

ADDENDUM No. 2

Dated February 9, 2017

REQUEST FOR PROPOSALS - RFP No. RP213-2017-01

For Architectural Design Consulting Services Firm, including Facility Planning, Design, Project Management, and Relocation Management

**DELETE** Schedule F - Terms and Conditions of the Agreement, in its entirety and **REPLACE** with the Schedule F - Revised Terms and Conditions of the Agreement, issued with this Addendum.\*

\*Tracked changes document will not be provided, due to extensive revisions.

End of Addendum No. 2



## Schedule F - Revised Terms and Conditions of the Agreement

### Background:

The funding for this contract (the “Contract”) provided by the Canadian Partnership Against Cancer Corporation (the “Partnership”) is, in whole or in part, obtained pursuant to a funding agreement (the “Health Canada Funding Agreement”) between the Partnership and Her Majesty the Queen in Right of Canada as represented by the Minister of Health (the “Minister”);

The Health Canada Funding Agreement requires the Partnership to require certain minimum terms and conditions in agreements.

The provider of the Services in the Contract (the “Consultant”) acknowledges the source of the funding and recognizes the need to ensure that there is a high level of accountability and transparency in the receipt and expenditure of the funding.

The Parties in the Contract agree that the following terms and conditions are included in addition to any other terms of the Contract:

### 1. Conflict and Priority

Any provision in the Contract other than these additional terms and conditions that is in conflict with any provision in these additional terms and conditions shall take precedence unless there is a specific statement in the Contract to the contrary.

### 2. Definitions:

In this Contract,

- a) “Amount” means the amount expressed in the Contract to be payable to the Consultant for the Services;
- b) “Additional Services” means services that are in addition to, or outside of, the scope of Services to be supplied by the Consultant under this Contract, as may be amended by a Change Order and/or Change Directive.
- c) “Business Days” means a day other than a Saturday, Sunday or statutory holiday that is observed by the construction industry in Toronto, Ontario.
- d) “Change Directive” means a written direction by the Partnership to the Consultant directing the Consultant to proceed with a change in the scope of the Services within the general scope of the Contract prior to the Partnership and Consultant agreeing on an adjustment in the Contract Price and/or time within which to supply the Services.
- e) “Change Order” means a written amendment to the Contract signed by both the Partnership and

the Consultant setting out their agreement to a change in the scope of Services, change in the Contract Price, if any, and adjustment to the time within which the Services are to be provided, if any.

- f) “Change Request” means a request made by the Partnership or the Consultant requesting a change in the scope of Services and/or the provision of Additional Services.
  - g) “Contract” means the agreement to which these terms and conditions form a part;
  - h) “Contract Price” means the amount set out in Section 19(a) of this Contract.
  - i) “Contractor” means the party retained by the Partnership to carry out the construction work for the Project.
  - j) “Consultant” means the person or entity whose name appears on the signature page of the Contract and who is to supply the goods or services to the Partnership under the Contract;
  - k) “Good Industry Practice” means using standards, practices, methods and procedures to a high commercial standard, conforming to all applicable laws and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from an experienced expert providing similar services in a similar type of first class project under the same or similar circumstances.
  - l) “Instruments of Service” means the paper or electric documents which comprise the design, drawings, sketches, graphic representations, and specifications and materials prepared by or on behalf of the Consultant in respect of the Services and/or this Contract.
  - m) “Partnership” means Canadian Partnership Against Cancer Corporation;
  - n) “Party” means the Partnership or the Consultant or any other signatory to the Contract and “Parties” means all of them;
  - o) “Project” means the buildout of the office space located at 145 King Street West, Toronto, Ontario.
  - p) “Services” means all of the services required to be done, delivered and/or performed by the Consultant pursuant to this Contract, and any changes or amendments thereto, and more particularly described in Schedule “A” to this Contract.
- ### 3. Accounts and Audit
- a) Intentionally deleted.
  - b) Intentionally deleted.



#### **4. Appropriation**

It is a condition precedent to the Partnership's obligation to make payment to the Consultant under this Contract that the Partnership has been provided with sufficient funding from the Minister for the fiscal year in which the payment is due. For each fiscal year in which the Services are to be provided, the Consultant shall obtain confirmation from the Partnership, in writing, that funding from the Minister has been received by the Partnership. The Partnership will provide notice within ten (10) Business Days if funding is cancelled or withdrawn.

#### **5. Assignment**

- a) The Contract shall not be assigned in whole or in part by the Consultant without the prior written consent of the Partnership, and any assignment made without that consent is void and of no effect.
- b) No assignment of the Contract shall relieve the Consultant from any obligation under the Contract or impose any liability upon the Partnership unless otherwise agreed to in writing by the Partnership.

#### **6. Changes**

- a) The Partnership, without invalidating the Contract, may make changes in the scope of Services consisting of additions, deletions or other revisions to the Services.
- b) The Consultant shall not perform any change in the Services or Additional Services without a prior written Change Order or Change Directive. It shall be a condition precedent to the Partnership's obligation to remit payment in respect of any change in the Services or Additional Services that a Change Order and/or Change Directive has been issued.
- c) If the Partnership requires a change in the scope of Services and/or Additional Services, the Partnership shall issue a Change Request to the Consultant. The Consultant shall, within three (3) Business Days of receipt of the Change Request, provide the Partnership with a proposal for an adjustment to the Contract Price and/or any extension of time for the provision of the Services. Once the Partnership and Consultant agree on the change of Service and/or Additional Services, the change in the Contract Price, if any, and the change in the time within which the Services are to be provided, if any, the Partnership shall set out in the agreement in the Change Order. The Change Order shall not be effective unless and until both the Partnership and Consultant have signed the Change Order.

