



**South Fraser Perimeter Road Project
Request For Proposals
Volume 1 – Instructions to Proponents
RFP -SFPR
April 9, 2009**

Table of Contents

1.	Introduction.....	5
1.1	Gateway Program Overview	5
1.2	Project Scope Overview	7
1.3	Short-listed Respondents	9
1.4	Request for Proposals Stage.....	9
2.	Project Overview.....	10
2.1	Project Term and Parties.....	11
2.2	Design and Construction	11
2.3	Operations, Maintenance and Rehabilitation	12
2.4	Environmental	14
2.5	Third Parties.....	15
2.6	Quality Management	15
2.7	Lands	15
2.8	Communication and Consultation.....	16
2.9	Payment and Performance Mechanism.....	17
2.10	Advance Site Preparation by the Province	18
3.	Overview of RFP Process	20
3.1	Affordability	21
3.2	Proponent Consultation Process	21
3.3	Authorizations, Orders and Approvals	23
3.4	Proposal Submittal Requirements	24
3.5	Evaluation Process	25
3.6	Debriefing.....	28
3.7	Closing Process	28
3.8	Fairness Reviewer	30
3.9	Timetable	31
4.	General Information and Instructions	32
4.1	Background Investigations, Surveys and Studies	32
4.2	Investigations, Surveys and Studies by Proponents	32
4.3	Monitoring Data during Competitive Selection Process	33
4.4	Data Room.....	33
4.5	Contact Person and Questions and Answers Protocol	34
4.6	Proponent Communications	34
5.	General Matters	36
5.1	Amendment or Cancellation of RFP	36
5.2	No Contract.....	36
5.3	No Obligation to Proceed or Make any Selection	36
5.4	Proposal Review and Evaluation.....	39
5.5	Participation in the Competitive Selection Process.....	41
5.6	Conflicts in Documents.....	42
5.7	Confidentiality and Freedom of Information and Protection of Privacy.....	42
5.8	No Collusion.....	43

5.9	No Lobbying.....	43
5.10	Disclosure	44
5.11	Transportation Investment Act.....	45
5.12	Changes to Proponents and Proponent Team Members.....	45
5.13	Restricted Parties.....	46
5.14	Shared Use	48
5.15	Conflicts of Interest / Relationship Review Process.....	48
5.16	Delivery and Receipt.....	51
5.17	Proponent Team Members and Subcontractors	52
5.18	No Reliance	52
5.19	No Liability	53
5.20	Dispute Resolution.....	54
6.	Interpretation	55
7.	Definitions.....	57
Appendices – Volume 1		
A	- RFP Response Guidelines	
B	- Evaluation Criteria	
C	- Forms of Technical and Financial Submittal Certificates	
D	- Form of Escrow Agreement	
E	- Form of Irrevocability Agreement	
F	- Form of Limited Notice to Proceed Agreement	
G	- Forms of Commitment Letter	

Summary of Key Information

This summary has been prepared as an overview summary only and is not intended to replace, supersede or supplement the requirements set out in the Request for Proposals (RFP). It is the responsibility of each Proponent to ensure that they have received and fully understood the complete RFP including all Addenda.

RFP Title	South Fraser Perimeter Road Project Use the above title on all correspondence
Contact Person	Maria Ciarniello Fax: 604-775-0347 E-mail: SFPRRFP@GatewayProgram.bc.ca
Technical Submittal Deadline See Section 3.4.3	2:00 PM local Vancouver Time on November 27, 2009
Closing Time See Section 3.4.3	Closing Time for Proposals (Financial Submittals) to be specified in the invitation described in Section 3.5.3 (anticipated to be approximately 6 weeks after the invitation is issued)
Closing Location See Section 3.4.3	South Fraser Perimeter Road Project Metrotower 1 Suite 2400 - 4710 Kingsway Burnaby, BC V5H 4M2
Data Room See Section 4.4	(Authorized access only)

1. Introduction

1.1 Gateway Program Overview

The Province of British Columbia announced the Gateway Program in January 2006 to address current and future transportation needs in the Metro Vancouver area. Gateway Program road and bridge improvements complement other regional road and transit improvements already planned or underway in the region. These improvements will help create a balanced, comprehensive and effective transportation network that supports improved movement of people, goods, and transit; facilitates economic growth; increases transportation choices and provides better connections to designated population growth areas.

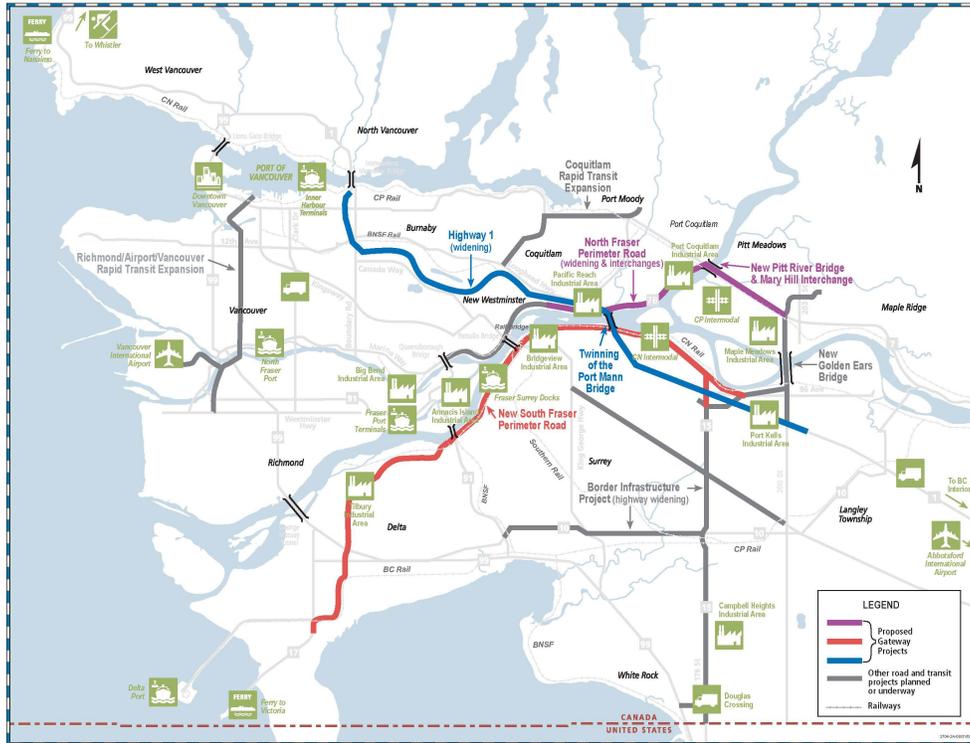
The goals of the Gateway Program are to:

- address congestion;
- improve the movement of people and goods in and through the region;
- improve access to key economic gateways through improved links between ports, industrial areas, railways, the airport and border crossings;
- improve safety and reliability;
- improve the region's road network;
- improve quality of life in communities by keeping regional traffic on regional roads instead of local streets;
- reduce vehicle emissions by reducing congestion-related idling;
- facilitate better connections to buses and SkyTrain, cycling and pedestrian networks; and
- reduce travel times along and across the Fraser River during peak periods.

As illustrated in Figure 1, the scope of the Gateway Program improvements is composed of three major components including:

1. South Fraser Perimeter Road (SFPR) – a new 40-kilometre long four-lane, 80 km/h route along the south side of the Fraser River extending from Deltaport Way in Delta to 176th Street (Highway 15) and the Golden Ears Bridge connector road in Surrey/Langley.
2. Port Mann/Highway 1 (PMH1) – widening of the highway, upgrading interchanges and improving access and safety on Highway 1 from Vancouver to Langley, including the construction of a new bridge at the Port Mann crossing of the Fraser River. The project also includes congestion-reduction measures such as expanded HOV lanes, transit and commercial vehicle priority access, improvements to the cycling network, and electronic tolling on the Port Mann Bridge. The new Port Mann Bridge will also be built to accommodate future light rail transit.
3. North Fraser Perimeter Road (NFPR) – proposed set of improvements on existing roads to provide an efficient, continuous route from New Westminster to Maple Ridge. The Pitt River Bridge and Mary Hill Interchange project contract was awarded in February 2007 and is under construction. It is a stand-alone component of the NFPR project.

Figure 1 Major Transportation Improvements in the Metro Vancouver Area



More details regarding the Gateway Program can be found on the Gateway Program website (www.gatewayprogram.bc.ca).

1.2 Project Scope Overview

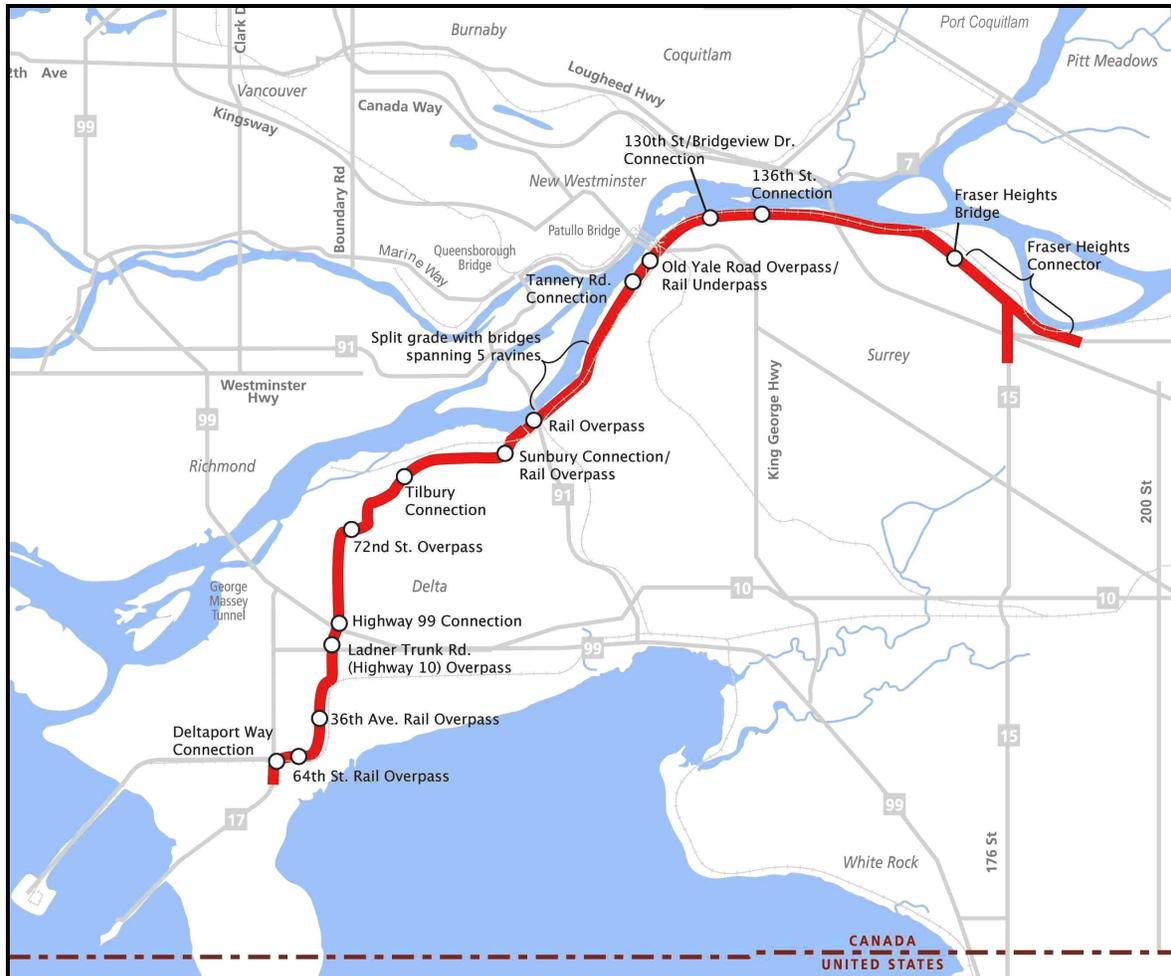
The SFPR is a key element in the Gateway Program and is being procured as a public private partnership. As illustrated in Figure 2 below, the SFPR extends approximately 40 kilometres from Highway 17 and Deltaport Way in Delta along the south side of the Fraser River to Highway 15 in Surrey and to the Golden Ears Bridge project which is under construction. The Concessionaire will be responsible for:

- the design and construction from Highway 99 through to the Fraser Heights Bridge in Surrey;
- elements of the design and construction between Highway 17 and Highway 99;
- elements of the design and construction of the Fraser Heights Bridge in Surrey;

and

- the operation, maintenance and rehabilitation of the SFPR between Highway 17 and Highway 15..

