



KICKING HORSE CANYON PROJECT PHASE 2

Request for Proposals — Volume 1

October 27, 2004

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Summary of Key Information

This summary has been prepared for the ease of reference of the Proponents. Proponents are solely responsible for ensuring that they have received and fully understood the complete RFP including all Addenda.

RFP Title	Kicking Horse Canyon Project- Phase 2 - Request for Proposals Use the above title on all correspondence
Contact Person	Ms. Tara Moultrie Fax: 604.660.1199 E-mail: kickinghorsecanyon@partnershipsbc.ca
Workshops with Proponents See Section 4.1.1	Workshop A – Early December, 2004 – Risk Allocation and Technical Issues Workshop B - End-December, 2004 – Draft Concession Agreement Workshop C - Mid-March, 2005 – Revised Concession Agreement
Closing Time See Section 4.2.1	2:00 p.m. local Vancouver time on May 12, 2005
Closing Location See Section 4.2.1	Partnerships BC 1260-999 West Hastings Street Vancouver, BC V6C 2W2, Canada
Background Information See Section 5.4	Data Room (Restricted Website)

1. Introduction

The Province is issuing this Request for Proposals (the “**RFP**”) as part of the selection process for the proposed Kicking Horse Canyon design-build-finance-operate project (the “**DBFO Project**”). The DBFO Project involves the construction of Phase 2 of the Kicking Horse Canyon Project and the operations and maintenance and rehabilitation on the approximately 26 kilometre section of the Trans-Canada Highway between the Highway 95 intersection in Golden and the western boundary of Yoho National Park thereby providing the Province and the public with a reliable service.

The primary objective of this DBFO Project is to achieve value for money in the provision of transportation services to the public through the transfer of risk and rewards for the design, build, finance and operation of the DBFO Project to the Concessionaire. Key project objectives (the “**Project Objectives**”) include:

- **Federal and Provincial Objectives:** To achieve the Federal and Provincial objectives outlined in the Transportation Service Plan (provided on the MOT website), ensuring that the DBFO Project is delivered on budget, on time and using the best project management practices.
- **Support BC's Strategic Vision:** To expand BC as Canada's trade gateway to the world through improved highway systems, border crossings, ports and airports.
- **Safety and Capacity:** To achieve improvements to safety and capacity for residents, commuters, tourists and commercial users
- **Economic Benefits:** To serve population growth and economic development in Golden and surrounding area through increased tourism and more efficient movement of goods and services.
- **Environmental:** Support BC's commitment towards integrated and environmentally sustainable transportation.

This RFP is the next step in the selection process for the DBFO Project which to date has included the Registration of Interest for the DBFO Project issued on May 27, 2004 and the Request for Qualifications issued on July 21, 2004.

The Respondents to the RFQ provided Submissions, the evaluation of which has led to the selection of the following Short Listed Respondents, in alphabetical order:

- KHC Highway Group
- SNC Lavalin Team
- Trans-Park Highway Group

1.1 Structure of the RFP

The RFP consists of the following three volumes and their respective schedules and appendices, each of which forms an integral part of this RFP:

Volume 1 – General Information and Instructions to Proponents

Volume 1 addresses the work included the DBFO Project (Section 2), the Payment Arrangements for the DBFO Project (Section 3), the Consultation and Selection Process (Section 4), and other general matters and instructions governing the RFP (Sections 5 and 6).

Volume 2 – Form of Concession Agreement

Volume 2 consists of the Draft Concession Agreement, which will be replaced by the Revised Concession Agreement and ultimately the Definitive Concession Agreement, each of which will be issued by Addendum as discussed in Section 2.7.

Volume 3 – Design, Construction, Operation, Maintenance, and Rehabilitation Specifications

Volume 3 contains the Specifications, which will be used to produce some of the schedules to the Concession Agreement, including performance requirements and specifications relating respectively to the design and construction, and the operation, maintenance, and rehabilitation of the Highway.

1.2 Project Description

1.2.1 Kicking Horse Canyon Project

Kicking Horse Canyon comprises the westerly portion of an 80 kilometre route that traverses the Rocky Mountains between Golden, British Columbia and Lake Louise, Alberta. The Trans-Canada Highway and the Canadian Pacific Railway run through the Kicking Horse Canyon, both of which support the movement of national road and rail based goods and tourism.

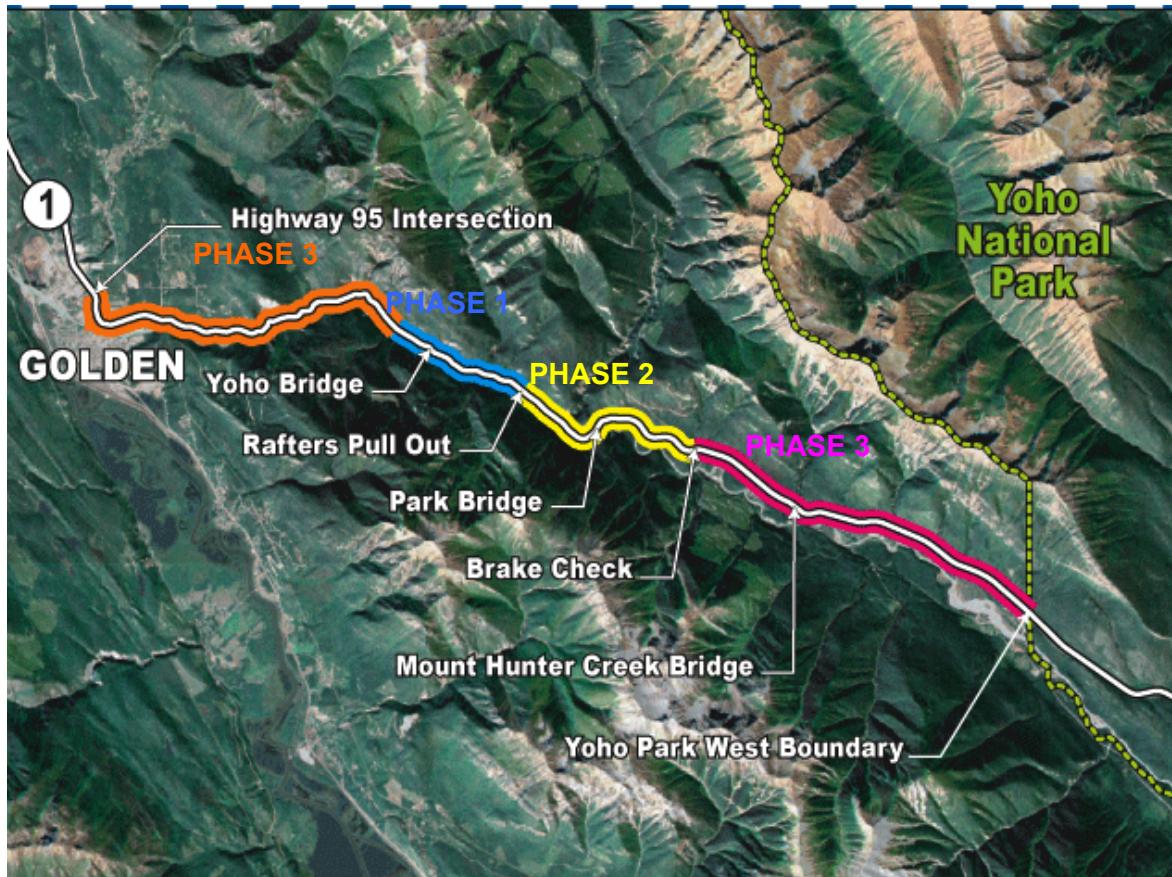
The 26 kilometres of the Trans-Canada Highway located within the Kicking Horse Canyon is part of British Columbia's primary highway system. It has been identified by the Province as a priority transportation corridor in recognition of the Highway's importance for the movement of people and goods and as such serves as a vital link for commercial transport, tourism, and general inter-Provincial/local traffic. The economy of the region and the Province is directly affected by the operational effectiveness and efficiency of this Highway.

The existing Kicking Horse Canyon road improvements were constructed when the Yoho and Park bridges were completed in 1956. There have been no significant upgrades since then, with the exception of the Yoho Bridge Project currently under construction.

Current average daily traffic is approximately 5,000 vehicles per day and 10,000 vehicles per day in the peak summer season. Approximately 15-25% of the average daily traffic is heavy trucks. Highway users currently experience winding roads and other less than optimal conditions creating a need for safety and geometric improvements.

1.3 Project Implementation

Due to the size and complexity of the improvements contemplated to the Highway, the upgrades are being undertaken in multiple phases and as shown in the map below:



1.3.1 Phase 1

Construction of Phase 1 (Yoho Bridge and approaches) was announced by the Federal Government in July 2002 and is currently underway. The estimated cost of Phase 1 is \$65 million, including a Federal Government contribution of \$23 million provided through the Strategic Highway Infrastructure Program. Phase 1 is underway and on target to meet the expected completion date in the fall of 2006.

1.3.2 Phase 2

Phase 2, a 5.8 kilometre segment that is the focus of the capital improvements portion of the DBFO Project, is the middle portion of the 26 kilometres of the Trans-Canada Highway immediately east of Golden. Phase 2 consists of the Park Bridge replacement and the upgrade of the Highway approaches west to the Rafter's Pull Out and east to the Brake Check. Preliminary cost estimates for the capital improvement components of the DBFO Project are approximately \$130 million. Preliminary engineering studies have been conducted and multiple alignments and possible solutions have been identified. Information on these studies and alignments is included in the Data Room.

On March 5, 2003, the Government of Canada announced its agreement to contribute up to \$62.5 million through the Canada Strategic Infrastructure Fund, subject to matching contributions to be made by the Province.

1.3.3 Phase 3 and Future Improvements

Future improvements contemplated in the remainder of the corridor consist of improvements to the segment of the Highway east of Golden, from the Highway 95 intersection to the western limit of Phase 1 and the segment of the Highway east of Phase 2, between the Brake Check and the western boundary of Yoho National Park. While the method, timing and delivery of improvements for Phase 3 have not been determined, they remain an important infrastructure initiative for both the Province and the Federal Government. The upgrade of the Highway segments included in Phase 3 is considered a future objective of the Province. The capital cost of the upgrade to Phase 3 is estimated at approximately \$530 million. It is yet to be determined whether this work will be carried out as one large project or various smaller projects.

1.3.4 The DBFO Project

The improvements forming part of this DBFO Project will include widening of the Highway in Phase 2 to a four lane standard with a design speed of 100 kilometres per hour, geometric improvements, replacement of the Park Bridge (also known as 10 Mile Bridge) and other design innovations and measures to reduce hazards, improve safety along the corridor and increase the capacity of the Highway.

Table 1 and the map in Section 1.3 identify sections of the Highway in which design and construction improvements are planned or are being undertaken, and by whom. Further information is available in the Data Room.

TABLE 1

Design, Construction, Operation, Maintenance and Rehabilitation and Finance Responsibility along the Highway

Phase	Description	Responsibility for Design	Responsibility for Construction	Responsibility for Operations, Maintenance & Rehabilitation	Responsibility for Finance
Phase 3	Highway 95 to Yoho Bridge Construction not yet commenced or scheduled	N/A	N/A	Concessionaire	Concessionaire for operations, maintenance & rehabilitation only
Phase 1	Yoho Bridge and approaches Improvements expected to be completed by fall of 2006	Other MOT contractors	Other MOT contractors	Concessionaire	Province for design and construction only Concessionaire for operations, maintenance & rehabilitation only
Phase 2	Park Bridge (Rafters Pull Out to Brake Check)	Concessionaire	Concessionaire	Concessionaire	Concessionaire

Phase	Description	Responsibility for Design	Responsibility for Construction	Responsibility for Operations, Maintenance & Rehabilitation	Responsibility for Finance
Phase 3	Brake Check to Yoho National Park Construction not yet commenced or scheduled	N/A	N/A	Concessionaire	Concessionaire for operations, maintenance & rehabilitation only

The DBFO Project consists of the following components:

- **Design.** The Concessionaire will be responsible for design of the capital improvements to the Highway section identified in Table 1 and the map in Section 1.3 as Phase 2. Further information regarding the scope of design work for the DBFO Project is described in Section 2.1 of this Volume and detailed information is provided in Volume 3 of the RFP.
- **Construction.** The Concessionaire will be responsible for the construction of the capital improvements to the Highway section identified in Table 1 and the map in Section 1.3 as Phase 2. Further information regarding the scope of the construction work for the DBFO Project is described in Section 2.1 of this Volume and detailed information is provided in Volume 3 of the RFP.
- **Operation, Maintenance and Rehabilitation.** The Concessionaire will be responsible for the operation, maintenance and rehabilitation of the entire Highway from the Effective Date until the end of the Project Term. Further information regarding the scope of work for the operation, maintenance and rehabilitation for the DBFO Project is described in Section 2.5 of this Volume and detailed information is provided in Volume 3 of the RFP.
- **Finance.** The Concessionaire will be responsible for financing the DBFO Project, including all design, construction, maintenance and rehabilitation services to be provided pursuant to the Concession Agreement. The financing must be sufficient to provide for the design and construction of Phase 2 as well as the operation, maintenance and rehabilitation of Phases 1, 2 and 3. Further information regarding the commercial and financial arrangements for the DBFO Project is described in Section 2.6 of this Volume.

1.4 Overview of RFP Process

Only Short Listed Respondents who have executed and delivered a Proposal Competition Agreement (each a “**Proponent**”) in the form attached to this RFP as Appendix 1D (the “**Proposal Competition Agreement**”), are eligible to participate in the Consultation and Selection Process.

It is anticipated that through the Consultation and Selection Process, one of the three Proponents will be selected as the Proponent (the “**Preferred Proponent**”) who will be offered the opportunity to sign an agreement for the delivery of the DBFO Project (the “**Concessionaire**”).

The Province would prefer not to initiate a Best and Final Offer (“**BAFO**”) stage following the Closing Time but expressly reserves the right to do so, in its discretion. If the Province decides

to proceed with a BAFO stage, it will notify the Proponents selected to participate in such stage (the "**BAFO Proponents**"), will issue instructions regarding the BAFO stage process and will require the BAFO Proponents to enter into a new proposal competition agreement specific to the BAFO process (the "**BAFO Proposal Competition Agreement**"), including the BAFO Partial Compensation and any additional Security Deposit requirements. If the Province elects to proceed with a BAFO stage, the Preferred Proponent will then be selected based on the BAFO Proponents' "Best and Final Offer". If the Province does not elect to proceed with a BAFO stage, a Preferred Proponent will be selected based on the Proposals submitted in response to this RFP. In accordance with Section 6.8, the Province may publicly disclose the identities of the BAFO Proponents and/or the Preferred Proponent.

A key element of the Consultation and Selection Process is the Proponent Consultation Process, which is designed to:

- provide opportunities for Proponent participation;
- maximize opportunities for innovation;
- help ensure that the Project Objectives are met; and
- facilitate input on development of a Concession Agreement.

1.5 **Partial Compensation and Expenses**

Assuming the Province does not proceed to a BAFO stage, Partial Compensation in the amount of \$600,000 will be paid to each Proponent that is not selected as the Preferred Proponent and that meets the conditions for payment described in the Proposal Competition Agreement.

If the Province proceeds to a BAFO stage, Partial Compensation in the amount of \$600,000 will be paid to each Proponent that is not selected as a BAFO Proponent and that meets the conditions for payment described in the Proposal Competition Agreement. A further \$100,000 (the "**BAFO Partial Compensation**") will be provided to each BAFO Proponent that is not selected as the Preferred Proponent after the BAFO Process and that meets the conditions for payment to be described in the BAFO Proposal Competition Agreement.

The Proposal Competition Agreement also sets out the Province's commitment to pay Partial Compensation under other circumstances.

Except in circumstances where they are entitled to receive Partial Compensation, Proponents are solely responsible for their own costs and expenses in preparing and submitting a Proposal and for participating in the Consultation and Selection Process, including the costs of providing information requested by the Province, attendance at meetings and conducting due diligence, and are not entitled to any other compensation from the Province or its Representatives.

1.6 Timetable

The anticipated timetable for the Consultation and Selection Process and Financial Close is set out in Table 2.

TABLE 2

Anticipated Timetable for the Consultation and Selection Process

Activity	Date
Workshops <ul style="list-style-type: none"> • Workshop A - Risk Allocation and Technical Issues • Workshop B - Draft Concession Agreement • Workshop C - Revised Concession Agreement 	Early December, 2004 Mid-December, 2004 Mid-March, 2005
Proponents submit Proposed Amendments to the Draft Concession Agreement	During first week of January, 2005
Revised Concession Agreement issued	Early March, 2005
Proponents submit Proposed Amendments to the Revised Concession Agreement	March, 2005
Definitive Concession Agreement issued	April, 2005
Closing Time for Proposals	May 12, 2005
Announcement of Preferred Proponent	Summer 2005
Execution of Concession Agreement/Financial Close	Fall 2005

Note: All dates are subject to change, in the Province's discretion.

1.7 Management and Advisors

Partnerships BC, a company wholly owned by the Province, is managing the Consultation and Selection Process for the DBFO Project on behalf of the Province. The Province and Partnerships BC have in turn retained advisors, identified as Restricted Parties in Section 6.13, to provide input and advice as required by the Province. Under no circumstances are Proponents to contact any of the advisors listed in Section 6.13 or any member of the staff of Partnerships BC, the Ministry of Finance, the Ministry of Transportation, or the Ministry of the Attorney General in connection with the DBFO Project unless expressly permitted hereunder.

2. The Works

This Section 2 of the RFP describes what the Concessionaire must deliver in relation to the DBFO Project including the following:

- design and construction work for the Highway (Section 2.1)
- operation, maintenance and rehabilitation services for the Highway and Side Roads (Section 2.3)
- financing for the design, construction, operation, maintenance and rehabilitation of the Highway (Section 2.4)
- communication requirements (Section 2.5)

2.1 Design and Construction

The DBFO Project must be delivered in accordance with the requirements set out in the Concession Agreement. The Concessionaire will be required to provide all of the resources, materials, equipment and tools necessary to completely manage, design and construct the Works in conformity with the standards, design criteria, performance specifications and guidelines outlined and referenced within the Concession Agreement, and as generally described in this RFP.

The scope of the work is to re-align and improve the Highway through Phase 2 shown on the map in Section 1.3 from the Phase 1 work to the vicinity of the Brake Check (Phase 3). The scope of the Works includes both the minimum required scope of work identified in this RFP as well as any additional work that the Concessionaire commits to provide in their Proposal as incorporated into the Concession Agreement.

In general, the construction consists of approximately 5.8 kilometres of the Highway, as measured along the existing alignment, including the new Park Bridge. Following completion of the new Park Bridge (approximately 400-600m depending on alignment), the Concessionaire may be required to maintain and/or decommission the replaced segment of the Highway.

The scope of work includes but is not limited to improvements and requirements with respect to the following:

- roads;
- intersections and other access provisions;
- bridges;
- retaining structures;
- tunnels;
- excavation including rock removal, haul and placement;

- slope stabilization;
- protection of highway from avalanches and rockfall;
- pavement;
- safety appurtenances;
- drainage;
- lighting;
- signs and pavement markings;
- utilities;
- environmental mitigation and enhancements;
- landscaping and aesthetic features;
- quality management;
- traffic management;
- temporary works and facilities; and
- securing permits and approvals necessary to carry out the construction of the DBFO Project.

The scope of the Works also includes the operation, maintenance and rehabilitation of the Highway and the Side Roads.

Construction of the Works is to be completed by Fall 2009 as more particularly described in the Concession Agreement.

A traffic management regime during the construction period will be established that describes the requirements that must be met to minimize disruption and maximize predictability concerning road and rail availability.

2.2 Minimum Performance Requirements

Unless explicitly stated to the contrary in the Concession Agreement, the Concessionaire shall be solely responsible for ensuring that all aspects of the DBFO Project are designed and constructed in accordance with current MOT directives, accepted standards, specifications, practices, policies and procedures in effect at the date of execution of the Concession Agreement. The minimum standards that must be met by the Concessionaire are provided in Volume 3 and will be included in the Concession Agreement. Any deviation from the design criteria, standards or quality defined by the Specifications must be explicitly and expressly pre-approved in writing by the Province in accordance with the Concession Agreement.

The Minimum Performance Requirements for the Works include:

- design and construction of the Works in accordance with Volume 3
- compliance with the environmental requirements set out in Volume 3
- compliance with the quality management requirements set out in Volume 3
- compliance with the traffic management requirements set out in Volume 3

2.3 Opportunities for Innovation in Design and Construction

The Concessionaire is encouraged to find opportunities for innovation in the DBFO Project that will enable the Concessionaire to exceed the Minimum Performance Requirements. The Province values enhanced performance standards that would provide benefits to the public. In support of the Province's desire to achieve more than the Minimum Performance Requirements, Proposals that provide more value with regards to additional safety enhancements will be rewarded.