- d) If during the progression of the Services, the Consultant requires a change in the scope of Services and/or Additional Services to be performed, the Consultant shall submit to the Partnership a Change Request setting out the requested change in the scope of Services and/or Additional Services, any adjustment in Contract Price and any adjustment in the time for the supply of the Services. If the Partnership and Consultant agree to the change of Services and/or Additional Services, the change in the Contract Price, if any, and the change in the time within which the Services are to be provided, if any, the Partnership shall set out in the agreement in the Change Order. The Change Order shall not be effective unless and until both the Partnership and Consultant have signed the Change Order.

- e) If the Parties are unable to agree on the change in the Services and/or Additional Services, change in the Contract Price and/or change in the time within the Services are to be provided, or if the Partnership requires the Consultant to proceed with a change in the Services or Additional Services that are within the general scope or intent of the Contract, the Partnership may issue a Change Directive to the Consultant. The Consultant shall proceed to carry out the Change Directive immediately upon receipt of the Change Directive. The Parties shall continue to agree on any adjustment in the Contract Price and/or time within which the Services are to be supplied, and if an agreement is reached the Parties shall record the agreement in a Change Order. Otherwise, the Partnership shall compensate the Consultant in accordance with the hourly rates attached as Schedule "B" to this Contract plus any reasonable direct expenses incurred by the Consultant.

#### **7. Communications**

- a) In the event that the Contract requires communications with members of the public, the Consultant shall take the necessary measures to respect the spirit and intent of the Official Languages Act to communicate with the public in the official language (i.e., English or French) of their choice;
- b) Any person, including individual researchers, related to the Consultant shall ensure that, as appropriate, announcements, services, documents, conferences, meetings, service shops, etc., be in both official languages, that community members of both official languages be encouraged to participate in its activities, projects or programs and that its activities, projects or programs will meet the needs of the two linguistic communities.



## 8. Compliance with Applicable Laws

The Consultant shall comply with all laws applicable to the performance of the Services or any part thereof including, without limitation, all laws concerning health and labour conditions and the protection of the environment, and shall require compliance therewith by all of its subConsultants. Evidence of compliance with such laws shall be furnished by the Consultant to the Partnership at such times as the Partnership may reasonably request.

## 9. Confidentiality

- a) The Consultant shall keep confidential all information provided to the Consultant by or on behalf of the Partnership in connection with the Services or any Additional Services, or acquired by the Consultant in the course of performing the Services or any Additional Services. The Consultant shall not disclose the information to any person without the written permission of the Partnership, except that the Consultant may disclose to a subConsultant, authorized in accordance with this Contract, information necessary for the performance of the subcontract. The Consultant shall treat as confidential and cause to those to whom it shares such information, during as well as after the performance of any Services under this Contract, any information to which the Consultant becomes privy as a result of acting under the Contract.
- b) This section does not apply to any information that:
  - i. is publicly available from a source other than the Consultant; or
  - ii. is or becomes known to the Consultant from a source other than the Partnership, except any source that is known to the Consultant to be under an obligation to the Partnership not to disclose the information.
- c) Upon request, the Consultant shall return to the Partnership all information provided to the Consultant by or on behalf of the Partnership or acquired by the Consultant in connection with the Services and any copies of the information, in any form whatsoever.
- d) The Consultant shall ensure that each and every subConsultant retained by the Consultant shall comply with Section 9 of this Contract.

## 10. Conflict of Interest and Government Contracting

- a) The Consultant declares that the Consultant has no interest in the business of any third party that would cause a conflict of interest or seem to cause a conflict of interest in carrying out the Services.

Should such an interest be acquired during the life of the Contract, the Consultant shall declare it immediately to the Partnership.

- b) It is a term of this Contract that no individual, for whom the post-employment provisions of the *Conflict of Interest and Post-Employment Code for Public Office Holders* or the *Conflict of Interest and Post-Employment Code for the Public Service* apply, shall derive a direct benefit from this Contract unless that individual is in compliance with the applicable post-employment provisions.
- c) The Consultant certifies that the Consultant and the Consultant's officers, agents and employees, are not prohibited under subsection 750(3) of the Criminal Code from benefiting from a government contract.
- d) No member of the House of Commons or the Senate shall be admitted to any share or part of this Contract or to any benefit to arise therefrom.
- e) The Consultant represents and covenants that no bribe, gift, benefit, or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of the Partnership or to a member of the family of such a person, with a view to influencing the entry into the Contract or the administration of the Contract.

## 11. Consultant Status

This is a Contract for the performance of the Services and the Consultant is engaged under the Contract as an independent Consultant for that purpose. Neither the Consultant nor any of the Consultant's personnel is engaged as an employee, servant or agent of the Partnership. The Consultant agrees to be solely responsible for any and all payments or deductions required to be made including those required for Canada or Quebec Pension Plans, Unemployment Insurance, Workmen's Compensation, or Income Tax.

## 12. Dispute Resolution

In the event that either of the Parties has a dispute relating to any matter subject to this Contract a ("Dispute"), unless the circumstances otherwise require, the Parties agree to make all reasonable efforts to resolve their dispute by amicable negotiations at the lowest applicable level and agree to provide on a without prejudice basis frank, candid, and timely disclosure of facts and documents to facilitate such negotiations. If such negotiations are unsuccessful, the Parties agree to refer the Dispute to their respective senior representatives. Should the matter not be resolved at this senior level, the Dispute shall be resolved through court action. Nothing in this Section 12



shall prevent a Party from preserving any right or remedy the Party otherwise has at law.

### 13. Entire Contract

The Contract constitutes the entire agreement between the Parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements relating to it unless they are incorporated by reference in the Contract.

### 14. Further Assurances

The Parties will agree to do, execute and deliver, or cause to be done, executed and delivered, all such further assignments, documents, instruments, transfers, acts, deeds, matters, assurances and things as, from time to time, may be reasonably necessary or desirable to give effect to this Contract and the obligations of the Parties hereunder.