Figure 2 Project Physical Scope



The corridor will be a continuous, four-lane divided route with a posted speed limit of 80 km/h. When the SFPR opens it will likely accommodate a combination of intersections, roundabouts and grade-separated interchanges, providing connections to Highways 1, 15, 91, 99, and 17, and key municipal roadways within the corridor.

The federal government is providing funding to the Province of approximately 50 per cent of the Project's Eligible Costs as part of the federal government's Canada-British

Columbia Asia-Pacific Gateway Corridor Transportation Infrastructure Fund. It is anticipated that the federal funding will be paid during the construction of the Project upon achievement of construction milestones.

1.3 Short-listed Respondents

Through the Request for Qualifications (RFQ), the following three Respondents were identified as eligible to receive this Request for Proposals (RFP) and to be invited to participate further in the Competitive Selection Process:

- Fraser Transportation Group
- South River Connector
- The Riverway Partnership

1.4 Request for Proposals Stage

The Province is issuing this RFP as part of the Competitive Selection Process for the Project. This RFP contains the following two volumes:

- Volume 1 – Instructions to Proponents; and
- Volume 2 – Draft Concession Agreement.

It is anticipated that through the Competitive Selection Process one of the Proponents will be identified as eligible to be selected as the Preferred Proponent to be offered the opportunity to enter into a Concession Agreement for the delivery of the Project.

A key objective of the Competitive Selection Process for the Project is to maximize the Project scope delivered while meeting the Project's Affordability Requirements, in accordance with the terms of this RFP.

2. Project Overview

The Concession Agreement (CA) sets out the rights and obligations of the parties in respect of the Project and contains, among other things: the technical specifications for the design, construction, operations, maintenance and rehabilitation components of the Project; the scope of the services to be provided by the Concessionaire; the end of term requirements; and other commercial terms.

The Concession Agreement will be developed through processes, further detailed in this RFP and in the Proponent Agreement, that include:

- issuance of a Draft CA as Volume 2 of this RFP;
- consideration of comments, issues, and proposed amendments to the Draft CA from Proponents, in writing and as part of Workshops and Topic Meetings;
- incorporation by Addenda into the initial and any revised form of Draft CA of amendments, which amendments may include any such Proponent-proposed and additional amendments; and
- issuance of a Definitive CA as Volume 2 of this RFP by Addendum.

Any description or overview of either the Draft CA or the Definitive CA in this Volume 1 is provided for convenience only and does not supercede, supplement or alter the Draft CA or the Definitive CA, as applicable. If there are any inconsistencies between the terms of either the Draft CA or the Definitive CA and the description of those terms set out in this Volume 1 of this RFP, the terms of the Draft CA or the Definitive CA, as applicable, will prevail.

2.1 Project Term and Parties

2.1.1 Parties

The Concession Agreement will be between the Province (represented by the Minister of Transportation and Infrastructure) the BC Transportation Financing Authority (BCTFA) and the Concessionaire.

2.1.2 Term

The term of the Concession Agreement will commence on the Effective Date and continue until the Termination Date. The Province expects the term to include approximately three years of design and construction followed by a 20 year operating period with an anticipated Required Substantial Completion Date of December 31, 2012 and an anticipated Expiry Date of December 31, 2032.

2.2 Design and Construction

The Concessionaire will be responsible for all aspects of Design and Construction in accordance with the Concession Agreement, including the Design and Construction Requirements as set out in Schedule 4 of the Concession Agreement.

The Province has a Reference Concept for the Project. The Province has developed Reference Concept Overview Reports to describe the Reference Concept. To promote innovation Proponents are encouraged to develop Proposals that differ or vary from the Reference Concept and that comply with the requirements of the Concession Agreement.

A summary of the design and construction scope is provided in Table 1 below. This summary should not be considered exhaustive in terms of design and construction responsibilities or complete in terms of the scope, all of which are as fully set out in the Concession Agreement.

Table 1 – Summary Design and Construction Scope

SUMMARY DESIGN AND CONSTRUCTION SCOPE
<ul style="list-style-type: none">• Approximately 160 lane-kilometres of road construction• Construction of seven major roadway connections• Construction of seven major overpass/underpass structures• Construction of approximately two kilometres of split grade roadway with bridges to span five ravines• Expansion of the cycling network• Improvements to municipal road connections• Closure of landfill sites• Agricultural and environmental enhancement works

The Project has a significant number of connections with existing highways, arterial routes and other municipal roads, which are of importance for the Provincial and local economy. During construction, the Concessionaire will be required to comply with the traffic management requirements set out in the Concession Agreement to minimize the impact of construction on other highways and roads and provide certainty for road users.

2.3 Operations, Maintenance and Rehabilitation

The Concessionaire is required to carry out Operations, Maintenance and Rehabilitation in respect of the Concession Highway in accordance with the Concession Agreement.

The OMR Requirements are set out in Schedule 5 of the Concession Agreement. The general scope of Operations, Maintenance and Rehabilitation includes all services associated with the planning, management and delivery of the operations, maintenance and asset preservation activities to ensure compliance with all Performance Measures set out in the Concession Agreement. This generally includes:

- operating the Concession Highway to minimize traffic delay and closures;

- maintaining the Concession Highway including road pavement, structures, pavement markings, drainage infrastructure, closed landfill sites, electrical systems and traffic counting devices;
- rehabilitating the road pavement and structures;
- managing the long-term structural integrity of the Concession Highway by considering good asset management practices during the design and construction phase of the Project;
- communications and reporting, including inventory and condition updates; and
- quality management on a self-auditing basis.

2.3.1 SFPR Segments delivered by others

The SFPR Project includes the following two segments that will be designed and or constructed separately from the Concessionaire's responsibilities:

- Highway 17 to Highway 99; and
- Fraser Heights Bridge to Highway 15.

These segments will form part of the OMR Requirements of the Concessionaire. The Concessionaire shall propose an inspection plan for its inspection of these segments during design and construction, including joint inspections with the Province prior to substantial completion and total completion.

2.3.1.1 Highway 17 to Highway 99

The Highway 17 to Highway 99 segment of SFPR is a new section of roadway providing an alternate route for trucks and regional traffic. The Concessionaire will be responsible for the design and construction of certain elements of this segment. These elements will be clarified by Addendum and set out in Schedule 4 of the Concession Agreement. Two structures in South Delta (64 Street and 36 Avenue, each crossing over SFPR), as well as components of the Highway 17 interchange will be designed and constructed by others.

2.3.1.2 Fraser Heights Bridge to Highway 15

The Fraser Heights Bridge to Highway 15 segment is a new section of roadway which connects the South Fraser Perimeter Road to Highway 1 and the Golden Ears Bridge connector road. The procurement of this segment of SFPR is being conducted separately as part of the PMH1 project.

The Concessionaire will have the following responsibilities with respect to the SFPR Extension portion of the PMH1 project:

- The construction of the Fraser Heights Bridge over the wetlands at the north end of the CN Rail intermodal yard near 168 Street, together with approximately 500 m of roadway to the east of the bridge; and
- The Operations, Maintenance and Rehabilitation of the SFPR Extension portion of the Fraser Heights connector, consisting of approximately 1500 m of highway along the south side of the CN Rail intermodal yard west of 104 Avenue, and the Structure over the wetlands at the north end of the CN Rail intermodal yard near 168 Street.

2.4 Environmental

The Province has received the Environmental Assessment Certificate for the Project.

The Concessionaire will be required to perform the Project Work in compliance with the Concessionaire's environmental obligations, including the Environmental Assessment Certificate and the commitments, responsibilities and information set out in the Table of Commitments and Assurances, as described in the Concession Agreement, including Schedule 6. These obligations include:

- ensuring the design, construction and operation of the project complement long-term management objectives of the Burns Bog Ecological Conservation Area;
- implementing measures to enhance agricultural productivity in Delta, such as improving existing drainage and irrigation networks and farm vehicle access within the agricultural land reserve;
- providing an air quality and dust control plan to all relevant agencies prior to

- construction, and mitigating noise and vibration impacts during design, construction and operation;
- working with interested First Nations to develop a mutually acceptable plan to preserve archaeological deposits during planning, design, construction and operation of the Project; and
 - consulting with local governments, stakeholders and the public during all stages of Project development.

2.5 Third Parties

The design and construction of the Project will require interaction between the Concessionaire and a number of third parties, including Railways, Municipalities, Utilities, and Port Metro Vancouver. The Province has entered into discussions with such third parties with a view to documenting, where practicable, the expected interaction between the Concessionaire and these parties. Any such documentation which is agreed will be made available to Proponents in the Data Room.

2.6 Quality Management

The Concessionaire will be required to develop and implement a Quality Management System in accordance with the Concession Agreement. The Quality Management System will be certified by an accredited ISO 9001:2000 Standard certification agency acceptable to the Province and the certification will be required to be retained throughout the Term. The Concessionaire will undertake internal and external quality audits of the Quality Management System throughout the Term as required under the Concession Agreement.

2.7 Lands

The Province has identified lands along an alignment that are based upon the Reference Concept. These lands include the Specified Concession Lands and Specified Other Highway Lands that are listed in Schedule 8 of the Concession Agreement. The Province will, subject to the terms of the Concession Agreement, make available the Specified Concession Lands and Specified Other Highway Lands.

Proponents may identify Additional Lands required for permanent Project Infrastructure according to the Proponent's design and that are sufficient to enable the Proponent, should it become the Concessionaire, to deliver the Project in accordance with the Concession Agreement. The Concessionaire will be responsible for all costs, expenses, approvals and permits in connection with any Additional Lands. Any Proponent wishing to propose Additional Lands should list the applicable lands and the proposed Acquisition Dates on Form A-6 and submit them to the Province by no later than July 31, 2009. The Province will:

- review the Form A-6 list of proposed Additional Lands and corresponding proposed acquisition dates submitted by each Proponent on an individual basis and;
- notify each Proponent by not later than September 15, 2009, whether the proposed Additional Lands and the proposed acquisition dates are acceptable to the Province.

If the proposed Additional Lands are accepted, the Province will specify the lead time for acquisition of any such Additional Lands, and the date by which the Proponent, should it become the Concessionaire, will be required to initiate the acquisition process in accordance with Schedule 8 of the Concession Agreement.

2.8 Communication and Consultation

A public, community and stakeholder communications and consultation program was initiated in 2004. This ongoing program allows opportunities for stakeholders and members of the public to learn about the Gateway Program and provide input.

Details of the results of the pre-design consultations can be found in the pre-design and traffic management consultation reports that are included in the Data Room.

In addition to the pre-design and ongoing consultation on Project scope refinements, the Province will continue to take the lead in consulting with local governments, stakeholders and the public through the subsequent phases of the Project. The Concessionaire will have a support role in these activities.

The Gateway Program also has a proactive community relations program that provides

information about the Project, and includes a public inquiry and response program to respond to email, phone and written inquiries.

The responsibilities regarding traffic communications, community relations, public consultation and media relations will be allocated between the Province and Concessionaire in accordance with Schedule 9 of the Concession Agreement.

2.9 Payment and Performance Mechanism

The Concessionaire will receive payments and be required to comply with a performance mechanism, in accordance with the terms of the Concession Agreement, including Schedule 10.

During construction, the Concessionaire will receive milestone payments based upon the achievement of agreed milestones. Such payment will be subject to the terms of the Concession Agreement and the Asia-Pacific Gateway Corridor Transportation Infrastructure Fund Contribution Agreement for South Fraser Perimeter Road. The milestone payment amounts will be fifty per cent of the Eligible Costs specified in the Concession Agreement, and the Concessionaire will be entitled to make claims, through the Province's Representative, on a monthly basis.

Following Substantial Completion the Concessionaire will receive monthly performance based Availability Payments.

The components of the performance mechanism that will trigger payments to the Province and/or deductions by the Province are more fully set out in the Concession Agreement, including Schedule 10, and include the following:

- construction period traffic management mechanism;
- unavailability events mechanism; and
- non-compliance events mechanism.

2.9.1 Key Aspects of the Performance Mechanism

The performance mechanism, in accordance with the terms of the Concession Agreement, including Schedule 10, includes provisions that relate to:

- completing the Construction of the Project to Substantial Completion and Total Completion;
- managing traffic and minimizing disruption on other highways and roads during the Construction of the Project;
- operating the Concession Highway with a view to minimizing periods of unavailability and providing an appropriate level of service to road users and the Province;
- complying with the environmental obligations;
- developing and implementing a Quality Management System;
- maintaining and rehabilitating the Concession Highway to specified standards; and
- co-operating and being efficient and effective in communicating and dealing with the general public and other interested parties.

