CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Hamilton Water Division
and
CORPORATE SERVICES DEPARTMENT
Financial Planning and Policy Division

TO: Mayor and Members
General Issues Committee

COMMITTEE DATE: February 19, 2014

SUBJECT/REPORT NO: Biosolids Management Project - Public Private Partnerships (PPP) Canada Funding (PW11098c/FCS11112c) - (City Wide)

WARD(S) AFFECTED: City Wide

PREPARED BY: Dan McKinnon
Director of Hamilton Water
905-546-2424, Extension 5941

Dan Chauvin
Director of Woodward Upgrades
905-546-2424, Extension 5988

John Savoia
Senior Policy Advisor
905-546-2424, Extension 7298

SUBMITTED BY: Gerry Davis, CMA
General Manager
Public Works Department

SIGNATURE: Mike Zegarac
Acting General Manager
Finance and Corporate Services

OUR Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.
OUR Mission: WE provide quality public service that contribute to a healthy, safe and prosperous community, in a sustainable manner.
OUR Values: Accountability, Cost Consciousness, Equity, Excellence, Honesty, Innovation, Leadership, Respect and Teamwork.
RECOMMENDATION

(a) That the Mayor and City Clerk be authorized and directed to execute Public Private Partnerships (‘PPP’) Canada’s Conditional Financial Agreement (‘CFA’) as included herein as Appendix A, and all necessary associated documents, in a form satisfactory to the City Solicitor and with content acceptable to the General Manager of Public Works, and the General Manager of Finance & Corporate Services;

(b) That the General Manager of Public Works be authorized and directed to proceed with Phase 2 – Transaction Phase of the Biosolids Management Project as follows;

   (i) That the General Manager of Public Works be authorized and directed to proceed with the procurement and award of Transaction Advisors using approved funds from account 5160966910 having a budget of $2,500,000;

   (ii) That the General Manager of Public Works be authorized and directed to proceed with the procurement and award of the Fairness Monitor using approved funds from account 5160966910 having a budget of $500,000;

   (iii) That the General Manager of Public Works be authorized and directed to proceed with issuing the Request for Pre-Qualifications for the purpose of short listing qualified Proponents for the Biosolids Management Project;

   (iv) That the General Manager of Public Works be authorized and directed to proceed with issuing the Request for Proposal to the pre-qualified proponents resulting from (b)(iii) for the Biosolids Management Project as to identify a Preferred Proponent for Council’s consideration;

   (v) That the General Manager of Public Works present the results of the Request for Proposals from (b)(iv) to Council prior to any award.

EXECUTIVE SUMMARY

The main purpose of Report PW11098c/FCS11112c is to formally advise Council of PPP Canada’s acceptance of the City’s Business Case for funding support of the lesser of: (a) 25% of the Eligible Cost of the Project, and (b) $22.9 million towards the Biosolids Management Project (‘Project’), and to seek approval to proceed to the next phases of the project referred to as Phase 2 – Transaction Phase.

On December 18, 2013, PPP Canada formally announced it has accepted the City’s Business Case for its Biosolids Management Project and has committed the technical resources and financial support accordingly. In order to proceed, the City is required to enter into a Conditional Financial Agreement (‘CFA’) which outlines terms and conditions which the City must adhere to until such a time that a formal Financial Agreement (‘FA’) can be completed (referred to as ‘Interim Period’). The key activities of the Interim Period include the Transaction Phase which is the procurement activities that ultimately identify the Preferred Proponent, through the oversight of a Fairness
Monitor. Once a Preferred Proponent is identified and all the terms and conditions of the CFA can be demonstrated as being satisfied, PPP Canada will then enter into a FA with the City which commits the specific amount of funding being provided as well as other relevant terms and conditions and which allows the City to make the final award to the Successful Proponent.

This Report makes recommendations that will allow staff to execute the CFA and proceed with the next phase of the Project that will advance through a series of procurement activities where a Preferred Proponent is identified for Council’s consideration. This Report recommends that staff return to Council with the results of the associated procurement processes and prior to awarding the Request for Proposal for the Biosolids Management Project.

The recommendations from this Report will assist in meeting the Public Works key goal from the Innovate Now Business Plan process to be recognized as the centre of environmental and innovative excellence in Canada as this will be one of the first municipal water and wastewater PPP Canada funded projects in the country.

Alternatives for Consideration - See Page 6

FINANCIAL - STAFFING - LEGAL IMPLICATIONS

Financial: By approving the recommendations of this Report, Council is committing staff to proceed with procuring the services of a Transaction Advisor team and a Fairness Monitor in support of the Biosolids Management Project. A budget cost of $3.0 million will be carried and awarded as two separate contracts (estimated as $2.5 million Transaction Advisors and $500,000 Fairness Monitor). Budget for these activities were approved in December 2013, as part of the 2014-2023 Water, Wastewater and Storm Rate Budget under account 5160966910 – Biosolids Management Facility.

Council will have the opportunity in subsequent reports to approve the final financial commitment of this Project which Council has previously set at an affordability cap of $111 million for a 30 year design, build, finance, operate and maintain (‘DBFOM’) contract. Funds currently exist within the 10 year budget forecast of the 2014-2023 Water, Wastewater and Storm Rate Budget.