### 15. Indemnification

- a) The Consultant agrees to indemnify and save harmless the Partnership and its officers, directors, employees, servants and agents from and against all claims, losses, damages, costs, expenses, actions and other proceedings, made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon, occasioned by or attributable to any injury to or death of a person or damage to or loss of property arising from any willful or negligent act, omission or delay on the part of the Consultant, the Consultant's servants or agents, and/or the Consultant's subConsultants, in performing the Services or as a result of the Services.
- b) The Consultant agrees to indemnify and save harmless the Partnership and its officers, directors, employees, servants and agents from all costs, charges and expenses whatsoever that the Partnership sustains or incurs in or about all claims, actions, suits and proceedings for the use of the invention claimed in a patent, or infringement or alleged infringement of any patent or any registered industrial design or any copyright or trade secret resulting from the performance of the Consultant's obligations under the Contract, and in respect of the use of or disposal by the Partnership of anything furnished pursuant to the Contract.
- c) The Consultant's obligation to indemnify and save harmless under this Section 15, shall not affect or prejudice the Partnership from exercising any other rights it has under the Contract or otherwise at law.

- d) The Consultant acknowledges that it, he or she, is not an employee, servant or agent of the Partnership or the Minister and will not represent or hold itself, himself or herself, out to third parties in that capacity. To the extent that any third party, in reliance upon representations by the Consultant, considers the Consultant to be an agent or employee of the Partnership, the Consultant agrees to indemnify and hold harmless the Partnership for any loss or damages and costs occasioned thereby by such third party.

### 16. Injury on Duty

The Partnership shall assume no liability for injury on duty while the Consultant is performing tasks related to this Contract except to the extent caused by or due to the Partnership. It is the Consultant's responsibility to ensure that proper insurance coverage is in place prior to the commencement of the Services.

### 17. Representations and Warranties

- a) The Consultant acknowledges, agrees, represents, covenants and warrants that it shall:
  - i. Perform the Services in accordance with this Contract and any and all Schedules hereto;
  - ii. Perform the Services, duties, responsibilities, and obligations herein for the sole and exclusive benefit of the Partnership in accordance with Good Industry Practice;
  - iii. Coordinate the Services with any subConsultants;
  - iv. Comply with, and ensure that all subConsultants comply with, all applicable laws in the performance of the Services and any directions of the Partnership;
  - v. Comply with all directions of the Contractor regarding any health and safety on the Project site;
  - vi. Ensure that all personnel employed by the Consultant shall be experienced, qualified, competent, and appropriate and that the Consultant has sufficient experienced, qualified and competent personnel to properly perform the Services;
  - vii. The Consultant has all proper licenses, registrations and/or permits from its applicable professional licensing body, and all such licenses, registrations and/or permits are up to date; and
  - viii. There are no pending, threatened, or anticipated claims or litigation involving the Consultant that would have a material



adverse effect on the financial ability of the Consultant to perform the Services.

### 18. Intellectual Property

- a) Copyright for the Consultant's Instruments of Service shall remain the property of the Consultant whether the Project proceeds and whether or not the Consultant has been paid for the Services. The Consultant grants a perpetual, irrevocable, transferable, royalty-free license to the Partnership for use of the Instruments of Service, including use for Project and any maintenance and/or future renovations and additions to the Project. For greater certainty, the within license shall continue in the event that the Consultant's services are terminated under this Contract whether or not there may be a dispute between the Consultant and Partnership relating to the amount of fees, if any, payable to the Consultant at the time or as a result of the termination.

### 19. Payment and Invoicing

- a) The Contract Price for the Services to be performed by the Consultant is exclusive of HST. The breakdown of the Contract Price is set out in the attached Schedule "B".
- b) On the last day of each month, the Consultant shall submit an invoice on its own form to the Partnership in respect of the Services provided during that period for the applicable percentage of the Contract Price. The invoice shall include the following information:
- i. Consultant name and address;
  - ii. Number assigned by the Partnership, if any, to this Contract;
  - iii. Consultant's Invoice Number and Date;
  - iv. The Period in which Services were rendered;
  - v. Deliverables and/or milestones completed (when applicable);
  - vi. Description of the Services performed; and
  - vii. Total amount for Services rendered, with HST shown separately.
- c) The Partnership shall review each invoice and remit payment to the Consultant, subject to the applicable lien legislation and any dispute, within sixty (60) days of receipt of a proper invoice, less the ten (10) percent construction lien holdback amount (the "Lien Holdback").
- d) If the Partnership has any reasonable objection whatsoever to an invoice, the supporting documentation, or the performance of the Contract by the Consultant, then the Partnership shall, within fifteen (15) days of receipt of the invoice or as quickly as reasonably possible,

notify the Consultant of the nature of the objection.

- e) Upon completion of all of the Services under this Contract, the Partnership shall remit payment of the Lien Holdback to the Consultant provided that: (i) the applicable lien period has expired; (ii) no liens have been preserved against the Project arising out of the Services provided by the Consultant or any party for whom the Consultant is responsible, which have not been vacated or discharged; and (iii) no claims have been made against the Partnership in respect of the Services, which remain unresolved.

### 20. Language

The Parties confirm it is their wish that the Contract be drawn up in the English Language.

### 21. Law of the Contract

The Contract shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. It is agreed that both Parties shall submit to the jurisdiction of the courts sitting in Toronto, Ontario.

