advance notice of any intention to disclose or publish the Deliverables.

7. RECORD KEEPING

The Recipient will ensure that proper and accurate accounts and records in respect of the Collaborative Project are kept for at least five (5) years after the completion of the Project and will, upon reasonable notice, make them available to PPP Canada for inspection and audit.

8. AUDIT

PPP Canada may, at its expense, audit all accounts, records and claims for reimbursement relating to the Collaborative Project and may undertake reviews of the Recipient's administrative, financial and claim certification processes and procedures to ensure compliance with this Agreement.

In the event that such audit reveals an underpayment by PPP Canada to the Recipient, PPP Canada will promptly remit the amount of such underpayment to the Recipient. In the event that such audit reveals an overpayment by PPP Canada to the Recipient, the Recipient will promptly repay the amount of such overpayment to PPP Canada. The foregoing provisions are subject to, and do not alter, amend or impair the rights or obligations of the Parties under, the Agreement.

8.1 Evaluation

Following Fiscal Year 2015-2016, PPP Canada will conduct a final evaluation of all activities it has undertaken in respect of the P3 Canada Fund, and could use the Collaborative Project and the Project-related documentation as part of this evaluation process. If requested by PPP Canada, the Recipient will participate fully in either or both of such initial evaluation or final evaluation processes at its own expense.

Should the Recipient conduct its own evaluation process in respect of the Collaborative Project, PPP Canada will participate in such evaluation process at its own expense if it deems that the terms of its participation are reasonable.

9. DEFAULT

9.1 Default

Each of the following events shall constitute an event of default (“**Default**”):

- a) the Recipient has failed to comply with any of the terms or conditions of the Agreement and has failed to remedy such failure within thirty (30) days after written notice of same is sent to the Recipient or within such longer period as may reasonably be required to the performance of the terms and conditions of this Agreement;
- b) the Recipient has given PPP Canada false or misleading information;
- c) the Recipient has made a false or misleading statement to PPP Canada; and
- d) there occurs a breach of a material term or undertaking of the Contract which, in the opinion of PPP Canada, acting reasonably, impairs or threatens to materially impair the completion of the Collaborative Project.

9.2 Remedies

If PPP Canada determines that a Default has occurred then, notwithstanding any other remedy provided in law, PPP Canada may exercise one or more of the following remedies:

- a) terminate this Agreement, in whole or in part;
- b) suspend any obligation of PPP Canada to make any further payment hereunder, including monies due or accruing due which have not yet been paid;
- c) require the Recipient to repay all or a portion of contribution made by PPP Canada; and/or
- d) terminate any obligation of PPP Canada to make further contribution, including paying any past, present or future obligation.

For greater clarity, all of the foregoing remedies are cumulative.

9.3 Remedy Process

PPP Canada shall not exercise any one or more of the remedies set out in Section 9.2 unless:

- a) it gives the Recipient thirty (30) Business Days prior notice thereof;
- b) the Recipient does not file a notice of Dispute in accordance with Section 10 within such thirty (30) Business Days; and
- c) where a notice of Dispute pursuant to Section 10 has been filed by the Recipient, the determination of the Dispute process confirms PPP Canada’s right to exercise any one or more of the remedies set out in Section 10.

9.4 Termination on Notice

Each Party reserves the right to terminate this Agreement, without cause, upon thirty (30) Business Days prior written notice to the other Party.

10. DISPUTE RESOLUTION

If a Dispute should arise between the Parties regarding the application or interpretation of any provision of the Agreement or the performance of either Party hereunder, the aggrieved Party shall notify the other Party within ten (10) Business Days of the Dispute. If the Parties fail to resolve the Dispute within thirty (30) Business Days after delivery of such notice, the matter shall be referred to an *ad hoc* conciliation committee made up of one (1) senior management person from each Party. If the Dispute is not resolved within twenty (20) Business Days by such *ad hoc* committee, such Dispute shall be referred to the President and CEO of PPP Canada and the City Manager of the Recipient for final and binding resolution.

Any payments contemplated to be made by a Party hereunder which are related to a Dispute will be suspended, together with the obligations related to such issue, pending resolution.