2.9.2 End of Term Retentions

Starting three years before the Expiry Date, the Province will withhold an amount from the Availability Payments as security for the Concessionaire's performance of end of Term requirements set out in Appendix C to Schedule 5 of the Concession Agreement. Such amount will be held in a retention account and interest accrued will be retained in the account. A series of audits will take place over the final years of the Term to ensure the completion of the end of Term requirements, and money remaining in the account following the successful completion of the end of Term requirements will, subject to the Concession Agreement, be returned to the Concessionaire.

2.10 Advance Site Preparation by the Province

The Province has undertaken extensive planning and engineering activities and is consulting with local governments, stakeholders and the public to identify and address interests throughout the planning and development stages of the Project. The Province will continue to work with these groups throughout the Competitive Selection Process.

The Province is conducting advance site preparation to support the Project schedule and to help address certain Project risks. This advance site preparation includes the

placement of preload materials over portions of the Project route. This is expected to help advance ground settlement and provide timely geotechnical data for the design and construction of the Project. As described further in section 4.3 of this RFP, the Province anticipates providing monitoring data to Proponents on a regular basis throughout the Competitive Selection Process. The first settlement data report will be available to Proponents in the Data Room on the release of this RFP. Subsequent reports will be posted in the Data Room as they become available.

Following the Effective Date, the Concessionaire will be required to assume the geotechnical risk associated with the Project, in accordance with the Concession Agreement.

A summary of the advance site preparation work is shown in Table 2 below. This work has commenced and will continue during the Competitive Selection Process, and is scheduled to be completed prior to the Effective Date of the Concession Agreement.

Table 2 - Summary of Advance Work

SUMMARY OF ADVANCE WORK
<p>Advance site preparation work includes:</p> <ul style="list-style-type: none"> ▪ major works tender - Tannery Interchange to Port Mann Bridge <ul style="list-style-type: none"> ○ preload, drainage and utility construction ▪ major works tender – Highway 17 to Highway 99 <ul style="list-style-type: none"> ○ preload, drainage and utilities construction ▪ major works tender – Highway 99 to 80th Street <ul style="list-style-type: none"> ○ preload, drainage and utilities construction ▪ major works tender – 80th Street to Highway 91 <ul style="list-style-type: none"> ○ preload, drainage and utilities construction ▪ stockpiling of sand at Highway 99 Interchange, Tilbury Connection, Sunbury Connection and Tannery Interchange ▪ Terasen Gas Transmission Line Relocates at the 76th Street Ditch, Alexander Road ditch and Highway 91 Connector ▪ environmental enhancement works <ul style="list-style-type: none"> ○ Alex Fraser tidal wetland ○ Manson Canal tidal wetland

Details of the advance site preparation are available in the Data Room.

3. Overview of RFP Process

The purpose of this RFP stage of the Competitive Selection Process is to invite the Proponents to submit Proposals for the Project. It is anticipated that, subject to the terms of this RFP, an eligible Proponent will be selected as Preferred Proponent and be offered the opportunity to enter into a Concession Agreement for the delivery of the Project.

Eligibility to continue in the Competitive Selection Process and to participate in this RFP is conditional on the terms of this RFP including:

- the Proponent being identified as a Short-Listed Respondent pursuant to the RFQ;
- the Proponent observing and ensuring that its Proponent Team Members observe the terms of this RFP and the Proponent Agreement, including the terms and conditions that may be required, or otherwise established by the Province, in respect of any waiver or permission to be issued by the Province under this RFP or the Proponent Agreement; and
- the Proponent submitting a Proposal that substantially satisfies the requirements of this RFP.

Any failure(s) on the part of the Proponent or on the part of any Proponent Team Member to observe, satisfy, or comply with such requirements, terms and conditions may result in one or more of the following:

- the Proponent being ineligible to continue further in the Competitive Selection Process or to receive any further invitations or information; and/or
- the Proponent being disqualified from the Competitive Selection Process.

3.1 Affordability

A key objective of the Competitive Selection Process is to maximize the Project scope while meeting the Project's Affordability Requirements.

3.1.1 Project Work Scope Levels

The Province has identified Project Work Scope Levels to allow Proponents to maximize the Project scope and ensure that Proponents can submit a Proposal that meets the Affordability Requirements. The Project Work Scope Levels are as follows:

- (a) Base Scope: The Base Scope is the delivery in accordance with the Concession Agreement of the Project Work as defined in the Definitive CA, including Schedule 4;
- (b) Adjusted Scope Level 1: This Project Work Scope Level requires the provision of the Base Scope and an interchange to replace the Sunbury connection;
- (c) Adjusted Scope Level 2: This Project Work Scope Level requires the provision of the Base Scope and an interchange to replace the Sunbury connection and an interchange to replace the Tilbury connection.

3.1.2 Affordability Requirements

The Province is currently determining the appropriate Affordability Requirements for the Project, and the appropriate methodology and assumptions that Proponents will use to ensure that their Proposals meet the Affordability Requirements. The Affordability Requirements, and the associated assumptions and methodology that Proponents are to use in their Proposal will be provided by Addendum.

3.2 Proponent Consultation Process

The Province will facilitate a consultation process with the Proponents. This will include exchanges of information, discussions and clarification of issues through Workshops and Topic Meetings, and the submission and consideration of comments on and proposed amendments to the Draft CA.

In addition, Proponents may communicate with the Province through a Request for Information (RFI) process as described in Section 4.6.

3.2.1 Workshops and Topic Meetings

In accordance with the Proponent Agreement, the Province may schedule and conduct Workshops and Topic Meetings during this RFP stage to enable communication between the Province and the Proponents as to issues relating to this RFP, the Project, and the Draft CA. Workshops typically focus on the Draft CA and RFP whereas Topic Meetings typically focus on specific technical aspects of the Project. Generally, attendance by Proponents at Topic Meetings will be optional and attendance at Workshops will be required, unless otherwise designated by the Province.

One Topic Meeting and two Workshops are planned, as indicated below and further referenced in Table 3 at the end of this section:

- A Topic Meeting in the form of an all-Proponent information meeting. Attendance by Proponents at this Topic Meeting will be required; and
- Two Workshops that are anticipated to include:
 - Workshop A – separate meetings between the Province and each Proponent to discuss risk allocation and the Draft CA; and
 - Workshop B – separate meetings between the Province and each Proponent to discuss the revised Draft CA.

The Province may, at the request of any Proponent(s), schedule additional Workshops or Topic Meetings, if the Province considers it desirable or necessary, in its discretion.

3.2.2 Finalization of Concession Agreement

The Province will issue the initial and subsequent revised forms of the Draft CA as Volume 2 of this RFP. In addition to considering comments and issues discussed in the Workshops and Topic Meetings, the Province will from time to time invite Proponents to review and submit comments in respect of the Draft CA.

Any information or documentation provided to, or which comes to the attention of the Province at, or in connection with, any Workshops or Topic Meetings, including in, or as

a result of questions raised during any such meetings, and further Proponent-requested amendments or information relating to commercially sensitive matters, may be subject to disclosure to the other Proponents in the discretion of the Province.

Proponents may submit additional comments, requested amendments and issues following these discussions.

The Province currently anticipates that the sequencing of submission and review of comments, issues and requested amendments and scheduling of Workshops will follow in the order outlined in Table 3. The Province may in its discretion extend, accelerate and modify the sequencing at any time and from time to time. Additional separate Workshops and Topic Meetings may, in the discretion of the Province, be scheduled and carried out.

Any proposed amendments to the Draft CA should be submitted in table format, identifying the Draft CA wording that is the subject of the issue, the comment or requested amendment, highlighting the Proponent's priorities and setting out the corresponding summary of the issue or comments, and where applicable the requested substitute wording and accompanying memorandum summarizing the rationale for the requested amendment.

The Province may elect, at its discretion, whether or not to consider comments, issues and requested amendments received from the Proponents. Without limiting any other term of this RFP, including Section 5.1, the Province may in its discretion, on its own initiative, or as a result of Proponent comments or requests, at any time and from time to time, including after the Technical Submittal Deadline, by Addenda amend, restructure, or supplement the initial and any revised form of Draft CA, including by incorporating any such Proponent comments or requests.

The Province will issue the Definitive CA by Addendum as Volume 2 of this RFP.

3.3 Authorizations, Orders and Approvals

Without limiting any other term of this RFP, the Concession Agreement is subject to the issuance of all necessary governmental authorizations, orders and approvals required in connection therewith, including the following:

- any approvals required under the *Financial Administration Act* (British Columbia);

- issuance by the Lieutenant Governor in Council of orders in council made under the *Transportation Investment Act* (British Columbia) and the *Transportation Act* (British Columbia); and
- any other regulatory or other approvals required under the laws of the Province of British Columbia or Canada.

Unless otherwise provided for in this RFP, required authorizations, orders and approvals may be obtained by the Preferred Proponent and the Province, as applicable, prior to the Effective Date.

3.4 Proposal Submittal Requirements

Proposal submittal requirements are set out in detail in Appendix A to this RFP Volume 1, and include formatting, packaging and content requirements relating to the Proposals.

Proposals are to be delivered in the following two submittals, as further described in Appendix A of this RFP Volume 1.

3.4.1 Technical Submittal

Proponents are to provide a Technical Submittal which addresses the Base Scope, and Adjusted Scope Level 1 and Adjusted Scope Level 2.

The Technical Submittal, except as otherwise expressly required in Appendix A, is to include no pricing information.

3.4.2 Financial Submittal

The Financial Submittal is to clearly identify the Selected Project Work Scope Level that will be achieved, and include pricing information in respect of that Selected Project Work Scope Level and meet the Affordability Requirements.

3.4.3 Closing Time and Closing Location for Proposals

Proposals are to be received at the Closing Location, addressed to the Contact Person:

- in the case of the Technical Submittal, before the Technical Submittal Deadline; and
- in the case of the Financial Submittal, before the Closing Time.

Faxed, telephone or electronically submitted Proposals, will not be accepted.

The calendar and clock designated as the official calendar and clock by the Province at the Closing Location, whether accurate or not, will be determinative with respect to whether a Technical Submittal, including any part of a Technical Submittal, has been received before the Technical Submittal Deadline, whether a Financial Submittal, including any part of a Financial Submittal, has been received before the Closing Time. The Province may at any time and from time to time, by Addendum sent to the Proponents (whether or not actually received by the Proponents), amend, including by extension the Technical Submittal Deadline and the Closing Time.

3.5 Evaluation Process

3.5.1 Technical Submittal Package Review

This is a review for substantial completeness of the Technical Submittal in accordance with this RFP, including Appendix A to this RFP Volume 1.

3.5.2 Technical Submittal Evaluation

The Technical Submittal evaluation will be in accordance with the evaluation criteria set out in Appendix B of this RFP.

3.5.3 Invitations to Submit Financial Submittal

The Province will, subject to the terms of this RFP, invite each Proponent that has delivered a Technical Submittal that substantially satisfies the requirements of this RFP, and that otherwise is considered, in accordance with this RFP, to be eligible to receive such an invitation, to submit a Financial Submittal.

Proponents are to prepare their Financial Submittal on the basis of:

- the Affordability Requirements, which will be provided as outlined in Section 3.1 of this RFP;
- the relevant part of the Proponent's Technical Submittal which is applicable to the Selected Project Work Scope Level, including any further information and documentation, including, clarifications, rectifications, and more complete, supplementary, replacement and additional information and documentation delivered in accordance with this RFP; and
- the Definitive CA, without amendment, and, including any further information and documentation.

3.5.4 Invitations to Submit Technical Supplement

The Province may, in its discretion, issue an invitation to submit a Technical Supplement to the Closing Location on or before the date and before the time specified in the invitation for receipt of Technical Supplements, if,

- any amendment, restructuring or supplement made after the Technical Submittal Deadline,
 - is made to any of the schedules of the version of Definitive CA issued as at the Technical Submittal Deadline, or
 - is considered by the Province to impact on the elements of the Project Work provided for in or on the requirements of any such listed schedules; or
- any document is posted to the Data Room after the Technical Submittal Deadline and contains information which is considered by the Province to impact on the elements of the Project Work provided for in or on the requirements of any such listed schedules, and
- the Province considers the above-referenced amendment, restructuring or supplement, or either of the above-referenced impacts, as applicable, to be so material, having regard to the applicable elements of the Project Work or the applicable requirements provided for in the schedule or schedules, as the case may be, as to necessitate review by the Proponents of their Technical Submittals.