### 22. Insurance

- a) The Consultant shall carry appropriate commercial liability, errors and omissions, professional liability and other insurance which relates to the subject matter hereof in amounts and form satisfactory to the Partnership and, at the Partnership's request and expense.
- b) Without limiting the generality of the foregoing, the Consultant shall effect and maintain during the terms of this Contract, at its own costs, the following insurance:
- i. comprehensive general liability insurance in the amount of not less than five million dollars (\$5,000,000.00) for any one occurrence for bodily Injury, property damage or death. Such policy shall include the *Partnership* as an additional insured and shall include a cross liability/severability of interests clause;
  - ii. standard automobile insurance covering owned and non-owned vehicles with limits of not less than two million dollars (\$2,000,000.00); and
  - iii. professional liability insurance with limits of not less than one million dollars (\$1,000,000.00) per claim and in the aggregate and a deductible not to exceed fifty thousand dollars (\$50,000.00). Such policy shall not exclude prior acts relating to the Consultant's Services under this



Contract. Such insurance shall be maintained during the period of construction and for a period of three years following completion of the work and Services. The Consultant agrees to advise the Partnership of any and all claims pending against such insurance prior to commencement of the work and subsequently when the Consultant becomes aware of any erosion in the policy limit by five hundred thousand dollars (\$500,000.00) or more or at the request of the Partnership in writing.

- c) The Consultant shall deliver certificates of insurance in a form satisfactory to the Partnership evidencing that the required insurance is in force at the inception of this Contract and each renewal thereof, and if requested by the Partnership the Consultant shall deliver certified copies of each insurance policy. Delivery to and examination by the Partnership of any certified copy of any policy of insurance or certificate thereof or other evidence of insurance shall in no way relieve the Consultant of any of its obligations pursuant to this Contract and shall in no way operate as a waiver by the Partnership of any of its rights.

### **23. Notices**

Where in the Contract any notice, request, direction, or other communication is required to be given or made by either Party, it shall be in writing and is effective if delivered in person, sent by any means including electronic means addressed to the party for whom it is intended at the address mentioned in the Contract and any notice, request, direction or other communication shall be deemed to have been given if by registered mail, when the postal receipt is acknowledged by the other Party; or by any other means when the receipt is acknowledged by the other Party. The address of either party may be changed by notice in the manner set out in this provision.

### **24. Liens**

- a) The Consultant shall keep the Project free from all claims, liens, attachments, charges or encumbrances in respect of the Services. In the event that a construction lien is preserved against the Project or a written notice of lien is received by the Partnership by or from anyone claiming through the Consultant, the Consultant shall, at its own costs and expense, within seven (7) Business Days of receiving notice of such construction lien or written notice of lien, regardless of whether or

not such notice is given by the Partnership or another party, vacate or discharge the construction lien and vacate any applicable certificate of action from title to the Project lands, and, in the case of a written notice of lien have the written notice of lien withdrawn.

- b) In the event that the Consultant fails to comply with paragraph 24(a), in addition to any other right or remedy the Partnership may have, the Partnership may (i) take any steps it determines, in its sole discretion, necessary to have the construction lien vacated or discharged and/or the written notice of lien withdrawn; and/or (ii) terminate the Services of the Consultant. If the Partnership takes the steps referred to in paragraph (b)(i), the Consultant shall fully reimburse the Partnership for any and all costs and expenses the Partnership incurs, including, without limitation all disbursements and legal costs incurred in a full indemnity basis.
- c) Notwithstanding any other provision of the Contract, the Partnership shall have no obligation whatsoever to remit any payment to the Consultant where a construction lien has been preserved against the Project, or a written notice of lien has been delivered, by anyone claiming through the Consultant, unless and until, such construction lien is vacated or discharged, or any written notice of lien has been withdrawn.
- d) This Section 24 shall not apply where a construction lien has been preserved solely as a result of the Partnership's failure to make any proper payment under this Contract.

### **25. Powers of the Partnership**

Every right, remedy, power and discretion vested in or acquired by the Partnership under the Contract or by law shall be cumulative and non-exclusive.

### **26. Proactive Disclosure**

- a) Information contained in this Contract in relation to the following data elements - vendor name, reference number, Contract date, description of Services, Contract period or delivery date, and Contract value, may be gathered, and may be posted on the Partnership web site. Information that would normally be withheld under the *Access to Information Act* and *Privacy Act* will not appear on the web site.
- b) This "public disclosure" is intended to ensure that Contract information is collected and presented consistently in a manner that promotes transparency and facilitates public access.

**27. Reporting**

- a) The Consultant shall provide the Partnership such progress reports, as required as part of the Services under the Contract. Unless otherwise provided in the Contract, the form and substance of the progress report shall be in a form agreed to by the Parties.
- b) The Partnership may, in its sole discretion, require the Consultant to provide an interim progress report on the Services under the Contract for a specified period of time (no more than a 12 month period).

**28. Severability**

If any provision of the Contract is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from the Contract and all other provisions of the Contract shall remain in full force and effect.

**29. Status and Replacement of Personnel**

- a) If at any time during the period of the Contract the Consultant is unable to provide the Services of any person who was to perform the Services in the Contract, it shall immediately advise the Partnership and provide a replacement person with similar qualifications and experience.
- b) The Partnership may reject any such replacement person and the Consultant shall immediately remove the person from the Services and shall secure a further replacement.
- c) The fact that the Partnership does not order the removal of a replacement person from the Services shall not relieve the Consultant from its responsibility to meet the requirements of the Contract.

**30. Subcontracting**

- a) Unless otherwise provided in the Contract, the Consultant shall obtain the prior written consent of the Partnership in writing prior to subcontracting or permitting the subcontracting of any portion of the Services at any tier. The Partnership shall not unreasonably withhold consent.
- b) The Consultant is not obliged to seek consent to subcontracts specifically authorized in the Contract.
- c) Any consent to a subcontract shall not relieve the Consultant from its obligations under the Contract or be construed as authorizing any liability on the part of the Partnership to a subConsultant.

**31. Successors and Assignees**

The Contract shall be for the benefit of and be binding upon the Parties hereto and their lawful heirs, executors, administrators, successors and assignees.

**32. Survival**

- a) Those terms and conditions that ought reasonably to survive the termination of this Agreement, shall so survive termination including, without limitation, Sections 9, 15, 18, 33 and 34.