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

The recommendations contained within this Report have City wide implications.

The Report titled Biosolids Management Project – Public Private Partnerships (PPP) Canada Funding Business Plan Approval (PW11098a/FCS11112a) was presented to the General Issues Committee on May 11, 2012, for which the recommendations were as follows:
(a) That the General Manager, Public Works be authorized and directed to submit the Business Case attached as Appendix “A” to Report PW11098a/FCS11112a to Public-Private Partnerships (PPP) Canada requesting funding approval for either the Enhanced Treatment and/or Thermal Reduction alternatives for the City’s long-term Biosolids Management Solution;

(b) That staff report back to Council with an update subsequent to receiving a response from PPP Canada, and prior to proceeding with Phase 2 of the approved Workplan, attached as Appendix “B”.

As directed through Report PW11098a/FCS11112a, staff formally submitted the Business Case to PPP Canada as an application for funding towards the City’s Biosolids Management Project. The process within PPP Canada is structured such that the Business Case is first reviewed by their Business Development Group. Once the Business Case is deemed to meet PPP Canada standards, it is then forwarded to their Investment Group who then validates the financial assumptions within the Business Case. Once approved by both groups, a recommendation is then made to the PPP Canada Board for project approval. An overall workplan with key timelines was developed and approved by Council which was subsequently updated (milestones only) and attached as Appendix B for reference.

On December 18, 2013, PPP Canada formally announced it has accepted the City’s Business Case for the Biosolids Management Project, and has committed the financial support identified as the lesser of: (a) 25% of the Eligible Cost of the Project, and (b) $22.9 million. This Report recommends Council authorize the Mayor and City Clerk to execute the CFA on the City’s behalf which then formalizes the funding commitment, allowing the project to proceed to the next phase of procurement, and the development of a draft Financial Agreement as described earlier in this Report.

The rationale for the recommendations in this report is to support the advancement of the City’s Biosolids Management Project and includes a number of benefits as summarized as follows:

The Transaction Phase involves staff retaining Transaction Advisors with a scope of work which includes but is not limited to Legal, Financial and Engineering services to prepare all contract documents for the tendering of a 30 year design, build, finance, operate and maintenance (DBFOM) contract including oversight during design and construction through to Substantial Completion of the Capital Works. In addition, as per PPP Canada requirements, a Fairness Monitor will be retained to oversee the entire procurement process as an independent third party to satisfy PPP Canada and City Council that an open, transparent and fair process was undertaken for all proponents.

This Report recommends that staff return to Council with the results of the associated procurement processes and identification of the Preferred Proponent prior to awarding the Request for Proposal for the Biosolids Management Project. The schedule associated with Phase 2 is outlined in Appendix B to Report PW11098c/FCS11112c.
The recommendations from this Report will assist in meeting the Public Works key goal from the Innovate Now Business Plan process to be recognized as the centre of environmental and innovative excellence in Canada as this will be one of the first municipal water and wastewater PPP Canada funded projects in the country.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The proposed recommendation follow all City Policy’s in particular the Purchasing Policy.

RELEVANT CONSULTATION

Corporate Services Department - Staff from the Corporate Services Department are part of the Project Team and assisted in developing this Report and associated Recommendations.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The Rationale with proceeding with PPP Canada support for the Biosolids Management Project has many benefits as summarized as follows:

- A DBFOM contract is a form of public-private partnership that will allow the City to capitalize on the potential financial contribution from PPP Canada, to the lesser of: (a) 25% of the Eligible Cost of the Project, and (b) $22.9 million.

- Through the setting of a project affordability cap of $111 million, the City can leverage a more sustainable biosolids management solution for the same estimated cost of land application over a 30 year timeframe,

- A biosolids management project based on the proposed alternatives are expected to provide overall savings to the City over the term of the Project, by transferring risk to the private sector and anchoring the risk transfer by requiring investment of private capital over the long term (30 years).

- This approach allows the City to “let the market to decide” the suitable technology by providing an output specification that requires biosolids to be treated to a certain standard which is safe for marketing as a product and/or fertilizer, or thermally treated.

This Report makes recommendations that will allow staff to deliver the next phase of the Project and advance it through a series of procurement activities, where a Preferred Proponent is identified.

This Report also recommends that staff return to Council with the results of the associated procurement processes and prior to awarding the Request for Proposal for the Biosolids Management Project.
ALTERNATIVES FOR CONSIDERATION

As an alternative, Council may choose to not proceed with PPP Canada financial support for the Biosolids Management Project in which case the following may be considered;

1. Cancel PPP Canada application, continue with the current biosolids land contract which expires in 2016, and re-tender the service contract at that time with a term that allows the City time to update the Biosolids Master Plan.

ALIGNMENT TO THE 2012 - 2015 STRATEGIC PLAN

Strategic Priority #1
A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective
1.2 Continue to prioritize capital infrastructure projects to support managed growth and optimize community benefit.