Some of the opportunities for innovation which the Province believes may be available for the DBFO Project include:

- enhanced safety improvements
- enhanced mobility improvements
- enhanced environmental improvements
- improved geotechnical reliability.

2.4 Design and Construction Work by Others

The Province, through separate contractual arrangements with third party contractors, has arranged for certain improvements to the Highway. These include the following:

- Grading work west of Yoho (5 Mile) Bridge by Dawson Construction Ltd. (final completion achieved)
- Yoho (5 Mile) Bridge and Approaches by Peter Kiewitt Sons Company Ltd. (completion expected Summer 2005)
- 6 Mile to Rafters Pullout by Emil Anderson Construction Inc. (expected completion Fall 2006)

Information related to the design and construction work by others is provided in the Data Room. New information will continue to be added to the Data Room as it becomes available.

2.5 Operations, Maintenance and Rehabilitation

- **Operations and Maintenance:** The Concessionaire is required to operate, maintain, and rehabilitate the Highway and the Side Roads during and after construction until the end of the Project Term. The performance standards and specifications relating to operations, maintenance and rehabilitation of the Highway and the Side Roads and other DBFO Project facilities will be set out in the Concession Agreement.
- **Rehabilitation:** The DBFO Project will include rehabilitation of the Highway and the Side Roads during the term of the Concession Agreement. Rehabilitation obligations with respect to the portion of the Highway to be constructed in Phase 3 will be established after mitigation strategies for the construction risks on the Phase 3 section of the Highway have been finalized.

The Province has entered into the following contracts relating to the operation, maintenance, and rehabilitation services for the Highway:

- **Maintenance Contract:** There is an existing contract under which operation and maintenance services for highways within Contract Area 12 (Selkirk) including the Highway are provided by HMC Services Inc. This maintenance contract commenced on October 19, 2003 and continues until October 18, 2013. A copy of this contract is available in the Data Room. The Province intends to remove the Highway from this contract effective upon Financial Close.
- **Electrical Contract:** The Province has issued an RFP for the provision of electrical maintenance services for an area that includes the Highway. Further details will be provided as and when a contract is entered into. The Province intends to remove the Highway from this contract and for all electrical services to be provided by the Concessionaire.
- **Road Marking Contract:** There is an existing contract under which pavement marking services for highways in the Southern Interior Pavement Marking Contract Area, including the Highway, are provided by Lafrentz Road Marking, a division of Canadian Road Builders Inc. This contract commenced on May 23, 2004 and continues until December 15, 2006. The Province intends to remove the Highway from this contract and for all pavement marking services for the Highway to be provided by the Concessionaire.

2.6 Commercial and Financing Arrangements

2.6.1 Project Term

The term of the Concession Agreement is 25 years from the Effective Date.

2.6.2 Allocation of Risks

Risks that may arise during the Project Term will be allocated between Concessionaire and the Province as set out in the Concession Agreement.

It is expected that Workshop A will focus on the allocation of risks. A summary risk matrix has been prepared for indicative purposes and is set out in Table 3 below. The Province may modify the risk allocation in the Definitive Concession Agreement as a result of input from Proponents during the Proponent Consultation Process.

Proposals must not deviate from the risk allocation set out in the Definitive Concession Agreement.

Table 3 provides an indicative summary of the risk allocation envisaged by the Province. It is intended as a guide only and is not intended as an exhaustive list of the risks.

The check marks indicated under each heading is the party to which the risk is intended to be allocated. Risks where there are check marks under both headings indicate a shared risk.

TABLE 3

Indicative Summary of Risk

Risk Description	Risk Allocation	
	Proponent	Province
DESIGN AND CONSTRUCTION RISKS		
Concept approvals within the environmental corridor (including Federal CEAA)		✓
Design and construction approvals	✓	
Design risks associated with flaws in design	✓	
Land acquisition by the Province within the corridor described in 2.6.3.1		✓
Land acquisition by the Province outside the corridor described in 2.6.3.1	✓	
Securing permits licenses and approvals	✓	
Cost and time overruns	✓	
Adequacy of insurance	✓	
Changes in design and construction standards during construction	✓	✓
Sub-contractor insolvency	✓	
Geotechnical	✓	
Labour disputes	✓	
Quality assurance and quality control	✓	
Achieving construction standards and specifications	✓	
Labour and material availability	✓	
OPERATIONAL RISKS		
Changes in standards – depending on the nature of the change	✓	✓
Operating - Associated with general operation, maintenance and rehabilitation for Phase 2 and Phase 3	✓	
Operating - Associated with general operation, maintenance and rehabilitation of Phase 1	✓	
Increased rehabilitation as a result of higher traffic volume	✓	
Increase in OM&R Services expenditure during the Project Term	✓	
Third party claims and accidents	✓	
Changes in required insurance premiums	✓	
Meeting operational performance specifications	✓	
Meeting End of Term Requirements	✓	
Labour and material availability	✓	
FINANCIAL RISKS		
Interest rate risk after Financial Close	✓	
Inflation risk after Financial Close	✓	
Raising adequate financing	✓	
Refinancing risk	✓	
OTHER RISKS		
Negotiations	✓	✓
Political		✓
Accounting	✓	✓
Change in Law (general – Proponent ; discriminatory – Province)	✓	✓
Force Majeure	✓	✓

2.6.3 Property and Other Rights

2.6.3.1 Extent of Property Available to Proponents

The Province has identified a corridor within which it will make land available to the Concessionaire for the purpose of construction of Phase 2. This corridor is set out at Section 8 of the Data Room. The Proponents must ensure that any design put forward in their Proposals can be constructed within this corridor to the Province or that they have obtained firm commitments from the owners of any lands to transfer the lands required in addition to those lands in this corridor prior to the Effective Date.

2.6.3.2 Non-Exclusive Licence

The Province will grant to the Concessionaire a non-exclusive licence over the Highway and the Side Roads during the Project Term on the terms and conditions set out in the Concession Agreement.

2.6.3.3 Other Rights in the Corridor

All commercial and other rights and opportunities related to the Highway, the Kicking Horse Canyon Project and the DBFO Project will be retained by the Province. During the Project Term, the Concessionaire may from time to time propose business opportunities for the Province to consider in accordance with the Concession Agreement.

2.6.4 Securing Permits, Licences, and Approvals

The Concessionaire is responsible for obtaining and maintaining all Permits, Licences, and Approvals required for the DBFO Project, except as otherwise stated in this RFP or in the Concession Agreement.

2.6.5 Providing Utilities and Related Infrastructure

The Concessionaire is responsible for securing and relocating all temporary and permanent utilities required for the DBFO Project. The Concessionaire is required to observe and be bound by the terms of any utility agreements existing or entered into between the Province and any utility company. Information regarding utilities is available in the Data Room.

2.6.6 End of Term Requirements

Performance standards for the condition of the Highway at the end of the Project Term are set out in Volume 3 of this RFP and in the Concession Agreement (the “**End of Term Requirements**”). The procedure for reviewing the condition of the Highway, correcting any required deficiencies, and setting aside funds to ensure completion during the period preceding the end of the Project Term, is set out in detail in the Concession Agreement.

2.7 Development of the Concession Agreement

The Concession Agreement sets out the rights and obligations of the Province and the Concessionaire in respect of the DBFO Project. The Concession Agreement may be amended during the Consultation and Selection Process as described in this RFP.

2.7.1 Draft and Revised Concession Agreement

The Draft Concession Agreement will be issued shortly after the RFP and will be Volume 2 of the RFP. Each Proponent is invited to provide comments in respect of the Draft Concession Agreement, incorporating all of the Proponents' comments, corrections, and proposed amendments ("Proposed Amendments") during the five weeks following the issue of Volume 2.

All Proposed Amendments to the Draft Concession Agreement must be submitted to the Contact Person and must be in the form of a mark-up of the Draft Concession Agreement, including specific proposed substitute or additional wording, where applicable, accompanied by a memorandum containing a brief summary of the reason for each Proposed Amendment.

The Province has scheduled Workshop B to provide a forum for discussion with Proponents regarding their Proposed Amendments to the Draft Concession Agreement. The Province will consider the Proposed Amendments, incorporate those which are acceptable to the Province and may reissue the Concession Agreement (the "Revised Concession Agreement") in early March, 2005.

2.7.2 Concession Agreement Finalization

In March, 2005, each Proponent is invited to provide a mark-up of the Revised Concession Agreement identifying a final set of Proposed Amendments. All Proposed Amendments to the Revised Concession Agreement must be submitted to the Contact Person and must be in the form of a mark-up of the Revised Concession Agreement, including specific proposed substitute or additional wording, where applicable, and be accompanied by an explanatory memorandum.

The Province will review each Proponent's mark-up and has scheduled Workshop C to provide a forum of discussion with Proponents regarding the Revised Concession Agreement. This Workshop will take place in mid-March, 2005 as set out in Section 1.6. If no Proposed Amendments are received from a Proponent by the end of March, 2005, the Province is entitled to assume that neither the Proponent nor its Funders have any further comments with respect to the Revised Concession Agreement.

The Province intends to issue an Addendum to the RFP in April, 2005, which will provide the form of Concession Agreement that will include all Proposed Amendments that are acceptable to the Province and all other amendments which the Province, in its discretion, may make (the "Definitive Concession Agreement"). It is the intention of the Province to finalize negotiations with respect to the Concession Agreement during the Consultation and Selection Process so that the Definitive Concession Agreement, once issued, can be executed by the Preferred Proponent without further material negotiation. The Definitive Concession Agreement, without amendment, is to be used by the Proponents as the basis for their Proposal.

When submitting Proposed Amendments in respect of the Revised Concession Agreement, Proponents must provide letters signed by the Funders, and Funders' legal counsel, in accordance with the requirements of the Proposal Competition Agreement.

If necessary, the period between selection of the Preferred Proponent and execution of the Concession Agreement may provide the Preferred Proponent and the Province the opportunity to obtain any required regulatory or other approvals.

Execution by the Province of the Concession Agreement is subject to the Province obtaining all necessary governmental authorizations and approvals required in connection therewith, including:

- Any approvals required under the British Columbia's Financial Administration Act, R.S.B.C. 1996, c. 138
- Issuance by the Lieutenant Governor in Council of an Order in Council made under the Transportation and Investment Act, S.B.C. 2002, c. 65
- Any regulatory or other approvals required under the laws of the Province of British Columbia and the laws of Canada.

2.8 Communications and Consultation with the Public and Stakeholders

The Province's community relations and consultation activities in recent years have included a meeting between the Province and the Town of Golden, a public open house in 1999 and regular discussions on planning and design with the Town of Golden, its economic development agency, emergency services, utility companies, CP Rail, environmental agencies, and Parks Canada. These consultations have confirmed local concerns about the safety and reliability of the Highway and the need to maintain reasonable access during construction. More recent dialogue between the Province and the Town of Golden and stakeholders, including local tourism and business representatives, has shown these issues of safety reliability and access to be key to both economic development opportunities and ongoing economic well-being for the area.

The Province and the Concessionaire will, throughout the Project Term, share certain responsibilities for communications and consultation. It is anticipated that this approach will provide communities, businesses, residents and other stakeholders with an efficient and consistent approach to communications and consultation.

These are the four principal categories of communications and consultation:

- traffic communications – Traffic communications involves providing timely, accurate information to the public and other stakeholders regarding current and expected traffic conditions for the Highway, particularly regarding delays and closures associated with construction and maintenance.
- community relations – Community relations involves ongoing two-way communications with the public and other stakeholders. This includes dealing with ongoing public inquiries, problem solving, project updates, and regular public reporting. It is distinct from public and other stakeholder consultation in that community relations includes ongoing two-way communications while public and stakeholder consultation involves gathering specific input on design options at key milestones including pre-design, preliminary design and detailed design stages.
- public and stakeholder consultation – Public and stakeholder consultation involves gathering input from the public and other stakeholders on the scope and nature of the Highway improvements, including public input at key design milestones such as pre-design, preliminary design, and detailed designs.

- media relations - Media relations involves interacting with and responding to requests from the media.

Refer to Appendix 1B for specific information about lead and support roles in traffic communications, community relations, public and stakeholder consultation and media relations.

3. Payment Arrangements

3.1 Performance Payment

3.1.1 Introduction

The Concessionaire will be paid a Total Performance Payment based on its performance in operating the Highway. The underlying principle in the development of the Payment Mechanism is to achieve the Project Objectives in an efficient and effective manner. The Performance Payments are more fully described in Appendix 1C and a detailed description of the Payment Mechanism is provided in a schedule to the Concession Agreement. The Payment Mechanism has been designed so that its components are:

- cost effective;
- practical to implement;
- achievable by the Concessionaire;
- measurable; and
- independently verifiable.

For the purpose of the Payment Mechanism, the DBFO Project can be broken down into two distinct periods:

- the Original Service Period during which the Works will be designed, built, commissioned and tested, and O,M&R Services will be provided for the Highway and the Side Roads including the existing infrastructure and those portions on which MOT Work is ongoing; and
- the Enhanced Service Period during which the O,M&R Services will be provided for the Highway and the Side Roads, including the existing infrastructure, the Works, and those portions of the Highway on which MOT Work is ongoing.

The Province recognizes the different service levels with respect to the two periods and intends to compensate the Concessionaire accordingly. The Performance Payments with respect to each period are summarized in Table 1.1 in Appendix 1C.

As set out in Appendix 1F, Proponents are required to submit a payment schedule that conforms to the Payment Mechanism. While the Payment Mechanism summarized in this RFP is that anticipated by the Province, during the Proponent Consultation Process, Proponents will

be given the opportunity to propose variations to the Payment Mechanism that achieve the same objectives which may become the subject of Addenda to the RFP.

3.1.2 Original Service Period Performance Payments

During the Original Service Period, Pre-Completion Performance Payments and Original Service Period Availability Payment will be made to encourage efficient operation and maintenance of the Highway and effective traffic management.

3.1.2.1 Pre-Completion Performance Payments.

Pre-Completion Performance Payments will be paid quarterly during the construction of the Works in accordance with the Concession Agreement, up to a maximum of \$62.5 million in total.

3.1.2.2 Original Service Period Availability Payments

Original Service Period Availability Payments will be made for the provision of O,M&R Services in accordance with the Concession Agreement.

Deductions will be made from the Original Service Period Availability Payments, if the Concessionaire fails to meet the performance specifications with regards to the operation, maintenance and rehabilitation of the Highway or if the Highway is unavailable for a period of time. Deductions will also be made for traffic disruption due to Phase 2 construction.

3.1.3 Enhanced Service Period Performance Payments

During the Enhanced Service Period, Availability Payments, Traffic Volume Payments and Safety Performance Payments will be made to encourage efficient operation and maintenance of the Highway, to encourage traffic volume growth and to encourage safety.

3.1.3.1 Availability Payment

The Concessionaire will receive payments, in accordance with the Concession Agreement, for providing available lanes in the Highway which meet the requirements for the DBFO Project. The Availability Payments are structured to encourage the Concessionaire to maximize lane availability, particularly during periods of high traffic volumes, and to schedule operations and maintenance, and asset rehabilitation, in periods to minimize traffic disruptions, as well as to respond in a timely manner to unscheduled events such as breakdowns and accidents as efficiently as possible to maximize lane availability.

Deductions will be made to the Availability Payments, if the Concessionaire fails to meet the performance specifications with regards to the operation, maintenance and rehabilitation of the Highway or if the Highway is deemed to be unavailable for a period of time.

3.1.3.2 Traffic Volume Payments

The Kicking Horse Canyon is a vital link in the Province's transportation network, and the commercial and tourist traffic using this stretch of road is of significant importance to the economy of the Province. The Concessionaire will be rewarded for increased usage of this corridor through payments for both current and incremental traffic volume on a per-vehicle rate, in accordance with the Concession Agreement.

3.1.3.3 Safety Performance Payments

The DBFO Project encompasses a challenging stretch of the Trans-Canada Highway. A key objective for the DBFO Project is to improve safety performance, through design, operation and maintenance activities. The Province wishes to provide incentives for the Concessionaire to focus on safety through the Payment Mechanism. The Concessionaire will receive Safety Performance Payments which are directly linked to the safety performance of the Highway.

3.1.4 End of Term Payment

The Concession Agreement will specify a service life for the Highway. The Province wishes to provide incentives to the Concessionaire to ensure that the assets are able to achieve or exceed their designed service life.

The Concessionaire will receive an End of Term Payment at the end of the Project Term provided it meets standards specified in the Concession Agreement which are directly linked to the asset condition of the Highway at the end of the Project Term.

3.1.5 Payment Retention

The Province wants to ensure that the Works and O,M&R Services are provided and assets maintained in accordance with the Specifications.

A portion of the Total Performance Payment made to the Concessionaire will be retained if the assets on the Highway do not meet the pre-determined asset conditioning requirements at the end of the Project Term.

The retained payment will be released to the Concessionaire if issues resulting in retentions are rectified by the Concessionaire within the required period.

3.2 Tax Issues

Each Proponent is responsible for obtaining and relying on tax advice from its own advisors and experts in relation to the DBFO Project (including in relation to the proposed structure and its tax consequences) as it considers appropriate or necessary.

4. Consultation and Selection Process

The Consultation and Selection Process has been implemented by the Province to give Proponents and the Province the opportunity to exchange information, engage in a dialogue and clarify issues relating to the RFP, including the Draft Concession Agreement and the Revised Concession Agreement.

4.1 Proponent Consultation Process

Recognizing the importance of input from the Proponents in the success of the Consultation and Selection Process and the schedule, the Province has implemented a process by which the Province and Proponents have the opportunity to exchange information, engage in dialogue, and clarify issues related to the RFP, including the Concession Agreement. The rules and protocols for Workshops and Topic Meetings have been established and are set out in the Proposal Competition Agreement and include provision for waivers and acknowledgement of the non-binding nature of all discussions at Workshops and Topic Meetings.

The Province may issue written guidance notes, directions, or addenda to the RFP to all Proponents during the Proponent Consultation Process. It is the intention of the Province to use the process of Workshops and Topic Meetings as a means for Proponents to actively identify and expand upon opportunities for innovation with respect to all aspects of the DBFO Project to maximize value for money to the Province. The Proponents are encouraged to identify and discuss such opportunities with the Province as early as possible in the Proponent Consultation Process.

4.1.1 Workshops

Proponents are required to participate in the following Workshops:

- Workshop A – Risk Allocation and Technical Issues
- Workshop B – Draft Concession Agreement
- Workshop C – Revised Concession Agreement

Proponents will have the opportunity to request Workshop agenda items as set out in the Proposal Competition Agreement. Proposed timing for Workshops are provided in Section 1.6.

4.1.2 Topic Meetings

In addition to the Workshops, Topic Meetings regarding specific topics may from time to time be scheduled with Proponents. All Proponents will be notified of topics as they are determined by the Province. Proponents will also have the opportunity to propose additional topics and request additional Topic Meetings as set out in the Proposal Competition Agreement.

4.2 Proposal Submission Requirements

While this Section 4.2 provides an overview of the Proposal submission requirements, Proponents should refer to Appendix 1F which contains detailed information regarding Proposal requirements, including:

- formatting, packaging, and other guidelines;
- general information on topics such as changes to the Proposal before the Closing Time, the procedure for changes to the Proponent's team subsequent to the Submission, and validity of Proposals;

- Mandatory Submission Requirements; and
- Minimum Performance Requirements.

The Province encourages Proponents to come forward early with ideas on innovation and does not wish to constrain the scope for innovation by Proponents. To encourage innovation Proponents are free to submit more than one Proposal provided that each Proposal is a Compliant Proposal. Proponents must prepare their Proposals on the basis of the Definitive Concession Agreement without amendment. Only Proposals which comply with all provisions of this RFP will be accepted for consideration. The Province's determination as to whether or not a Proposal is acceptable will be based upon the requirements set out in the RFP and the Proponent need not be consulted.

Each Proposal must consist of the following packages:

- Package 1: Transmittal Package
- Package 2: General and Proponent Team Information
- Package 3: Financial/Commercial Submission
- Package 4: Technical Submission

4.2.1 Closing Time and Closing Location for Proposals

Proposals must be received at the following address (the “**Closing Location**”), addressed to the Contact Person before 2:00 p.m. local Vancouver time on Thursday, May 12th, 2005 (the “**Closing Time**”).

Kicking Horse Canyon Project
DBFO Project
Response to Request for Proposals

Kicking Horse Canyon Project
c/o Partnerships BC
1260-999 West Hastings Street
Vancouver, BC V6C 2W2
Canada

Proposals received at or after the Closing Time will not be compliant, will not be considered and will be returned unopened.