The Province may in its discretion issue an invitation under this Section on its own initiative or on consideration of a Proponent's request delivered by RFI in accordance with Section 4.6.

In considering whether to issue an invitation under this Section, the Province, may as part of the consideration process or otherwise, seek and consider comment, information and documentation from the Proponents. Proponents requesting that an invitation under this Section be issued will include in the RFI sufficient information and documentation to enable the Province to understand and assess the materiality of the amendment, restructuring or supplement or of the impact, as applicable, having regard to the applicable elements of the Project Work provided for in or to the requirements of the schedule or schedules, as applicable.

3.5.5 Technical Supplement Review and Evaluation

If a Technical Supplement is invited, a review of the Technical Supplement will be made for substantial completeness and evaluation of the Technical Supplement will be made in accordance with this RFP, including Appendix A and Appendix B to this RFP Volume 1, and the Definitive CA.

3.5.6 Financial Submittal Package Review

This is a review for substantial completeness of the Financial Submittal in accordance with this RFP, including Appendix A to this RFP Volume 1, and the Definitive CA.

3.5.7 Financial Submittal Evaluation

The evaluation of the Financial Submittal will be in accordance with the evaluation criteria set out in Appendix B to this RFP Volume 1.

3.5.8 Invitation to Deliver Preferred Proponent Security Deposit

The Province will, subject to the terms of this RFP, invite the Proponent that has delivered a Proposal, including a Financial Submittal, that:

- substantially satisfies the requirements of this RFP and the Definitive CA;

- receives the highest ranking in accordance with the evaluation criteria set out in Appendix B to this RFP; and
- otherwise is considered, in accordance with this RFP, to be eligible to be selected to receive such an invitation,

to deliver the Preferred Proponent Security Deposit.

The Proponent's eligibility to be considered for selection as the Preferred Proponent is, subject to the terms of this RFP, conditioned on the Proponent delivering the Preferred Proponent Security Deposit, in accordance with the invitation, on or before the date and time specified in such invitation.

3.5.9 Preferred Proponent

The Province will, subject to the terms of this RFP, select as the Preferred Proponent, the Proponent that has delivered the Preferred Proponent Security Deposit in accordance with the invitation issued pursuant to Section 3.5.8.

The Province may, in its sole discretion, invite the Preferred Proponent to commence certain works, including certain design works, on substantially the terms set out in the Limited Notice to Proceed Agreement.

3.6 Debriefing

Following the Effective Date, representatives of the Province will, upon request, meet with unsuccessful Proponents and provide them with a debriefing. During such debriefing, the relative strengths and weaknesses of that Proponent's Proposal will be disclosed and discussed.

3.7 Closing Process

3.7.1 Settle – Finalize Terms and Close

It is the intention of the Province that, subject to Section 3.7.2 of this RFP Volume 1, any issues with respect to the Draft CA must be finalized prior to the Closing Time so that the Definitive CA, once issued, will not be further modified and is to be executed by the Preferred Proponent without further negotiation or amendment, except for changes, modifications and additions:

- relating to the determination by the Province regarding which parts, if any, of the Proposal are to be incorporated by reference or otherwise into the Concession Agreement or otherwise pursuant to express provisions of the Concession Agreement, and changes and additions as a consequence of or in connection with such incorporations;
- to those provisions or parts of the Definitive CA which are indicated as being subject to completion or finalization or which the Province determines in its discretion require completion or finalization, including provisions which require;
 - the modification or the insertion or addition of information relating to the Proponent's corporate and funding structure; and
 - the modification or the insertion or addition of information in order to reflect accurately the nature of the Proponent's relationships with its principal subcontractors (including each of the Principal Contractors)
- required in order to complete, based on the Proposal, any provision of the Definitive CA, including changes, modifications and additions contemplated in or required under the terms of the Definitive CA;
- that are necessary to create or provide for a duly authorized and legally complete and binding agreement; and
- that are necessary solely to enhance clarity in legal drafting.

3.7.2 Negotiations

If the Preferred Proponent submitted a Proposal corresponding to the Base Scope or a Proposal that does not meet the Affordability Requirements, the Province may, in its discretion, and without limiting any other terms of this RFP, including Section 5.3 of this RFP Volume 1, by delivery of written notice invite the Preferred Proponent to enter into negotiations with a view to obtaining a Concession Agreement which the Province considers in its discretion to be in the interests of or advantageous to the Province or otherwise acceptable to the Province.

The negotiations may, in the Province's discretion, extend to any matter whatsoever, including changes and additions to, and removals of, any one or more aspects or parts, including design, technical, scope, timing, commercial, risk, financing, pricing aspects or

parts, of the Project, the Definitive CA, the Proposal, the Technical Submittal, the Technical Supplement (if applicable), the Financial Submittal, the Project, and the Project Work.

Neither the Province nor the Preferred Proponent will be under any obligation or duty, whether in contract, tort, statute or common law, to negotiate any matter, to continue negotiations or to obtain a Concession Agreement through this process.

The Province may at any time and for any reason that the Province in its discretion considers to be in the interests of the Province, including if the Preferred Proponent declines to accept the Province's invitation to enter into negotiations, revoke the invitation and, if applicable, terminate negotiations with the Preferred Proponent and proceed to take any one or more steps that the Province in its discretion considers to be in its interests or to its advantage including:

- proceed with the same Proponent as Preferred Proponent to finalize and settle the Definitive CA as contemplated in Section 3.7.1 of this RFP Volume 1 in which case the terms of Section 3.7.1 of this RFP Volume 1 will apply;
- discontinue the process with the Proponent, select another Proponent as Preferred Proponent and invite that Proponent to enter into the negotiations contemplated in this Section 3.7.2;
- discontinue the process with the Proponent and select another Proponent as Preferred Proponent to finalize and settle the Definitive CA as contemplated in Section 3.7.1 of this RFP Volume 1 in which case the terms of Section 3.7.1 of this RFP Volume 1 will apply; or
- any of the steps contemplated in Section 5.3 of this RFP Volume 1.

3.8 Fairness Reviewer

A Fairness Reviewer has been appointed by the Province with responsibility to review the development and implementation of the Competitive Selection Process from a fairness perspective, including by participating in any or all aspects of the Workshops and the Topic Meetings. This includes, but is not limited to, monitoring the evaluation, including the ranking, of the Proposals and the selection, if any, of the Preferred

Proponent. The Fairness Reviewer will report only to the Province and will provide, on an ongoing basis, an objective opinion as to the fairness of the Competitive Selection Process. In particular, the Fairness Reviewer will provide a written report in respect of the Proposal evaluation process which will be made public at the time of selection of the Preferred Proponent.

3.9 Timetable

The anticipated timetable for the Competitive Selection Process is set out in Table 3.

Table 3 - Anticipated Timetable for the Competitive Selection Process

Activity	Date
RFP Volume 1 and 2 Issued	April 9, 2009
Topic Meeting – All-Proponents Information Meeting	April 21, 2009
Proponents Submit comments on Draft CA	May 21, 2009
Workshop A – One-on-one Draft CA meeting	June 18, 2009
Revised Draft CA may be issued	July 30, 2009
Proponents submit comments on revised Draft CA	September 18, 2009
Workshop B – One-on-one revised Draft CA meeting	October 16, 2009
Definitive CA issued	October 30, 2009
Technical Submittal Deadline	2:00 PM local Vancouver Time on November 27, 2009
Closing Time	Closing Time for Proposals (Financial Submittals) to be specified in the invitation described in Section 3.5.3 (anticipated to be approximately 6 weeks after the invitation letter is issued)
Announcement of Preferred Proponent	Spring 2010

4. General Information and Instructions

4.1 Background Investigations, Surveys and Studies

Numerous investigations, surveys, and studies have been and are anticipated to continue to be undertaken with respect to the South Fraser Perimeter Road Project. Reports and other material relating to these activities are included in and will continue to be added to the Data Room.

4.2 Investigations, Surveys and Studies by Proponents

Each Proponent is responsible for conducting its own independent due diligence and for satisfying itself as to all aspects of the Project, including assessments, investigations, examinations, surveys, and studies which they consider necessary, desirable, beneficial, or appropriate at their own cost.

Proponents are responsible for making their own arrangements in respect of access to lands that are not owned or administered by the Province.

Proponents will coordinate any field work or any access to any non-public part or parts of the Project Site and adjacent areas, including to any part of the lands owned, operated, or administered by a Railway, through the Province by submission of a request to the Contact Person, to ensure that inconvenience to land owners, tenants, road users, and other contractors is kept to a minimum, and to ensure that environmental, safety and time constraints are taken into account. The request for access should be submitted as early as possible, and in any event at least 48 hours in advance of the time for any proposed access, and should include the requested access or field work date(s), time(s), location(s), and proposed field work or activities.

The Province will provide no insurance or workers compensation coverage for any matter whatsoever to any Proponents, Proponent Team Members, or any of their respective directors, officers, employees, consultants, advisors, agents or others. Access to the Project Site and adjacent areas, or to any other facilities or premises, may be conditioned upon Proponents providing evidence acceptable to the Province that insurance and indemnities, acceptable to the Province, are in place and granted as the case may be; that the Proponent and its Proponent Team Members are registered with

the Workers' Compensation Board of British Columbia in accordance with applicable Laws, or have employer's liability insurance in amounts and on terms and conditions acceptable to the Province; and that a Representative of the Province be present during the Proponent's works and activities at the access locations. Without limiting the foregoing, access to any part of the lands owned, operated, or administered by a Railway may be conditional on satisfaction of any additional requirements of a Railway, as the case may be.

Proponents are responsible for obtaining and holding any and all rights, permits, licences, consents, approvals and authorities required by any governmental agency or authority or other person to carry out any of such field work, assessments, investigations, and surveys.

4.3 Monitoring Data during Competitive Selection Process

The Province anticipates providing data associated with the monitoring of the advance site preparation during the Competitive Selection Process. The results of the monitoring will be documented in reports which will be included in the Data Room when the RFP is issued. The monitoring data will be updated as the information becomes available.

Without limiting any other term of this RFP, including Sections 4.2, 5.18 and 5.19, Proponents will assume all risk in connection with any analysis, interpretation and conclusions drawn from the raw factual data.

4.4 Data Room

The Province has established a Data Room for the Project and the Competitive Selection Process.

The Province may in its discretion, supplement, replace, modify, and update information in the Data Room at any time and from time to time without notification. Proponents are solely responsible for checking the Data Room frequently and on an ongoing basis, including for any such supplements, replacements, modifications, and updates. Proponents are solely responsible for ensuring that they have software, which allows them access to, and use of, any information in the Data Room.

All information in the Data Room is subject to the Confidentiality Agreement.

In the event of conflict or inconsistency between material downloaded from the Data Room and the applicable material as posted in the Data Room, the posted contents of the Data Room will govern and take precedence.

4.5 Contact Person and Questions and Answers Protocol

Except as expressly provided for in this RFP, Proponents will direct all communications in relation to this RFP or any part of the Competitive Selection Process, the Project, the Draft CA, the Definitive CA, the Concession Agreement, or the preparation of any Proposal, including questions, inquiries, comments, requests for information, requests for clarification, and requests for Topic Meetings or Workshops to the Contact Person in writing by fax or email to the following address:

South Fraser Perimeter Road Project
Attention: Contact Person
Metrotower 1
Suite 2400- 4710 Kingsway
Burnaby, BC
V5H 4M2
Fax: 604-775-0347
E-mail: SFPRRFP@GatewayProgram.bc.ca

Information or documentation obtained from any source other than the Contact Person is not official, will not be binding on the Province, and may not be relied on or otherwise used in any way for any purpose whatsoever. The Province in its discretion may but will not be obligated in any way whatsoever to respond to any RFI or any other communication or enquiry.

4.6 Proponent Communications

Proponents will communicate with the Province or any of its representatives in relation to this RFP, any part of the Competitive Selection Process, the Project, the Draft CA, the Definitive CA, the Concession Agreement, or the preparation of their Proposals, only

- (a) in writing using a Request for Information in accordance with the Requests for Information and Distribution of Information protocol set out in Schedule 3 to the Proponent Agreement;

- (b) in Workshops and Topic Meetings, and any additional meetings subject to the terms of this RFP;
- (c) as may be otherwise expressly invited in writing by the Province, and
- (d) as may be expressly permitted by this RFP, including in accordance with the response guidelines set out in Appendix A of this RFP.