11. INDEMNITY AND LIMITATIONS

11.1 Indemnification

The City agrees to indemnify and hold harmless the other Party and its directors, officers, employees, agents and advisors (the “**Indemnified Parties**”) from and against any and all liabilities, losses, Claims, actions, costs and expenses (including legal fees and disbursements) (“**Losses**”) suffered or incurred by them as a result of or arising directly or indirectly out of or in connection with this Agreement or the Collaborative Project, except such Losses as may result from the willful misconduct, fraud or negligent acts or omissions of the Indemnified Parties.

11.2 Limitations

In no event shall either Party have any liability for any indirect, incidental, special, or consequential damages, however caused and on any theory of liability (including negligence), arising out of this Agreement, including but not limited to loss of anticipated profits, even if such Party has been advised of the possibility of such damages. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

Save and except for the provisions of Section 9.1, neither Party shall be liable to the other for damages in excess of the aggregate amount of the contribution actually paid to the Recipient by PPP Canada pursuant to this Agreement.

By accepting or approving of any documents, certificates, agreements or other instruments pursuant to this Agreement or the Collaborative Project, PPP Canada is not warranting or representing, and shall not be deemed to have warranted or represented, as to the accuracy, completeness, suitability, fitness, sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation by PPP Canada to anyone with respect thereto.

The Recipient hereby acknowledges that PPP Canada may provide funding to numerous companies, entities and consortia, some of which may be competitive with the Recipient and/or Third Parties party

to Contracts (in this section, "**Competitive Entities**"). PPP Canada shall not be liable to the Recipient for any claim arising out of, or based on:

- a) the provision of funding by PPP Canada to any Competitive Entity; or
- b) actions taken by any director, officer or other representative of PPP Canada to assist a Competitive Entity (in the capacity as a director of such company or otherwise), whether or not such action has a detrimental effect on the Recipient or the Collaborative Project,

provided that PPP Canada will in all circumstances maintain the confidentiality of all information provided to it by the Recipient in accordance with the terms and conditions hereof.

11.3 Confidentiality

In this section, "**Confidential Information**" means all information relating to the other Party which is supplied by or on behalf of the other Party (whether before or after the date of this Agreement), either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with the other Party or which is obtained through observations made by the receiving Party. "Confidential Information" also includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information.

Each Party will hold in confidence any Confidential Information, provided that the provisions of this section will not restrict either Party from passing such information to its professional advisors, provided such advisors are subject to similar confidentiality obligations, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that the Recipient may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement, provide to the professional advisors documents and other information which are necessary for the Recipient's performance of this Agreement.

The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

- a) which the other Party confirms in writing is not required to be treated as Confidential Information;
- b) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
- c) to the extent any Person is required to disclose such Confidential Information by Applicable Laws, provided that such Person shall take all reasonable steps to limit such disclosure and any subsequent disclosure of such Confidential Information;
- d) to the extent required in connection with PPP Canada fulfilling the objectives of the P3 Canada Fund; or
- e) to the extent such Confidential Information is aggregated with similar information from other projects and is not attributed to the Recipient, or other Third Parties party to a Contract.

The Recipient recognizes the necessity for PPP Canada to provide verification and reporting pursuant to the requirements of Her Majesty the Queen in right of Canada (in this section, the "**Federal Crown**") applicable to entities disbursing public funds and consents to the disclosures reasonably necessary to effectively report to the Crown. The Recipient shall cooperate with PPP

Canada to enable PPP Canada to effectively report to the Crown, provided however that PPP Canada shall not disclose Confidential Information received from the Recipient to the Crown unless such Confidential Information is aggregated with similar information from other projects and is not attributed to the Recipient or other Third Parties party to a Contract, in which case the information will be deemed not to be Confidential Information.

11.4 Communications

PPP Canada will make public the name of the Recipient and the amount received. PPP Canada and the Recipient will agree in advance of any communications with the public in respect of this Agreement. Public disclosures or announcements made by the Recipient that do not refer to PPP Canada or the Government of Canada may be made in the Recipient's sole discretion.