Faxed, telephone or electronically submitted Proposals will not be accepted in response to this RFP. Amendments to Proposals must be received at the above noted address before the Closing Time. Faxed, telephone or electronic amendments 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 Proposal, including any amendments, has been received at the Closing Location before the Closing Time. It is the sole responsibility of Proponents to ensure that their Proposal is received

before the Closing Time and that they obtain confirmation from Partnerships BC as to whether their Proposal was received before the Closing Time.

The Province or Partnerships BC may at any time, by notice sent to the Proponents (whether or not actually received by the Proponents), extend the Closing Time.

4.3 Evaluation Process

4.3.1 Evaluation Committee

Review and evaluation of Proposals will be conducted by an Evaluation Committee. The size and composition of the Evaluation Committee is at the discretion of the Province.

The Province anticipates that the Evaluation Committee, and any subcommittees, may include representatives of the Province and external advisors. It is anticipated that Partnerships BC, Macquarie North America Ltd., The Focus Corporation Ltd. (and other members of the Owners Engineers Team), Fraser Milner Casgrain LLP and others, as may be identified at a later date, will participate in the evaluation. These companies or firms may have commercial relationships in other jurisdictions or other projects with one or more Proponent or Proponent Team Members. By submitting a Proposal, Proponents accept that the Evaluation Committee may contain such representatives.

In carrying out the evaluation of the Proposals and related activities, the Evaluation Committee may:

- obtain a ruling from the Conflicts Adjudicator where the Evaluation Committee determines that there may be a conflict of interest or unfair advantage issue at any time during the Consultation and Selection Process; and
- in confidence, obtain and rely upon any technical, managerial and other input and direction from any Person, including without limitation, officials of the Province and private sector advisors to the Province.

4.3.2 Preliminary Review

After the Closing Time members of the Evaluation Committee will review all Proposals submitted by Proponents at the Closing Location. The Evaluation Committee will determine whether the submission conforms to the requirements of this RFP and satisfies the Mandatory Submission Requirements.

4.3.3 Overview of Evaluation Criteria

The Evaluation Committee will evaluate Proposals in accordance with the Evaluation Criteria set out in Appendix 1G of the RFP. Proposals must comply with all mandatory requirements of the RFP, including the completeness of the Proposal and the satisfaction of the requirements laid out in the Mandatory Submission Requirements set out in Appendix 1F.

Proposals will be subject to the completeness review before being subjected to detailed commercial and technical evaluations. The Province may disqualify any incomplete Proposal or

Proposals that do not meet the Mandatory Submission Requirements, without further consideration.

The strengths of the Technical Submissions will be evaluated on a pass/fail basis. The “pass” mark will be obtained if the minimum information required in Sections 5 to 8 inclusive of Appendix 1F is included in the Proposal. Safety enhancements and other qualitative aspects of the Technical Submissions (e.g., management plans, project plans and reports) will also be subject to another level of evaluation as outlined in Appendix 1G.

The strengths of the Financial/Commercial Submission will also be evaluated first on a pass/fail basis. The “pass” mark will be obtained if the minimum information required in Section 3 and 4 of Appendix 1F is included in the Proposal. Other qualitative aspects of the Financial/Commercial Submission (e.g., strength of the Financial Plan) will also be subject to another level of evaluation as outlined in Appendix 1G.

The Province may seek clarification or rectification of any Proposal in accordance with Section 4.3.6.

Once Proposals have passed the completeness requirement and the above pass/fail requirements, the following criteria will be evaluated:

1. Financial Criteria:
 - (a) The risk-adjusted NPV of the Total Performance Payments proposed by the Proponent. The Evaluation Committee will use the Base Case scenarios provided by the Province and advisors rather than the Proponents' forecasts to evaluate Proposals uniformly. Sensitivity analyses will be undertaken to assess the Province's risk with regards to Total Performance Payments.

The discount rate used to calculate the NPV of the Total Performance Payments will be based on the Province's best estimate of a required internal rate of return (or weighted cost of capital) for a project of this nature. To determine the discount rate, the Province will assess the capital markets environment with respect to risk and return expectation, and examine project financing options available to the DBFO Project.
 - (b) The value for money offered by the Proposal. It is intended that value for money will be primarily captured through the Payment Mechanism.
 - (c) The comparison of the Proposal based on the risk adjusted net present value of the Total Performance Payments required under the Proposal plus the expected value of any additional traffic payments, with the theoretical risk-adjusted cost of public sector delivery.
2. Technical and Commercial Capability – The strength of the Proposal, and the demonstrated ability to implement and deliver all facets of the DBFO Project, all as set out in Appendix 1G.
3. Safety Enhancements – The Proposal will be evaluated on the safety enhancements of the Phase 2 design with regard to grade, radius and geometry as outlined in Appendix 1G.

4.3.4 Priority of Evaluation Criteria

For those Proposals that achieve a pass on both the Technical Submissions and the Financial/Commercial Submissions, the Evaluation Committee will then consider the merits of the Proposal as a whole which will be evaluated on the criteria in the table below.

The Province anticipates that an offer of the lowest risk adjusted NPV Total Performance Payments stream (Financial Criteria) will be the most significant element in the evaluation of Proposals. Other criteria will be evaluated quantitatively as follows:

TABLE 4
Evaluation Criteria

Financial Criteria Commercial and financial criteria, including risk-adjusted aggregate NPV of the total Performance Payments, Value for Money, and comparison to the risk adjusted cost of public sector delivery.	60 Points
Technical and Commercial Capability Financial/Commercial Submissions – Based on information submitted in response to Sections 3 and 4 of Appendix 1F and as set out in Appendix 1G. Technical Submissions – Based on information submitted in response to Sections 5 to 8 (inclusive) of Appendix 1F that are in excess of the minimum requirements for the pass/fail evaluation and as set out in Appendix 1G.	20 Points
Safety Enhancements	20 Points
Total	100 Points

The points attributable to each category are indicative and will be confirmed during the Consultation and Selection Process.

4.3.5 Verification of Proposals

To assist in evaluation of the Proposals and in determining their suitability, acceptability and credibility, the Province may:

- conduct reference checks with any or all of the references provided to the Province or otherwise requested by the Province; and
- rely on and consider any information from such references.

If experience, capacity, commercial or other information contained in a Proposal is not verified to the satisfaction of the Province through such reference checks, the Province is not obliged to consider such cited experience, capacity, commercial or other information.

The Province may, in the evaluation process, take into consideration information from other sources and seek clarification from the Proponents on such information.

4.3.6 Clarification and Rectification of Proposals

The Province may request clarification or rectification of Proposals or request further information from any or all Proponents for any reason at any stage of the Evaluation Process including to ensure that all Proposals comply with the Mandatory Submission Requirements and Minimum Performance Requirements, and that all aspects of a Proposal are fully described as the Evaluation Committee may require. If a Proponent fails to provide satisfactory clarification, rectification or information as requested by the Province, the Province may reject or disqualify such Proponent's Proposal and such Proposal will not be considered further in the Evaluation Process.

The Province, in its discretion, may proceed with the evaluation of, or reject a Proposal if a Proponent fails to provide a written response for clarification or rectification that adequately satisfies the request or fails to provide information within the time specified for the request.

The procedure for requests for clarification of this RFP by a Proponent is set out in Section 5.5.

If any Proposal is obscure, contains a defect or fails in some way to comply with any requirement of this RFP that is not material in the opinion of the Province, the Province may waive the obscurity, defect or non-compliance and accept the Proposal as submitted or request further clarification or rectification before further considering the Proposal.

The Province, in its discretion, may determine what is material in the context of a Proposal, whether or not to reject any Proposal or waive any obscurity, defect, or failure to comply, whether or not to request clarification, rectification, and the adequacy and acceptability of any clarification or rectification submitted by a Proponent. The Province is not bound by industry custom or practice in the exercise of its discretion.

4.3.7 Debriefing

Following Financial Close, representatives of the Province will, upon request, meet with unsuccessful Proponents and provide them with a debriefing. During such debriefing, confidential information including any scores awarded to any Proposal, the pricing of any Proposal, and the order of ranking of Proposals or any other aspect of the evaluation, scoring and ranking of Proposals will not be disclosed. During such debriefing, only the relative strengths and weaknesses of that Proponent's Proposal will be disclosed and discussed.

4.4 Fairness Auditor

Jane Shackell, Q.C., has been appointed by the Province as a fairness auditor (the "**Fairness Auditor**") with responsibility, as an independent observer, to review the development and implementation of the entire Consultation and Selection Process from a fairness perspective. This includes, but is not limited to, monitoring the evaluation of the Proposals and the selection of the Preferred Proponent. The Fairness Auditor will report only to the Province and will provide, on an ongoing basis, an objective opinion as to the fairness of the Consultation and Selection Process. In particular, the Fairness Auditor 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.

5. General Information and Instructions

5.1 Background Investigations, Surveys and Studies

Numerous investigations, surveys, and studies have been undertaken with respect to the Kicking Horse Canyon Project. Reports and other material relating to these activities will be included in the Data Room.

Investigations, surveys, and studies presently at various stages of completion, include:

- LiDAR survey for Phase 3;
- additional Phase 2 survey work;
- asset Condition Study;
- pavement Evaluation and Rehabilitation Options Report;
- Phase 2 core logs;
- preliminary alignment "E6";
- Environmental Synopsis Report;
- property drawings; and
- CEAA Screening Report.

These investigations, surveys and studies will be entered into the Data Room when complete.

5.2 Investigations, Surveys, and Studies by Proponents

Proponents are required to conduct their own due diligence in relation to all aspects of the DBFO Project. Proponents are responsible for carrying out any independent investigations, surveys, and studies which they consider necessary or appropriate in connection with satisfying their due diligence responsibilities, at their own cost. Proponents are required to coordinate any field work through the Province in accordance with Section 5.7, to ensure that inconvenience to land owners, tenants, road users, and other contractors is kept to a minimum. Proponents wishing to arrange a site visit for such purpose should submit their request to the Contact Person.

5.3 Geotechnical Investigations by the Owner During Proposal Period

The Province will consider undertaking a limited amount of drilling, sampling and testing and seismic refraction surveys at locations requested by Proponents. Since weather and daylight conditions will hamper field-work, site activities will be limited to the period after January 31, 2005. The Province does not warrant that any or all investigations will be undertaken or that any or all investigations undertaken will be completed as required or planned and reserves the right, in its discretion, to suspend, temporarily or permanently, investigations at any time. Requests for such surveys should be provided by RFI to the Contact Person no later than January 18, 2005.

For drilling, the information provided with the RFI should include up to three (3) locations and will include; priority, co-ordinates, depth, sampling details, and testing requirements for each location. For seismic refraction survey, this information should include for up to ten (10) spreads, including priority and geophone spacing for each spread.

The Province may discuss the drilling and seismic refraction survey program with Proponents in order to achieve a balanced program.

The Province anticipates that a mud rotary drill (fly-in and/or truck mounted), capable of soil sampling and bedrock coring will be available.

Proponents may inspect the investigations in the field at any time, provided they comply with the requirements for site access set out in Section 5.7.

Results of field investigations and testing will be posted to the Data Room as the information becomes available. Bedrock cores will be made available for viewing in Golden at a location to be announced. Raw seismic data will be made available to Proponents for their own analysis through the Data Room.

5.4 Data Room

An electronic data room at a secure internet address (the “**Data Room**”) has been established. There are no plans to establish a separate physical data room except for viewing bedrock cores as described above.

The information in the Data Room will be supplemented or updated from time to time. Proponents are solely responsible for checking the Data Room frequently for updates to ensure that they are using only the current information. Without limiting Section 6.17, neither the Province nor any of its Representatives is responsible or liable for any failure on the part of any Proponent to check the Data Room, or for any error or omission in any notice regarding the Data Room. 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 provisions of the Proposal Competition Agreement and disclaimers and limitations of liability and responsibility set out in the RFP and in any documents in the Data Room, including the provisions of Sections 6.14 and 6.17.

In the event of conflict between anything downloaded from the Data Room by Proponents and the contents of the Data Room, the contents of the Data Room will govern and take precedence.

If a Proponent has previously provided a report to the Province with respect to the Highway, which is not already included in the Data Room, such Proponent is required to advise the Province of such report and the report will be placed in the Data Room.

5.5 Contact Person and Questions and Answers Protocol

All questions, inquiries, comments, requests for information, requests for clarification, request for a Topic Meeting, and other communications regarding the RFP or the Consultation and Selection Process, including the Concession Agreement, (each a “**Request for Information**” or “**RFI**”) must conform to the requirements set out in the Proposal Competition Agreement and be directed to the following person (the “**Contact Person**”):

Kicking Horse Canyon Project
DBFO Project
Request For Information

Kicking Horse Canyon Project
c/o Partnerships BC
#1260-999 West Hastings Street
Vancouver, BC V6C 2W2
Canada

ATTN: Ms. Tara Moultrie
Fax: 604.660.1199
E-mail: kickinghorsecanyon@partnershipsbca.ca

If the Province identifies a need for general clarification on an issue which does not require an Addendum, or if it identifies a matter of substance which the Province, in its discretion, considers should be formally brought to the attention of all Proponents, a letter of clarification will be issued to all Proponents.

5.6 Proponent Communications Protocol

Proponents will only communicate with the Province or Partnerships BC in connection with the DBFO Project through the Contact Person, in accordance with the questions and answers protocol set out in Section 5.5, or where applicable, in accordance with the Proposal submission requirements set out in Section 4.2 and Appendix 1F. Without limiting anything in Section 6, in no event will the Province or any of its Representatives be responsible for any statements, representations, assurances, commitments, or agreements which Proponents believe they may have received or reached with any stakeholders or other parties. Proponents rely on all such statements, representations, assurances, commitments or agreements at their own risk and without recourse to the Province or any of its Representatives and are solely responsible for ensuring that they are incorporated into binding written agreements between the Proponent and the stakeholders or other parties.

All publicity in relation to the DBFO Project, including communications with the media and the public, by or from Proponents or their Proponent Team Members (or their respective directors, officers, employees, consultants, advisors, representatives and agents) must be coordinated with, and is subject to, the prior written approval of the Province, provided that such approval shall not be unreasonably withheld.

No media releases may be issued by any Proponent or Proponent Team Member in relation to the DBFO Project without first submitting same to the Province for review and approval, acting reasonably. Proponents and their Proponent Team Members shall promptly notify the Province of requests for interviews or other requests from the media. The subject and content of all responses to such media requests and to interviews shall be reviewed and coordinated in advance with the Province in the same manner as media releases. Each Proponent shall use all reasonable efforts to ensure that its Proponent Team Members and others associated with the Proponent comply with these requirements.

5.7 Site Access

Proponents shall not access the Site or Adjacent Areas unless they have complied with this Section 5.7 and the Province has approved such visit. Proponents wishing to arrange a visit to the Site or Adjacent Areas for any purpose or to access any non-public portions of the Site or Adjacent Areas should submit their request to the Contact Person by RFI in accordance with the Proposal Competition Agreement setting out the proposed visit date(s), time(s), location(s), and the purpose for the visit(s). The RFI should be submitted as early as possible and in any event at least 48 hours in advance of the time for any proposed site visit.

If the Proponent intends to access the lands comprising the CP Rail right of way for any purpose the Proponent shall obtain written approval to do so from CP Rail in addition to making the request described above.

The Province may have a representative present during any and all visits to the Site or Adjacent Areas to monitor the Proponent's activities during the site visit or the Province may impose restrictions on such access, particularly if the purpose of the site visit includes any activities which may disturb the environment or cause damage to any property at or adjacent to the Site and Adjacent Areas. The Proponent should ensure that it carries appropriate insurance coverage, acceptable to the Province, acting reasonably.

6. General Matters

6.1 Province's Right to Amend or Cancel RFP

The Province may in its discretion at any time and for whatever reason, and without liability to the Proponent, except as may be expressly provided for in the Proposal Competition Agreement, or any other person, by Addendum, modify, amend or otherwise change any part or all of this RFP, including by extending any schedule or time periods (including the Closing Time and the schedule for implementation of the Project) specified within, or suspending, postponing or cancelling, all or any part of this RFP. Each such Addendum shall be issued by the Province in writing and shall be expressly identified as an Addendum to this RFP.

Although it is the intention of the Province to select a Preferred Proponent and to sign the Concession Agreement, if the Province does not receive a Proposal that satisfactorily meets all of the requirements set out in this RFP, as determined in the discretion of the Province, and for which the required approvals described in Section 4.4 are obtained, without limiting the preceding paragraph, the Province may cancel this RFP and issue a new request for proposals for any or all parts of the DBFO Project. In such case, the Province may proceed with any or all parts of the DBFO Project in such manner as the Province in its discretion considers appropriate including by using some or all of the Proponents' ideas and concepts and by proceeding through a traditional design-bid-build, design-build or other procurement model rather than that contemplated by this RFP.

If the Province fails to select a Preferred Proponent within nine (9) months of the Closing Time or cancels the RFP at any time and then elects to proceed with all or any parts of the DBFO Project through an alternative procurement process, the Province will be entitled to contract directly with one or more Proponent Team Members or with any one or more of the contractors, sub-contractors, consultants, advisors and others engaged by or through any Proponent or any Proponent Team Members or with any other person or persons, for any or all matters related to all of any part of the DBFO Project.

If the Province receives a Compliant Proposal from at least one Proponent, the Consultation and Selection Process is unchanged.

If the Province has not received one Compliant Proposal then the Province has the right, but not the obligation, in its discretion at any time and without liability to any Proponent or Proponent Team Member, except as may be expressly provided for in the Proposal Competition Agreement, to:

negotiate with the Proponent who submitted the Proposal which in the opinion of the Province is most advantageous to the Province, and attempt to finalize a Concession Agreement with that Proponent on terms, conditions and with scope acceptable to the Province; or

negotiate with any other person whom the Province considers appropriate, and that the Province in its discretion considers may be able to complete the DBFO Project for a price and on terms and conditions acceptable to the Province.

The Province may, in its discretion, elect not to proceed with the Concession Agreement or the DBFO Project in its discretion.

6.2 Province's Right to Reject any and all Proposals

The Province is not bound to accept the lowest priced, highest ranked or any Proposal and may in its discretion reject any Proposal that does not meet all of the requirements set out in this RFP or for which the necessary orders and approvals described in Section 2.7.2 are not issued. The Province's decision on whether or not a Proposal is acceptable will be final and the Province need not consult with the Proponent in making its determination.

Without limiting but in addition to the foregoing, the Province may in its discretion refuse to consider, remove from the evaluation process entirely, or reject outright any Proposal which in

the opinion of the Province is materially incomplete or irregular, which contains exceptions or variations not acceptable to the Province, which contains a false or misleading statement, claim or information, which omits any material information required to be submitted under the RFP by a Proponent or Proponent Team Member.

None of the Province or its Representatives shall under any circumstances, be responsible or liable to any person, including any Proponent for any costs incurred or damages suffered by any person or any Proponent in relation to the RFP (including in relation to the preparation, review or evaluation of a Proposal) or the Consultation and Selection Process, other than to pay, in accordance with and subject to the terms and conditions set out in the Proposal Competition Agreement, the Partial Compensation.

6.3 Conflicts in Documents

If there is any provision in any part of the RFP or the Concession Agreement which a Proponent considers prior to submitting its Proposal to be in conflict with any other part of the RFP or the Concession Agreement, the Proponent shall notify the Contact Person in writing in accordance with Section 5.5, giving the details of such apparent conflict and seeking clarification. If any such conflict exists but notice is not given by a Proponent in accordance with the foregoing, the provision which, in the sole opinion of the Province, will provide the higher overall value to the Province, shall govern and take precedence.

Subject to the foregoing, in the event of conflict or inconsistencies between or among any of the documents of the RFP or any appendix to Volume 1, the documents shall govern in the following order of precedence, with the first listed taking precedence over those listed after them:

- Concession Agreement (including all schedules thereto)
- Proposal Competition Agreement
- RFP (other than Volume 2 containing the form of Concession Agreement)

If there is a conflict between one of the above documents as issued to Proponents in paper form and the same document as issued to Proponents in digital, electronic or other computer readable form, the paper form shall govern and take precedence. If there is a conflict between any of the above documents as issued to Proponents in paper form and the same document in the Data Room, the document as issued to Proponents in paper form shall govern.

6.4 Conflicts of Interest / Relationship Review Process

Proponents shall, in their Proposals, disclose any existing relationships they or any of their Proponent Team Members or Key Individuals may have with any Restricted Party that may give rise to an actual or perceived conflict of interest or an unfair advantage.

If a Proponent, prior to or following submission of its Proposal, discovers any existing relationship they or any of their Proponent Team Members or Key Individuals may have with any Restricted Party that may give rise to an actual or perceived conflict of interest or an unfair

advantage, the Proponent shall promptly disclose the relationship to the Province in writing through the Contact Person.