Proceeding with the recommendations allows the City to undertake a selection process to move from a logistically challenging biosolids management program to a long-term sustainable biosolids management strategy that services the community for a period of at least 30 years, at no additional cost when compared to current practice of Land Application and transfers significant risk to the private sector.

1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Proceeding with the Recommendations allows the City to select a long-term biosolids management strategy through an open market procurement process that accounts for a more holistic life-cycle costing strategy over that of a lowest capital price which may have higher long-term operating and maintenance costs. In addition, through the establishment of a project affordability cap provides assurances to the community and Council that there is a defensible return on investment funding profile.

Strategic Priority #2
Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective
2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.
Proceeding with the Recommendations allows the City to select a sustainable long-term biosolids management option through an innovative process that promotes open and transparent technology selection and a procurement strategy which allows all key decision variables to be considered simultaneously. This model also leverages the creativity and capacity of the private sector to enable new technology and strategies that are reliable while minimizing risk to the City.

**Strategic Priority #3**

**Leadership & Governance**

*WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.*

**Strategic Objective**

3.1 Engage in a range of inter-governmental relations (IGR) work that will advance partnerships and projects that benefit the City of Hamilton.

Proceeding with the Recommendations allows staff to enhance consultation with external government funding agencies thereby positioning the City to secure the existing funding, as well as pursue future PPP Canada funding opportunities.

3.2 Build organizational capacity to ensure the City has a skilled workforce that is capable and enabled to deliver its business objectives.

Proceeding with the Recommendations in this report provides staff with experience analysing complex business decisions in consultation with internal and external Legal, Financial and Engineering expertise.

**APPENDICES AND SCHEDULES ATTACHED**

Appendix A: Conditional Financial Agreement (‘CFA’)
Appendix B: Biosolids Management Project Workplan
CITY OF HAMILTON BIOSOLIDS MANAGEMENT PROJECT
CONDITIONAL FINANCIAL AGREEMENT (the “Agreement”)

FROM
PPP CANADA INC., AS MANAGER OF THE P3 CANADA FUND
(“PPP Canada”)

Purpose: This Agreement document sets out: (i) the basic terms to be contained in the definitive Financial Agreement; (ii) the conditions precedent to entry into a definitive Financial Agreement; (iii) the required conduct of the parties and due diligence requirements necessary to satisfy the conditions precedent; and, (iv) the administration requirements of this Agreement.

Project: This Agreement is in respect of the project described in Schedule “A” hereto under the heading “City of Hamilton Biosolids Management Project” (the “Project”).

Eligible Recipient: City of Hamilton, ("City"),

Financial Support: PPP Canada’s financial support of the Project, in the form of a non-repayable contribution of funds (the "Support") shall be provided pursuant to and in accordance with a definitive Financial Agreement (the “Financial Agreement”) to be entered into between the City and PPP Canada (the “Parties” or “Party” if referring to only one of the signatories to this Agreement).

Applicable Laws: Means, for the purpose of this Agreement, all laws, statutes, regulations, by-laws, treaties, judgments, decrees and binding judgments of relevant courts of law having the force of law, all official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of 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.

Application of Support: To fund Eligible Costs in connection with the Project.

Eligible Costs: Has the meaning ascribed to that term in Schedule “B”.

Support Limits: PPP Canada’s Support in the Financial Agreement will be the lesser of: (a) 25% of the Eligible Costs of the Project, and (b) $22.9 million. Should the Government of Canada’s total direct financial assistance to the Project (of any nature whatsoever, and including assistance provided by PPP Canada or other Federal Crown corporations) exceed 25% of the Eligible Costs of the Project, PPP Canada shall reduce the Support accordingly.

Currency: All funds herein are expressed in Canadian dollars.
Payment of Support: Subject to the Support Limits set out above, the Support of:

(i) “Public Sector Implementation Costs” as defined in Schedule “B” to this Agreement, will be reimbursed based upon a written request for disbursement by the City, accompanied by supporting documentation.

(ii) “Direct Construction Costs” as defined in Schedule “B” to this Agreement will be remitted based upon:

(a) the Project achieving “Substantial Completion” in accordance with the Project Agreement between the City and the contractor (“Project Co.”) delivering the Project (the “Project Agreement”); and

(b) upon the issuance by an independent certifier of a certificate certifying that the Project has achieved the Substantial Completion criteria identified in the Project Agreement.

In order to make a claim for payment of Support, the City will be required to provide copies of reports and certificates to be delivered by the independent certifier under the Project Agreement.

For clarity, no Support is or will be remitted under this Agreement.

Financial Agreement: The Financial Agreement will be based on mutually acceptable terms and conditions and will reflect the particular nature of the Eligible Recipient and the Project.