The Province may in its discretion distribute any communication, information or enquiry, including any RFI or Response to Proponents to all the Proponents. If the Province in its discretion considers an RFI or the corresponding Response to Proponents to be of a minor or administrative nature and to relate only to the Proponent, or to any other of the Proponents who submitted the RFI, the Province may issue a Response to Proponents only to the Proponent or any other of the Proponents who submitted the RFI.

Despite any other term of this RFP and any RFI or other communication being identified as “Commercial in Confidence”, if the Province in its discretion, considers the matter to be a matter of substance or a matter that should be brought to the attention of the Proponents for purposes of fairness in or maintaining the integrity of the Competitive Selection Process, the Province may deliver an Addendum or a Response to Proponents relating to the matter to all the Proponents.

Without limiting the foregoing, if the Province considers, in its discretion including for purposes of fairness in the Competitive Selection Process, that the Province should not respond to an RFI that is marked “Commercial in Confidence” on a confidential basis, the Province will notify the Proponent and specify the time period within which the Proponent may withdraw its RFI in writing. If the Proponent does not withdraw the RFI within the time specified by the Province, then the Province in its discretion may provide to all Proponents the Province’s response to the RFI.

Proponents will not communicate, including by media releases or interviews, and will ensure that its Proponent Team Members, including their respective directors, officers, employees, consultants, advisors, representatives and agents do not communicate, in respect of any part or parts of the Project or the Competitive Selection Process with the media or the public without the prior written consent of the Province.

Each Proponent will notify the Province of requests for interviews or other requests from the media received by the Proponent or any of its Proponent Team Members.

5. General Matters

5.1 Amendment or Cancellation of RFP

This RFP may be amended only by Addenda issued by the Province.

The Province may in its discretion at any time, and from time to time, including after the Technical Submittal Deadline, by Addendum, amend, supplement or otherwise modify, any part or all of this RFP, including the Draft CA and the Definitive CA, including by extending or accelerating any schedules, timetables, or dates, including any timetables or schedules for the Competitive Selection Process or the Project, the Technical Submittal Deadline and the Closing Time, or any of them, by adding to, reducing or otherwise modifying the evaluation process, including the ranking, for Proposals, or the scope or any other part of the Project, or by suspending, postponing, canceling or re-issuing, all or any part of this RFP.

5.2 No Contract

This RFP is neither an offer nor an agreement to purchase goods or services. No contract of any kind whatsoever is formed under or arises from this RFP, or as a result of or in connection with the submission of a Proposal, including as a result of or in connection with the submission of a Technical Submittal and a Financial Submittal, or either of them.

5.3 No Obligation to Proceed or Make any Selection

The Province has no obligation or duty, in any way, whether in contract, tort or otherwise, including:

- if the Province receives only one Proposal that substantially satisfies the requirements of this RFP and the Definitive CA; or
- only one Proponent remains to be considered for selection as the Preferred Proponent; or
- if the Province selects a Preferred Proponent;

to complete this RFP stage or proceed with or to any part of the Competitive Selection Process, to enter into the Concession Agreement, or any agreement with respect to all or any part of the Project, with any Proponent, the Preferred Proponent if one is selected and offered the opportunity, or any Person.

The Province has no obligation or duty, in any way, whether in contract, tort or otherwise, to:

- accept, review or evaluate any one or all Proposals, including any one or all Technical Submittals or Financial Submittals; or
- to extend any invitations, to consider any Proponent for selection as a Preferred Proponent; or
- to select a Preferred Proponent, to continue with a Preferred Proponent; or
- to accept the Proposal that receives the highest ranking in accordance with the evaluation criteria set out in this RFP, or any Proposal.

The Province may in its discretion accept, reject, or disqualify any or all Technical Submittals, Financial Submittals or Proposals, including any that do not satisfy all requirements set out in this RFP or for which necessary orders, authorizations, and approvals, including governmental authorizations, orders and approvals, have not been obtained.

Without limiting any other term of this RFP, the Province may in its discretion for any reason, (including if the Province does not select a Preferred Proponent), at any time or within six months of the Closing Time, if the Province elects not to continue with a Preferred Proponent, (if selected), or if the Province elects not to enter into the Concession Agreement, or at any time during this RFP stage, for any other reason that the Province in its discretion considers to be in the interests of or advantageous to the Province:

- terminate the Competitive Selection Process, including this RFP;
- take any steps that the Province in its discretion considers to be in the interests of, or advantageous to the Province, including implement or issue any other procurement or other process including a negotiation process for, or to proceed in any other manner whatsoever, at any time and from time to time, with any part

of parts of the Project or Project Work, including any part or parts of the design, construction, operation, maintenance, rehabilitation or financing of any part or parts of the lands and infrastructure comprising or anticipated to comprise the Project.

In so doing, the Province may at any time, and from time to time, contract directly with any Person, on such terms as the Province may in its discretion deem appropriate, including any one or more Proponent Team Members or any contractors, advisers or other Person engaged by or through or associated with any Proponent.

A negotiation process referenced in this Section 5.3 may:

- proceed with the Proponent who submitted the Proposal which the Province considers, in its discretion, to be most advantageous to the Province, and the Province may attempt to finalize an agreement, including a Concession Agreement, as applicable, with that Proponent on terms, conditions, and as to scope acceptable to the Province; or
- proceed with any Person whom the Province considers, in its discretion, to be capable of completing the Project, or any parts thereof, for a price and on terms and conditions acceptable to the Province, and to be otherwise appropriate.

5.4 Proposal Review and Evaluation

In administering and carrying out its functions under this RFP, or in any aspect of the Competitive Selection Process, including in reviewing, evaluating, and ranking, Proposals, the Province may, in its discretion and in confidence utilize, be assisted by, consult with, obtain and rely upon input, advice and direction from technical, financial, managerial and legal advisors and consultants in any way that the Province considers in its discretion will be of assistance to the Province. Such advisors and consultants may be representatives and employees of the Province, of government agencies and/or of private sector firms.

Review and evaluation, including ranking, of Proposals may be conducted by evaluators comprised of employees and representatives of the Province, of government agencies and/or of private sector firms.

The Province may in its discretion establish its own methods and procedures for the review, evaluation and ranking of Proposals, including the Technical Submittals, the Technical Supplement, if any, and the Financial Submittals, and the selection of a Preferred Proponent, if any.

The Province may in its discretion take any one or more of the following steps, at any time and from time to time in connection with the review and evaluation, including ranking, of any aspect of a Proposal, including if the Province considers that any Proposal, including any of the Technical Submittal, the Technical Supplement, if any, or the Financial Submittal, or any part of a Proposal requires clarification or more complete information, contains defects, alterations, qualifications, omissions, inaccuracies or misstatements, or does not for any reason whatsoever satisfy any requirements of this RFP at any time, or for any other reason the Province in its discretion deems appropriate and in the interests of the Province and the Competitive Selection Process, or either of them:

- waive any such defect, ambiguity, alteration, qualification, omission, inaccuracy, misstatement or failure to satisfy, and any resulting ineligibility on the part of the Proponent, or any member of the Proponent Team;
- independently consider, investigate, research, analyze, request or verify any information or documentation whether or not contained in any Proposal;

- conduct credit, reference, criminal record, litigation, bankruptcy, tax payer information and other checks and obtain references from Persons, including Persons other than those listed by Proponents in any part of their Proposals;
- not proceed to review and evaluate or discontinue the evaluation of any Proposal or part thereof, including any Technical Submittal or Financial Submittal, and disqualify the Proponent from this RFP and the Competitive Selection Process;
- reject in whole or in part any Technical Supplement, if any are invited;
- seek clarification, rectification or more complete, supplementary, replacement or additional information or documentation from any Proponent or in connection with any Proposal, including with any Technical Submittal, Technical Supplement, or Financial Submittal or any part of their component packages.

Without limiting the foregoing, the Province may in its discretion, decline to review, evaluate or rank, or may reject outright any Proposal which in the opinion of the Province is materially incomplete or irregular, which contains omissions, exceptions or variations not acceptable to or material to the Province, which contains a false or misleading statement, claim or information, or for which background investigations reveal any false statements, criminal affiliations or activities by a Proponent or Proponent Team Member.

To enable the Province to take any one or more of the above-listed steps, the Province may enter into separate and confidential communications of any kind whatsoever, including by meetings or interviews, with any Person, including any Proponent. The Province has no obligation whatsoever to take the same steps or to enter into the same or any communications in respect of all Proponents and Proposals, or in respect of any Proponent, including the Proponent whose Proposal is the subject of the review or evaluation, as the case may be.

The review and evaluation, including the ranking, of any Proposal may rely on, take into account and include any information and documentation, including any clarification, more complete, supplementary and additional or replacement information or documentation, including information and documentation obtained through any of the above-listed investigations, research, analyses, checks, and verifications.

Proponents will not submit any clarifications, rectifications, information or documentation in respect of the Technical Submittal after the Technical Submittal Deadline and in

respect of the Financial Submittal after the Closing Time, without the prior approval of the Province or at the invitation or request of the Province.

If any information, including information as to experience or capacity, contained in a Proposal is not verified to the Province's satisfaction through such checks, the Province may, in its discretion, not consider such cited experience, capacity or other information.

The Province is not bound by industry custom or practice in taking any of the steps listed above, in exercising any of its discretions, in formulating its opinions and considerations, exercising its discretions in making any decisions and determinations, or in discharging its functions under or in connection with this RFP, or in connection with any Proponent, Proposal, or any part of any Proposal, including any Technical Submittal, Technical Supplement, or Financial Submittal.

The Province's decision in its discretion as to whether or not a Proposal substantially satisfies the requirements of this RFP and the Definitive CA will be final and the Province need not consult with any Proponent in making its decision.

5.5 Participation in the Competitive Selection Process

If a Proponent fails to observe any term of this RFP or to comply with any term of the Proponent Agreement, or fails to ensure that its Proponent Team Members observe the terms of this RFP or of the Proponent Agreement, or the Province becomes aware through investigations or checks, or otherwise, of false statements, criminal affiliations or activities by a Proponent or any Proponent Team Member, as the case may be, the Province may, in its discretion at any time and from time to time, including during the review and evaluation, including ranking, of any Proposal:

- acknowledge the Proponent's ineligibility to continue to participate in the Competitive Selection Process;
- decline to or cease to review, evaluate or rank, or reject outright the Proponent's Proposal, including the Technical Submittal, the Technical Supplement, if any, or Financial Submittal, as the case may be;
- not extend an invitation to the Proponent to submit a Financial Submittal, regardless of whether or not the Proponent has delivered a Technical Submittal that substantially satisfies the requirements of this RFP and the Definitive CA;

- decline to consider a Proponent for selection as a Preferred Proponent, regardless of whether or not the Proponent receives the highest ranking in accordance with the evaluation criteria set out in this RFP;
- decline to continue with a Preferred Proponent, if one has been selected and designated;
- disqualify the Proponent from the Competitive Selection Process; or
- waive the failure or failures on such terms and conditions as the Province may in its discretion require to satisfy the Province's consideration of the interests of the Province, including the public interest, or of any other matter that in the Province's discretion is appropriate in respect of the Competitive Selection Process.

5.6 Conflicts in Documents

If a Proponent considers any term of this RFP or the Definitive CA to be in conflict with any other part of this RFP or the Definitive CA, the Proponent will notify the Contact Person in writing in accordance with Section 4.5, giving the details of such apparent conflict and seeking clarification. If any such conflict exists but notice is not given by a Proponent, the provision which, in the sole opinion of the Province, will provide the higher overall value or benefit to the Province, will govern and take precedence.

Subject to the foregoing, in the event of any conflict or inconsistency, the Concession Agreement, including all schedules to the Concession Agreement, will govern and take precedence over this RFP.

In the event of a conflict or inconsistency between the paper form as issued to Proponents of the Definitive CA, the Concession Agreement or this RFP and, either, the same document as issued to Proponents in digital, electronic or other computer readable form, or the same document as posted in the Data Room, the paper form of the applicable document as issued to Proponents will govern and take precedence.

5.7 Confidentiality and Freedom of Information and Protection of Privacy

All documents and other records in the custody of or under the control of either or both

of Partnerships BC and the Province are subject to the FOIPPA.

Subject to the terms of the FOIPPA, the Proponent Agreement and Section 5.10 all Proposals and other documents and records submitted by a Proponent in connection with this RFP will be considered confidential.

The Province will, subject to all applicable Laws, including the FOIPPA, and except as may be otherwise required or necessary to enable the review and evaluation of Proposals and the administration of this RFP stage and any other part of the Competitive Selection Process, use reasonable efforts to maintain the confidentiality of Proposals.