At the time of disclosure of any existing or previous relationship, the Proponent shall provide the Province with the Proponent's proposed means to mitigate and minimize to the greatest extent practicable the consequences of the relationship where it may give rise to an actual or perceived conflict of interest or an unfair advantage. The Proponent shall submit such additional information to the Province as the Province may require in connection with its consideration of the relationship.

The Province may in its discretion waive the impacts of any existing relationships that may give rise to an actual or perceived conflict of interest or an unfair advantage, whether arising out of existing business relationships or otherwise. Any waiver may be upon such terms and conditions as the Province in its discretion may require to satisfy itself that the conflict of interest or unfair advantage has been appropriately managed, mitigated and minimized, including requiring the Proponent 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 mitigate the impact of such conflict of interest or unfair advantage and to ensure that any and all Confidential Information the Proponent or any Proponent Team Member or Key Individual may have continues to be kept confidential and not disclosed or used except as expressly allowed 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 conflict of interest or unfair advantage or who has the existing or previous relationship. Proponents are encouraged to bring all such potential or actual conflicts, unfair advantages and existing and previous relationships to the attention of the Province prior to the submission of Proposals so that the Province may be able to advise them as to whether a waiver will be granted and, if so, the terms and conditions (if any) that may be imposed by the Province as a condition of granting a waiver.

The Province has appointed Mr. Leslie Peterson, C.M, O.B.C., Q.C. to act as a conflicts adjudicator in respect of the DBFO Project (the "**Conflicts Adjudicator**") to make decisions on issues pertaining to conflict of interest or unfair advantage including whether any person or entity is a Restricted Party. The decisions of the Conflicts Adjudicator on any conflict of interest or unfair advantage issue, including whether any person or entity is a Restricted Party, whether on a request for rulings under Section 6.13 or on request by the Province at any stage of the Consultation and Selection Process, is final and binding on the person requesting the ruling, all Proponents, their Proponent Team Members and the Province.

6.5 Confidentiality

In connection with the Submission made by each Proponent pursuant to the RFQ, the Province required Proponents to execute a confidentiality agreement, which agreement extends to the RFP and the Consultation and Selection Process. Further confidentiality requirements are contained in the Proposal Competition Agreement.

The Province will (subject to the requirements of applicable freedom of information legislation) use reasonable efforts to maintain the confidentiality of Proposals but only so far as the consultation, evaluation, scoring and approval processes will allow, having regard to the involvement of third parties, including the stakeholders, in such processes.

6.6 No Collusion

Proponents, Proponent Team Members and Key Individuals shall 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 or Key Individual of such other Proponent) regarding the preparation, content or representation of their Proposals. Proposals shall 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 or Key Individual of such other Proponent), excluding HMC Services Inc. and Wyllie Norrish Rock Engineers, both of whom are acknowledged as being a Proponent Team Member for more than one Proponent, but both of whom must otherwise comply with the terms of this Section 6.6.

6.7 No Lobbying

Proponents and Proponent Team Members and their respective directors, officers, employees, consultants, agents, advisors and representatives shall not in relation to the DBFO Project or the Consultation and Selection Process, engage in any form of political or other lobbying whatsoever to influence the outcome of the Consultation and Selection Process or the selection of the Preferred Proponent. Further, no such person (other than as expressly directed or allowed by this RFP or the Proposal Competition Agreement) shall attempt to communicate in relation to the DBFO Project or the RFP, directly or indirectly, with any representative of Partnerships BC or the Province, any Minister or Deputy Minister of the Province, any member of the Province, any member of the Executive Council, any Members of Legislative Assembly, any Restricted Parties, or any director, officer, employee, agent, advisor, consultant or representative of any of the foregoing, before or after the Closing Time, for any purpose whatsoever, including:

- commenting on or attempting to influence views on the merits of the Proponent's Proposals in relation to Proposals of other Proponents;
- influencing, or attempting to influence, through outside pressure, the scoring and ranking by the Province of Proposals, the selection of the Preferred Proponent, or any negotiations between the Province or Partnerships BC and the Preferred Proponent;
- promoting the Proponent or its interests in the DBFO Project in preference to that of other Proponents;
- criticizing aspects of the RFP or Concession Agreement in a manner which may give the Proponent a competitive or other advantage over other Proponents; and
- criticizing the Proposals of other Proponents.

In the event the Province determines, in its discretion, that there has occurred any lobbying or communication by a Proponent in contravention of the foregoing:

- the Province in its discretion may at any time, but will not be required to, reject any and all Proposals submitted by that Proponent without further consideration and, in the

Province's discretion, either terminate that Proponent's right to continue participating in the Consultation and Selection Process, or impose such conditions on that Proponent's continued participation in the Consultation and Selection Process as the Province in its discretion may consider in the public interest or otherwise appropriate;

- the Proponent will no longer be eligible for, or receive, the Partial Compensation.

6.8 Disclosure

The following information has been publicly disclosed by posting it at www.kickinghorsecanyon.ca and also at www.partnershipsbc.ca:

- Registration of Interest
- Request for Qualifications
- Name and Number of Short Listed Respondents
- Relationship Review Guidelines

Additional information that may be publicly disclosed by posting it at www.kickinghorsecanyon.ca and also at www.partnershipsbc.ca include:

- Request for Proposals – Volume 1
- Name of Preferred Proponent
- value for money assessment (may be published shortly after Financial Close)

6.9 Freedom of Information and Protection of Privacy Act

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 Freedom of Information and Protection of Privacy Act.

Subject to the requirements of the Freedom of Information and Protection of Privacy Act, the terms of the Proposal Competition Agreement and the Province's disclosure policy described in Section 6.8 all Proposals and other documents and records submitted by a Proponent in connection with the RFP will be considered confidential.

6.10 Transportation Investment Act

The Transportation Investment Act (S.B.C. 2002, c.65) authorizes the Minister to enter into concession agreements with third parties to design, build, operate and maintain highways. Proponents should ensure they familiarize themselves with the Transportation Investment Act and other relevant legislation.

6.11 Insurance and Workers Compensation

The Province is providing no insurance or workers compensation coverage for any matters whatsoever to any Proponents, Proponent Team Member or any of their respective directors, officers, employees, consultants, advisors or agents.

If a Proponent proposes to perform any investigations at the Site and Adjacent Areas, the Province, as a condition of allowing access to the Site and Adjacent Areas or to the facilities or premises of Partnerships BC, BCTFA or the Province, reserves the right to require Proponents to provide evidence acceptable to the Province that insurance, acceptable to the Province, is in place.

As a condition of allowing access to the Site and Adjacent Areas or to the facilities or premises of Partnerships BC, BCTFA or the Province, each of them reserves the right to require each Proponent to provide evidence acceptable to them that each Proponent and its Proponent Team Members are registered with the Workers' Compensation Board of British Columbia, where such registration is required by Laws and Regulations in British Columbia or, if not required to be registered, then to provide evidence acceptable to them that each Proponent and its Proponent Team Members have employer's liability insurance in amounts and on terms and conditions acceptable to Partnerships BC and the Province.

6.12 Changes to Proponents and Proponent Team Members

Changes to Proponent Team Members, including Prime Members or Equity Members, and/or Key Individuals or its proposed contractors, consultants, advisors or others named in the Submission made pursuant to the RFQ or the Proposal submitted pursuant to this RFP, may only be made with the consent of the Province. If, prior to the Closing Time, a Proponent wishes to make such a change, the Proponent shall immediately notify the Contact Person in writing. Such notification shall clearly indicate the proposed substitution, the reason for the change, and include the same information as was required under the RFQ in respect of the proposed substitute together with such other reasonable documentation to demonstrate that the proposed substitute has appropriate qualifications, experience and ability when compared as a whole to the original named entity or person and is otherwise suitable for the particular position. The Proponent shall also provide such further documentation and information as may be requested by the Province in its discretion so as to satisfy itself as to the suitability, qualifications, experience and ability of the proposed substitute.

The Province will consent to such substitution if the proposed substitute entity or person is, in its discretion, acceptable to the Province. Any such consent will be in writing and may be subject to such terms and conditions as the Province may require.

If the proposed substitute is not acceptable to the Province, the Proponent shall propose an alternative substitute for consideration by the Province, which substitute is capable of meeting the suitability, qualifications, experience and ability of the original entity or person and is available to work with the Proponent and shall satisfy the same documentation and information requirements as set out above for the initially proposed substitute. If the Proponent is unable to provide the Province with an acceptable substitute, such Proponent's Proposal may, at the option and in the discretion of the Province, be disqualified from consideration.

If, after submission of a Proposal and prior to the execution of the Concession Agreement, there is a proposed addition, deletion or substitution or other change in the Proponent Team Members or effective control of the Proponent or there is a material change in circumstances which may adversely affect a Proponent's ability to perform its obligations under the Concession Agreement, then the Proponent shall immediately notify the Province in writing to the Contact Person. Such a change will not automatically disqualify a Proponent. The Province's decision as to whether or not to disqualify a Proponent as a result of such a change shall be final and binding.

The Province may in its discretion allow a proposed or actual change on such terms and conditions (if any) as it may require. In the case of an actual change which has previously occurred without the consent of the Province, the Province may disqualify the Proponent and may terminate its continued involvement in the Consultation and Selection Process, or allow the Proponent to continue under such terms and conditions as the Province in its discretion may require. If an addition, deletion, substitution or other change is allowed by the Province, the Province may require additional information to form part of the Proposal and to be taken into account in the evaluation process.

6.13 **Restricted Parties**

Restricted Parties are those Persons (including their former and current employees) who had or currently have participation or involvement in the Consultation and Selection Process or in the design, planning or implementation of the DBFO Project, and who may provide a material unfair advantage or confidential information to a Proponent or a Proponent Team Member that is not, or would not reasonably be expected to be, available to other Proponents or their Proponent Team Members or who may be in a conflict or perceived conflict of interest position in relation to a Proponent or a Proponent Team Member (collectively "**Restricted Parties**" and individually a "**Restricted Party**"). Government employees (current or former) who have been involved in the Consultation and Selection Process or the design, planning and implementation of the DBFO Project may also be Restricted Parties.

The firms and parties listed in this section and their affiliates have been identified as Restricted Parties and, accordingly, neither they nor any of their respective directors, officers, partners or employees (including former employees) are eligible to participate as a Proponent or as a Proponent Team Member. Additional firms or individuals may be added to this list of Restricted Parties at any stage of the Consultation and Selection Process of the DBFO Project.

- The Focus Corporation Ltd.
- UMA Engineering Ltd.
- Hatch Mott MacDonald
- Thurber Engineering Ltd.
- Macquarie North America Ltd.
- Fraser Milner Casgrain LLP
- Novatrans Engineering Inc.

- E. Wolski Consulting
- Geoplan Opus Consultants Inc.
- A.H.B. 2000 Inc.
- Transtech Data Services
- Owner's Engineer Team Members

Restricted Parties and their affiliates are not eligible to advise any Proponent or Proponent Team Member, directly or indirectly, or participate in any way as an employee, advisor, consultant, Prime Member, Equity Member, Key Individual or otherwise in connection with any Proponent in relation to the DBFO Project. Proponents are responsible for ensuring that they and their Proponent Team Members do not use any Restricted Parties. A Proponent, Proponent Team Member, prospective Proponent Team Member or an advisor who has any concerns regarding whether a party is or may be a Restricted Party for the purposes of the Consultation and Selection Process should seek a ruling from the Conflicts Adjudicator.

In order to request a ruling as to whether a party is a Restricted Party, a Proponent, Proponent Team Member, prospective Proponent Team Member or advisor should submit to the Contact Person, not less than 10 days prior to the Closing Time in accordance with Section 5.5, 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 raises the possibility or perception of a conflict of interest or unfair advantage;
- a description of the steps taken to date and future steps proposed to be taken to mitigate the possibility or perception of a conflict of interest or unfair advantage; and
- copies of any relevant documentation.

Each Proponent, Proponent Team Member, prospective Proponent Team Member and their respective advisors agrees that, by submitting a request for a ruling, the ruling provided by the Conflicts Adjudicator will be final and binding on the person submitting the request, the Proponent, all its Proponent Team Members, all other Proponents and their Proponent Team Members, the Province and Partnerships BC. Neither the Province nor the Conflicts Adjudicator guarantees the timely provision of a ruling.

Subject to Section 6.9, all requests for rulings will be treated in confidence. If a Proponent, a Proponent Team Member, a prospective Proponent Team Member or advisor becomes a Restricted Party, it may be listed in an Addendum, posted on the project website or otherwise communicated to Proponents as a Restricted Party.

The Province may also independently ask for rulings where it identifies persons who may be Restricted Parties. The Province will give notice to the possible Restricted Party so that it can make its own submission to the Conflicts Adjudicator.

The Province may in its discretion waive the foregoing ineligibility for any one or more of the above listed entities or persons on such terms and conditions as the Province in its discretion may require, including requiring that the Proponent or entity put in place adopt adequate safeguards to mitigate the impact of such conflict and to ensure that any and all Confidential Information it may have continues to be kept confidential and not disclosed or used except as expressly allowed by the Province.

6.14 No Reliance

Except as may be expressly provided for in the Concession Agreement, neither the Province nor any of its Representatives represents or warrants the accuracy or completeness of any information set out in the RFP, its appendices or the Background Information or made available to Proponents in the Background Information, or of any other background or reference information or documents and which may be made available to Proponents by or through the Province, its Representatives or BCTFA.

Proponents should make such independent assessments as they consider necessary or desirable to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Proponents on any and all of such information shall be at the Proponent's sole risk and without recourse against the Province or its Representatives.

Without limiting the generality of the foregoing, unless otherwise expressly provided in this RFP:

- Any and all use of or reliance upon any such information (including the Background Information or anything in the Background Information) by Proponents shall be and is subject to all express disclaimers of liability in the RFP, as well as all disclaimers of liability in the Concession Agreement.
- Neither the Province nor any of its Representatives represents or warrants and none of them are responsible in any way for the scope, timeliness, completeness, appropriateness, or accuracy of any information, representations, statements, assumptions, opinions, interpretations in any such information (including the Background Information), including in relation to any one or more of: descriptions of site, geological or subsurface conditions; dewatering; opinions or interpretations based on existing or assumed information; previous studies or optimization; conceptual designs or layouts, statements or estimates of quantities of any part of the work; assumptions or descriptions as to construction means or methods; availability and quality of construction materials; soil disposal; requirements of the stakeholders or others, or any assumptions or interpretations made by Proponents based on any information contained in the Background Information, any interpretations, conclusions, opinions or assumptions reached or made by Proponents based on anything in the Background Information.
- Where investigations and information relating to site conditions, including subsurface conditions, has been produced or made available to Proponents, such investigations and information are of a preliminary nature only and are not to be relied upon by Proponents except at their sole risk. Proponents are cautioned that any bore hole logs or test pit logs provided with any geotechnical information record only the observations which were made at the specific locations described and at the specific times recorded, and may not be representative of conditions encountered either at locations immediately adjacent thereto or, with respect to groundwater and other conditions, at any other times. Data

shown for bore hole logs and test pit logs may not necessarily be representative of anticipated conditions. Proponents should perform such additional geotechnical and other investigations as they consider necessary and must obtain and rely on their own geotechnical consultants for all interpretation and opinions, including based on any bore hole logs and test pit logs made available through Partnerships BC, the Province and others.

By submitting a Proposal, each Proponent acknowledges, represents and warrants that its Proposal is based on and relies solely upon the Proponent's own examination, knowledge, information, judgment and investigations and not upon any statement, representation or information made, furnished or given by or on behalf of any of the Province or any of its Representatives except where expressly made in the Concession Agreement and warranted in the Concession Agreement to be accurate by the Province for purposes of reliance by the Proponent.

No communications or responses from the Province in relation to the RFP, the Concession Agreement, the Specifications, the Consultation and Selection Process or the DBFO Project may be relied upon by Proponents or any person unless, and only to the extent, confirmed in writing by an Addendum to the RFP. Any reliance by a Proponent or any person on any communication or response obtained by a Proponent which is not contained in an Addendum to the RFP shall be at the Proponent's sole risk and without recourse against the Province or any of its Representatives.

6.15 No Contract

No contract of any kind whatsoever is formed under or arises from this RFP save and except only the Proposal Competition Agreement and to the extent expressly agreed upon in the Proposal Form included in Appendix 1D.

6.16 Proponent Team Members and Subcontractors

Proponents shall ensure that all their Proponent Team Members, subcontractors, suppliers, manufacturers, advisors, consultants and subconsultants, and everyone associated with or related to the foregoing, are subject to and comply with the provisions of this RFP.

6.17 No Liability

As set out in the Proposal Competition Agreement, neither the Province nor any of its Representatives nor any of their respective successors and assigns (collectively, the "**Releasees**") will under any circumstances, including pursuant to contract, tort, statutory duty, law, equity or otherwise, or any actual or implied duty of fairness, be responsible or liable to anyone for any claims, actions, proceedings, causes of action, suits, debts, dues, accounts, bonds, warranties, claims over, indemnities, covenants, contract losses (including consequential losses), damages, costs, 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 present or future, and whether known or unknown (collectively and individually any and all of the foregoing referred to in this Section 6.17 as "**Claims**") (except in respect of wilful misconduct by the

Province) by any Person (including any Proponent, Proponent Team Member and/or their respective contractors, subcontractors, directors, officers, consultants, advisors or agents), arising out of or in any way related to the Consultation and Selection Process; (including any Claims arising our of or in any way connected with the Workshops, the Topic Meetings, or the Province's participation therein).

By executing a Proposal Competition Agreement, the Proponent waived any Claims which it now has or may hereafter have against any Releasee and released each of the Releasees from any and all Claims.

As set out in the Proposal Competition Agreement, the Proponent has agreed to indemnify and hold harmless each of the Releasees from and against any and all Claims brought by or on behalf of (i) any present or former Proponent Team Member against the Province arising out of or related to the Consultation and Selection Process, or (ii) any third party as a result of any act or omission of the Proponent or any Proponent Team Member in connection with the performance of its obligations in relation to the Consultation and Selection Process. Without limiting the generality of the foregoing, it is expressly understood and agreed that the Province shall not be under any obligation whatsoever to select a Preferred Proponent or to award the Concession Agreement to any Proponent at all or may cancel the RFP and/or the Consultation and Selection Process at any time for whatever reason(s) the Province in its discretion considers in its discretion to be in the best interests of Partnerships BC or the Province.

6.18 Dispute Resolution

Each Proponent, by submitting a Proposal, agrees that:

The Authorized Representative for the Proponent identified in their Submission must, within 14 days of any dispute arising in connection with this RFP, submit written notice to the Contact Person of such dispute; and

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, will be referred to and finally resolved by binding arbitration in accordance with the *Commercial Arbitration Act*.

6.19 Proposal Evaluation

Except where otherwise expressly provided by the RFP, the Province has the authority to establish its own methods and procedures for the review, evaluation and scoring of Proposals and to make a recommendation in respect of the Preferred Proponent. The Province may independently consider, request or verify any information whether or not contained in any Proposal including conducting credit, reference, criminal record, litigation, bankruptcy, tax payer information and other checks and obtaining references from parties other than those listed by Proponents in their Proposals. If experience, capacity or other information contained in a Proposal is not verified to the Province's satisfaction through such checks, the Province is not obliged to consider such cited experience, capacity or other information.

The Province may be assisted by and may consult with various technical, financial and legal advisors and consultants in relation to any or all aspects of a Proposal. The appointment of and consultation by the Province with any one or more of these advisors or consultants will be in the

discretion of the Province which may utilise any such advisors and consultants in any way that the Province in its discretion considers will be of assistance to it.

Appendix 1A

Definitions and Interpretation

1. Definitions

In the RFP, the following definitions apply:

“Addendum” means a written addendum to the RFP (including the Concession Agreement), including the Specifications, which is expressly identified as an addendum and issued by the Province to Proponents before the Closing Time for the submission of Proposals.

“Adjacent Areas” has the meaning given to it in the Concession Agreement.

“Aesthetics and Landscape Design Report” means the portion of a Proponent’s Proposal described in Section 7.2.5 of Appendix 1F.

“Asset Condition Retention” has the meaning given to that term in the Concession Agreement.

“Asset Management Plan” means the portion of a Proponent’s Proposal referred to in Section 8.9 of Appendix 1F.

“Asset Management Strategy” means that portion of a Proponent’s Proposal referred to in Section 8.9 of Appendix 1F and includes the Operations and Maintenance Plan and the Asset Management Plan.

“Asset Preservation Performance Measures” means the measures described in Section 3.2.1 of Part C of Volume 3.

“Authorized Representative” means the Authorized Representative identified as such in the Submission.