**33. Termination Due to Default of Consultant**

- a) The Partnership may, by notice to the Consultant, terminate the whole or any part of the Services if:
  - i. the Consultant becomes bankrupt or insolvent, or a receiving order is made against the Consultant, or an assignment is made for the benefit of creditors, or if an order is made or resolution passed for the winding up of the Consultant, or if the Consultant takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors, or
  - ii. the Consultant defaults in the performance of any of the Consultant's obligations under the Contract to a substantial degree, and fails to correct such default within five (5) Business Days of receipt of notice from the Partnership of such default.
- b) In the event that the Partnership terminates the Services in whole or in part under this Section 33, in addition to any other right or remedy the Partnership may have, the Partnership may, in its sole discretion, arrange for the Services to be completed by another party or parties, upon such terms and conditions and in such manner as the Partnership deems appropriate, and the Consultant shall be liable to the Partnership for any excess costs relating to the completion of the Services.
- c) In the event of termination of this Contract, providing the Partnership has complied with its payment obligations hereunder, the Partnership shall be entitled to make full use of the Instruments of Service. The Partnership and the Consultant agree that the retention and use by the Partnership of the Instruments of Service in such circumstances does not constitute either a breach of the Consultant's copyright or this Contract. The Partnership and the Consultant further agree that any failure by the Consultant to promptly deliver to the Partnership an up-to-date set of the Instruments of Service upon a termination shall entitle the Partnership to seek, at its option, the appropriate equitable relief as





money damages would, in such circumstances, be an inadequate remedy.

- d) On termination under this Section 33, the Partnership shall have no obligation to remit payment to the Consultant for unpaid Services completed before termination, until completion of the Services under this Contract by another party or parties. Upon completion, the Partnership shall remit payment to the Consultant for any unpaid Services at the time of termination less an excess costs, expenses and damages incurred by the Partnership to complete the Services over and above the Contract Price. Should the costs, expenses and damages incurred to complete the Services over the Contract Price exceed the unpaid Services the Consultant shall pay to the Partnership the difference.
- e) The Consultant shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the Consultant under the Contract, exceeds the Contract Price applicable to the Services or the particular part thereof.
- f) If, after the Partnership issues a notice of termination under sub-section a), it is determined by the Partnership that the default of the Consultant is due to causes beyond the control of the Consultant, such notice of termination shall be deemed to have been issued pursuant to the section entitled "Termination or Suspension Without Cause" and the rights and obligations of the parties hereto shall be governed by that section.

#### **34. Termination or Suspension Without Cause**

- a) The Partnership may for any reason, give notice to the Consultant terminating or suspending the Services with respect to all or any part or part of the Services not completed. The Consultant shall proceed to complete parts of the Services not affected by the termination notice. Additional notices for different parts of the Contract may be given subsequently.
- b) All Services completed by the Consultant to the satisfaction of the Partnership based on the provisions of the Contract before the giving of such notice shall be paid for by the Partnership in accordance with the provisions of the Contract.
- c) All Services not completed before the giving of such notice shall be paid by the Partnership to the Consultant on a *pro rata* basis plus all costs of and incidental to the termination of the Services or part thereof, including the cost of cancellation of obligations incurred by the Consultant with respect to the terminated Services or part thereof; but not including the cost of severance payments

or damages to employees whose services are no longer required by reason of the termination.

- d) Payment and reimbursement under the provisions of this section shall be made only to the extent that it is established to the satisfaction of the Partnership that the costs and expenses were actually incurred by the Consultant and that the same are fair and reasonable and are properly attributable to the termination or suspension of the Services or the party thereof so terminated.
- e) The Consultant shall not be entitled to be reimbursed any amount which, taken together with any Amounts paid or becoming due to the Consultant under the Contract, exceeds the Contract Amount applicable to the Services or the particular part thereof.
- f) The Consultant shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by the Partnership under the provisions of this section except as expressly provided therein.

#### **35. Suspension by the Consultant**

- a) In the event the Partnership fails to make payment to the Consultant in accordance with the terms and conditions of this Contract, the Consultant may suspend the Services upon delivering five (5) Business Days notice to the Partnership of the Consultant's intent to suspend Services. If the default is not cured by the Partnership within twenty-five (25) Business Days of receipt of the notice required under this Section 35, the Consultant may terminate its Services.

#### **36. Time of the Essence**

- a) Time is of the essence of the Contract.
- b) Any delay by the Consultant in performing the Consultant's obligations under the Contract which is caused by an event beyond the control of the Consultant, and which could not have been foreseen and could not have been avoided by the Consultant by means reasonably available to the Consultant, constitutes an excusable delay. Events may include, but are not restricted to: acts of God, acts of Her Majesty, acts of local or provincial governments, fires, floods, epidemics, quarantine restrictions, strikes or labour unrest, freight embargoes and unusually severe weather.
- c) The Consultant shall give notice to the Partnership immediately after the occurrence of the event that causes the excusable delay. When requested to do so by the Partnership, the Consultant shall deliver a description in a form satisfactory to the Partnership, of Services-around plans including alternative sources and any other means that the Consultant will utilize to overcome



the delay and endeavour to prevent any further delay. Upon approval in writing by the Partnership of the Services-around plans, the Consultant shall implement the Services-around plans and use all reasonable means to recover any time lost as a result of the excusable delay. Any additional costs caused by the delay shall be supported by the Consultant.

- d) Notwithstanding that the Consultant has complied with the requirements of this section the Partnership may exercise any right of termination

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**End of RFP**

contained in the section entitled “Termination or Suspension Without Cause.”

**37. Waivers**

The waiver by a Party of a breach of any term or condition of the Contract shall not prevent the enforcement of that term or condition by that Party in the case of a subsequent breach, and shall not be deemed or construed a waiver of any subsequent breach.