Conditions Precedent: Prior to entering into the Financial Agreement, PPP Canada shall satisfy itself that the following conditions precedent have been met:

1. the City will have received all other necessary funding assurances for the Project to proceed as a public-private partnership (“P3”);
2. the fairness monitor, the financial advisor, the legal advisor and the technical advisor engaged will have extensive P3 experience advising public sector clients acceptable to PPP Canada;
3. the City will be responsible for ensuring that its technical advisors possess sufficient knowledge of both the Thermal Reduction technology and the Enhanced Treatment technology;
4. the Project will be undertaken in accordance with P3 best practices, methodology, processes and templates of Infrastructure Ontario or any of other leading P3 agency in Canada;
5. the City will have selected a preferred proponent with which it will enter into the Project Agreement;
6. the City will have refreshed the value for money using information from Project Co.’s submission and the refresh demonstrates that the Project has a positive value for money as compared to an appropriate public sector comparator;
7. all required environmental approvals for the selected technology will have been granted or that the Project Agreement will provide that Project Co. is responsible for obtaining any remaining permits and approvals at its risk;
8. the City will qualify the top three submissions to the Request for Qualifications and, if possible, at least two proponents using each of the Thermal Reduction or Enhanced Treatment technologies, should the top
three submissions involve both technologies;
9. the procurement process will be competitive, fair and transparent and is consistent with the Agreement on Internal Trade and Canada's international trade obligations and all other applicable provincial and municipal laws;
10. there has been no material change or change in any material fact (whether disclosed in this Agreement or otherwise) or a new material fact which has arisen which would be expected to have an adverse change on the business, affairs, condition or prospects of the Project (financial or otherwise);
11. there is no inquiry or investigation in relation to the City, Project Co. or any of the officers or directors or principal shareholders of the City or Project Co., as applicable, which in the opinion of PPP Canada, acting reasonably, could have a detrimental impact on the Project;
12. the City shall obtain from Project Co., and provide to PPP Canada, a detailed cost and quantity breakdown specifically related to the Project, as outlined in Project Co.'s financial model;
13. other reasonable conditions as are customary to a P3 transaction of this nature; and
14. in the event that the City has updated the information disclosed in this Agreement, including Schedule "A" hereof, PPP Canada shall satisfy itself as to the sufficiency thereof.

Conflict:
In the event of a conflict, discrepancy or ambiguity between the terms of this Agreement and the Applicable Laws, the Applicable Laws shall prevail except to the extent that any introduction, modification or application of any Applicable Law, after the 4th day of November, 2013, which has the effect of adversely affecting (i) the ability of either Party to fulfill its obligations herein or (ii) the economic or commercial position of either Party from what it was on the 4th day of November, 2013. In such event, either Party may terminate this Agreement by providing notice delivered in the manner contemplated in Schedule “D” hereto.

Due Diligence:
The City acknowledges that this Agreement is based on available information provided by the City and that PPP Canada has not concluded its own due diligence investigation of the City or the Project during the Interim Period (as defined below). During the Interim Period, the City will make available (or cause others to make available) to PPP Canada:

1. any document and all information reasonably required to permit PPP Canada to conduct due diligence on the fairness, competitiveness and transparency of procurement processes; the risk transfer to and responsibilities Project Co. and its members set out in the Project Agreement; the value for money of the Project; and, the Project/funding approvals of the City as required by the P3 Canada Fund Terms and Conditions or as is necessary for responsible public administration of the P3 Canada Fund; including but not limited to the following:

   a. the draft Request for Qualifications, draft Request for Proposals and draft Project Agreement as and when the drafts are available;
   b. draft versions of the Request for Qualifications, Request for Proposals and Project Agreement shall be provided to P3 Canada up to thirty (30) business days prior to their anticipated
issuance;
c. all addenda, changes to procurement documents, new and revised schedules, clearly identifying the changes from the original document (e.g. blackline edit) and other in-process documents such as topic meeting invitations and Request For Information responses will be provided through data-room access and in a timeline so as not to impede the procurement process;
d. all value for money refreshes subsequent to the initial value for money report along with a detailed description of the rationale for key changes in assumptions and model parameters; and
e. evidence that Project, procurement and funding approvals have been obtained.

2. forthwith, but not less than ten (10) business days following the City becoming aware thereof, provide PPP Canada such additional information as is necessary to ensure that the information disclosed in this Agreement, including Schedule “A” and Schedule “B” hereto, is at all times correct, complete and not misleading.

The City represents, warrants and covenants that all information made available to PPP Canada and its counsel and consultants, now and in the future, including any information disclosed in or pursuant to this Agreement or in Schedule “A” hereto, is and will be true, accurate and complete in all material respects (or, in the case of information provided by a third party, is to the best of its knowledge true, accurate and complete in all material respects) and, in the case of any financial information, will be prepared in good faith, based on reasonable assumptions.

Information provided to PPP Canada under or pursuant to this Agreement shall be considered “Confidential Information”, as that term is defined below.

**Interim Period:**

During the period between the date this Agreement is accepted by the City and the Closing (as defined below) (the “**Interim Period**”), in addition to those matters noted in the Due Diligence section, the City will undertake each of the matters at the time and in the manner set out below:

a. maintain a suitable Project governance structure and Project management team, including a dedicated **project manager** and external resources to act as the procurement advisor, fairness advisor, financial advisor, legal advisor and technical advisor;
b. inform PPP Canada of any applications undertaken for funding support from other Federal departments, agencies or Crown Corporations and keep PPP Canada apprised of the status of funding applications;
c. provide an opportunity for PPP Canada to participate in regular conference calls (including project steering committee meetings) with the project director and his/her team who would provide updates on issues, challenges and concerns; and,
d. provide debriefs and access to PPP Canada on discussions with bidders including, but not limited to, commercially confidential meetings.