“Availability Payment” means the payment described in Section 3.1.3.1.

“Background Information” means any and all drawings, reports, studies, data, documents or other information which are given or made available to Proponents by, through or on behalf of Partnerships BC or the Province, including those in the Data Room, or which are obtained by Proponents from or through any other sources such as the Kicking Horse Canyon Project website, before the Closing Time and related in any way to the RFP, a Proposal or to the DBFO Project, but does not include the RFP, the Concession Agreement, and the Specifications.

“Background Technology” has the meaning given to it in Section 4.1.2 of Appendix 1D.

“BAFO” means Best and Final Offer.

"BAFO Partial Compensation" has the meaning given to it in Section 1.5.

"BAFO Proponents" has the meaning given to it in Section 1.4.

"BAFO Proposal Competition Agreement" has the meaning given to it in Section 1.4.

"BC Hydro" means the Crown corporation known as BC Hydro & Power Authority and the British Columbia Transmission Corporation and their respective affiliates.

"BCTFA" means British Columbia Transportation Financing Authority.

"Brake Check" means the brake check area on the Highway generally located as shown on the map included in Section 1.3.

"Canadian Environmental Assessment Act (CEAA)" means the *Canadian Environmental Assessment Act*, R.S.C. 1992, c. 37, as amended.

"Claims" has the meaning given to it in Section 6.17.

"Closing Location" has the meaning given to it in Section 4.2.1.

"Closing Time" has the meaning given to it in Section 4.2.1.

"Completion Retention" has the meaning given to that term in the Concession Agreement.

"Completion Retention Rate" has the meaning given to that term in the Concession Agreement.

"Compliant Proposal" means a Proposal that meets or exceeds all of the Mandatory Submission Requirements and the Minimum Performance Requirements.

"Concession Agreement" means, (i) prior to the Province awarding a contract for the DBFO Project to the Preferred Proponent and execution of that contract, the most recently issued draft form of Concession Agreement, once issued, or the Definitive Concession Agreement, once issued, and (ii) after the execution of a contract by the Province and the Preferred Proponent for the DBFO Project, the contract as executed by the Preferred Proponent and the Province, and in each case includes all Addenda, appendices, schedules and exhibits thereto.

"Concession Highway" means the 26 kilometre portion of the Trans-Canada Highway located within Kicking Horse Canyon between the Highway 95 intersection in Golden and the western boundary of Yoho National Park.

"Concessionaire" means the Preferred Proponent with whom the Province has entered into the Concession Agreement for the provision of the DBFO Project.

"Confidential Information" means all information which the Proponent directly or indirectly receives or acquires from or through any one or more of Partnerships BC or the Province, or their respective directors, officers, employees, agents and consultants, whether before or after the issuance of this RFP, either in writing, or other visual or electronic form orally or through observation at the Site, Adjacent Areas or at any facilities of Partnerships BC, BCTFA or the Province relating to the financing, designing, development, equipment procurement, construction, commissioning, O,M&R Services or any other aspect of the DBFO Project,

including, without limitation, information in the Data Room; trade secrets; designs and design concepts; design data; calculations; operating and maintenance parameters; procedures and manuals; specifications; drawings, plans and sketches; reports; surveys; source codes; object codes; together with all analyses, compilations, data, studies, photographs, specifications, manuals, memoranda, notes, reports, maps, documents, computer records or other information in hard copy, electronic or other form containing or based on any such information and any other information which by written notice from Partnerships BC or the Province at the time of disclosure to the Proponent is required to be kept confidential by the Proponent. Confidential Information also includes all information prepared by the Proponent and submitted in its Proposal.

“Conflicts Adjudicator” has the meaning given to it in Section 6.4.

“Consultation and Selection Process” means the process described in this RFP for selection of a Preferred Proponent and finalization of and execution of the Concession Agreement, including but not limited to, any interviews by the Province and any clarifications and additional information that may be requested by Partnerships BC or the Province.

“Construction Management Plan” means the portion of a Proponent’s Proposal referred to in Section 8.1 of Appendix 1F.

“Construction Staging Plan” means the portion of a Proponent’s Proposal referred to in Section 8.2 of Appendix 1F.

“Contact Person” has the meaning given to it in Section 5.5 or is such other person appointed from time to time by the Province.

“CP Rail” means Canadian Pacific Limited and its affiliates.

“Data Room” has the meaning given to it in Section 5.4.

“DBFO Project” means the capital improvements and the O,M&R Services to be provided by Concessionaire in accordance with the Concession Agreement.

“Definitive Concession Agreement” has the meaning given to it in Section 2.7.2.

“Draft Concession Agreement” means the first form of Concession Agreement issued during the Proponent Consultation Process.

“Drainage Design Report” means the report described in Section 7.2.3 of Appendix 1F.

“Effective Date” means the date on which the Concession Agreement becomes effective.

“Eligible Costs” has the meaning given to it in the Concession Agreement.

“Eligible Force Majeure” has the meaning given to it in the Concession Agreement.

“Eligible Proponent” has the meaning given to it in Appendix 1D.

“End of Term Payment” has the meaning given to it in Section 5 of Appendix 1C.

“End of Term Requirements” has the meaning given to it in Section 2.6.6.

“Enhanced Service Period Availability Payment” means the payment described in Section 3.2 of Appendix 1C.

“Enhanced Service Period Performance Payment” has the meaning given to it in Section 3.1 of Appendix 1C.

“Enhanced Service Period” means the period commencing immediately after the expiry of the Original Service Period and ending on, and including, the last day of the Project Term.

“Environmental Management Act” means the *Environmental Management Act*, S.B.C. 2003, c. 53, as amended.

“Environmental Management Plan” means the portion of a Proponent’s Proposal referred to in Section 8.4 of Appendix 1F.

“Equity Members” means the individuals, corporations, joint venturers, partnerships or other legal entities that have an ownership or equity interest in a Proponent.

“Evaluation Committee” means a committee, including its sub-committees, established by the Province to evaluate Proposals.

“Evaluation Process” has the meaning given to it in Section 4.3.

“Expiry Date” has the meaning given to it in the Concession Agreement.

“Fairness Auditor” has the meaning given to it in Section 4.4.

“Final Completion” has the meaning given to it in the Concession Agreement.

“Financial/Commercial Submission” means the portions of a Proponent’s Proposal referred to in Section 4 of Appendix 1F.

“Financial Close” means the date at which the financing arrangements contemplated by the Concession Agreement are completed and all conditions precedent to the drawdown of funds under such arrangements are satisfied and such funds are available to be drawn down.

“Financial Model” has the meaning given to it in Appendix 1F.

“Financial Plan” means the portion of a Proponent’s Proposal referred to in Appendix 1F.

“Financing Plan” means the plan described in Section 4.3.1 of Appendix 1F.

“Funder” means any or all of the persons who have arranged or provided or will arrange or provide financing or funding to a Proponent if it is selected as the Preferred Proponent and enters into the Concession Agreement, but does not include the Equity Members unless such Equity Members also provide non-equity financing to Concessionaire and after the award of the Concession Agreement has the meaning given to it in the Concession Agreement.

“GAAP” has the meaning given to it in the Concession Agreement.

“Geotechnical Design Report” means the report referred to in Section 7.2.2 of Appendix 1F.

“Highway” means the Site and the Adjacent Areas.

“Improvement” has the meaning given to it in the Concession Agreement.

“Key Individuals” means the specific person(s) exclusive to a Proponent who were identified as such in such Proponent’s Submission.

“Key Performance Measures” has the meaning given to it in Section 3.1 of Part C of Volume 3.

“Kicking Horse Canyon” means the westerly portion of an 80 kilometre section of the Trans Canada Highway between the Highway 95 intersection in Golden and Alberta.

“Kicking Horse Canyon Project” means the upgrade of the 26 kilometres of the Kicking Horse Canyon that is within the control of the Province.

“Laws and Regulations” has the meaning given to it in the Concession Agreement.

“List of Third Party Technology” has the meaning given to it in Section 4.1.2 of Appendix 1D.

“Mandatory Submission Requirements” has the meaning given to it in Appendix 1F.

“Member” has the meaning given to it in Section 18.1 of Appendix 1D.

“Minimum Performance Requirements” has the meaning given to it in Appendix 1F.

“Minister” has the meaning given to that term in the Concession Agreement.

“MOF” means the ministry of the Province known as the Ministry of Finance.

“MOT” means that ministry of the Province known as the Ministry of Transportation.

“MOT Work” means that portion of the Kicking Horse Canyon Project undertaken by MOT, through separate contractual arrangements.

“New Highway” has the meaning given to it in the Concession Agreement.

“NPV” means net present value.

“O,M&R Services” means the operation, maintenance and rehabilitation services relating to the DBFO Project as required under the Concession Agreement to be provided by Concessionaire in respect of the Highway and Side Roads.

“Operational Performance Measures” has the meaning given to it in Section 3.3 of Part C of Volume 3.

“Operations and Maintenance Plan: means that portion of a Proponent’s Proposal referred to in Section 8.9.1 of Appendix 1F.

“Original Service Period Availability Payment” means the payment to be made by the Province to Concessionaire during the Original Service Period, as more particularly described in Section 2.3 of Appendix 1C.

“Original Service Period Performance Payment” has the meaning given to it in Section 2.1 of Appendix 1C.

“Original Service Period” means the period commencing on the first day of the Project Term and expiring on the Substantial Completion Date.

“Original Service Period Availability Payment” means the payment described in Section 2.3 of Appendix 1C.

“Owner’s Engineer Team Members” means Stevens Engineering, Woodhead Consultants Inc., Coulter Consulting Ltd., Cami Consulting Ltd., Dr. Evert Hoek, Fieber Rock Engineering Services, Vandine Geological Engineering Ltd., CPE Construction Project Services, Applied Ecological Solutions Corp., C.F. Morely & Associates Ltd., Access Property Services, Jack Stuempel & Associates, Taphorn Consulting, de Leur Consulting Ltd., Roy J. van Ryswyk, Sea to Sky Drilling, Denny Maynard & Associates, Mosaic Mapping, Terratech Consulting Ltd., and such other persons as are retained from time to time by the Province to provide engineering or similar services in connection with the Project.

“Partial Compensation” has the meaning given to it in the Proposal Competition Agreement.

“Partnerships BC” means Partnerships British Columbia Inc.

“Payment Mechanism” means the method described in Section 3 used to determine the payments to be made by the Province to the Concessionaire for fulfilling the Concessionaire’s obligations under the Concession Agreement.

“Payment Retentions” has the meaning given to it in Appendix 1C.

“Performance Deductions” has the meaning given to it in Appendix 1C.

“Performance Payment” has the meaning given to it in Appendix 1C.

“Permits, Licences and Approvals” has the meaning given to it in the Concession Agreement.

“Permitted Use” has the meaning given to it in Section 4.3.1 of Appendix 1D.

“Person” has the meaning given to it in the Concession Agreement.

“Phase 1” means the upgrade of the portion of the Highway described in Section 1.3.1.

“Phase 2” means the upgrade of the portion of the Highway described in Section 1.3.2.

“Phase 3” means the upgrade of the portion of the Highway described in Section 1.3.3.

“Pre-Completion Performance Payment” means the payment described in Section 2.2 of Appendix 1C.

“Preferred Proponent” means the Proponent selected by the Province as having submitted the highest ranked Proposal in accordance with Section 1.4.

“Prime Members” means any individual, corporation, joint venturer, partnership or other legal entity, related to one Proponent, who, if the Proponent is awarded the Concession Agreement,

would have a role which involves one of the following: (i) undertaking construction work which is equal to or greater than 10% of the total construction activity, (ii) providing O,M&R Services which are equal to or greater than 25% of the total O,M&R Services or (iii) undertaking design work which is equal to or greater than 25% of the total design activity.

“Project Facilities” has the meaning given to it in the Concession Agreement.

“Project Management Plan” means that portion of the Technical Submissions referred to in Section 6 of Appendix 1F.

“Project Objectives” has the meaning given to it in Section 1.

“Project Plans” means that portion of a Proponent’s Proposal referred to in Section 8 of Appendix 1F and includes the Construction Management Plan, the Construction Staging Plan, the Traffic Management Plan, the Environmental Management Plan and the Asset Management Strategy.

“Project Schedule” has the meaning given to it in the Concession Agreement.

“Project Term” means the term of the Concession Agreement.

“Proponent Communications Protocol” has the meaning given to that term in Section 8 of Appendix 1E.

“Proponent Consultation Process” has the meaning given to it in Section 4.1.

“Proponent Team Member” includes the Proponent, a Prime Member or an Equity member or any other member of the Proponent, and any of their respective contractors, consultants, advisors, representatives, agents, successors and permitted assigns.

“Proponents” has the meaning given to it in Section 1, and “Proponent” means any one of the Proponents.

“Proposal” means a proposal submitted by a Proponent before the Closing Time at the Closing Location in response to this RFP.

“Proposal Competition Agreement” means the agreement between the Province and a Proponent substantially in the form attached as Appendix 1D.

“Proposal Form” is the form included in Appendix 1E of this Volume.

“Proposed Amendments” has the meaning given to it in Section 2.7.1.

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

“Quality Management System” or **“QMS”** means a management system that establishes the organizational structure, procedures, processes and resources for determining and implementing quality management policy as described in Section 5.5 of Part A of Volume 3 and further detailed in Section 2 of Part D of Volume 3.

“Rafter’s Pull-Out” means the pull-out on the Highway located as generally shown on the map included in Section 1.3.

“Registration of Interest” means the Registration of Interest issued May 27, 2004.

“Relationship Review Guidelines” means the Relationship Review Guidelines posted by the Province at www.kickinghorsecanyon.ca and at www.partnershipsbc.ca.

“Releasees” has the meaning given to it in Section 6.17.

“Remediation Amount” has the meaning given to it in Section 5 of Appendix 1C.

“Representatives” means Partnerships BC, the Fairness Auditor, the Conflicts Adjudicator, BCTFA or any of their or the Province’s respective directors, officers, representatives (including members of the Executive Council), managers, employees, consultants, advisors or agents.

“Respondent” means a party or consortium of parties which submitted a Submission in response to the Request for Qualifications.

“Restricted Parties” has the meaning given to it in Section 6.13.

“Revised Concession Agreement” has the meaning given to it in Section 2.7.1.

“RFI” or **“Request for Information”** has the meaning given to it in Section 5.5.

“RFI Form” means the form as set out as an appendix to the Proposal Competition Agreement to be used by Proponents for the submission of written questions, inquiries, requests for information, requests for clarification or other communications with the Province or Partnerships BC through the Contact Person.

“RFP” or **“Request for Proposals”** means the Request for Proposals issued on October 27, 2004 and includes all volumes, appendices, and addenda.

“RFQ” or **“Request for Qualifications”** means the Request for Qualifications issued July 21, 2004 and includes all addenda and appendices thereto.

“Risk Capital” has the meaning given to it in Appendix 1F.

“Road Design Report” means the portion of a Proponent’s Proposal referred to in Section 7.1.1 of Appendix 1F.

“Road Safety Audit” means the road safety audits referred to in Section 7.2.1 of Appendix 1F.

“Safety Performance Payment” means the payment described in Section 3.1.3.

“Scheduled Final Completion Date” has the meaning given to it in the Concession Agreement.

“Security Deposit” has the meaning given to it in the Proposal Competition Agreement.

“Short Listed Respondents” has the meaning given to it in the RFQ.

“Side Roads” means the three side roads known as Wapta Road, Beaverfoot Road and Kicking Horse Road.

“Site” has the meaning given to it in the Concession Agreement.

“Specifications” means the obligations contained in Volume 3 establishing the design, construction, operation, maintenance and rehabilitation requirements, respectively, as amended by Addenda issued in accordance with the provisions of this RFP.

“Structural Design Report” means the portion of a Proponent’s Proposal referred to in Section 7.1.2 of Appendix 1F.

“Submission” means the submission provided by a Respondent in response to the RFQ.

“Substantial Completion” has the meaning given to it in the Concession Agreement.

“Technical Reports” means that portion of a Proponent’s Proposal referred to in Section 7.1 of Appendix 1F and includes the Road Design Report, the Structural Design Report and the Tunnel Design Report.

“Technical Submissions” means the portion of a Proponent’s Proposal referred to in Section 5 of Appendix 1F.

“Third Party Technology” has the meaning given to it in Section 4.1.2 of Appendix 1D.

“Topic Meeting” means a meeting between the Province and a Proponent as more fully described in the Proposal Competition Agreement.

“Total Performance Payment” has the meaning given to it in Appendix 1C.

“Traffic Disruption Charges” means the charges imposed on the Concessionaire as described in Section 2.3.3 of Appendix 1C.

“Traffic Management Plan” means the portion of a Proponent’s Proposal referred to in Section 8.3 of Appendix 1F.

“Traffic Volume Payment” means the payment described in Section 3.1.3.

“Tunnel Design Report” means that report referred to in Section 7.1.3 of Appendix 1F.

“Unavailability Deductions” has the meaning given to it in Appendix 1C.

“Water Act” means the *Water Act*, R.S.B.C. 1996, c. 483, as amended.

“Waiver” has the meaning given to it in Section 4.2.2 of Appendix 1D.

“Works” has the meaning given to it in the Concession Agreement.

“Workshop” means a workshop scheduled by the Province in accordance with the terms of the Proposal Competition Agreement.

2. Interpretation

References to the RFP or the Concession Agreement, or to the documents which make up the appendices or schedules to the RFP or the Concession Agreement, or to any part of those documents, shall be deemed to be references to the most current version of those documents,

including all modifications, amendments and Addenda thereto made and issued by the Province to Proponents.

References to a section, article or volume, without a further reference to another document or to a specific Appendix to the RFP, shall be deemed to be references to that Section, Article or Volume of the RFP, exclusive of appendices, unless the context otherwise expressly requires. References to a Section or Article of the RFP within a volume of the RFP shall be deemed to refer to the Section or Article within such Volume of the RFP.

References to an appendix or volume by number in the RFP or in an appendix or volume to the RFP shall be deemed to be a reference to an appendix or volume (as applicable) of the RFP unless the context otherwise expressly indicates.

References to a statute include the statute as amended from time to time, and in the event that statute is repealed includes any successor legislation thereto including amendments to the successor legislation, and includes all regulations, by-laws and codes enacted thereunder as such regulations or by-laws or codes may be amended from time to time.

The terms “include”, “includes”, “including” and others of like import shall not be deemed limited by the specific enumeration of items but shall be deemed to be without limitation and interpreted as if the term was “including without limitation.”

References to “in its discretion” and terms of similar import when used in reference to MOT, Partnerships BC or the Province shall be deemed to mean and be interpreted as “in MOT’s sole and absolute discretion”, “in Partnerships BC’s sole and absolute discretion” or “in the Province’s sole and absolute discretion”, as applicable.

Where a section, clause, paragraph or other part of any document includes a list of items, whether or not enumerated, the list of items will be construed and interpreted conjunctively as if each was connected to the other by the word “and”, unless the context specifically indicates the terms are to be construed and interpreted disjunctively by the use of the word “or” at the end of each item of the list.

Appendix 1B

Communications

1. Lead and Supporting Roles

Within each category of communications and consultation, the Concessionaire will play either lead or supporting roles, working with the Province to provide traffic communications, community relations public and stakeholder consultation and media relations services.

An overview of the responsibilities associated with lead and supporting roles is provided below.

Lead responsibilities include:

- developing traffic communications, community relations, and public and stakeholder consultation plans (and where the Concessionaire is in the lead, also obtaining approval of traffic communications, community relations, and public and stakeholder consultation plans from the Province) and implementing approved communication, community relations and consultation plans.
- establishing and maintaining constructive relationships with the public and other stakeholders.

Supporting responsibilities include:

- assisting with the development and implementation of communication and consultation plans.
- conducting DBFO Project activities in a manner consistent with communication and consultation plans.
- maintaining constructive relationships with the public and other stakeholders and supporting the lead party and its team members in their role as the primary contact with the public and other stakeholders.
- providing information, as required by the lead party and its team members, to support all communications activities.
- attending and participating in public and stakeholder consultation meetings and community relations meetings, as necessary, throughout the Project Term.
- consideration and application as appropriate of public and stakeholder-input throughout the Project Term and reporting to the public and stakeholders regarding the manner in which public and stakeholder input will be used.

- identifying an individual or firm experienced in developing and implementing traffic communications, community relations, and public and stakeholder consultation plans, consistent with the supporting responsibilities.

2. Traffic Communications

Traffic management remains the responsibility of the Concessionaire throughout the Project Term.

Until completion of the Phase 1 works, the Province will take the lead role in traffic management, while the Concessionaire will take the supporting role. Following the completion of Phase 1 works, the Concessionaire will take the lead in traffic communications including development and implementation of a comprehensive traffic communications plan. The plan should include a variety of driver awareness and education tools such as regular bulletins, web tools, coordination with the Provincial Highway Conditions Centre, and others.