11.5 Interpretation

In this Agreement, including the recitals and Schedules hereto, except where expressly stated to the contrary or the context otherwise requires:

- a) the headings to Articles, Sections, Subsections, Schedules and Appendices are for convenience only and will not affect the construction or interpretation of this Agreement;
- b) each reference in this Agreement to "section", "Schedule" and "Article" is to a section of, a Schedule to or Article to this Agreement;
- c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria made under that statute and any successor statute, each amended or re-enacted from time to time;
- e) each reference to a ministry, office, agency or similar body of any Relevant Authority is deemed to be a reference to any successor or replacement of such ministry, officer, agency or similar body;
- f) words importing the singular include the plural and vice versa, and words importing gender include all genders;
- g) in the event that any time period referred to in this Agreement shall fall upon a day which is not a Business Day, such time period shall be deemed to expire on the first Business Day thereafter;
- h) references to time of day or date mean the local time or date in Ottawa, Ontario;
- i) all references to amounts of money mean lawful currency of Canada; and
- j) the words "include" and "including" are to be construed as meaning "include without limitation" and "including without limitation".

11.6 No Benefit

No member of the House of Commons or the Senate of Canada will be admitted to any share or part of any Contract made pursuant to this Agreement, or to any benefit arising from it.

11.7 No Agency

No provision of this Agreement and no action by the Parties will establish or be deemed to establish a partnership, joint venture, principal-agent relationship, or employer-employee relationship in any way or for any purpose whatsoever between PPP Canada and the Recipient or between PPP Canada, the Recipient and a Third Party.

11.8 No Authority to Represent

Nothing in this Agreement is to be construed as authorizing any Third Party to contract for, or to incur any obligation on behalf of, a Party or to act as agent for a Party.

11.9 Assignment

The Recipient agrees to not transfer or assign its rights or obligations under this Agreement to any person without the prior written consent of PPP Canada.

11.10 Values and Ethics Code

No person governed by any post-employment, ethics and conflict of interest guidelines or policies of PPP Canada or the Recipient shall derive a direct benefit from this Agreement unless that person complies with the applicable provisions of the guideline or policy.

11.11 Severability

Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Agreement or the legality, validity or enforceability of that provision in any other jurisdiction except that if:

- a) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable; and
- b) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of such determination or this section the basic intentions of the Parties in this Agreement are entirely frustrated, the Parties will use reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

11.12 Lobbyists and Agent Fees

The Recipient warrants that any person it has hired, for payment, to speak to or correspond with PPP Canada on the Recipient's behalf concerning any matter relating to the contribution under this Agreement or any benefit hereunder and who is required to be registered pursuant to the *Lobbying Act*, R.S. 1985, c.44 (4th Supp.), is registered pursuant to that Act. Furthermore, the Recipient warrants that no payment or other compensation that is contingent or calculated upon the contribution hereunder or negotiating the whole or any part of the terms of this Agreement will be paid to a person.

11.13 Amendments

This Agreement may only be amended in writing by the Parties.

11.14 Notice

Any notice, information or document provided for under this Agreement will be effectively given if delivered or sent by letter, postage or other charges prepaid. Any notice that is delivered will be deemed to have been received on delivery, and any notice mailed will be deemed to have been received eight (8) calendar days after being mailed. A Party may change the address below by notifying the other Party in writing.

Any notice to PPP Canada must be sent to both:

100 Queen Street, Suite 630
Ottawa, Ontario K1P 1J9
Attn: John McBride, CEO

Any notice to the Recipient will be addressed to:

City Manager
City of Portage la Prairie
Portage la Prairie, Manitoba
R1N 0L8

Each Party may change the address that it has stipulated by notifying the other Party of the new address in writing.

11.15 Applicable Laws / Forum

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario which will be deemed to be the proper law of this Agreement.

Except where the Parties utilize the dispute resolution procedure set out in Section 10 of this Agreement, the courts of the Province of Ontario (in this section, collectively, the “**Court**”) shall have the exclusive jurisdiction to entertain and determine all Disputes, Claims, suits, actions and other proceedings of any nature or kind arising out of or in connection with this Agreement including, without limitation, specific performance, injunction, declaration of damages or otherwise, both at law and in equity (in this section, collectively, an “**Action**”), and each of the Parties do and shall irrevocably submit to the exclusive jurisdiction of the Court and hereby waives, and will not assert by way of motion, as a defence, or otherwise, in any Action, any Claim that: (i) that Party is not subject to the jurisdiction of the Court; (ii) the Action is brought in an inconvenient form; (iii) the venue of the Action is improper; or (iv) any subject matter of the Action may not be enforced in or by the Court. In any suit, action or proceeding brought to obtain a judgment for the recognition or enforcement of any judgment rendered in any Action; no Party will seek any review with respect to the merits of any Action, whether or not that Party appears in or defends that Action.