**Expenses and Legal Fees:**

The City shall be responsible for its own out-of-pocket and other expenses relating to the negotiation of this Agreement, supporting Due Diligence activities and the negotiation of the Financial Agreement, including, all legal,
accounting and professional fees and expenses.

Indemnity:
The City agrees to indemnify and hold harmless PPP Canada and its directors, 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 any related transaction, except such Losses as may result from the wilful misconduct, fraud or negligent acts or omissions of an Indemnified Party.

Confidentiality:
“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 agrees to hold in confidence Confidential Information provided by the other Party and shall use such Confidential Information only to the extent necessary to enable the Party to perform its rights or obligations under this Agreement.

The obligation to maintain the confidentiality of Confidential Information shall not relate to any information which:

a. comes into the public domain or is subsequently disclosed to the public (other than through the default of either Party);
b. was already in possession of the Party (without restrictions as to its use) on the date of receipt; or
c. is required to be disclosed by either Party by virtue of (i) Applicable Laws, or (ii) an order of a court or tribunal, pursuant to a legal proceeding, or as otherwise required by Applicable Laws.

Public Announcements:
Except as set forth below, no disclosure or announcement, public or otherwise, in respect of the matters set forth in this Agreement will be made by the City without the prior written agreement, including e-mail, of PPP Canada as to timing, content and method thereof, other than disclosures to the City’s employees, agents, or professional advisors. The City shall be responsible for any breach of this paragraph by City elected officials, officers, employees, agents or other representatives.

No disclosure of Confidential Information of PPP Canada shall be made by the City to Project Co. or its members and its/their directors, shareholders, officers, employees, agents and representatives without the consent of PPP Canada and provided Project Co. or its members are subject to similar confidentiality obligations.

Public disclosures or announcements made by the City that do not refer to PPP Canada or the Government of Canada may be made in the City’s sole discretion.

The City consents to the disclosure of the transaction contemplated hereby by PPP Canada to announce the conditional approval of the Support for the Project and to the extent necessary for it to comply with its obligations to the
Government of Canada or in a manner consistent with PPP Canada’s procedures and policies.

PPP Canada and the City will collaborate on public announcements or communications related to PPP Canada Fund support for or Government of Canada involvement in the Project. Each of the Parties will comply with the Communications Guidelines, contained in Schedule “C”.

Closing: 
The City and PPP Canada agree to work in good faith to negotiate and enter into the Financial Agreement and complete the transactions contemplated by this Agreement by October 31, 2016 or such later date as may be agreed in writing by PPP Canada and the City.

Expiry Date: 
If the Financial Agreement has not been entered into by April 30, 2017 this Agreement shall expire and the Support shall be revoked by PPP Canada without further notice or liability to the City. The City hereby acknowledges and agrees that PPP Canada shall not be liable to the City for any damages arising out of the termination or revocation of this Agreement and hereby releases PPP Canada from any and all such claims.

Amendment: 
This Agreement may be amended by written agreement of the parties, which amendment may be evidenced by an exchange of signed letters between the General Manager of Public Works and the Chief Executive Officer for PPP Canada Inc.

Survivability: 
The terms set forth under the headings “Interim Period”, “Confidentiality” and “Public Announcements”, “Due Diligence”, “Expenses and Legal Fees” and “Indemnity” shall survive termination or expiry of this Agreement.

Contact Information: 
Notices and other communications hereunder (including required updates to the content of this Agreement) shall be delivered in the manner contemplated in Schedule “D” hereto under the heading “Communications”. Either party may change its address for notice by giving notice to the other party.

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.
Original signed by: John McBride, Chief Executive Officer
Date: Nov 4, 2013

City of Hamilton
Original signed by: Greg Smith, Chief Financial Officer
Date: Oct 29, 2013
Schedule “A”

Project Scope

The City currently processes 43,923 wet tonnes of partially digested biosolids annually and utilizes land application for management and disposal of its biosolids. Land application is a biosolids management practice which involves contracting private sector service providers to store and distribute Class ‘B’ biosolids as fertilizer to agricultural lands.

There are several risks involved with land application that cast a doubt on its future availability including market capacity, changing regulations, storage issues and continued availability of land for application.

The new plant will be built on the existing wastewater facility and have capacity to accept up to 60,000 wet tonnes of partially digested biosolids annually.

The City’s reference design is for a thermal reduction solution and the project will involve the construction of an incinerator building, including tanks or silos and a sludge receiving station.

Project Co. will be responsible for the deconstruction of an existing building and the design, build, finance, operation and maintain (“DBFOM”) of the new biosolids facility for a total concession period of 30 years. Project Co. will also be responsible for possible off-site storage and landfilling of all by-products, permitting and quality control.

The City will be responsible for delivering a pre-defined minimum quantity and quality of partially digested biosolids to the Project via a parallel put-or-pay contract it signs with Project Co. Quantity forecasts will be supplied to bidders during the procurement process.