3. Community Relations

Until Substantial Completion, the Province will take the lead role in community relations, while the Concessionaire will take the supporting role. During that period, the parties shall work together for the transition of the lead role in community relations to the Concessionaire.

The Concessionaire will have full responsibility (both the lead and supporting roles) in community relations after Substantial Completion. A comprehensive community relations program provides the public and stakeholders with project information on a regular basis and handles public inquiries and concerns in a timely effective manner.

The Concessionaire must report regularly to the Province on community relations activities and issues.

4. Public and Stakeholder Consultation

Until Substantial Completion, the Province will take the lead role in public and stakeholder consultation, while the Concessionaire will take the supporting role including the provision of consultation materials regarding pre-design, preliminary design, and detailed designs, and attendance and participation in consultation activities, such as small group meetings, open houses, and council presentations. During that period, the parties shall work together for the transition of the lead role in public and stakeholder consultation to the Concessionaire.

The Concessionaire will have full responsibility (both the lead and supporting roles) in public and stakeholder consultation after Substantial Completion.

The Concessionaire must report regularly to the Province on consultation activities and issues.

5. Media Relations

Except as delegated by the Province for matters that may include, but are not limited to, day-to-day media communications concerning traffic closures and delays, the Province is responsible for, and will take the lead role in, media relations throughout the Project Term.

Appendix 1C

Payment Mechanism

1. Overview

In consideration for the services required under the Concession Agreement, the Concessionaire will receive the following payments (each a "**Performance Payment**" and collectively, the "**Total Performance Payment**"):

- Original Service Period Performance Payments during the Original Service Period;
- Enhanced Service Period Performance Payments during the Enhanced Service Period; and
- End of Term Payment in accordance with the requirements of the Concession Agreement.

There is no minimum Total Performance Payment and no amount of any portion of the Total Performance Payment is guaranteed.

TABLE 1.1
Total Performance Payment Components

Payment Component	Frequency of Payment	Amount
1. Original Service Period Performance Payments		
Pre-Completion Performance Payments	Quarterly	Up to \$62.5 million of Eligible Costs in total
Original Service Period Availability Payments	Monthly	\$2 million per annum
2. Enhanced Service Period Performance Payments		
Enhanced Service Period Availability Payments	Monthly	86-88% of total NPV of Enhanced Service Period Performance Payments over the Project Term
Traffic Volume Payments	Monthly	9-11% of total NPV of Enhanced Service Period Performance Payments over the Project Term
Safety Performance Payments	Annually	3% of total NPV of Enhanced Service Period Performance Payments over the Project Term
3. End of Term Payment		
End of Term Payment	Once	\$4-6 million

2. Original Service Period

2.1 Original Service Period Performance Payments

The Performance Payments accruing during the Original Service Period will consist of two components, namely:

1. Pre-Completion Performance Payments; and
2. Original Service Period Availability Payments

(collectively, the "**Original Service Period Performance Payment**").

Traffic Volume Payments and Safety Performance Payments will not accrue or be paid during the Original Service Period.

2.2 Pre-Completion Performance Payment

The Pre-Completion Performance Payments will be paid quarterly, in an amount equal to or greater than the Eligible Costs incurred by the Proponent. The aggregate amount of all Pre-Completion Performance Payments will not exceed \$62.5 million in total.

2.3 Original Service Period Availability Payments

The Concessionaire will receive Availability Payments for services provided during the Original Service Period.

The maximum Original Service Period Availability Payment for each year of the Original Service Period will be the gross annual figure proposed by the Concessionaire in its Proposal, less Unavailability Deductions and Traffic Disruption Charges for that year.

If the Original Service Period Availability Payment for a year is a negative amount, it will be treated as zero.

2.3.1 Unavailability Deductions

Unavailability Deductions will be made when the Highway does not meet the pre-determined minimum performance requirements.

Unavailability Deductions will be the sum of travel time delay multiplied by a pre-determined travel time cost.

Travel time delay results from an event that causes unavailability of a part of or all of the Highway and which impacts vehicle usage. Travel time delay will be measured in vehicle hours based on the principle that the cumulative distribution of traffic exiting a part of or all of the Highway in a day will mirror the cumulative distribution of traffic entering that part or all of the Highway in that same day, subject to there being no unscheduled events that significantly impact vehicle usage.

Travel time cost will be measured in dollars per vehicle hour.

The Unavailability Deduction will not be applied in certain specified circumstances such as pre-scheduled lane closures, emergency access, closure by relevant authorities unless due to the Concessionaire, Eligible Force Majeure, where Traffic Disruption Charges apply, and others.

2.3.2 Performance Deductions

The monthly Performance Deduction will be determined by the number of Non-Conformance Event Points and the Non-Conformance Events Points Rate (\$/point) for that year.

The Concessionaire will be required to manage the operation, maintenance and rehabilitation of the Highway to comply with the performance standards and specifications contained within Volume 3 of the RFP as incorporated into the Concession Agreement. Monitoring of the Concessionaire's performance in the area of operation and maintenance will take into account both the records maintained by the Concessionaire and the results of the auditing and monitoring processes undertaken by the Province.

The Concessionaire will be required to record events resulting in non-conformance with the performance standards and specifications. An event will be deemed a Non-Conforming Event if the Concessionaire fails to comply with the contractual requirements set out in the Concession Agreement, or if the Concessionaire fails to identify and record such an event that has been identified by the Province.

The specific number of Non-Conforming Event Points will be assigned to different types of Non-Conforming Events, depending on the nature (and gravity) of the non-conformance. On any given day, the Concessionaire will be allowed a specified number of Non-Conforming Event Points before any Performance Deduction is applied.

2.3.3 Traffic Disruption Charges

The Concessionaire is solely responsible for maintaining the flow of traffic through the Site during the Phase 2 construction.

The Traffic Disruption Charges payable by the Concessionaire will apply to all traffic stoppage or unauthorized traffic delay on the Highway due to Phase 2 construction outside the permitted timeframes and durations as defined in Volume 3 – Section 2.3.16.3 – Tables 1 and 2.

Except where specifically permitted, either by these requirements or by prior written permission of the Province, whenever, in the opinion of the Province Representative, the Concessionaire causes or permits, either by action or inaction, a traffic stoppage or any other unauthorized traffic delay on the Highway due to Phase 2 construction, in the form of a lane closure or lane obstruction, the MoT Representative will assess the Concessionaire a Traffic Disruption Charges. The Traffic Disruption Charges will be determined by reference to the time of day and duration of the stoppage or delay and will be subject to a cap for each 24-hour period.

3. Enhanced Service Period

3.1 Enhanced Service Period Performance Payments

The Performance Payments accruing during the Enhanced Service Period will consist of three components, namely:

1. Enhanced Service Period Availability Payments;
2. Traffic Volume Payments; and
3. Safety Performance Payments

(collectively, the “**Enhanced Service Period Performance Payment**”).

The Enhanced Service Period Performance Payment will be subject to Unavailability Deductions and Performance Deductions.

If the Enhanced Service Performance Payment is a negative amount, it will be treated as zero.

3.2 Enhanced Service Period Availability Payment

The maximum Enhanced Service Period Availability Payment for each year of the Enhanced Service Period will be the gross annual figure proposed by the Concessionaire in their Proposal, less Unavailability Deductions and Performance Deductions. It will be indexed at the rate proposed by the Concessionaire in their Proposal.

Unavailability and Performance Deductions will be made on the same basis as for the Original Service Period.

3.3 Traffic Volume Payment

The Traffic Volume Payment will be directly linked to the number of vehicles passing measuring points on the Highway (in both directions) in each year. The Concessionaire will be required to count all vehicles.

Traffic Volume Payments will be made on a banded basis. The Concession Agreement will define up to five traffic bands specifying the upper and lower limits of vehicle usage in each band. The Concessionaire is required to provide the relevant payment per vehicle for each band in its Proposal.

In setting the payment per vehicle for each band, the Proponent should ensure that the structure they propose:

- does not provide for a guaranteed Traffic Volume Payment; and

- that the Traffic Volume Payment varies to such an extent as to demonstrate that the Concessionaire is assuming traffic risk. In order to achieve this, the Concessionaire will be required to structure the per vehicle payments such that:
 - a 1% decrease in traffic volume will result in at least a 0.5% decrease in the Traffic Volume Payment; and
 - with no Traffic Volume Payment, the return to shareholders will be lower than the Concessionaire's cost of long-term debt as set out in the Financial Model.

The actual Traffic Volume Payment will be determined by the number of vehicles falling within each band, multiplied by the proposed rate for that band, indexed at the rate set out in the Concessionaire's Proposal.

3.4 Safety Performance Payments

Safety Performance Payments will be made to incentivize the Concessionaire to improve safety performance and minimize accidents on the Highway.

The Province will measure safety performance on a three-year rolling average basis. In the first and second year of the Enhanced Service Period where a three-year rolling average is not available, the Province will use the respective one and two-year average in the calculation and adjust the payment retroactively in the third year, when the information is available.

The Safety Performance Payment will be the sum of a Safety Performance Payment base proposed by the Concessionaire in its Proposal multiplied by the applicable Safety Performance Payment ratio.

The Safety Performance Payment ratio will be determined by reference to accident frequency and severity. This Safety Performance Payment ratio will be contained in the Concession Agreement and will be re-calibrated by the Province every five years to adjust for traffic volumes and the general safety performance of all highways in British Columbia. The benchmark will also be re-calibrated if police accident reporting standards materially change.

The Safety Performance Payment will be indexed in accordance with the factor proposed by the Concessionaire in its Proposal.

The Concessionaire will calculate and report to the Province the Safety Performance Payments annually in arrears.

3.5 Payment Retentions

The Province may withhold from the Enhanced Service Period Performance Payments the following amounts:

- a completion retention to provide incentives to the Concessionaire to complete construction in the agreed timeframe;
- an asset condition retention is to provide incentives to the Concessionaire to maintain the assets to a pre-agreed standard throughout the Project Term.

The Concessionaire may provide the Province with a letter of credit, guarantee or other form of security as security for the Concessionaire's obligations relating to the Payment Retentions.

3.5.1 Completion Retention

The Province may withhold a completion retention during the period commencing from the Scheduled Final Completion Date until Final Completion. The completion retention in each month from the Scheduled Final Completion Date will be calculated at the completion retention rate (to be set out in the Concession Agreement) and the number of days between:

- the Scheduled Final Completion Date and the first day of month m , whichever is the later; and
- the last day of the month m or the Final Completion, whichever is the earlier.

The Province will return to the Concessionaire the completion retention within 30 days of Completion.

3.5.2 Asset Condition Retention

If, during the Term of the Agreement, the Project Facilities do not comply with the asset condition requirements required by the Concession Agreement, the Province may withhold an asset condition retention. This will be the sum of the cost of carrying out or completing capital works to ensure the Project Facilities will meet or exceed the asset condition requirements multiplied by a retention factor.

4. Measurement & Monitoring

The Concessionaire will be required to measure, monitor, manage and maintain records of the provision of the services in accordance with the requirements of the Concession Agreement. Such records will include traffic volume and availability and will be subject to inspection by the Province at any time upon reasonable notice.

The Concessionaire will be responsible for reporting all aspects of the Payment Mechanism schedule, including traffic, unavailability, safety incidents and minimum performance specifications. The Province will have a right to audit all records relating to the DBFO Project and the Project Facilities.

5. End of Term Payment

In addition to the Performance Payments, the Concessionaire will be eligible to receive an amount at the end of Project Term (the "**End of Term Payment**"). The End of Term Payment will be based on the figure contained in the Concessionaire's Proposal as accepted by the Province. A Remediation Amount (being the amount determined as required to return the asset to the pre-agreed condition) may be deducted from the End of Term Payment.

Appendix 1D

Form of Proposal Competition Agreement

THIS PROPOSAL COMPETITION AGREEMENT made as of the ____ day of _____, 2004.

B E T W E E N :

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA
(the "Province")**

- and -

<>, having a place of business at <>

("Proponent")

- and -

<>

- and -

<>

(each a "Member" and collectively, the "Members")

WHEREAS

- (a) The Proponent has been advised that pursuant to the Request for Qualifications for the DBFO Project dated July 21, 2004 (the "RFQ") they are one of the Short-Listed Respondents for the DBFO Project;
- (b) The Province has offered to pay Partial Compensation to certain of the Proponents on certain terms and conditions, and wishes to set out the terms and conditions upon which the Partial Compensation will be paid;
- (c) The Province has proposed a consultative process which involves workshops and individual meetings with each of the Proponents. The Proponent and its Members wish to acknowledge by executing this Agreement that the proposed consultative process is acceptable to the

Proponent and its Members and to acknowledge that they will be bound by the releases and waivers set out in this Agreement;

- (d) The parties have entered into this Agreement to set out the terms and conditions for payment of the Partial Compensation and to set out their respective rights and obligations in respect of the consultative process and certain other matters referred to herein.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT the Province and the Proponent, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, **AGREE AS FOLLOWS:**

ARTICLE I
DEFINITIONS AND INTERPRETATION

- 1.1 Wherever used in this Agreement, unless the context otherwise requires, terms defined in Schedule I have the meanings given to them in Schedule I and capitalized terms used herein that are not otherwise defined have the meanings given to them in the RFP.
- 1.2 Each of the schedules to this Agreement are incorporated into and form part of this Agreement.
- 1.3 If there are conflicts or inconsistencies between this Agreement and any part of the RFP, the provisions of this Agreement will prevail.
- 1.4 References herein to the RFP or the form of the Concession Agreement, including the Specifications, are references to the most current version of those documents as amended by addenda issued by the Province to the Proponent in accordance with the RFP (collectively, "Addenda", individually, each an "Addendum").

ARTICLE II
PARTIAL COMPENSATION AND LIABILITY TO PROPONENTS

- 2.1 The Province will pay the Partial Compensation to the Proponent in accordance with the terms and conditions specified in this Article II.
- 2.2 The obligation of the Province to pay the Partial Compensation is subject to Sections 2.2 and 2.3 and is conditional upon the Proponent:
 - (i) submitting at least one Compliant Proposal before the Closing Time (for greater certainty, the Proponent shall only be eligible to receive the Partial Compensation once, regardless of how many Compliant Proposals are submitted by the Proponent);

- (ii) providing to the Province all of the intellectual and other property rights in the Proposal in accordance with and as described in the RFP and in Article IV herein;
 - (iii) attending and participating in each of the Workshops described in Article VII and Schedule II hereof;
 - (iv) providing a duly executed release of claim and waiver in connection with the Consultation and Selection Process substantially in the form attached as Appendix D or as may otherwise be reasonably required by the Province; and
 - (v) providing letters from Funders and their legal counsel in accordance with the Funders' review procedure described in Section 2.5.
- 2.3 (a) Subject to the provisions of paragraph (b) of this Section 2.3, the Province will pay the Partial Compensation to each of the Proponents in the manner and in the circumstances set forth below:
- (i) to each Proponent that is not selected as the Preferred Proponent but that complies with the terms and conditions specified in this Article II (an "**Eligible Proponent**");
 - (ii) to each Eligible Proponent if the Province withdraws the RFP or otherwise terminates the Consultation and Selection Process at any time after issuance of the RFP but prior to selection of the Preferred Proponent;
 - (iii) to the Preferred Proponent if the Province withdraws the RFP or otherwise terminates the Consultation and Selection Process after selection of the Preferred Proponent but prior to the execution by the Province and the Preferred Proponent of the Concession Agreement; provided, however, that no Partial Compensation or other amount whatsoever will be paid or payable to the Preferred Proponent in the circumstances referred to in Section 3.3 or 5.3 or if the Province is entitled to call on the letter(s) of credit held as the Security Deposit.
- (b) Notwithstanding anything contained in paragraph (a) of this Section 2.3, no Partial Compensation whatsoever will be paid or payable to the Proponent if:
- (i) the Proponent fails to meet any of the requirements set out in Section 2.2;

- (ii) except in the circumstances set out in Section 2.3(a)(iii), the Proponent is selected as the Preferred Proponent;
 - (iii) the Proponent breaches this Agreement or fails to abide by the terms of the RFP, including those set out in Section 6 of the RFP or an event contemplated by Section 5.3 of this Agreement occurs; or
 - (iv) the Proponent, after submitting a Compliant Proposal, for any reason withdraws its Compliant Proposal prior to the selection of the Preferred Proponent.
- 2.4 The Province will pay the Partial Compensation no later than thirty (30) days after receiving an invoice. The Proponent will not issue an invoice until the earliest to occur of (i) execution and delivery of the Concession Agreement by all of the parties thereto, (ii) nine (9) months after the announcement of the Preferred Proponent whether or not the Concession Agreement has been executed or (iii) nine (9) months after the Closing Time if the Province has not announced a Preferred Proponent by that time, or (iv) thirty (30) days after the withdrawal of the RFP or cancellation or termination of the Consultation and Selection Process by the Province.
- 2.5 The Proponent will provide to the Province, together with any comments submitted by the Proponent on the Revised Concession Agreement to be issued in March, 2005 (in accordance with the timetable contained in Section 3.1 of Schedule II, as amended from time to time), a letter from its Funders together with a confirming letter from such Funders' legal counsel confirming that the Funders and their legal counsel have reviewed such agreement, identifying which comments and requested amendments were provided with respect to such agreement by or on behalf of the Funders and their legal counsel and confirming that the Funders have no additional material comments on the Revised Concession Agreement issued in March, 2005.
- 2.6 The Proponent accepts and agrees to be bound by the waivers, disclaimers, limitations of liability and indemnities contained in this Agreement or provided in connection with the Workshops or Topic Meetings and the Proponent expressly waives any claim for any amount in excess of the Partial Compensation which it has or may have, or which may arise, whether for damages or any other compensation, in connection with the Consultation and Selection Process leading to selection of a Preferred Proponent and the finalization and execution of the Concession Agreement.
- 2.7 The Proponent acknowledges that pursuant to Section 28(2) of the Financial Administration Act, it is a term of every agreement providing for the payment of money by the Province that the payment of money that

becomes due under the agreement is subject to an appropriation (as such term is defined in the Financial Administration Act) being available for that agreement in the fiscal year when any payment of money by the Province falls due under such agreement.

2.8 The Proponent hereby agrees that in consideration of the Proponent receiving access to the Data Room and being invited to submit a Proposal:

- (a) the Releasees will not under any circumstances, including pursuant to contract, tort, statutory duty, law, equity or otherwise, or any actual or implied duty of fairness, be responsible or liable for or in respect of any Claims (except in respect of wilful misconduct by the Province) by any Person (including any Proponent, Proponent Team Member and/or any of their respective contractors, sub-contractors, directors, officers, consultants, advisors or agents) arising out of or in any way relating to the Consultation and Selection Process (including any Claims arising out of or in any way connected with the Workshops, the Topic Meetings or the Province's participation therein). The Proponent hereby expressly waives any such Claims arising out of or in any way relating to the Consultation and Selection Process which it now has or may hereafter have against any Releasee and releases each of the Releasees from any and all such Claims arising out of or in any way relating to the Consultation and Selection Process; provided however, for greater certainty, that, if the Proponent is selected as the Preferred Proponent, the foregoing release is not intended to extend to any Claims arising solely in connection with the breach by the Province of any of its obligations under the executed Concession Agreement entered into between the Province, the Proponent and such other Person(s) as may be party to such agreement; and
- (b) the Proponent will indemnify and hold harmless the Province and the other Releasees from and against any and all Claims brought by or on behalf of (i) any present or former Proponent Team Member(s) against the Province or any Releasee or Releasees arising out of or related to this Agreement or the Consultation and Selection Process, or (ii) any third party as a result of any act or omission of the Proponent or any Proponent Team Member in connection with the performance of its obligations under this Agreement or in connection with the Consultation and Selection Process.

2.9 Without limiting the generality of the foregoing, it is expressly understood and agreed that the Province will not be under any obligation whatsoever to select a Preferred Proponent or to award the Concession Agreement to

any Proponent at all or may cancel the RFP and/or the Consultation and Selection Process at any time for whatever reason(s) the Province in its discretion considers to be in the best interests of Partnerships BC and the Province.