11.16 Further Assurances

Each Party will promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement and to complete the transactions contemplated by this Agreement.

11.17 Force Majeure

The dates and times by which either Party is required to perform any obligation under this Agreement shall be postponed automatically to the extent, for the period of time, and to the degree that the Party is prevented from so performing by circumstances beyond its reasonable control. Said circumstances shall include acts of nature, strikes, lockouts, riots, acts of war, epidemics, government regulations imposed after the fact, fire, power failures, earthquakes or other disasters. A Party seeking relief under this section shall, as promptly as possible under the circumstances, provide the other Party with written notice of the circumstances, and its anticipated scope and time of postponement of its obligations.

11.18 Language

This Agreement has been drafted in the English language at the express wish of the Parties. Le présent document a été rédigé dans la langue anglaise à la volonté expresse des parties.

11.19 Fees and Expenses

The Recipient shall bear its own expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement and the transactions contemplated hereby, including, without limitation, all fees and expenses of agents, representatives, counsel and accountants, and in no event shall PPP Canada be responsible for such costs.

11.20 Counterpart Signature

This Agreement may be signed in counterpart, and the signed copies will, when attached, constitute an original agreement.

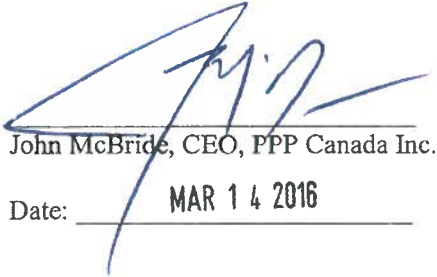
This Agreement has been executed by the Parties as of the dates provided below.

PPP Canada Inc.

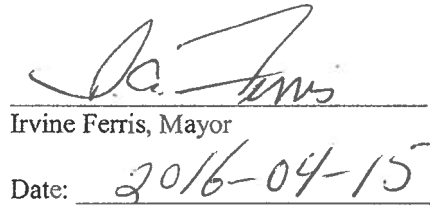
City of Portage la Prairie

Original signed by:

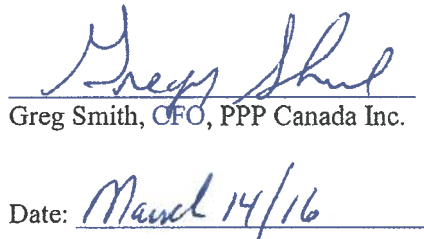
Original signed by:



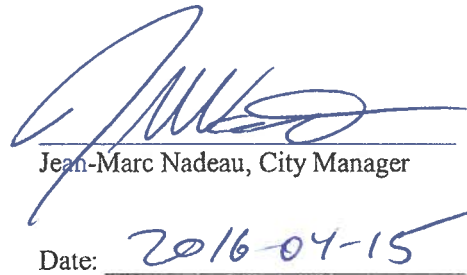
John McBride, CEO, PPP Canada Inc.
Date: MAR 14 2016



Irvine Ferris, Mayor
Date: 2016-04-15



Greg Smith, CFO, PPP Canada Inc.
Date: March 14/16



Jean-Marc Nadeau, City Manager
Date: 2016-04-15

SCHEDULE A – COLLABORATIVE PROJECT DESCRIPTION AND DELIVERABLES

For greater clarity, Collaborative Projects will be strictly limited to the development of Recipient P3 capacity and projects and nothing set out below shall be interpreted as expanding the definition of Collaborative Project.