By submitting a Proposal, the Proponent represents and warrants to the Province that the Proponent has complied with applicable Laws, including by obtaining from each Person any required consents and authorizations to the collection of information relating to such individual and to the submission of such information to the Province as part of the Proposal for the purposes of this RFP and the Competitive Selection Process.

5.8 No Collusion

Proponents and Proponent Team Members will not discuss or communicate, directly or indirectly, with any other Proponent, or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent, including any Proponent Team Member of such other Proponent, regarding the preparation, content or representation of their Proposals. Proposals will be submitted without any connection, including a connection arising solely through shareholdings or other equity interests in or of a Proponent or Proponent Team Member, knowledge, comparison of information, or arrangement, with any other Proponent or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent, including any Proponent Team Member of such other Proponent.

5.9 No Lobbying

Proponents and Proponent Team Members, and their respective directors, officers, employees, consultants, agents, advisors and representatives will not in relation to the Project, this RFP, the Draft CA, the Definitive CA, the Concession Agreement, or the Competitive Selection Process, engage in any form of political or other lobbying whatsoever, and will not except as expressly contemplated by this RFP attempt to communicate in relation to any of these matters, directly or indirectly, with any

representative of Partnerships BC or the Province, including any minister or deputy minister of the Province, any member of the Executive Council, any members of the Legislative Assembly, any Restricted Parties, or any director, officer, employee, agent, advisor, staff member, consultant or representative of any of the foregoing, as applicable, for any purpose whatsoever, including for purposes of:

- commenting on or attempting to influence views on the merits of the Proponent's Proposal, or in relation to Proposals of other Proponents;
- influencing, or attempting to influence, the outcome of this RFP stage, or of the Competitive Selection Process, including the review, evaluation, and ranking of Proposals, the selection of the Preferred Proponent, or any negotiations with the Preferred Proponent;
- promoting the Proponent or its interests in the Project, including in preference to that of other Proponents;
- commenting on or criticizing aspects of this RFP, the Competitive Selection Process, the Project, or the Concession Agreement, including in a manner which may give the Proponent a competitive or other advantage over other Proponents; and
- criticizing the Proposals of other Proponents.

5.10 Disclosure

The following information has been publicly disclosed by posting it at www.gatewayprogram.bc.ca and/or at www.partnershipsbc.ca:

- the Request for Qualifications,
- the names of the Short-Listed Respondents, and
- the Relationship Review Process Description.

Additional information that may be publicly disclosed, subject to government policy and FOIPPA, by posting it at www.gatewayprogram.bc.ca and/or at www.partnershipsbc.ca includes:

- Volume 1 of this RFP,

- the name of a Preferred Proponent, and
- the value for money assessment to be published shortly after the Effective Date.

The Draft CA is confidential and is not intended to be made publicly available unless otherwise required by government policy or Law. The Concession Agreement, excluding those portions that may be severed pursuant to the FOIPPA, will be disclosed publicly following the Effective Date.

5.11 Transportation Investment Act

The *Transportation Investment Act* authorizes the Minister of Transportation to enter into concession agreements with third parties to design, build, operate, and maintain highways. Without limiting any other term of this RFP, Proponents should ensure they familiarize themselves with the *Transportation Investment Act* and other relevant Laws.

5.12 Changes to Proponents and Proponent Team Members

Subject to the terms of this RFP, Changes to the Proponent, or any Proponent Team Member either before or after delivery of the Proposal, including the Technical Submittal or the Financial Submittal, may only be made with the permission of the Province. If for any reason a Proponent wishes to make or requires that a Change be made, the Proponent will deliver a written request to the Province for permission to make the proposed Change.

The Proponent must include in such written request the full legal name(s) of the Person(s) affected by or involved with the proposed Change, together with a clear and concise description of the legal nature and status of such Person(s), sufficient to correctly and fully legal describe the Persons affected by or involved with the proposed Change, the reason for the proposed Change, a comprehensive description of the proposed Change and sufficient information and documentation, including as to suitability, knowledge, skills, resources, experience, qualifications and abilities of the individuals or entities involved in the proposed Change to demonstrate that the proposed Change, if permitted, would result in the Proponent, the Proponent Team Members, considered as a whole and considered separately, meeting or exceeding, in the sole opinion of the Province, the suitability, qualifications, experience, and abilities of the Proponent, and the Proponent Team Members considered as a whole before the

proposed Change. The Proponent will provide such further information and documentation as the Province may request in the Province's discretion for the purpose of considering any such request, and any such additional information and documentation, including the request for a proposed Change, may in the discretion of the Province be included in the evaluation of the Proponent's Proposal.

The Province may, in its discretion, by written notice refuse or permit the proposed Change. Any permission of the Province may be on such terms and conditions as the Province may consider appropriate.

The Proponent will immediately notify the Province if, after submission of the Proposal or either of the Technical Submittal or Financial Submittal, a material change in circumstances, including a Change, occurs which may:

- adversely affect a Proponent's ability to enter into or perform the Concession Agreement including any aspects of the Project Work; or
- adversely affect a Proponent's ability to finance the Project or obtain the necessary financing to enter into the Concession Agreement .

Such a change may not automatically render a Proponent ineligible so as to be disqualified from the Competitive Selection Process. The Province's decision in its discretion as to whether or not to disqualify a Proponent as a result of such a change will be final and binding.

5.13 Restricted Parties

The Persons listed in this section and their affiliates have been identified as Restricted Parties:

- DA Aberdeen & Associates Ltd
- CH2M Hill Canada Limited
- Delcan Corporation
- Farris, Vaughan, Wills & Murphy LLP

- Geoplan Opus Consultants Inc
- Golder Associates Ltd
- Hemmera Envirochem Inc.
- Kirk & Co Consulting Ltd
- KPMG LLP
- PricewaterhouseCoopers LLP
- Banjar Management Inc.
- Miller Thomson
- CMS Focus Construction Management Services Ltd
- E. Wolski Consulting Inc.
- Lucent Strategies Inc.
- RF Binnie and Associates
- Coast River Environmental Services Ltd.
- Meyers Norris Penny
- Freshfields

This is not an exhaustive list of Restricted Parties. Additional Persons may be identified as Restricted Parties, including by being added to the list during the Competitive Selection Process.

Restricted Parties, their respective directors, officers, partners, employees, and affiliates are not eligible to participate as a Proponent or as a Proponent Team Member, or advise any Proponent or Proponent Team Member, directly or indirectly, or participate in any way as an employee, advisor, consultant, Equity Member, Key Individual or otherwise in connection with any Proponent.

Each Proponent will ensure that neither the Proponent nor any Proponent Team Member uses, consults, includes, or seeks advice from any Restricted Party.

5.14 Shared Use

Shared Use Persons may enter into arrangements with any and all Proponents, but may not enter into exclusive arrangements with any Proponent. Shared Use Persons include Persons who have unique or specialized information or skills such that the Province considers, in its discretion, their availability to all Proponents to be desirable in the interests of the Competitive Selection Process. The following Persons have been identified as Shared Use Persons:

- Wakefield Acoustics Ltd.
- BKL Consultants
- International Road Dynamics Inc.

5.15 Conflicts of Interest / Relationship Review Process

Each Proponent will, by written notice addressed to the Contact Person, promptly after becoming aware of any such relationship, whether before or after delivery of the Technical Submittal or the Financial Submittal, fully disclose all relationships that the Proponent or any of its Proponent Team members has, or had, with the Province, Partnerships BC, any Restricted Party or any other Person providing advice or services to the Province with respect to the Project.

At the time of disclosure of such relationship, the Proponent will include sufficient information and documentation to demonstrate that appropriate measures have been or will be implemented to manage, mitigate, minimize or eliminate any actual or potential conflict of interest or unfair advantage, as applicable, to the greatest extent practicable. The Proponent will provide such additional information and documentation and implement such additional measures as the Province may require in its discretion in connection with the Province's consideration of the disclosed relationship and proposed measures.

A description of the relationship review process is posted on the Gateway Program

website (www.gatewayprogram.bc.ca).

The Province may in its discretion waive any and all potential or actual conflicts, or the impacts of any existing relationships. Any waiver may be upon such terms and conditions as the Province in its discretion may require, to satisfy itself that the conflict, actual or potential, or impact, or consequence of the relationship, as the case may be, has been appropriately managed, mitigated, minimized, or eliminated, including by requiring the Proponent and any Proponent Team Member and affected persons or entities to put into place such policies, procedures, measures and other safeguards as may be required by and are acceptable to the Province, in its discretion, to ensure that any and all Confidential Information the Proponent or any Proponent Team Member may have continues to be kept confidential and not disclosed or used except as expressly permitted by the Province. Without limiting the generality of the foregoing, the Province may, in its discretion, require the Proponent or Proponent Team Member to substitute a new person or entity for the person or entity giving rise to the potential or actual conflict of interest or unfair advantage, or who has the existing relationship.

Without limiting any other term of this RFP, the Province may in its discretion disqualify any Proponent that in the Province's opinion has or permits or suffers an actual conflict of interest or unfair advantage involving itself or any of its Proponent Team Members, to continue, or has a relationship or permits or suffers a relationship involving any Proponent Team Member that has the potential to give rise to a conflict of interest or unfair advantage.

5.15.1 Conflict of Interest Adjudicator and Rulings

The Province has appointed a Conflict of Interest Adjudicator to make decisions on conflicts of interest and unfair advantage, including whether any Person is a Restricted Party. The decisions or rulings of the Conflict of Interest Adjudicator on any conflict of interest or unfair advantage issue, including whether any Person is a Restricted Party, whether in response to a request for ruling or a request by the Province at any stage of the Competitive Selection Process, is final and binding on the Person requesting the ruling, and on all other Persons, including all Proponents, their Proponent Team Members, and the Province.

A Proponent, Proponent Team Member, prospective Proponent Team Member or an

advisor who has any concerns regarding whether a Person is or may be a Restricted Party or becomes aware of circumstances that may constitute an actual or potential conflict of interest or give rise to unfair advantage should seek a ruling from the Conflict of Interest Adjudicator.

In order to request a ruling, a Proponent, Proponent Team Member, prospective Proponent Team Member or advisor should submit to the Contact Person, not less than 10 Business Days prior to either the Technical Submittal Deadline or the Closing Time by hand, courier, email delivery or facsimile, all relevant information and documentation, including, the following information:

- the names and contact information of the Proponent and Proponent Team Members and the person or firm in respect of which the ruling is requested;
- a description of the relationship that is the subject of the request for a ruling ;
- a description of the steps taken to date and future steps proposed to be taken to mitigate, manage, minimize or eliminate any actual or potential conflict of interest or unfair advantage, as applicable, to the greatest extent practicable; and
- copies of any relevant documentation.

Subject to the terms of this RFP, all requests for rulings will be treated in confidence. If a Proponent, a Proponent Team Member, a prospective Proponent Team Member or advisor is identified as a Restricted Party, it may be listed in an Addendum, posted on the Project website or otherwise communicated to Proponents as a Restricted Party, including in any subsequent Competitive Selection Process documents.

The Province may on its own initiative, at any time and from time to time, including during any part of the evaluation of any Proposal, ask for rulings from the Conflict of Interest Adjudicator, if Persons who may be Restricted Parties, or if actual or potential conflicts of interest or unfair advantage are brought to, or otherwise come to the attention of, or are identified by the Province. The Province will, if it seeks a ruling, provide the Conflict of Interest Adjudicator with relevant information, including relevant information in its possession about the participation of the Person in the Project or other circumstances relevant to the relationship that is the subject of the request for ruling. The Province will give notice to the subject Persons so that such Persons may make their own submissions and provide relevant information to the Conflict of Interest

Adjudicator.

5.16 Delivery and Receipt

Proponents are solely responsible for ensuring that they have received the complete RFP. By submitting a Proposal each Proponent represents that the Proponent has verified receipt of a complete RFP, has understood the complete RFP, and delivers the Proposal on the basis of the complete RFP, including all Addenda.

Neither the Province, nor its employees, servants, agents, or representatives will be in any way responsible or liable for or make any guarantee, warranty or representation whatsoever as to:

- the timely, complete, effective, condition (including security) upon delivery, or receipt of any, communication, enquiry, response, information or other documentation, including this RFP, or any and all Addenda, any Proposal, any part of a Proposal, including the Technical Submittal or the Financial Submittal, or any amendments to any part of a Proposal, from or by any Person, including a Proponent or the Province, whether by email, by courier, by hand, or by facsimile; or
- the working order, functioning with or without errors or interruptions, or malfunctioning, or capacity of any facsimile transmission equipment or electronic email or information system, including the Data Room or any notices in respect of the Data Room.