ARTICLE III **SECURITY DEPOSIT BY PREFERRED PROPOSERNT**

- 3.1 The Proponent shall provide to the Province a Security Deposit in accordance with the requirements of this Article III by irrevocable letter(s) of credit in the form attached as Appendix C (or otherwise in form and substance satisfactory to the Province in its discretion) as follows:
- (a) Together with the submission of its **first** Proposal, in an additional amount of **\$1,000,000**.
 - (b) If the Proponent is selected as the Preferred Proponent, within seven (7) days of the notification thereof, in an additional amount of **\$4,000,000 for a cumulative total of \$5,000,000**.
- 3.2 If the Proponent does not provide the Security Deposit to the Province as required by Section 3.1 then the Province may, in its discretion, by written notice to the Proponent, terminate the Proponent's involvement in the Consultation and Selection Process including the Proponent's right to submit a Proposal or, if a Proposal has been submitted, to reject the Proposal without review or any further consideration even if it is a Compliant Proposal, cease all negotiations or other contact with the Proponent, terminate any obligations of the Province to the Proponent hereunder and commence negotiations with any other Proponent or any other Person, in which case the Proponent will not be entitled to or receive the Partial Compensation or any other payment or compensation of any kind for any reason.
- 3.3 Subject to the Province's right to retain and apply the Security Deposit as Liquidated Damages as provided herein and subject to Sections 3.2 and 3.4, the Security Deposit will be returned to the Proponent within ten (10) days following the earlier of:
- (i) withdrawal of the RFP by the Province or the cancellation or termination of the Consultation and Selection Process by the Province;
 - (ii) nine (9) months after the date on which the Proponent is notified that it was an Eligible Proponent but was not selected as the Preferred Proponent;

- (iii) failure by the Province to satisfy any conditions precedent for the benefit of the Preferred Proponent which the Province is required to satisfy under the terms of the Concession Agreement within the applicable time periods required thereunder provided such conditions precedent have not been waived by the Preferred Proponent;
- (iv) execution by the Province and the Preferred Proponent of the Concession Agreement and the satisfaction of all conditions precedent for the benefit of the Province which the Proponent is required to satisfy under the terms of the Concession Agreement within the applicable time periods required thereunder; and
- (v) occurrence of Financial Close.

3.4

The Province will be entitled to call on the letter(s) of credit held as the Security Deposit and retain and apply the proceeds thereof to its own use, as Liquidated Damages, if:

- (i) there is a material breach of this Agreement or the terms of the RFP by the Proponent which would lead to disqualification of the Proponent from the Consultation and Selection Process. The Province will provide written notification to the Proponent of any such material breach and will allow the Proponent a minimum of five (5) business days to cure the breach to the satisfaction of the Province; or
- (ii) after submitting a Compliant Proposal and having received written notice from the Province that the Proponent has been selected as the Preferred Proponent, the Proponent does not execute and deliver a Concession Agreement or Financial Close has not occurred (for reasons other than the failure of the Province to satisfy any conditions precedent for the benefit of the Proponent as contemplated in clause 3.3(iii) above) on or before that date which is one hundred and twenty (120) days after written notification has been received by the Proponent (or such later date as the Province, in its discretion, may specify for this purpose in writing) of its selection as Preferred Proponent, provided that in the case of (ii) such failure to execute or reach Financial Close is not solely as a result of a major disabling event or circumstance which could not have been reasonably prevented by and is beyond the reasonable control of the Proponent and which the Proponent can demonstrate to the Province's satisfaction, acting reasonably, would substantially frustrate or render it impossible for the

Proponent to perform its obligations under the Concession Agreement for a continuous period of one hundred and eighty (180) days.

- 3.5 Where the Province is entitled to retain and apply the proceeds of the letter(s) of credit held as the Security Deposit to its own use as Liquidated Damages, it is expressly agreed and understood that any such retention and application represents and will be construed as Liquidated Damages and not as a penalty. Without limiting the generality of the foregoing, the Proponent acknowledges that the provisions of section 27.1 of the Ministry of Transportation and Highways Act (British Columbia) apply in respect of any retention and application to its own use by the Province of the proceeds of the letter(s) of credit held as the Security Deposit.
- 3.6 Subject to Section 3.4(i), the Province will not be required to give any prior written notice to the Proponent of the Province's intention to call on the letter(s) of credit held as the Security Deposit. If the Proponent notifies the Province in writing in accordance with this Agreement that the Proponent disputes the Province's right to call on the letter(s) of credit and to retain the Security Deposit as Liquidated Damages then the Province will nonetheless be entitled to call on the letter(s) of credit but will remain liable to repay all or a portion of the amount of the letter(s) of credit called on if the dispute is resolved in favour of the Proponent by a final decision of a court of competent jurisdiction, together with interest charges at the rate prescribed under the Financial Administration Act and the *Interest on Overdue Accounts Payable Regulation* (B.C. Reg 215/83) on that amount.
- 3.7 If the Proponent fails to renew or extend the letter(s) of credit representing the Security Deposit at least thirty (30) days prior to its expiry date, the Province may, at any time without notice to the Proponent, call on such letter(s) of credit and hold the proceeds thereof in the same manner as the Security Deposit.

ARTICLE IV **INTELLECTUAL PROPERTY RIGHTS**

- 4.1 Disclosure
- 4.1.1 In accordance with the terms of this Agreement, upon submission of its Proposal, Proponent will deliver all Deliverables and disclose all other Work Product to the Province (or any Person designated by the Province in writing).
- 4.1.2 Intellectual Property developed, acquired, or otherwise obtained by the Proponent prior to this Agreement including any enhancements, modifications or customizations made thereto or derivatives made therefrom, in connection with the preparation and development of the

Work Product, but which are not otherwise part of the Work Product (collectively, “**Background Technology**”) or which is licensed to or obtained by the Proponent from third parties in connection with the preparation and development of the Work Product (collectively, “**Third-Party Technology**”) may not be incorporated into or required for the use of the Work Product unless, subject to Section 4.1.3, this Intellectual Property has been specifically identified and described in the Proposal by the Proponent (the “**List of Third Party Technology**”). The Proponent shall take all reasonable steps to license to the Province all Background Technology as provided in Section 4.3.

- 4.1.3 If the specific identification and description of any Background Technology or Third-Party Technology would cause the Proponent to violate any confidentiality obligations, the Proponent will not identify and describe such Background Technology or Third-Party Technology with specificity, but will disclose (to the extent permitted):
- (a) a general identification and description of such Background Technology or Third-Party Technology,
 - (b) the owner or owners of such Background Technology or Third-Party Technology and the Proponent’s relationship to such owner or owners, and
 - (c) the specific reason that the Background Technology or Third-Party Technology is not fully disclosed.
- 4.2 Ownership and Assignment of Work Product
- 4.2.1 Except for the Proponent’s Intellectual Property Rights in the Background Technology, the Proponent agrees that upon the submission of its Proposal the Proponent will (by instrument in writing in form and substance reasonably satisfactory to the Province):
- (a) irrevocably and unconditionally convey, sell, transfer and assign, to the Province all right, title, benefit, interest, claim and demand of the Proponent in and to the Work Product and all Intellectual Property Rights thereto; and
 - (b) waive all moral rights it may have in the Work Product in favour of the Province.

The Proponent understands and agrees that the Proponent has no right to use and will not use the Work Product except as necessary to perform its obligations in relation to the DBFO Project and this Agreement and that the Proponent will have no further right to use and will not use the Work Product in any manner should the Proponent not be selected as the Preferred Proponent. Immediately following the transfer of ownership of

the Work Product from the Proponent to the Province, as provided herein, the Province will (by instrument in writing in form and substance satisfactory to the Province) grant to the Proponent a non-exclusive, perpetual, fully-paid right and license to the Work Product for use by the Proponent in connection with the performance of its obligations in relation to the DBFO Project and this Agreement and as may be otherwise provided in such written instrument executed by the Province.

- 4.2.2 If any assignment of Intellectual Property Rights or waiver of moral rights, as applicable, in the Work Product cannot (as a matter of law) be obtained or granted by the Proponent to or in favour of the Province as provided in Section 4.2.1, then
- (a) the Proponent unconditionally and irrevocably waives the enforcement of such rights and all claims and causes of action of any kind against the Province with respect to such rights (the "Waiver"), and
 - (b) to the extent the Proponent cannot (as a matter of law) make this Waiver, the Proponent unconditionally grants to the Province an exclusive, perpetual, irrevocable, worldwide, fully-paid license, with the right to sublicense through multiple levels of sublicensees, (to the extent the Proponent possesses such right to license and sub-license and the Proponent shall take all reasonable steps to obtain such rights) under any and all such rights
 - (i) to reproduce, create derivative works of, distribute, publicly perform, publicly display, digitally transmit, and otherwise use the Work Product in any medium or format, whether now known or hereafter discovered,
 - (ii) to use, make, have made, sell, offer to sell, import, and otherwise exploit any product or service based on, embodying, incorporating, or derived from the Work Product, and
 - (iii) to exercise any and all other present or future rights in the Work Product.

4.3 License of Background Technology

4.3.1 The Proponent unconditionally grants to the Province a non-exclusive, perpetual, irrevocable, fully-paid right and license, with the right to sublicense through multiple levels of sublicensees, (to the extent the Proponent possesses such right to license and sub-license and the Proponent shall take all reasonable steps to obtain such rights) all of the Proponent's Intellectual Property Rights in any and all Background Technology used in connection with or incorporated in any Work Product:

- (a) to reproduce, create derivative works of, distribute, publicly perform, publicly display, digitally transmit, and otherwise use the Work Product in any medium or format, whether now known or discovered at a later date;
- (b) to use, make, have made, sell, offer to sell, import, and otherwise exploit any product or service based on, embodying, incorporating, or derived from the Work Product; and
- (c) to exercise any and all other present or future rights in the Work Product,

all in connection with the DBFO Project or otherwise in connection with the construction, operation, maintenance, rehabilitation or regulation of the Highway (the "**Permitted Use**").

4.3.2 Notwithstanding Section 4.3.1, the Province will have no rights to reverse engineer, decompile or otherwise arrive at the source code of any applicable Background Technology nor does it have the rights to sell, lease, license, sublicense or otherwise transfer, convey or alienate the Background Technology (whether for commercial consideration or not) to any Person, otherwise than as may be necessary to operate or use the Work Product in connection with the Permitted Use. Background Technology may not be removed from the Work Product nor used as a stand-alone product and shall only be used in conjunction with the Work Product.

4.4 Unless the Province and the Proponent expressly agree otherwise, the Proponent upon submission of its Proposal will, at no cost to the Province, unconditionally grant to the Province (by instrument in writing in form and substance satisfactory to the Province) an irrevocable, worldwide, royalty-free (from the time of submission of the Proposal to and including the selection of the Preferred Proponent and thereafter if the Proponent is selected as the Preferred Proponent), perpetual sublicence, with the right to sublicense through multiple levels of sublicences, (to the extent the Proponent possesses such right to license and sub-license and the Proponent shall take all reasonable steps to obtain such rights) to all of

the Proponent's licenses and rights to all Third-Party Technology incorporated into the Work Product. If such a sub-license cannot be validly granted without the consent of a third party, the Proponent will use its best efforts to obtain such consent (at the Proponent's expense) and will indemnify and hold harmless the Province and its ministers, employees and agents from and against all liabilities, losses, damages, costs and expenses (including legal fees) arising from the Proponent's failure to obtain such consent. Provided, however, that the Proponent will not be required to sublicense to the Province any Third-Party Technology which consists of non-specialized third party software programs that are generally commercially available and that the Province, in its sole discretion, has determined from its review of the List of Third Party Software it does not require to sublicense from the Proponent in order to operate or use the Work Product. Such sub-licence must provide that, if the Proponent is not selected as the Preferred Proponent, the Province will have the option from and after the selection of the Preferred Proponent: (i) to terminate the sub-licence with no liability to the Proponent, the owner of the Third-Party Technology or any other Person, or (ii) to continue the sub-licence provided that the Province will be obligated to pay all royalties and other fees associated with the use of the applicable Third-Party Technology from the date the Proponent is notified by the Province that it has not been selected as the Preferred Proponent until the termination or expiry of the sub-licence.

- 4.5 The Proponent represents, warrants and agrees that it is, or at the time of submission of its Proposal it will be, the owner or licensee (as the case may be) of all Intellectual Property Rights associated with the Work Product and the Background Technology (including all copyright and moral rights therein) and has or will have, at the time of submission of its Proposal, the right to convey or grant (as the case may be) the aforesaid rights to the Province as set forth in Section 4.2 and 4.3. The Proponent further acknowledges, represents, warrants and agrees that any actual or purported future restriction on the Province's ability or right to use the Work Product or the Background Technology will be null and void and of no effect and unenforceable against the Province or Partnerships BC.
- 4.6 On submission of its Proposal, the Proponent will (by instrument in writing in form and substance satisfactory to the Province) indemnify and save the Releasees and each of them harmless from, and defend the Releasees against, any and all loss, cost, damage and expense which the Releasees or any of them may suffer, incur or pay out by reason of, claims or suits brought by third parties against the Releasees or any of them that arise from allegations of infringement by any of the Releasees of confidential information, or Intellectual Property Rights of such third parties, including for certainty, but without limitation, allegations of use by any of the Releasees of such third parties' confidential information, patent rights, copyrights, and moral rights.

- 4.7 The Proponent will execute and deliver to the Province, at the Province's request, a copyright assignment (in form and substance satisfactory to the Province) for any Work Product subject to copyright protection.
- 4.8 The Proponent will execute and deliver to the Province, at the Province's request, a patent application assignment (in form and substance satisfactory to the Province) for any invention conceived or reduced to practice by the Proponent in connection with the Work Product for which the Province elects to file a patent application.
- 4.9 The Proponent agrees to provide to the Province all reasonably required assistance, and to execute such further and other documents and do such other acts and things reasonably required, to protect the Intellectual Property Rights in the Work Product or to more fully carry out the intent of this Article IV.
- 4.10 The Proponent hereby irrevocably designates and appoints the Province and its duly authorized ministers, officers and agents as the Proponent's agent and attorney-in-fact to act for and in the Proponent's behalf to execute, deliver and file any and all documents with the same legal force and effect as if executed by the Proponent, if the Province is unable for any reason to secure the Proponent's signature on any document needed in connection with any of the actions described in this Article IV.

ARTICLE V **TERMINATION**

- 5.1 This Agreement will terminate automatically upon the earliest to occur of:
- (a) the Province terminating the Agreement pursuant to Sections 5.2 or 5.3; and
 - (b) the execution and delivery of the Concession Agreement by all of the parties thereto.
- 5.2 The Province may, in its discretion and for whatever reason and without liability to the Proponent or any other party (except as expressly set out in this Section), by Addendum, modify, amend or otherwise change or extend any schedule or time periods (including the Closing Time and the schedule for implementation of the DBFO Project) specified within the RFP, or this Agreement, and suspend, postpone, cancel or terminate this Agreement or any part or all of the Consultation and Selection Process, except that the Province may not without consultation and the mutual consent of the parties, such consent not to be unreasonably withheld, change or extend any schedule or time periods in respect of the timeframe for Financial Close or execution of the Concession Agreement after the Preferred Proponent has provided the Province with the Security Deposit

set out in Section 3.1(b). For the avoidance of doubt, this Agreement may only be amended or changed through mutual consent of the parties thereto except as expressly provided in Article I of Schedule II with respect to the provisions of Schedule II.

- 5.3 In addition to any other rights the Province may have to terminate this Agreement, the Province may in its discretion terminate this Agreement whereupon the Proponent will no longer be permitted to take part in the Consultation and Selection Process if the Proponent or any Member or any other Person who has agreed to guarantee the obligations of the Proponent or any Member in respect of the DBFO Project institutes proceedings or if proceedings are commenced against it in respect of the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Proponent or any Member or any other Person who has agreed to guarantee the obligations of the Proponent or any Member in respect of the DBFO Project. If this Agreement is terminated pursuant to this Section 5.3, the Proponent will not be entitled to receive the Partial Compensation.
- 5.4 Unless otherwise expressly provided for herein, the parties' respective rights and obligations under Article II, Article III, Article IV, Section 5.4, Article VII, Section 8.3 and Article XI of this Agreement and all disclaimers, limitations of liability and indemnities in favour of the Province under the RFP will survive the termination of this Agreement for a period of ten (10) years.

ARTICLE VI **WORKSHOPS AND TOPIC MEETINGS**

- 6.1 The Province intends to schedule Workshops and may schedule Topic Meetings, as described in Schedules II and III, during the Consultation and Selection Process.
- 6.2 The Proponent will ensure that at least one Key Individual from the Proponent will attend each of the Workshops.
- 6.3 The Proponent will ensure that each Proponent Team Member and each individual in attendance on behalf of the Proponent or any Proponent Team Member at any part of the Workshops or Topic Meetings is familiar with and abides by the terms of this Article VI and Schedules II and III.
- 6.4 Prior to the start of each Workshop or Topic Meeting, each individual attendee will review, execute and deliver to the Province the waiver and agreement set out in Appendix B. The Proponent will indemnify each of the Releasees for any Claims arising directly or indirectly from the failure by any individual attending a Workshop or Topic Meeting on behalf of the Proponent to execute, deliver and abide by the terms of such waiver and agreement.

ARTICLE VII **NON-BINDING NATURE OF TOPIC MEETINGS AND WORKSHOPS**

- 7.1 The Proponent hereby acknowledges and agrees that no statement, consent, waiver, acceptance or approval made by the Releasees (or any of them) during any Workshop or Topic Meeting and no action or omission by the Releasees (or any of them) during any Workshop or Topic Meeting will amend or waive any provision of the RFP or be binding on the Releasees or be relied upon in any way by the Proponent or the Proponent Team Members for any purpose, unless and only to the extent expressly **confirmed by Addenda issued by the Province**.
- 7.2 In any Topic Meeting or Workshop the Proponent may seek information or comments from the Province; provided, however, that the Province will, in its sole discretion, determine whether to provide any such information and comments and will in no event be bound to do so. The Proponent hereby agrees that it will not seek to obtain commitments from the Releasees (or any of them) during the Consultation and Selection Process (except as specifically contemplated in Section 3.8 of Schedule II or Section 1.1(f) of Schedule III) and will not otherwise seek to obtain an unfair competitive advantage over any other Proponent. Any information or comments received will represent the opinion of the party providing the opinion or comments only, and will not amend, modify or in any way change or affect the RFP unless recorded in writing in the RFP itself or in a formal amendment to the RFP.
- 7.3 The Proponent acknowledges and agrees that (unless confirmed pursuant to the issuance of an Addendum by the Province in the manner contemplated in Section 3.8 of Schedule II or Section 1.1(f) of Schedule III) no comments provided by or on behalf of the Releasees (or any of them) during any Workshop or Topic Meeting, whether positive or negative, including in respect to any particular matter raised by a Proponent or which is included in any document or information provided by a Proponent or Proponent Team Member prior to or during the Workshop or Topic Meeting, will in any way bind the Releasees (or any of them) and will not be deemed or considered to be an indication of a preference by the Releasees (or any of them) even if adopted by the Proponent or another Proponent.

ARTICLE VIII **COMMUNICATIONS BY PROPONENTS WITH** **THE PROVINCE, PARTNERSHIPS BC AND STAKEHOLDERS**

- 8.1 Proponents will not in relation to the Consultation and Selection Process (including in relation to the RFP and the preparation of their Proposals) communicate with representatives (including officers, directors, managers, employees, consultants, advisors and agents) of any one or more of the

Province, Partnerships BC or other stakeholders as determined by the Province, except as may be expressly permitted by the RFP or pursuant to and in accordance with this Agreement or as otherwise permitted by the Province in its discretion.

- 8.2 Proponents will not meet with any such personnel referred to in Section 8.1, in relation to the Consultation and Selection Process, except through the Topic Meetings and Workshops arranged by and coordinated through the Contact Person.
- 8.3 No communications or responses from the Province or Partnerships BC in relation to the RFP, Concession Agreement, Specifications, the Consultation and Selection Process or the DBFO Project may be relied upon by Proponents unless, and only to the extent, confirmed in writing by an Addendum. Any reliance by a Proponent on any information obtained by a Proponent which is not contained in an Addendum will be at the Proponent's sole risk and without recourse against the Province, Partnerships BC, or any of the other Releasees.

ARTICLE IX

COORDINATION OF TOPIC MEETINGS AND WORKSHOPS BY THE PROVINCE

- 9.1 The Contact Person will at all times be the initial point of contact for all Requests for Information and for any other information requests and clarifications from Proponents and is the initial point of contact for requests for additional meetings with the Province.
- 9.2 Proponents will have access to officers, directors, managers, employees, consultants, advisors and agents of the Province and Partnerships BC only through prior arrangement in each instance with the Contact Person.
- 9.3 Schedule III sets out the process for initiating requests for Topic Meetings and Requests For Information.