Location

The City owns the site at the Woodward Avenue plant which is properly zoned. There is sufficient space for the project adjacent to the existing plant.

Key Projected Project Milestones

<table>
<thead>
<tr>
<th>Event/Milestone</th>
<th>Date/Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFQ Phase</td>
<td></td>
</tr>
<tr>
<td>Issue of RFQ</td>
<td>8 Months</td>
</tr>
<tr>
<td>Selection of qualified proponents</td>
<td>September 2014</td>
</tr>
<tr>
<td></td>
<td>May 2015</td>
</tr>
<tr>
<td>RFP Phase</td>
<td></td>
</tr>
<tr>
<td>Issue of RFP</td>
<td>13 Months</td>
</tr>
<tr>
<td>Notification of Preferred Proponent</td>
<td>June 2015</td>
</tr>
<tr>
<td>Execution of DBFOM Agreement</td>
<td>May 2016</td>
</tr>
<tr>
<td>Construction Period</td>
<td>28 Months</td>
</tr>
<tr>
<td>Construction Start</td>
<td>January 2017</td>
</tr>
<tr>
<td>Substantial Completion</td>
<td>December 2018</td>
</tr>
<tr>
<td>Contract Term</td>
<td>30 Years</td>
</tr>
<tr>
<td>Operation and Maintenance period</td>
<td>December 2018 – November 2048</td>
</tr>
</tbody>
</table>
Schedule “B”

Project Estimated Costs

Total Project construction and set-up costs have been estimated to be $91.65 million (nominal).

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Total Cost $M (Nominal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Costs and Public Sector Implementation Costs</td>
<td></td>
</tr>
<tr>
<td>Construction Costs</td>
<td>79.88</td>
</tr>
<tr>
<td>Interest During Construction and Financing Fees</td>
<td>10.17</td>
</tr>
<tr>
<td>Special Purpose Vehicle Costs</td>
<td>0.60</td>
</tr>
<tr>
<td>Technical/Financial/P3 Advisory Fees</td>
<td>1.00</td>
</tr>
<tr>
<td>Sub-Total</td>
<td>91.65</td>
</tr>
<tr>
<td>Ineligible Construction Costs and Public Sector Implementation Costs</td>
<td></td>
</tr>
<tr>
<td>Debt Service Reserve Account-Prefund</td>
<td>1.75</td>
</tr>
<tr>
<td>Honorarium</td>
<td>0.50</td>
</tr>
<tr>
<td>Legal Fees</td>
<td>0.50</td>
</tr>
<tr>
<td>City of Hamilton’s Internal Staff</td>
<td>1.20</td>
</tr>
<tr>
<td>Sub-Total</td>
<td>3.95</td>
</tr>
<tr>
<td>Total Estimated Costs at Substantial Completion</td>
<td>95.60</td>
</tr>
<tr>
<td>Total Estimated Eligible Costs</td>
<td>91.65</td>
</tr>
<tr>
<td>Total Contribution</td>
<td>22.90</td>
</tr>
</tbody>
</table>

Upon review and evaluation of the final Project cost estimates reflected in the proposals from RFP respondents and the Project Agreement, some Project costs may not be “Eligible Costs” for the purpose of funding under the P3 Canada Fund. For further clarity, operating costs during the construction period are not eligible.

Eligible Costs

The following categories of costs are eligible for Support:

- Direct Construction Costs of the Project, based on explicit prices provided by Project Co. that is party to the Project Agreement with the City, to be incurred by such Project Co. or its members during the construction period, as defined in Project Co.’s financial model, including:
  - costs of construction including permits, building construction, site servicing and other construction on Project related structures and works performed by Project Co.;
  - costs of furniture and equipment;
  - the fees paid to non-legal professionals, including project managers, technical personnel, consultants and contractors specifically engaged to undertake the surveying, design, engineering, manufacturing or construction of infrastructure assets for the Project, and related facilities and structures;
  - costs of environmental assessment, remediation activities, mitigation measures and follow-up to any environmental assessment; and
  - construction financing costs, including interim financing fees during the construction period.

- Public Sector Implementation Costs of the Project, which the City has referred to as professional services, based on actual costs incurred by the procuring government, and verified through documentation submitted by the City, to be incurred by the City during the construction period, including:
• the fees paid to non-legal professionals, including project managers, technical personnel, consultants and contractors specifically engaged to undertake the surveying, design, engineering, manufacturing or construction of infrastructure assets for the Project, and related facilities and structures;
• commissioning costs; and
• disbursements.

Public Sector Implementation Costs are limited to a maximum of 15% of total Eligible Costs of the Project.