All permitted fax or email communications or delivery of documents relating to this RFP will be deemed to have been received by the Province on the dates and times indicated on the Province's facsimile transmission equipment or electronic equipment.

Each part of this RFP, any and all Addenda and any other communications, responses or other documentation delivered by or on behalf of the Province will be deemed validly delivered to and received by the intended recipient, including any Proponent, at the time that this RFP, such Addenda, communications, responses or other documentation, as the case may be, is issued by facsimile transmission to the facsimile number designated by the Proponent as the sole facsimile number for receipt of information in connection with this RFP, or by electronic email to the email address designated by the Proponent as the email address for receipt of information in connection with this RFP.

5.17 Proponent Team Members and Subcontractors

Proponents are responsible for ensuring that their Proponent Team Members, including subcontractors, suppliers, manufacturers, advisors, consultants and subconsultants, and everyone associated with or related to the foregoing, observe the terms of this RFP.

5.18 No Reliance

Neither the Province nor any of the Representatives makes any representation, warranty, guarantee or endorsement, or has any liability, obligation or responsibility whatsoever in contract, tort or otherwise, with respect to the scope, quality, timeliness, accuracy, reliability, appropriateness, sufficiency, relevance or completeness of any Information or any statements, representations, assurances, commitments, or agreements which Proponents believe they may have received or reached with any stakeholders, interested parties, or other Persons.

Without limiting the foregoing, any borehole logs, test pit logs or monitoring data provided by or on behalf of the Province, including the raw factual data described in Section 4.3 of this RFP, reflect only the observations which were made at the specific locations described and at the specific times recorded, and may not be representative or indicative of anticipated or actual conditions encountered either at specific locations or immediately adjacent thereto or, with respect to groundwater and other anticipated or actual conditions, at any other times.

No actions or omissions, communications or responses, including Information, statements, opinions, comments, consents, waivers, acceptance or approvals made or raised by or on behalf of the Province or any of the Representatives, the Proponent, the Proponent Team Members, any of the Proponents or their Proponent Team Members, or any Person, whether positive or negative, including if set out in any document or information provided by the Proponent or its Proponent Team Members, any of the Proponents or any their Proponent Team Members, in relation to any matter, including the Competitive Selection Process, this RFP, the Draft CA, the Definitive CA, the Concession Agreement, Project Requirements or the Project, at any time or times during the Competitive Selection Process, including during this RFP stage or during or before any Workshop or Topic Meeting, will be binding on the Province or be relied upon in any way by the Proponent, or the Proponent Team Members for any purpose whatsoever; be deemed or considered to be an indication of a preference by the Province or any

Representative even if adopted by the Proponent or another of the Proponents, or will amend or waive any term of this RFP in any way for any purpose whatsoever, unless and only to the extent expressly incorporated by Addendum, or expressly set out in a Response to Proponents issued by the Province to the Proponents.

By submitting a Proposal, each Proponent represents and warrants to the Province that its Proposal has been prepared, relies and has been submitted solely on investigations, examinations, knowledge, analyses, interpretation, information, opinions, conclusions, judgments, and assessments independently undertaken, formulated, obtained, and verified by the Proponent and its Proponent Team Members and not in any way upon any action or omission, the scope, timeliness, accuracy, completeness, relevance, or suitability of any Information.

Nothing in this RFP or otherwise relieves Proponents from undertaking their own investigations and examinations, including as they consider necessary, desirable, beneficial, or appropriate, and developing their own analysis, interpretations, opinions and conclusions including in respect of any raw factual data described in Section 4.3 of this RFP, bore hole logs, test pit logs and monitoring data provided by or on behalf of the Province, with respect to the preparation and delivery of their Proposals, and with respect to this RFP, the Draft CA, the Definitive CA, the Concession Agreement, Project Requirements and the Project.

Any and all use of or reliance upon, in any way whatsoever, any Information, including as described in this Section 5.18 of this RFP or any statements, representations, assurances, commitments or agreements which Proponents believe they may have received or reached with any stakeholders, interested parties, or other Persons will be at their sole risk and without recourse of any kind whatsoever against the Province or any of the Representatives.

5.19 No Liability

Notwithstanding any other provision of this RFP and except as expressly set out and only to the extent expressly set out in the Proponent Agreement, neither the Province nor the Representatives, will have any responsibility, obligation or liability whatsoever whether in contract, tort or otherwise, for or in respect of any Claims by any Person, including any Proponent, Proponent Team Member, prospective member of a Proponent Team or any of their respective contractors, sub-contractors, directors, officers,

employees, consultants, advisors or agents, for any matter whatsoever arising out of, in connection with, or relating in any way to the Competitive Selection Process, or any part of the Competitive Selection Process, including this RFP, matters or issues contemplated or considered in the opinion of the Fairness Reviewer, the Derivative Activities, or one or more Derivative Activity, or any of them, any Proponent or Proponents, the Proposal, the Technical Submittal or Financial Submittal, or any Proposal, any Shared Use Person or arrangements involving a Shared use Person, any use of or reliance on the Restricted Parties list, any identification of or failure to identify, in a timely manner or at all, any Person as a Restricted Party, any ruling or advice of or failure to provide a ruling or advice, in a timely manner or at all, of the Conflict of Interest Adjudicator.

5.20 Dispute Resolution

The Authorized Representative for the Proponent identified in its Proposal will, within 14 days of any dispute arising in any way in connection with this RFP, submit written notice to the Contact Person of such dispute.

All such disputes for which proper notice has been given to the Contract Person, that are not resolved through negotiation between the Province and the Proponent within sixty (60) days of the date of the written notice of the dispute, may by mutual agreement be referred to and finally resolved by binding arbitration in accordance with the *Commercial Arbitration Act* (British Columbia). This RFP stage and the Competitive Selection Process will continue despite any such ongoing dispute resolution.

6. Interpretation

References to this RFP or the Concession Agreement, or to the documents which make up the appendices or schedules to this RFP or the Concession Agreement, or to any part of those documents, refer to the most current version of those documents, including all modifications, amendments and Addenda thereto made and issued by the Province to Proponents.

Headings or captions in this RFP are inserted for convenience of reference only and will not constitute a part of the document in which they are contained, and in no way define, limit, alter, or enlarge or otherwise affect the scope or meaning or interpretation of this RFP.

As used in this RFP, gender is used as a reference term only and applies with the same effect whether the parties are masculine, feminine, corporate or other form and unless the context otherwise indicates to the contrary, the singular includes the plural and the plural includes the singular.

All monetary amounts herein refer to lawful currency of Canada.

References to "herein", "hereunder", "hereof" and similar terms, unless otherwise expressly provided, refer to this RFP as a whole and not to any article, section, subsection or other subdivision of this RFP.

References to a section, article or a paragraph in this RFP is a reference to the whole of the section, article or paragraph in this RFP, and references to a section, article, paragraph or other part by number is a reference to the section, article, paragraph or other part, as applicable.

References to a schedule, an appendix or volume by number in this RFP or in an appendix or volume to this RFP refers to an appendix or volume, as applicable, of this RFP unless the context otherwise expressly indicates.

Each schedule, appendix and volume attached to this RFP is an integral part of this RFP as if set out at length in the body of this RFP.

References in this RFP to a statute whether or not that statute is defined, means a

statute of the Province of British Columbia, unless otherwise stated.

References in this RFP to any statute, statutory provision, regulation, bylaws or code include any statute, statutory provision, regulation, bylaw, or code which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and include any orders, regulations, by-laws, ordinances, codes of practice, instruments or other subordinate legislation made under the relevant statute or regulation.

In this RFP, the terms “include”, “includes”, “including” and others of like import will not be deemed limited by any specific enumeration of items but will be deemed to be without limitation, interpreted as if the term was “including without limitation” and as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

References in this RFP to “in the opinion of the Province”, “at the discretion of”, “in its discretion”, “in the discretion of the Province”, “in the Province’s discretion”, “in the sole opinion of the Province”, “the exercise by the Province of any right, power or remedy” when used in respect of the Province will be interpreted to mean the sole, absolute and unfettered, including unfettered by any implied or express duties of good faith or of fairness, discretion or opinion, as the case may be, of the Province.

References in this RFP to the Province entering into the Concession Agreement, to the Province not entering into the Concession Agreement, to the Province proceeding with any part or parts of the Project or the Project Work, to the Province contracting with any Person, including as contemplated in Section 5.3 of this RFP, will be interpreted to include any or more of the Province, alone, the Province together with the Authority and or the BCTFA, or the Authority or the BCTFA entering into the Concession Agreement, not entering into the Concession Agreement, proceeding with any part or parts of the Project or the Project Work, contracting with any Person, including as contemplated in Section 5.3 of this RFP.

7. Definitions

In this RFP, unless the context otherwise expressly requires,

- (a) the following definitions apply to the following terms, and
- (b) any other capitalized term has the meaning given to that term in the Definitive CA.

“Addendum” means a written document specifically identified as an “Addendum” and issued by the Province to amend this RFP.

“Adjusted Scope Level 1” means the Project Work Scope Level described in Section 3.1.1(b).

“Adjusted Scope Level 2” means the Project Work Scope Level described in Section 3.1.1(c).

“Affordability Requirements” the Affordability Requirements and the associated assumptions and methodology that Proponents are to use in their Proposal to be provided by Addendum.

“Authorized Representative” means the authorized representative for the Proponent, identified as such in the Proponent’s Proposal.

“Base Date” has the meaning given to it in Section 4.2.1 of the Package 4 Table set out in Appendix A of this RFP.

“Base Scope” means the Project Work Scope Level described in Section 3.1.1(a).

“BCTFA” means BC Transportation Financing Authority, a corporation continued under the *Transportation Act* (British Columbia).

“Change” includes, in respect of a Proponent, a Proponent Team Member, or others named in the Proponent’s Qualification Response, a change in ownership or control, a redesignation, modification, removal, reorganization, addition, assignment, and substitution of any of them.

“Claims” includes claims, actions, proceedings, causes of action, suits, debts, dues,

accounts, bonds, warranties, claims over, indemnities, covenants, contracts, losses (including consequential losses), damages, remuneration, compensation, costs, expenses, grievances, executions, judgments, obligations, liabilities (including those relating to or arising out of loss of opportunity or loss of anticipated profit), rights and demands whatsoever, whether actual, pending, contingent or potential, whether express or implied, whether present or future and whether known or unknown, and all related costs and expenses, including legal fees on a full indemnity basis, howsoever arising, including pursuant to law, equity, contract, tort, statutory or common law duty, or to any actual or implied duty of good faith or actual or implied duty of fairness, or otherwise.

“Closing Location” means the location specified as such on the Summary of Key Information, as it may be amended from time to time by the Province in accordance with this RFP.

“Closing Time” means the date and time specified as such in the invitation to submit Financial Submittals described in Section 3.5.3, as such date and time may be amended from time to time by the Province in accordance with this RFP.

“Commercial Arbitration Act” means the *Commercial Arbitration Act* R.S.B.C. 1996, c.55.

“Competitive Selection Process” means:

- (a) the procurement process for the Project and any part or stage of the procurement process, and includes this RFP and the RFQ, any and all processes relating to the RFQ and this RFP, the Workshops, Topic Meetings, any additional meetings, and any consultations, meetings and participation relating to or arising from any of the Workshops, Topic Meetings or additional meetings, relationship review processes, including processes conducted and determinations and opinions issued by the Conflict of Interest Adjudicator, or by committees of the Province pursuant to any relationship review process policies referenced in the RFQ or this RFP, and the consultations, discussions, negotiations, closings and settling of agreements and documents relating to the Project; and
- (b) activities, participation, continued participation, waivers, evaluation, exclusion, disqualification, determinations, opinions, rulings, reports, comments, advice,

decisions, including rejection or acceptance of any responses, submissions, information, documents, Qualification Responses, Proposals, or any other proposals, whether they, or any of them, substantially satisfy the requirements of this RFP or otherwise,

involving the Province, the Conflict of Interest Adjudicator, the Fairness Reviewer, any relationship review committee of the Province, a Proponent, any Proponent Team Member, any or all the Proponents or Proponent Team Members, or any of their respective contractors, sub-contractors, directors, officers, employees, consultants, advisors or agents, or any Person, in connection with the matters described in subsections (a) and (b) of this definition.

“Commitment Letter” means the letter or letters, as applicable, substantially in the form and containing the terms set out in the form of letter contained in Appendix G of this RFP.