Activity 1

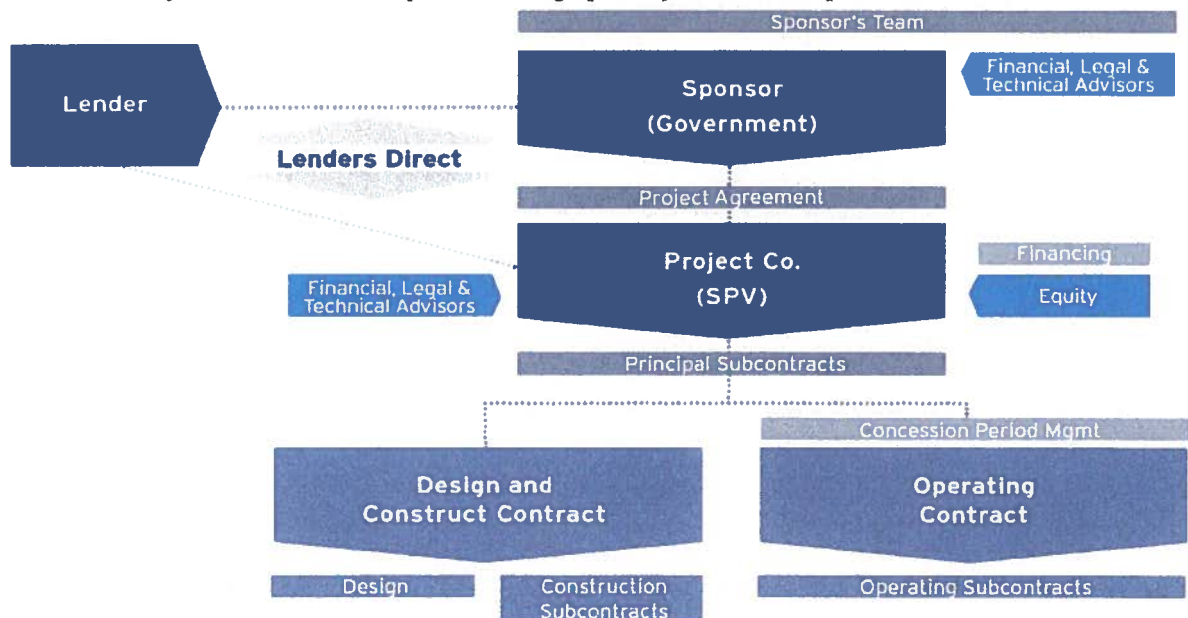
Procurement Options Analysis

Develop finalized procurement process, which includes the following components:

- Clearly describe the procurement approach with respect to the role of sponsor vis-à-vis the design, construction, operation and maintenance of the project.
- Substantiate the P3 models that are being examined by precedent transactions, inter-jurisdictional studies, or the knowledge and experience of a reputable advisor.
- Highlight the key evaluation criteria and provide clear articulation of assessment methodology.
- Provide information on key technical, financial, human health and environmental components of the Project.
- Evaluation criteria and scoring systems for evaluating the Technical and Financial Submissions.

Deliverables:

- Rationale for any and all scoring and/or ranking of delivery, including comment on the alignment of the project delivery models with the sponsor’s objectives and known constraints; and
- A short-list of project delivery models for quantitative analysis with graphically descriptions of the delivery structures. An example of such a graphic representation is provided below.



Activity 2

Market Sounding Report

- Prior to undertaking interviews, present PPP Canada with the proposed market sounding process and its participants and disclose the rationale for participant selection.
- Prior to undertaking interviews, present PPP Canada with the proposed number of potential proponents.

Develop and conduct an initial market sounding to determine:

- Types of guarantees that the private sector could provide;
 - Risks associated with the private sector assuming the existing components and requirements of the project;
 - Risk assessment, risk valuation;
 - The various technologies available; and
 - Alternative Partners & Business Models.
-

Deliverables:

Provide a report that articulates:

- The marketability of the project, considering market interest, financial capacity, risk allocation complexities, etc.;
- Potential market constraints;
- Specific concerns with respect to risk allocation;
- The exercise has begun to prepare the market for the project; and
- Estimated or confirmed assumptions to be used in the quantitative assessment.

Activity 3

Quantitative Risk Assessment

- Prior to the workshop, present PPP Canada with the proposed project risk analysis and risk allocation matrix, the participants in the workshop, describe the workshop methodology and highlight the main points of discussion.
 - Facilitate a risk workshop, with the objective of quantifying the consequences of each risk under each of the different shortlisted procurement models.
 - Identify and quantitatively assess project risks and allocating these risks between the Proponent and the private sector partner for the delivery model(s) under consideration.
 - Outline the process and methodology used to identify, assess and allocate risks. Describe the type of statistical analysis used to arrive at the distribution of impacts of each risk.
 - Analyze the results of the risk workshop to estimate the risk costs and risk ranges under each delivery model.
-

Deliverables:

- Risk quantification following Monte Carlo simulation and analysis results and output;
- A description of the risk profile of the project and the allocation of risks; and
- Summary tables showing the value of the risks retained and the transferred under both the PSC and Shadow Bid.