Costs that are not Eligible Costs

Costs related to the following items are not Eligible Costs:
• costs incurred before the approval date, or after the completion date;
• costs incurred for developing a business case or proposal for funding from PPP Canada and/or the P3 Canada Fund;
• the cost of purchasing land and associated real estate and other fees;
• the cost of leasing land, buildings, equipment and other facilities;
• financing charges and interest payments on loans for the operating and maintenance period;
• services or works normally provided by the City, incurred in the course of implementing the Project, except those specified as Eligible Costs;
• the cost of general repairs and maintenance of a Project and related structures, unless they are part of a larger capital expansion project tied to capital expansion;
• the cost of any goods and services which are received through donations or in kind;
• any goods and services costs that are paid by donations or in kind;
• employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs incurred by the City, and more specifically costs relating to services delivered directly by permanent employees of the City, or of a Crown Corporation or corporation owned and controlled by the City, except in cases where the City can demonstrate value for money and that the costs are incremental;
• Provincial sales tax, Goods and Services Tax and Harmonized sales tax, for which the City is eligible for a rebate, and any other costs eligible for rebates; and
• legal fees.

With respect to determining the accuracy of these costs, PPP Canada reserves the right:
• with respect to the estimated direct construction costs above, to retain an independent technical advisor to review the reasonableness of these estimates;
• with respect to completion of the Project require the City to provide certification of substantial completion as verified by an Independent Engineer;
• with respect to actual Project management costs incurred by the City to audit the City’s financial records; and
• acting reasonably, to reduce or otherwise change the value of Support provided to the City as a result of any such review.
COMMUNICATIONS GUIDELINES

1. SCOPE

1.1 These Guidelines establish the principles and practices that will guide all public communications, public announcements and other public events related to the Project and/or the Project Agreement. Public communications, public announcements and other public events may include, without limitation, news conferences, public announcements or other official ceremonies, or communications products such as speeches, press releases, websites, advertising, promotional material, value for money reports, case studies or signage ("Communication Activities" and each is a "Communication Activity"). The first Communication Activity for the Project will be a joint public event with media participation to mark the signing of the Agreement, accompanied by a joint news release issued by the Parties (the "First Communication Activity").

1.2 Unless otherwise provided therein, the City acknowledges and agrees that any other agreement or instrument related to the Project that is/are entered into by the Parties is/are subject to these Guidelines.

2. GUIDING PRINCIPLES

2.1 The Parties agree that Canadians have a right to transparency and public accountability, including full information about the public benefits of the P3 Canada Fund or other PPP Canada investments being available to Canadians.

2.2 In respect of the Project, the Parties agree:

2.2.1 to ensure open, transparent, proactive and effective communications with the public are achieved through appropriate and consistent Communication Activities that recognize the respective contributions of the Parties;

2.2.2 to jointly undertake and collaborate on all Communication Activities relating to the First Communication Activity;

2.2.3 where a Communication Activity is to be jointly undertaken by the Parties, to provide equal prominence and visibility to both Parties; and

2.2.4 where a Communication Activity is to be undertaken by only one Party, to properly acknowledge the other Party's involvement in the Project in such communications.

2.3 Notwithstanding the terms of these Guidelines, the Parties acknowledge and agree that the City is solely responsible for all operational communications in respect of the Project, including calls for tender and construction and public safety notices.

3. COMMUNICATION ACTIVITIES

3.1 Prior to the First Communication Activity, the City will provide to PPP Canada for its review a communications plan demonstrating how the City will undertake all Communication Activities, whether undertaken alone by the City or jointly undertaken with PPP Canada, during the term of the Project. In addition, the communications plan will forecast potential Communication Activities, whether undertaken alone by the City or jointly undertaken with PPP Canada, set out anticipated communications other than Communication Activities, and identify communications risks associated with the Project. The City may amend or update its communications plan at any time, and, if so, will promptly provide PPP Canada with the amended or updated copy thereof.
3.2 Following the First Communication Activity, the Parties will undertake Communications Activities, whether alone by one Party or jointly by both Parties, after funding decisions are made and/or upon completion of key Project milestones.

3.3 Either Party may request that the other participate in joint Communication Activities. Such joint Communication Activities will:

3.3.1 be organized jointly by the Parties;

3.3.2 if required by the nature of the Communication Activity, include mutually-agreed upon messages and quotes from representatives of the Parties;

3.3.3 take place at a mutually agreed date and, if required by the nature of the Communication Activity, location;

3.3.4 if required by the nature of the Communication Activity, involve a designated representative of each Party; and

3.3.5 if required by the nature of the Communication Activity, be governed by the Table of Precedence of Canada, as established by Canadian Heritage, or other mutually agreed protocol.

3.4 The City shall provide, whenever available, professional quality audio-visual material about the Project to PPP Canada to support wider communications and case studies about public-private partnerships, P3 Canada Fund investments and other PPP Canada investments.

3.5 All Communication Activities, including any Project-related signage, will reflect the Government of Canada’s communications policy, including the Official Languages Act (Canada), and applicable federal, provincial and/or territorial identity graphics guidelines, including the Federal Identity Program.

3.6 All Communication Activities will recognize that PPP Canada’s funding to the Project through the use of the appropriate Canada wordmark and/or tagline.

3.7 All Communication Activities made through electronic media, such as web sites or management information systems, will follow the same guiding principles as those established for “traditional” Communication Activities.

4. SIGNAGE

4.1 The City shall provide and install temporary signage bearing an appropriate inscription indicating the provision of funding by PPP Canada and/or the Government of Canada to the Project.