“Concession Agreement” means:

- (a) the Definitive CA, as may be changed, modified or added to in accordance with Section 3.7 of this RFP Volume 1; and
- (b) after execution, the agreement or agreements, as the case may be, executed and delivered by the Province, or the government entity, and the Concessionaire for the delivery of the Project;

“Confidentiality Agreement” means the Receipt Confirmation and Confidentiality Agreement executed and delivered by the Proponent in connection with the RFQ, as supplemented by the terms of the Proponent Agreement including Sections 13.2 and 13.3 of the Proponent Agreement.

“Confidential Information” means any and all information, including data, records, documents, facts, drawings, plans, reports, trade secrets, proprietary information, designs, concepts, calculations, figures, models, sketches, photographs, and anything contained in the Data Room, whether in hardcopy, digital, electronic, verbal or other form, that is disclosed, provided or otherwise comes to the knowledge of the recipient, whether before or after the issuance of this RFP, by, through or on behalf of the Province or any of the Representatives including by way of formal or informal conversations, meetings and observations, and that relates to the Project, the

Competitive Selection Process, including this RFP, the Draft CA, the Definitive CA, the Concession Agreement, the Project Work, the Project Site, the Project Infrastructure, or any part of any of them, or the requirements of any Governmental Authority, or any requirement of any of them, and any other information which by written notice from the Province or any of the Representatives at the time of disclosure to the recipient was required to be kept confidential, and further any other information whether in hard copy, digital, electronic, verbal or other form containing or based on any such information.

“Conflict of Interest Adjudicator” means the Person, appointed by the Province as the conflict of interest adjudicator, and described as such in Section 5.15.1 of this RFP.

“Contact Person” means the Person designated as such on the Summary of Key Information, as that designation may be amended from time to time by the Province in accordance with this RFP.

“Data Room” means the electronic data room established by the Province for the Project and the Competitive Selection Process that is a secure website with the URL [“http://www.sfpr-rfp.tran.gov.bc.ca”](http://www.sfpr-rfp.tran.gov.bc.ca).

“Design Build Contractor” or **“DB Contractor”** has the meaning given to it in the RFQ.

“Definitive Concession Agreement” or **“Definitive CA”** means the final draft form of the Draft CA, and subsequent Addenda issued in accordance with this RFP.

“Derivative Activities” means the steps, activities, processes, and works described in Section 5.3 of this RFP and **“Derivative Activity”** means any one of such steps, activities, processes and works.

“Documents Escrow Agreement” means the form of escrow agreement set out in Appendix D of this RFP;

“Draft Concession Agreement” or **“Draft CA”** means the initial draft form of the Definitive CA issued as Volume 2 to this RFP, as revised and amended from time to time by Addenda in accordance with this RFP.

“Equity Member” means individuals, corporations, other entities or the underlying legal entities that make up joint ventures and partnerships who have an ownership or equity interest in the Project in connection with the Proponent, as described in the Proponent’s

Qualification Response, as such individuals, corporations, and other entities may be subject to Change in accordance with and subject to the permission of the Province pursuant to this RFP.

“Fairness Reviewer” means the Person, appointed by the Province as the fairness reviewer, and described as such in Section 3.8 of this RFP.

“Financial Submittal” means the documentation and information as described in Section 3.4.2 and comprising Packages 1 and 4 as described in Section 4 of Appendix A of this RFP Volume 1, and submitted in accordance with this RFP, together with all clarifications, rectifications, and more complete, supplementary, replacement and additional information and documentation submitted by the Proponent from and after the Closing Time in response to any request of the Province.

“Financial Model” means a financial model as described in Section 4.5 of the Package 4 Table set out in Appendix A of this RFP.

“Freedom of Information Act” or “FOIPPA” means the *Freedom of Information and Protection and Privacy Act*, R.S.B.C. 1996, c.165.

“Funders” includes the Equity Members, Senior Lenders, Junior Lenders, Shareholders, Partners, Unitholders and Affiliates.

“Information” means any and all information including facts, records, plans, designs, calculations, figures, models, documents, drawings, descriptions of soils, site, geotechnical, geological or subsurface conditions, dewatering, opinions or interpretations based on existing or assumed information, previous studies or optimization, layouts, the Reference Concept, projections, traffic information, volume counts, classification counts, data, including origin, destination and vehicle jurisdiction data, speed and travel time information, statements or estimates of quantities of any works, assumptions or descriptions as to means or methods, availability and quality of materials, photographs, maps, specifications, reports, studies, correspondence, working papers, drafts, notes, requirements of stakeholders or interested parties, investigations, statements, representations, opinions, interpretations, analyses, and conclusions in electronic, digital, hard copy or any other form whatsoever, which is given or made available, directly or indirectly, to Proponents and to Proponent Team Members, or any of them, including on the RFQ Data DVD, by posting in the Data Room, or during or before any Workshop or Topic Meeting, whether before or after issuance of this RFP, by

or on behalf of the Province or any of the Representatives and related in any way to the Project, the Competitive Selection Process, including this RFP, the Draft CA, the Definitive CA, the Concession Agreement, a Proposal, the Project Work, the Project Site, the Project Infrastructure, or any part of any of them, or the requirements of any Governmental Authority, or any requirement of any of any of them.

“Irrevocability Agreement” means the form of irrevocability agreement set out in Appendix E to this RFP;

“Key Individuals” means specific Persons, exclusive to one Proponent, including the Concessionaire Director – P3 Development and Management, and the Operations Director – Operations Management, as such Persons may be Changed in accordance with and subject to the permission of the Province pursuant to this RFP.

“Limited Notice to Proceed Agreement” means the form of agreement set out in Appendix F to this RFP;

“Operating Member” means individuals, corporations, other entities or the underlying legal entities that make up joint ventures and partnerships who have the direct responsibility to deliver infrastructure management of the Project, in connection with the Proponent, as described in the Proponent’s Qualification Response, as such individuals, corporations, and other entities may be subject to Change in accordance with and subject to the permission of the Province pursuant to this RFP.

“Partnerships BC” means Partnerships British Columbia Inc.

“Payment NPC” is the sum of the net present cost of the Availability Payments. The assumptions and methodology to be used in calculating the Payment NPC will be provided by Addendum.

“Preferred Proponent” means the Proponent described in Section 3.5.9 of this RFP.

“Preferred Proponent Security Deposit” means the sum of \$5,000,000.00 by way of an irrevocable letter of credit in the form set out as Appendix B to the Proponent Agreement or otherwise in form and content acceptable to the Province in its sole discretion.

“Project” or **“South Fraser Perimeter Road Project”** or **“SFPR”** means the “Project” as defined in the Definitive CA.

“Project Work Scope Level” means any one of the following incremental work scopes comprising the Project Work:

1. Base Scope,
2. Adjusted Scope Level 1,
3. Adjusted Scope Level 2.

“Proponent” means a Short-listed Respondent.

“Proponent Team Member” includes the Proponent, a Shared Use Person, a Key Individual, an Operating Member, a Principal Contractor or an Equity Member of the Proponent, and any of their respective officers, directors, managers, employees, contractors, subcontractors, affiliates, consultants, advisors, representatives, agents, and permitted assigns.

“Proponent Agreement” means each of the three agreements relating to the Competitive Selection Process and made as of January 21, 2009 between the Province, each of the Proponents and their respective Members, as “Members” is defined in each Proponent Agreement.

“Proposal” means:

- (a) in respect of a Proponent who submits only a Technical Submittal, the Technical Submittal submitted in accordance with this RFP; and
- (b) in respect of a Proponent who submits a Technical Submittal and a Financial Submittal, the Technical Submittal and the Financial Submittal submitted by a Proponent in accordance with this RFP.

“Province” means Her Majesty the Queen in Right of the Province of British Columbia.

“Qualification Response” means the statement of qualifications and other information submitted by a Respondent in response to and in accordance with the RFQ.

“Quality Management System” has the meaning given to it in the Definitive CA and any reference in this RFP to **“QMS”** means the Quality Management System.

“Reference Concept Overview Reports” means the reference concept overview

reports located in section 0902 of the Data Room.

“Relationship Review Process Description” means the Relationship Review Process Description (Revision May 22, 2007) posted by the Province at www.gatewayprogram.bc.ca .

“Representatives” means Partnerships BC, the Fairness Reviewer, the Conflict of Interest Adjudicator, the BCTFA, or any of their or the Province’s respective directors, officers, members of the Executive Council), managers, employees, consultants, advisors and agents, and includes members of the Executive Council.

“RFI” or **“Request for Information”** is the request for information described in Section 4.6 of this RFP.

“RFP” or **“Request for Proposals”** means this Request for Proposals including all volumes, appendices, and Addenda.

“RFP Title” means “South Fraser Perimeter Road Project” as specified on the Summary of Key Information as it may be amended from time to time by the Province in accordance with this RFP.

“RFQ” or **“Request for Qualifications”** means the Request for Qualifications issued by the Province July 29, 2008, titled “South Fraser Perimeter Road Project Request For Qualifications”, including all “Addenda” thereto as defined in the RFQ.

“Respondent” has the meaning given to it in the RFQ.

“Respondent Team” has the meaning given to it in the RFQ.

“Response to Proponents” is a written document specifically identified as a “Response to Proponents” as described in Section 4.6 of this RFP.

“Restricted Party” means a Person who has participated or been involved in, or currently is participating in or is involved in:

- (a) the Competitive Selection Process;
- (b) the design, planning or implementation of the Project;
- (c) any other relationship with the Province;

and as a result has an actual conflict of interest or may provide a material unfair advantage to any Proponent or Proponent Team Member or may provide Confidential Information to any Proponent or Proponent Team Member that is not, or would not reasonably be expected to be, available to other Proponents or their Proponent Team Members, and includes, if the Person is a corporate entity, the Person's former and current employees, and further includes each of the Persons listed in Section 5.13 of this RFP.

"RFQ Data DVD" has the meaning given to it in the RFQ.

"Selected Project Work Scope Level" means the single Project Work Scope Level selected and identified by the Proponent within the Proponent's Financial Submittal as the project Work Scope Level in respect of which the Proponent submits its Proposal.

"Shared Use Person" means a Person described in Section 5.14 of this RFP and includes each of the Persons listed in Section 5.14 of this RFP and any other Persons that may, from time to time, be specifically identified as Shared-Use Persons by the Province.

"Short-Listed Respondents" means the Respondents listed in Section 1.3 of this RFP.

"Technical Submittal" means the documentation and information as described in Section 3.4.1 and comprising Packages 1, 2 and 3 as described in Appendix A of this RFP Volume 1, and submitted in accordance with this RFP, together with all clarifications, rectifications, and more complete, supplementary, replacement and additional information and documentation submitted by the Proponent from and after the Technical Submittal Deadline or Closing Time in response to any request of the Province.

"Technical Submittal Deadline" means the date and time specified as such on the Summary of Key Information, as it may be amended from time to time by the Province in accordance with this RFP.

"Technical Supplement" means a supplement to a Proponent's Technical Submittal that may be invited by the Province in accordance with Section 3.5.4 of this RFP.

"Topic Meetings" means the meetings described in Article 8 and in the Workshops and Topic Meetings Schedule of the Proponent Agreement, and **"Topic Meeting"** means

any one of such meetings.

“Transportation Investment Act” means the *Transportation Investment Act*, S.B.C. 2002, c.65.

“Workshops” means the workshops described in Article 8 and in the Workshops and Topic Meetings Schedule of the Proponent Agreement, and **“Workshop”** means any one of such workshops.

“Workshop and Topic Meeting Schedule” means Schedule 2 of the Proponent Agreement, as that schedule may be amended and replaced from time to time by the Province, in its sole discretion in accordance with the Proponent Agreement.

For purposes of Sections 5.7, 5.8, 5.9, 5.12, 5.13, 5.14, and 5.15 of this RFP,

- (a) a Person is considered to be an “Affiliate” of another Person if one is a subsidiary entity of another Person or if both are subsidiary entities of the same Person or if each of them is controlled by the same Person, and
- (b) a Person is considered to be controlled by a Person if:
 - (i) in the case of a Person other than a partnership or a limited partnership,
 - (1) voting securities of the first-mentioned Person carrying more than 50 percent of the votes for the election of directors are held (otherwise than by way of security only) by or for the benefit of the second-mentioned Person, and
 - (2) the votes carried by the securities held (other than by way of security only) by or for the benefit of the second-mentioned Person are entitled, if exercised, to elect a majority of the directors of the first-mentioned Person;
 - (ii) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned Person holds more than 50 percent of the interests in the partnership; or
 - (iii) in the case of a limited partnership, the general partner is the second-mentioned Person.