## Request for Proposal (RFP)

### RP213-2017-01

#### For Architectural Design Consulting Services Firm, including Facility Planning, Design, Project Management, and Relocation Management

Please see the answers below regarding any questions raised in relation to this RFP.

**1. Question:**

The RFP states that the Canadian Partnership Against Cancer is looking for Architectural services, however it is not clear whether proposals will be accepted from teams which are not licensed with an Ontario Association of Architects (OAA) Certificate to Practice will be accepted?

**Answer:**

Architectural services is one component of the services that the Partnership is looking for. Other services are noted in the title of the RFP including design, project management and relocation management. Leads/prime consultants on the project should hold a bachelor's degree or equivalent in interior design or architecture, be a registered member in good standing with the applicable professional association such as the Association of Registered Interior Designers of Ontario (ARIDO) or Ontario Association of Architects (OAA) and have a Building Code Identification Number.

**2. Question:**

Can you please confirm if this project is to be led by an Architectural firm with an OAA Certificate, or what professional qualification will be considered for the prime consultant?

**Answer:**

**See answer to Question #1**

**3. Question:**

Please advise if the construction procurement method will be CCDC 2, i.e. Stipulated Sum (Design-Bid-Build).

**Answer:**

It is anticipated that the construction procurement method will be CCDC 2 - 2008, Stipulated Price Contract with Supplementary Conditions. This has been clarified in the Schedule F – Revised Terms and Conditions of the Agreement.

**4. Question:**

What class of cost estimates do you require, and at what stages?

**Answer:**

We would be looking to the successful Proponent to advise on this. Moreover, we will consider estimates during the schematic design phase, completion of the design phase and potentially during the bidding/negotiating phase.

**5. Question:**

Please confirm whether Mechanical and Electrical consulting services and the associated fees are required as part of this proposal. Or, if the client is intending to pursue engineering fees at a later time?

**Answer:**

The Proposal should provide all necessary fees associated with this Project. These costs could be included in the Schedule C – Pricing Sheet for Fixed Fee, with an hourly rate and estimate of hours or as a disbursement.

**6. Question:**

Type of Contract between the Proponent and the Partnership:

It is not clear what contract will be signed between the 2 parties. It is standard practice to use the *OAA 600 – 2013 Standard Form of Contract For Architect's Services*, which can accommodate supplementary conditions proposed by the Partnership. I have attached a copy of this.

Page 1

This states that this *“is not a tender call intending to place legally binding obligations of the Partnership or on any Proponent...”*

This would seem to be contradicted by the statement on page 15, Item 2.8, that states:

*“All of the provisions in this RFP and its schedules are deemed to be accepted by each Proponent and incorporated into each Proponent’s Proposal.”* Please clarify.

**Answer:**

The Contract between the successful Proponent and the Partnership will be Schedule F – Revised Terms and Conditions of the Agreement, issued with this Addendum.

The intention of the first page is to clarify that the act of submitting a Proposal does not constitute a contract between the Partnership and a Proponent who may submit a Proposal. The intention of the wording in 2.8 on page 15 is to confirm that the Proponent accepts the provisions of the RFP. Note Schedule F – Revised Terms and Conditions of the Agreement, issued with this Addendum.

**7. Question:**

Page 9

You state: *“The successful Proponent will provide project management services for the duration of the assignment to, for example, direct, coordinate, and ensure completion of all activities for the project, including budgeting etc”.*

The Architect cannot ensure completion of all activities if you are referring to construction activities. We can review for general conformance.

Please clarify what is meant by *“including budgeting etc.”*

**Answer:**

We expect that the successful Proponent will have many types of professionals working together on this Project. The successful Proponent is expected to act as the Consultant, as defined in the CCDC 2-2008 form of Contract. The successful Proponent’s team should consider including a team member with project manager experience in order to assist in having the Project stay within the budget by working with the Contractor and any vendors associated with the Project.

**8. Question:**

Page 11

You refer to: *“Listing of vendors to be engaged outside of the Proponents e.g. Security and AV consultants.”*

This statement is unclear. Do you mean that the hiring of security and AV consultants is outside of the architect’s scope and they will be hired by the Partnership?

Or are you referring to all consultants that will be retained by the architect and carried within the fixed fee price for the project, including mechanical, electrical and communications?

It is standard practice for an RFP to define what services it requires the architect to carry within their fee, by providing a list of required consultants.

However, generally the scope of work for certain consultants can only be defined during the design process, after the architect has been hired.

These consultants would include: AV, security, voice-data, signage.

Also, for project with your scope, a structural engineer might be required, if there is high density filing, for example, but this is not known at this time.

For this purposes of this RFP, we can provide the names of the proposed consultants but do not have enough information to provide fees for all of them. The fees that can be provided would be for mechanical, electrical, communication, costing, code consulting. Hourly rates could be provided for consultants such as structural.

**Answer:**

It is acceptable not to provide the fees for services such as consultants on AV and security in this RFP. However, if hourly rates can be provided for other consultants such as structural, then they should be included.

**9. Question:**

Page 12

1.10. Please clarify what is meant by “*fair market assessment*”, with respect to hourly rates for additional services.

**Answer:**

This was an example of a service but it may not be applicable to this project. The point of this section is that in addition to the Schedule C – Pricing Sheet for Fixed Fee, hourly rates for any additional services are needed should be included in the Proposal.

**10. Question:**

Page 15

2.8. The provisions of the RFP are unclear, as indicated by the questions that are being asked here.

**Answer:**

See the response in question 6.

**11. Question:**

Page 16

Item 2.11.10 (i) – “...*arising from the replacement of existing goods, services, practices, methodologies and infrastructure (howsoever originally established).*”

This statement does not apply to architectural services

**Answer:**

This section applies to the entire Proponent's proposal which includes more than architectural service and as stated in question 7 we expect that the successful Proponent's service will include the Contractor and any vendors associated with the Project, including furniture and other such vendors.