4.2 Upon Substantial Completion of the Project, the City will provide and install a permanent plaque or sign at a fixed location on the Project site, which bears an appropriate inscription indicating the provision of funding by PPP Canada and/or the Government of Canada to the Project. Where there is no appropriate location for signage to be affixed, such as on a transit vehicle, a plaque or permanent sign will be installed at another acceptable and appropriate fixed location.

4.3 PPP Canada will provide the City with the necessary information to construct any temporary or permanent signage.

4.4 All temporary or permanent signage will be located in a prominent location on or about the Project site and will be clearly visible to users, visitors and/or passersby.

4.5 The costs of any temporary or permanent signage shall be borne by the City.
5. **VALUE FOR MONEY REPORTS**

The City will make public a final project report prepared in respect of the Project that describes in part the rationale, objectives and processes that led to the use of a P3 model and how the value for money was measured and is and will be achieved.

6. **NOTIFICATION**

6.1 PPP Canada and the City shall consult with each other in respect of any proposed Communication Activities. The Party proposing to undertake a Communication Activity shall provide notice thereof to the other Party, which notice will include a detailed description of the proposed Communication Activity and the proposed text thereof (if any), 15 business days prior to its undertaking. Within such 15 business day period, the Party receiving the notice may review and comment on the nature and contents of the proposed Communication Activity. In the event that a Communications Activity must be undertaken by a Party as a result of, or in response to, a public safety or other emergency event, such Party may provide fewer than 15 business days' notice thereof to the other Party, provided that: (i) a public safety or other emergency event exists; and (ii) it has reasonably determined the amount of notice of the Communication Activity to be given.

6.2 The City will advise PPP Canada in a timely manner on significant emerging media and stakeholder issues relating to the Project. PPP Canada will advise the City, where appropriate, about media inquiries it receives concerning the Project.

7. **COST ALLOCATION**

Unless otherwise arranged, the Parties shall each pay their own direct costs (e.g., staff time, transportation, per diems, etc.) associated with the application of this Guideline.
Schedule “D”

Communications

Any notice or other communication (a “notice”) required or permitted to be given or made under this Agreement must be in writing and is sufficiently given or made if:

(a) delivered in person and, if applicable, left with a receptionist or other responsible employee of the relevant party at the applicable address set forth below;

(b) sent by prepaid courier service or (except in the case of actual or apprehended disruption of postal service) mail; or

(c) sent by electronic or facsimile transmission, with confirmation of transmission by the transmitting equipment (a “Transmission”);

in the case of a notice to PPP Canada, addressed to it at:

630 - 100 Queen Street
Ottawa, Ontario K1P 1J9

Attention: CEO
Facsimile No.: 613-947-2289
E-mail: John.McBride@p3canada.ca

and in the case of a notice to the City, addressed to it at:

City of Hamilton
City Hall
71 Main Street West
Hamilton, ON L8P 4Y5

Attention: Gerry Davis, General Manager of Public Works
Facsimile No.: 905-540-5141
E-mail: CityManager@hamilton.ca

Any notice sent in accordance herewith shall be deemed to have been received:

(a) if delivered prior to or during normal business hours on a business day in the place where the notice is received, on the date of delivery;

(b) if sent by mail, on the fifth business day after mailing in the place where the notice is received, or, in the case of disruption of postal service, on the fifth (5th) business day after cessation of such disruption;

(c) if sent by electronic or facsimile during normal business hours on a business day in the place where the transmission is received, on the same day that it was received by Transmission, on production of a Transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the relevant facsimile number of a party; or

(d) if sent in any other manner, on the date of actual receipt;
except that any notice delivered in person or sent by Transmission after normal business hours on a business day or not on a business day shall be deemed to have been received on the next succeeding business day in the place where the notice is received.
Biosolids Management Project – Work Flow

Phase 1: Business Case Phase

1. Council Report
2. RFEOI ("Information")
3. Set of Alternatives
4. Business Case:
   - Thermal Reduction as PSC
   - City DBB vs. P3 Canada DBFOM
   - Concludes DBFOM has value
   - DBFOM is capital + 30 year O&M
   - Project cost built on NPV
   - Enhances Treatment technology identified as viable option

Phase 2: Transaction Phase

5. Council Approval – Business Case (Go / No Go)
6. P3 Canada Review and Board Approval
7. RFQ Stage ("Screening")
8. RFP Stage
9. Council Approval
10. Design and Construction

Timeline:
- Jan. - Feb. 2012: RFEOI ("Information")
- Jan. – April 2012: Set of Alternatives
- Jan. – April 2012: Business Case
- Mid Dec. 2011 to Jan. – April 2012: Council Approval – Business Case (Go / No Go)
- Feb. 2014: P3 Canada Review and Board Approval
- May 2012 to Dec., 2013: P3 Canada Review
- May 2012: Council Approval – Business Case (Go / No Go)
- Mid Dec. 2011 to May 2012: Phase 1 (Business Case Phase)
- March 2014 to June 2016: Phase 2 (Transaction Phase)
- June 2016 to May 2019: Design and Construction

Additional Notes:
- Go: P3 Canada Funding App. Go Ahead
- No-Go
- Cancel Process

30 Year O&M