Activity 4

Financial Analysis

- The risk assessment results as well as all cost and schedule data will be analyzed in the financial model. Various runs of the financial model will be undertaken including stress testing of the results to determine whether the suggested P3 approach provides Value for Money (VfM) under a range of assumptions;
- All funding sources and revenue streams been disclosed. The revenue risk has been assigned.
- There is a project funding plan, including amounts, timing and formal approval.
- The terms associated with the funding commitments dependent on other sources of funding are clearly articulated.
- Funds are utilized in a manner that maximizes VfM.
- The sponsor's plan to meet the on-going commitments associated with the P3 project tangible, committed and sustainable.

Deliverables:

- A valid and complete working financial model for the project with a full set of financial assumptions.

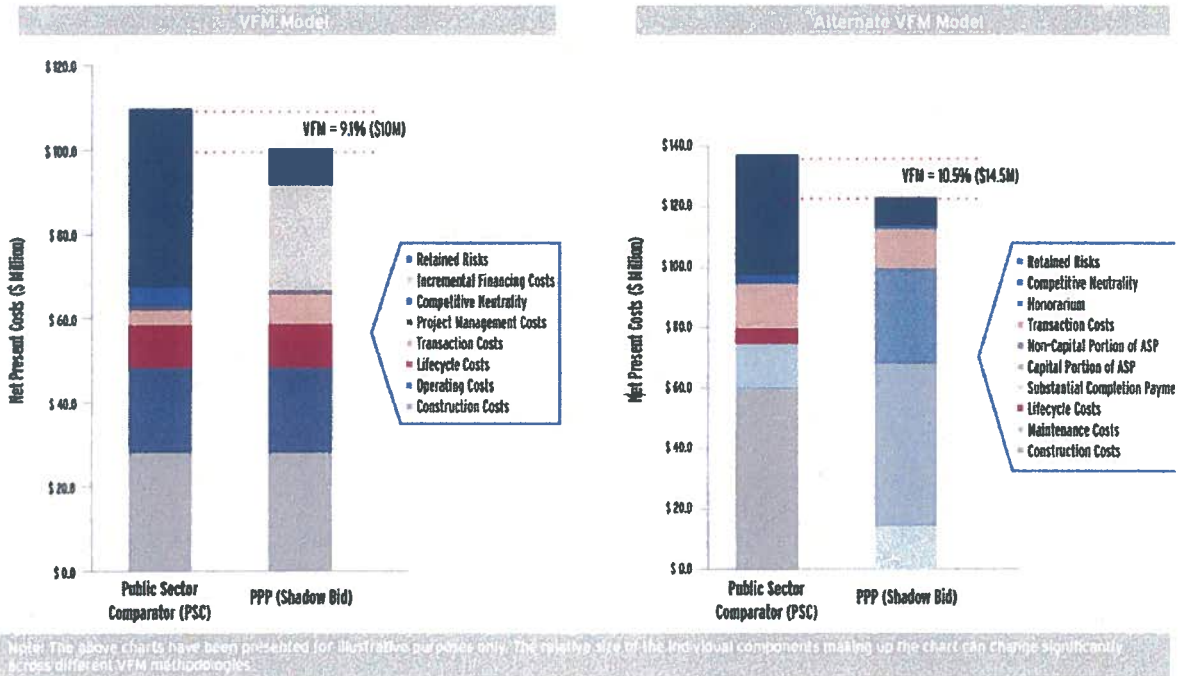
Activity 5

Value for Money Analysis

- The selected Value for Money methodology must be consistent with Canadian and/or international best practices. Any deviations from the selected methodology should have been disclosed and justified.
 - Cost information sources must be credible and disclosed.
 - Expected differences between the PSC and the Shadow Bid base and ancillary costs are clearly explained.
 - The risk allocation rationale and explanation supports that the model is appropriate and commercially reasonable.
 - Document the findings of the above tasks in a report that builds on the Strategic Assessment report and concludes with an assessment of whether or not the P3 approach is likely to deliver value to the City as compared to the traditional approach.
-

Deliverables:

- Notwithstanding the information contained in the unlocked financial models, results for the quantitative analysis will be presented using the following table and graph format. The cost table will be accompanied by a description of each line item, including relevant assumptions. Results of the quantitative analysis will be presented in the following chart and table formats.