**12. Question:**

Page 21

Is an incremental cost estimate required as part of the scope of work?

**Answer:**

An incremental cost estimate could be considered under 13) Any other customary requirements if this is recommended. Preparation of incremental cost estimates, if requested by the Partnership, acting reasonably.

**13. Question:**

Item 6)

This calls for "*selection of sub-contractors*".

What type of construction contract is anticipated for the project – stipulated sum with a CCDC 2 contract or Construction Management, with a CCDC 5B contract?

In either type of construction contract, the sub-contractors are not selected by the Architect (who you refer to as the "Contractor"). There may be certain sub-contractors who are suggested by the "Contractor" (Architect) to be included in those tendering the project, or a list of certain sub-contractors who are included in a list of pre-qualified trades, but not all sub-contractors are selected in this way. The Constructor is the one to tender out to the sub-contractors.

Also the "Contractor" (Architect) does not "oversee construction." They provide *general review* services of Code and Non-Code related matters.

*General review* means review during visits to the place of the work (and where applicable, at locations where building components are fabricated for use at the project site) at intervals appropriate to the stage of the construction that the architect in its professional discretion, considers necessary to become familiar with the progress and quality of the work and to determine that the work is in general conformity with the construction contract documents, and to report, in writing, to the client, contractor and chief building official.

**Answer:**

Please see question 3 and question 7.

**14. Question:**

Item 7)

The scope of certain services called for in the RFP is not adequately defined, and your equipment needs are not known. This includes:

- Extent of re-use of existing furniture and corresponding amount of new furniture to be specified.
- Audio-visual requirements
- Type of security systems
- Type of voice-data systems

We request that the fees for this not be included in the overall scope of services for this RFP. Generally, a client carries an allowance for this and fees are determined later once the scope has been more defined.

**Answer:**

Proponents are not required to include the cost of new furniture, security systems etc in their Proposal. However, for example, fees to determine the extent of re-use of existing furniture and amount of new furniture should be included as part of the Project fees.

**15. Question:**

Page 22

Item 9) Relocation Services

Are you requiring the architect to hire relocation services as part of a Delivered Service?

Subcontracting

Please clarify what is meant by this. Are you referring to an architect's sub-consultants who are carried in their fee?

**Answer:**

The RFP is requesting more than architectural services. There should be members on the team, for example a project manager that can procure relocation services as part of their deliverables.

See question 7.

**16. Question:**

Page 23



Page 23 calls for *“the project to be delivered as a construction contract and will be tendered in accordance with the Partnership’s procurement policy.”*

What is the Partnership’s procurement policy? This relates back to the question about the type of construction contract that is anticipated for the project.

**Answer:**

See question 3. Procurement through stipulated bid using the CCDC 2 should align to the Partnership’s procurement policy.

**17. Question:**

Page 23 – Insurance

The RFP states *“the Partnership shall be named as additional insured”*.

PEO insurance is professional liability insurance so it is not applicable to name a client as additional named insured.

We also carry CGL Insurance that does allow a client to be named as additional insured.

*“The Partnership reserves the right to request such higher limits of insurance or other types policies appropriate to the work at the Partnership may reasonably require.”*

Please confirm that should this be requested that the Partnership will pay for the cost of the additional premiums.

Bottom paragraph: *“The successful Proponent shall be...”*

This is a clause that is used for construction contracts. Also, PEO insurance does not necessarily pay for legal costs incurred by the owner. PEO insurance covers errors and omissions and negligent acts. We request that this clause be reconsidered in an equitable manner.

**Answer:**

You would be expected to name the Partnership, as additional insured under the CGL Insurance not the PEO insurance.

**18. Question:**

Page 27 Item

2. Offer

This would seem to contradict the statement on Page 1 that *“it is not the intent of the partnership nor the effect of this RFP, to initiate contractual relations...”*

**Answer:**

See question 6.

**19. Question:**

Page 31

We believe that some of the terms and conditions are not clear, and are open to interpretation.

Schedule F

In general, there seems to be some confusion in the RFP and especially in Schedule F between what is the work of the “Contractor” (the architect) and their team of consultants, and what is the work of the constructor (contractor or construction manager) of the project.

**Answer:**

Please see Schedule F – Revised Terms and Conditions of the Agreement, issued with this Addendum.

**20. Question:**

Item 2. Definitions

Item c)

We would like to point out that the architectural team is providing services, not goods.

**Answer:**

Please see Schedule F – Revised Terms and Conditions of the Agreement, issued with this Addendum.

**21. Question:**

Item 3. Accounts and Audit

All of this pertains to the constructor, not to architectural services. Please clarify why the architect would need to “...provide records of the cost to the Contractor of the Work...” for their architectural services.

**Answer:**

Please see Schedule F – Revised Terms and Conditions of the Agreement, issued with this Addendum.

**22. Question:**

Item 4. Appropriation

Please confirm that there is sufficient funding to pay the architect's fees for this project.

**Answer:**

There is sufficient funding to pay for this Project.

**23. Question:**

Item 8. Compliance with Applicable Laws

This is a statement that applies to the constructor, not to architectural services.

**Answer:**

Please see Schedule F – Revised Terms and Conditions of the Agreement, issued with this Addendum.

**24. Question:**

Item 10 c)

Is this a government contract?

**Answer:**

No this is not a government contract. Though, the Partnership is a not-for-profit corporation funded by the Federal government.

**25. Question:**

Item 15 Indemnification

- a) This is a statement that applies to the constructor, not to architectural services.
- b) Per our question above, the Partnership can be a named insured for CGL insurance but not for PEO insurance.
- d) Please clarify what is meant by "*or reimbursement.*"

**Answer:**

Please see Schedule F – Revised Terms and Conditions of the Agreement, issued with this Addendum.

**26. Question:**

Item 17

These are statement that applies to the constructor, not to architectural services. It is mixing up the responsibilities of the architect and the constructor.

**Answer:**

Please see Schedule F – Revised Terms and Conditions of the Agreement, issued with this Addendum.

**27. Question:**

item 24 d)

This relates to the work of the Constructor, who must submit a Statutory Declaration with each request for payment during construction.

Are you asking for a Statutory Declaration from the Architect with each application for payment for his/her services?

**Answer:**

Please see Schedule F – Revised Terms and Conditions of the Agreement, issued with this Addendum.

**28. Question:**

Item 27 a)

Please clarify what are “*financial matters.*”

**Answer:**

Please see Schedule F – Revised Terms and Conditions of the Agreement, issued with this Addendum.

**29. Question:**

Item 30 a)

By “*subcontracting*” are you referring to the sub consultants that would be part of the architectural team within the scope of this project?

**Answer:**

Please see Schedule F – Revised Terms and Conditions of the Agreement, issued with this Addendum.

**30. Question:**

Item 37

This is a statement that applies to the work of the constructor, not to architectural services.

**Answer:**

Please see Schedule F – Revised Terms and Conditions of the Agreement, issued with this Addendum.

**31. Question:**

Will there be consideration given to providing all new lighting for the space, or is the intention to reuse the existing lights with decorative lighting in speciality areas?

**Answer:**

To be determined.

**32. Question:**

Will there be any requirement for design of critical power, such as UPS?

**Answer:**

There is no requirement for the design of critical power for the office. However this would be a consideration for relocating computer equipment such as servers.

**33. Question:**

We understand the space has been brought back to base, are the lights/ diffusers etc. on pallets or installed in the grid?

**Answer:**

The lights/diffusers are installed in the grid.

**34. Question:**

Are mechanical and electrical design consulting services required as part of this submission?

**Answer:**

See question 5.

**35. Question:**

Are communications design consulting services required as part of this submission?

**Answer:**

We have an internal communications team however input from the Proponent's project team will be expected.

**36. Question:**

Are security or design consultant fees required?

**Answer:**

Security consultant fees are not required at this time. See response to question 9 posted February 3, 2017. Design consultant fees are required as specified in Schedule A.

**37. Question:**

For Schedule D Reference Form D2 (page 34), do the references need to be different from D1 or can they be the same if relevant. Also, do sub consulting firms need to complete this form as well or just the architectural team?

**Answer:**

Refer to the previous Q&A document issued February 3, 2017, question #29.

**38. Question:**

Does the Fixed Fee include other consultant fees such as Mechanical, Electrical, Communications engineering services?

**Answer:**

See question 5.

**39. Question:**

Do you require copies of our insurance certificates as part of the submission?

**Answer:**

No, not at this time.

**40. Question:**

Schedule A notes that phasing and sequencing of construction and the physical moves will be critical to the successful delivery of this project. The Construction Phase is anticipated as August to October 2017. Can you describe in more detail what driving a phased approach? For example, do you require partial occupancy before October, or will you be coordinating construction with other tenants on the 9th floor?

**Answer:**

Refer to the previous Q&A document, question #8 issued February 3, 2017.

**41. Question:**

Can we recreate Schedule D - Reference Form (following the same layout and order) since it is not an editable file?

**Answer:**

Yes, as long as long the information required is included.

**42. Question:**

Section D of page 9 titled "Project Experience" states that we are to provide 3-5 projects of a similar size and scope but Schedule D – Reference Form on page 32 says to only provide 3. Can you please confirm the number of projects that are requested?

**Answer:**

Refer to the previous Q&A document issued February 3, 2017, question #29.

**43. Question:**

As per Schedule C, do our Mechanical and Electrical Engineering consulting fees fall under f) Other\* on the pricing sheet?  
Or is it anticipated that these fees are integrated within a) through e)?)

**Answer:**

See response to question 5.

**44. Question:**

Following receipt and review of Addendum 1 and the various Q&A discussions we would like to confirm if our assigned "Project Manager" is required to have formal PMP certification and

training, or if an in-house member of the project team with significant experience managing projects from start to finish is acceptable.

**Answer:**

The Project Manager should be able to demonstrate significant knowledge and experience managing these types of projects. PMP certification is not a mandatory requirement but would be considered an asset.

**45. Question:**

We would like to request clarification for answer to question number 33 in Addendum 1. Did you intend to write " We do not have a need for high density filing nor do we have it currently" ; or did you in fact mean you do require HDU storage in the new proposed space, but do not currently have at your existing location? As mentioned by the other proponent, if HDU is desired or required, we will need to consider this in our pricing, as a structural engineer will need to be engaged.

**Answer:**

We currently do not have high density filing nor do we require it in the future.

**46. Question:**

Can you confirm the subconsultants required as part of the project team to ensure that all bidders are working from the same assumptions. We understand that there may still be a substantial amount of unknowns with regards to the project, but it will be difficult for each proponent to assemble fair and equal fees without clear understanding of the requirements. We could provided each of these consultant fees as a line item, which can be deleted should you determine at a later date with the successful bidder that the services of a given consultant (for example audio-visual consultant or other) not be required.

As we understand it at the moment : Electrical Engineer (will also act as IT communication specialist), Mechanical Engineer (HVAC & Plumbing), and Architectural Consultant are required. We would like confirmation if a price should be given for: Structural Engineer, Audio Visual Consultant, and Cost Consultant. If this confirmation cannot be provided we will assume at this time that the above 3 consultants are not required as part of our pricing and scope.

**Answer:**

It would be advantageous if the Proposal was clear in the consultants required and whether their associated fees are included in Schedule C – Pricing Sheet for the Fixed Fee. For consultants where it's unclear please provide a listing of the Disciplines with their hourly rates. Please also refer to the responses in question 5 and 8.