Activity 6

Schematic Design Development and Cost Estimates

- The Schematic Design and Cost Estimates must be consistent with PPP Canada’s Schematic Design Estimate Guide. Any deviations should be disclosed and justified.
- Cost estimates for the project should provide a level of cost accuracy of -15% to +20%.
- The Schematic Design should encompass plans, elevations, sections, and palettes of materials that generally represents 30% design completion.
- The Schematic Design and Cost Estimates should be a key input into the financial model and inform the project S-curve and overall project budget.

Deliverables:

- A Schematic Design which adheres to PPP Canada’s Schematic Design Estimate Guide.
- A Cost Report which adheres to PPP Canada’s Schematic Design and Estimate Guide.

Note – all Descriptions of Collaborative Projects should also be delivered to PPP Canada in electronic format.

The following is a description of the costs incurred by the City of Portage La Prairie in the development of the Collaborative Projects:

PPP Canada Activities				
#	Activity	Eligible Costs (includes PST)	Funding Ratio	PPP Canada Funding (includes PST)
1	Procurement Options Analysis and Short-list	\$35,920.80	50.0%	\$17,960.40
2	Market Sounding Report	\$10,411.20	50.0%	\$5,205.60
3	Quantitative Risk Assessment	\$7,473.60	50.0%	\$3,736.80
4	Financial Analysis	-	50.0%	-
5	Value for Money Analysis	\$13,651.20	50.0%	\$6,825.60
6	Schematic Design Development and Cost Estimates	\$440,921.71	25.0%	\$110,230.443
	Project grand total (includes 8% PST)	\$508,378.51		\$143,958.83

SCHEDULE B – ELIGIBLE COSTS

B1. Eligible Costs for Collaborative Projects

The terms and conditions of the P3 Canada Fund have been amended to include terms and conditions governing Collaborative Projects. Projects under this category are not themselves instances of direct capital procurement but concern the development of relevant knowledge in prospective project proponents that would allow them to assess the usefulness of the P3 model for their capital procurement needs.

Eligible Costs for Collaborative Projects will include the costs of consultants (“Third Parties”) to aid Recipients in their development of relevant knowledge that would allow them to assess the usefulness of the P3 model for their capital procurement needs.

Eligible Costs are comprised of both Eligible P3 Business Case Costs and Eligible Technical Work Costs as described below:

Eligible P3 Business Case Costs are comprised of the following:

- o The undertaking and completion of a Procurement Options Analysis in support of the P3 compatibility to the Collaborative Project;
- o The undertaking and completion of a Market Sounding (i.e., determining the availability of suitable private sector partners for aspects of a P3 project) to the Collaborative Project;
- o The undertaking of a risk workshop and assessment of risks to determine the appropriate allocation and quantification of risks to the Collaborative Project; and
- o The completion of value for money analysis to determine whether or not the P3 approach delivers cost savings when as compared to a traditional approach.

Eligible Technical Work Costs

Eligible Technical Work Costs are comprised of the following:

- o Development of a Schematic Design and Cost Estimates.

B2. Costs that are not Eligible Costs

The following are not Eligible Costs:

- a) costs incurred before the Approval Date, June 13 2014;
- b) costs incurred for developing a case or proposal for funding from PPP Canada and/or the P3 Canada Fund;

- c) employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs incurred by the Recipient, and more specifically costs relating to services delivered directly by permanent employees of the Recipient, or of an agency or corporation owned and controlled by the Recipient, except in cases where the Recipient can demonstrate value for money and that the costs are incremental;
- d) costs of goods or services which are received through donations or in kind;
- e) Provincial sales tax and Goods and Services Tax, for which the Recipient is eligible for a rebate, and any other costs eligible for rebates;
- f) legal fees; and
- g) any costs not listed as Eligible Costs in Section B1.

SCHEDULE C – P3 BUSINESS CASE DEVELOPMENT GUIDE

P3 Business Case Development Guide

The document assists project sponsors who apply to the P3 Canada Fund to develop and submit a comprehensive and robust P3 business case.

The guide can be downloaded from: [P3 Business Case Development Guide | PPP Canada](#)

Schematic Design Estimate Guide

This guide highlights industry best practices aimed at achieving a high degree of accuracy. It addresses design requirements, approaches to the application of contingences, sector-specific considerations, and the treatment of outputs. The guide's methods also promote a consistent approach to the preparation of cost estimates, allowing for improved cost comparisons over time.

The Guide can be downloaded from: [Schematic Design Estimate Guide | PPP Canada](#)