ARTICLE X

NOTICES

- 10.1 All notices under this Agreement will be in writing and will be delivered by person, sent by prepaid registered mail or transmitted by facsimile or other form of electronic media, provided that in the case of facsimile or other form of electronic media confirmation of transmission is printed. Such notices will be addressed as follows (telephone numbers are included solely for the purpose of confirming whether a written notice was received, and not for the purpose of giving notice):

If to the Proponent and/or the Members:

<>

Attention: <>

<>

Fax: <>

Phone: <>

E-mail: <>

If to the Province:

Kicking Horse Canyon Project
c/o Partnerships BC
1260-999 West Hastings Street
Vancouver, BC V6C 2W2
Canada

Attention: Ms. Tara Moultrie

Fax: (604) 660-1199

E-mail: kickinghorsecanyon@partnershipsbcc.ca

Either party may change the aforesaid addresses by given written notice in accordance with the foregoing.

- 10.2 Notices delivered in accordance with the Agreement will be deemed to have been given and received on the day delivered (or the day received if transmitted by fax or other electronic media) but only if received at that address prior to 4:30 p.m. local time on a business day; otherwise the notice will be deemed to have been given and received on the immediately following business day. Notices that have been mailed will be deemed to have been given and received on the fifth business day after the date of mailing. In case of postal strike, slowdown or other postal disruption, notices will not be mailed but either delivered by hand or transmitted by facsimile or other form of electronic media, in accordance with the Agreement.

ARTICLE XI **CONFIDENTIALITY AND RESTRICTIVE COVENANTS**

- 11.1 Without limiting any other confidentiality obligations imposed on the Proponent and each Member, the Proponent and each Member will at all times hold all Confidential Information in confidence and will not disclose or permit to be disclosed in any manner whatsoever any Confidential

Information, in whole or in part, to any Person except only to: (a) the Proponent Team Members, the affiliates of any Proponent Team Member and such of the directors, officers, managers, employees, professional advisors and agents of the Proponent and/or the Proponent Team Members and/or the affiliates of any Proponent Team Member who are directly concerned with the DBFO Project and whose knowledge is required in connection with the preparation of the Proponent's Proposal and, if awarded to the Proponent, in connection with the performance of the Proponent's obligations under the Concession Agreement; (b) any other Person only with the prior written consent of the Province, and (c) any other Person as may be expressly permitted pursuant to this Agreement; provided that, in the case of each of the Persons to whom Confidential Information is disclosed in accordance with paragraphs (a), (b) and (c) above, such Person has been informed of the confidential nature of the Confidential Information by the Proponent or the Member, as the case may be, that disclosed such information and has agreed to act in accordance with the terms of this Article XI, and provided further that the Proponent or Member that disclosed the Confidential Information to such Person will ensure that the Person to whom such disclosure is made will act in accordance with the terms of this Article XI as if that Person was a party to this Agreement and such Proponent or Member will be responsible to the Province for any breach of the terms in this Article XI by itself and by each such Person to whom it disclosed Confidential Information.

- 11.2 The Province owns all rights, title and interest in the Confidential Information and, subject to any disclosure requirements under applicable law, and except as permitted by this Agreement, the Recipients will keep all Confidential Information that they or any of them receive, have access to, or otherwise obtain strictly confidential for a period of three (3) years after the date of this Agreement, and will not, without the prior express written consent of an authorized representative of the Province, which may be unreasonably withheld, use, divulge, give, release or permit or suffer to be used, divulged, given or released, any portion of the Confidential Information to any other Person for any purpose whatsoever.
- 11.3 On written request, each Recipient will promptly deliver to Partnerships BC or destroy all documents and copies thereof in its possession or control constituting or based on the Confidential Information and the Proponent, Member and other Recipients will confirm that delivery or destruction to Partnerships BC in writing, all in accordance with the instructions of Partnerships BC provided, however, that the Proponent, Member, or other Recipients may retain one copy of any Confidential Information which it may be required to retain or furnish to a court or regulatory authority pursuant to applicable law.

- 11.4 Each Recipient shall indemnify and hold harmless the Releasees from and against any and all loss or damage, including without limitation actual legal costs, which arises directly or indirectly from a breach of this Agreement by the Recipients or any of them, including without limitation the unauthorized disclosure or use of Confidential Information by any Recipient.
- 11.5 Each Recipient acknowledges and agrees that the Confidential Information is proprietary and confidential and that the Province and Partnerships BC and either of them may be irreparably harmed if any provision of this Agreement were not performed by the Recipients in accordance with its terms, and that any such harm could not be compensated reasonably or adequately in damages. The Proponent and each Member further acknowledges and agrees that the Province and Partnerships BC will be entitled to injunctive and other equitable relief to prevent or restrain breaches of any of the provisions of this Agreement by the Recipients or any of them, or to enforce the terms and provisions hereof, by an action instituted in a court of competent jurisdiction, which remedy or remedies are in addition to any other remedy to which the Province or Partnerships BC may be entitled at law or in equity.
- 11.6 For the purpose of this Article XI, "Confidential Information" does not include information which:
- (i) is or subsequently becomes available to the public, other than through a breach of this Agreement by any Recipient or through a breach of a confidentiality agreement which another person has entered into concerning the Confidential Information;
 - (ii) is subsequently communicated to the Proponent, Member, or other Recipients by an independent third party, other than a third party introduced to the Proponent, Member, or other Recipients by the Releasees or connected with the subject matter of the DBFO Project, without breach of this Agreement and which party did not receive such information directly or indirectly under obligations of confidentiality;
 - (iii) was rightfully in the possession of the Recipients or was known to the Recipients before the date of this Agreement and did not originate, directly or indirectly, from the Releasees;
 - (iv) is required to be disclosed pursuant to any judicial, regulatory or governmental order validly issued under applicable law.
- 11.7 The Proponent and each Member acknowledges and agrees that, in the event the Province fails to select a Preferred Proponent within nine (9) months of the Closing Time or cancels the RFP or the Consultation and

Selection Process at any time and subsequently proceeds with all or any part of the design or construction or operation or maintenance or rehabilitation of the Highway which is the subject of the DBFO Project through an alternative procurement process of any sort, the Province: (i) will be entitled to contract directly with any other Person for any or all matters related, directly or indirectly, to all or any part of the design or construction or operation or maintenance or rehabilitation of that portion of the Highway which is the subject of the DBFO Project; and (ii) may contract directly with one or more Proponent Team Members or with any one or more of the contractors, sub-contractors, consultants, advisors or others engaged by or through any Proponent or any Proponent Team Member and the Proponent will not take any action that might prevent or impede the Province from so doing.

ARTICLE XII **ASSIGNMENT**

- 12.1 Neither the Proponent nor any Member will assign the whole or any part of this Agreement without the prior written consent of the Province, which consent shall not be unreasonably withheld if such assignment is to a person who has become the Proponent or Member (as the case may be) in accordance with the provisions of the RFP.

ARTICLE XIII **ENUREMENT**

- 13.1 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

ARTICLE XIV **SEVERABILITY**

- 14.1 If any provision of this Agreement is held to be illegal or invalid, then such invalidity or illegality will not affect any other provision hereof, and this Agreement will be construed and enforced as if such invalid or illegal provision had never been contained herein.

ARTICLE XV **ENTIRE CONTRACT**

- 15.1 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and cancels and supersedes all prior proposals, agreements, understandings, representations, conditions, warranties, negotiations, discussions and communications, whether oral or written, statutory or otherwise, and whether express or implied, between the parties with respect to the

subject matter of this Agreement, save and except the Submission made by the Proponent and any Proposal made in response to the RFP and otherwise to the extent expressly incorporated in writing into this Agreement.

ARTICLE XVI **AMENDMENT**

- 16.1 This Agreement may only be amended by instrument in writing signed by both parties.

ARTICLE XVII **APPLICABLE LAW**

- 17.1 This Agreement and the obligations of the parties hereunder will be interpreted, construed and enforced in accordance with the laws of the Province of British Columbia. The parties hereto irrevocably attorn to the jurisdiction of the courts of British Columbia.

ARTICLE XVIII **JOINT VENTURES AND CONSORTIA**

- 18.1 If the Proponent is a joint venture or consortium, or a combination thereof, or a special purpose entity created solely for the DBFO Project, each of the Equity Members of such joint venture, consortium or special purpose entity (for greater certainty, each a "**Member**"), will have executed this Agreement by their duly authorized representatives, both on behalf of the joint venture or consortium and in their own behalf, in the same manner as if the member was the sole party executing this Agreement. If any member, shareholder or partner (as the case may be) has not executed this Agreement, this Agreement will be valid and binding on the members of the joint venture or consortium or on the shareholders or partners of the special purpose entity (as the case may be) who have executed this Agreement, each of whom, by execution of this Agreement, expressly agrees to be jointly and severally liable to the Province for the obligations that would have been assumed hereunder by the member, shareholder or partner (as the case may be) that has not executed this Agreement had it executed this Agreement.
- 18.2 By executing this Agreement, each Member hereby represents, warrants and agrees that
- (a) it is jointly and severally liable with the Proponent to the Province for all covenants, obligations and liabilities of the Proponent set forth in this Agreement, and

- (b) the Members constitute all of the members of the joint venture or consortium, if applicable, or all of the shareholders or partners of the Proponent and will not assign their interest in such joint venture, consortium or the Proponent without obtaining the prior written consent of the Province, which consent shall not be unreasonably withheld if such assignment is to a person who has become a Member in accordance with the provisions of the RFP and if so requested by the Province, the assignee executes an agreement to be bound by the terms of this Agreement.

ARTICLE XIX **WAIVER**

- 19.1 No failure to exercise, and no delay in exercising, any right or remedy under this Agreement by either party to this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

ARTICLE XX **AUTHORITY TO EXECUTE AGREEMENT**

- 20.1 The Proponent and each Member hereby represents and warrants, on its own behalf and jointly and severally with the Proponent, that:
- (a) It has the requisite power, authority and capacity to execute and deliver this Agreement.
 - (b) This Agreement has been duly and validly executed by it or on its behalf by its duly authorized representatives.
 - (c) This Agreement constitutes a legal, valid and binding agreement enforceable against it in accordance with its terms.

ARTICLE XXI
PROOF OF AUTHORITY

21.1 The Province may, in its discretion, require each party executing this Agreement to provide proof, in a form acceptable to the Province, that the signatory of this Agreement on behalf of each such party had the requisite authority to execute this Agreement on behalf of and to bind that party.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA AS
REPRESENTED BY THE MINISTER OF
TRANSPORTATION**

Authorized Signatory

Full Name

Authorized Signatory

Full Name

[PROPOONENT]

Authorized Signatory
Name: <>
Title: <>

Authorized Signatory
Name: <>
Title: <>

[MEMBER]

c/s

Authorized Signatory

Name: <>

Title: <>

[MEMBER]

c/s

Authorized Signatory

Name: <>

Title: <>

SCHEDULE I **DEFINITIONS**

1. DEFINITIONS

Unless a contrary intention is clearly indicated, whenever used in the Agreement or any schedules thereto, the following terms will have the meanings given to them in this Schedule I.

- 1.1 **"Agreement"** means this agreement between the Province and the Proponent, and includes all documents specifically incorporated by reference herein.
- 1.2 **"Background Technology"** has the meaning given to it in Section 8.1.2.
- 1.3 **"BCTFA"** means BC Transportation Financing Authority.
- 1.4 **"Claims"** includes claims, actions, proceedings, causes of action, suits, debts, dues, accounts, bonds, warranties, claims over, indemnities, covenants, contracts, losses (including consequential losses), damages, costs, 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 in law or in equity, whether express or implied, whether present or future and whether known or unknown.
- 1.5 **"Closing Location"** means Kicking Horse Canyon Procurement Office, #1260-999 West Hastings Street, Vancouver, BC V6C 2W2, Canada or such other address as may be designated by the Province from time to time in writing as the Closing Location or such other location as may be prescribed in the RFP.
- 1.6 **"Closing Time"** means before 2:00 p.m. Vancouver time on May 12th, 2005 or such other date or time as may be designated by the Province from time to time in writing as the Closing Time or such other time as may be prescribed in the RFP.
- 1.7 **"Compliant Proposal"** means a Proposal that, in the opinion of the Province reasonably held, substantially meets or exceeds all of the mandatory requirements and minimum requirements for proposals set out in the RFP.
- 1.8 **"Confidential Information"** means all documents, knowledge and information provided by the Releasees or any of them to, or otherwise obtained by, the Proponent, Member and any other Recipients, whether

before or after the date of this Agreement, on the data room website or otherwise, either orally or in writing or other visual or electronic form in connection with or relevant to the subject matter of the DBFO Project, including, without limitation, all design, operational and financial information, together with all analyses, compilations, data, studies, photographs, specifications, manuals, memoranda, notes, reports, maps, documents, computer records or other information in hard copy, electronic or other form obtained from the Releasees or any of them or prepared by the Proponent, Member or other Recipients containing or based upon any such information.

- 1.9 **"Consultation and Selection Process"** means the process of consulting with the Proponent and other proponents, inviting and evaluating proposals submitted in response to the RFP, and selecting a Preferred Proponent, and includes the RFQ; the RFP; participation in the Workshops and Topic Meetings, meetings with the Province or any proposal evaluation committee which may be established by the Province from time to time or any of their respective agents, advisors or representatives; the preparation, negotiation, acceptance or rejection of any Proposal (whether conforming or non-conforming and whether otherwise valid or void); the amendment, cancellation, suspension or termination of the RFP or the DBFO Project and/or the issuance by the Province or receipt by the Proponent of the RFP, the form of Concession Agreement or any other documents and information in connection with the DBFO Project, including any supplemental documents, amendments or changes thereto issued by the Province prior to the Closing Time by Addenda or otherwise.
- 1.10 **"Contact Person"** means Ms. Tara Moultrie or her designee, Kicking Horse Canyon Project, DBFO Project, Kicking Horse Canyon Procurement Office, #1260-999 West Hastings Street, Vancouver, British Columbia V6C 2W2, Canada.
- 1.11 **"day"** means a calendar day.
- 1.12 **"Concession Agreement"** means the definitive Concession Agreement to be issued by way of Addendum to the RFP.
- 1.13 **"DBFO Project"** means that part of the Kicking Horse Canyon Project to be undertaken in accordance with the Concession Agreement.
- 1.14 **"Deliverables"** means the items to be provided or actually provided by the Proponent to the Province under this Agreement, or as part of or in connection with the Proposal and the Consultation and Selection Process.
- 1.15 **"Eligible Proponent"** has the meaning given to it in Section 6.20.
- 1.16 **"Fairness Auditor"** has the meaning given to it in Schedule II.

- 1.17 “**Financial Administration Act**” means the *Financial Administration Act*, R.S.B.C. 1996, c. 138.
- 1.18 “**Financial Close**” means the date on which the financing arrangements contemplated by the Concession Agreement are completed and all conditions precedent to the Concession Agreement and the drawdown of funds under such above-referenced financing arrangements have been satisfied or waived and funds are available to be drawn down.
- 1.19 “**Funders**” means any or all of the persons who will have or will provide financing or funding to the DBFO Contractor in respect of the performance of the Concession Agreement by the DBFO Contractor, but does not include Equity Members unless such Equity Members also provide non-equity financing to the DBFO Contractor.
- 1.20 “**Intellectual Property**” means all algorithms, application programming interfaces (APIs), apparatus, circuit designs and assemblies, concepts, data, databases and data collections, designs, diagrams, documentation, drawings, equipment designs, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice), IP cores, know-how, materials, marks (including brand names, product names, logos, and slogans), methods, models, net lists, network configurations and architectures, procedures, processes, protocols, schematics, semiconductor devices, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, test vectors, tools, uniform resource identifiers including uniform resource locators (URLs), user interfaces, web sites, works of authorship, and other forms of technology.
- 1.21 “**Intellectual Property Rights**” means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world in respect of any Intellectual Property: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in Intellectual Property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.
- 1.22 “**Liquidated Damages**” are not to be construed as a penalty but will represent the amount agreed to be paid by the Proponent to the Province on the happening of a specified event, and which amount has been agreed by the parties to be not a penalty but to represent a genuine pre-estimate of the damages that the Province will suffer as a result of the happening of the specified event for, among other things, lessening of the

competition for the Concession Agreement, jeopardizing the Province's opportunity to develop and proceed with the DBFO Project and causing the Province to incur wasted and lost time, cost, expense and opportunity and all of which damages the parties agree would be difficult or impossible to quantify upon the happening of the specified event.

- 1.23 **"List of Third Party Technology"** has the meaning given to it in Section 4.1.2.
- 1.24 **"Member"** has the meaning given to it in Section 18.1.
- 1.25 **"Partial Compensation"** means the CDN\$600,000, inclusive of all taxes, contribution towards the costs, expenses, loss of opportunity and all other direct and indirect costs related to or associated in any way with the RFP, this Agreement, and the preparation, submission, review, evaluation and acceptance or rejection of any Proposal, which the Proponent may be entitled to receive from the Province in accordance with and subject to the provisions of this Agreement.
- 1.26 **"Partnerships BC"** or **"PBC"** means Partnerships British Columbia Inc.
- 1.27 **"Permitted Use"** has the meaning given to it in Section 4.3.1.
- 1.28 **"Person"** includes any individual, sole proprietorship, partnership, joint venture, consortium, trust, unincorporated organization, association, corporation, institution, entity or party.
- 1.29 **"Preferred Proponent"** means the Proponent who is selected as the Preferred Proponent by the Province to be the DBFO Contractor.
- 1.30 **"Proponents"** means the Proponent and such other Persons which responded to the RFQ and have been short-listed by the Province as parties entitled to submit a Proposal.
- 1.31 **"Proponent Team Member"** includes the Proponent, a Prime Member or an Equity Member or any other Member of the Proponent, and any of their respective officers, directors, managers, employees, contractors, consultants, advisors, representatives, agents, successors and permitted assigns.
- 1.32 **"Proposal"** means a proposal submitted by a Proponent prior to the Closing Time at the Closing Location in response to the RFP.
- 1.33 **"Province"** means Her Majesty the Queen in Right of the Province of British Columbia.

- 1.34 **"Recipients"** means those Persons identified or referred to in paragraph 11.1 of this Agreement and including without limitation the Proponent and each Member.
- 1.35 **"Releasees"** means Partnerships BC, BCTFA, the Province and their respective directors, officers, representatives (including members of the Executive Council), managers, employees, consultants, advisors and agents, successors and assigns.
- 1.36 **"Request for Information"** means a request for information form in the form attached as Appendix A.
- 1.37 **"Request for Proposals"** or **"RFP"** means the request for Proposals for the DBFO Project issued by the Province to Proponents, which RFP is expected to be dated on or about October 27, 2004, as amended from time to time by addendum to the RFP in accordance with its provisions.
- 1.38 **"Security Deposit"** means the financial security to be provided by the Proponent by way of one or more letters of credit in the form attached hereto as Appendix C and in the amount required to be provided by the Proponent pursuant to Section 3.1.
- 1.39 **"Specifications"** means the technical, operation, maintenance and rehabilitation specifications set out in the RFP.
- 1.40 **"Topic Meeting"** means a meeting between the Province and a Proponent as more fully described in Schedule III.
- 1.41 **"Third Party Technology"** has the meaning given to it in Section 4.1.2.
- 1.42 **"Waiver"** has the meaning given to it in Section 4.2.2.
- 1.43 **"Work Product"** means (a) all Deliverables, (b) all Intellectual Property, in any stage of development, that the Proponent conceives, creates, develops, or reduces to practice in connection with the preparation of the Deliverables, the Proposal or as part of the Consultation and Selection Process and the DBFO Project, and (c) all tangible embodiments (including models, presentations, prototypes, reports, samples, and summaries) of each item of such Intellectual Property.
- 1.44 **"Workshops"** means the workshops scheduled by the Province in accordance with the process described in Schedule II.

2. INTERPRETATION

In this Agreement and this Schedule I, the following will apply:

- 2.1 Headings are inserted for convenience of reference only and will not constitute a part of the document in which they are contained, or affect the meaning or interpretation thereof.
- 2.2 As used herein, 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.
- 2.3 References to a Section, Article, Paragraph or other part of any document will be deemed to be a reference to the whole of the Section, Article, Paragraph or other part of that document, and references to a Section, Article, Paragraph or other part by number will be deemed to be a reference to the whole of the Section, Article, Paragraph or other part, as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix. References herein to a Section are references to a Section of this Agreement unless otherwise indicated.
- 2.4 "Includes", "including" and other terms of like import will not be deemed limited by the specific enumeration of items, but will be deemed to be without limitation and interpreted as if the term was "including without limitation".
- 2.5 All monetary amounts herein refer to lawful currency of Canada.
- 2.6 References to the exercise of discretion by a party will, unless otherwise specified, be interpreted as meaning the sole, absolute and unfettered discretion of the party exercising same.
- 2.7 References to "herein", "hereunder", "hereof" and similar terms, unless otherwise expressly provided, refer to this Agreement as a whole and not to any Article, section, subsection or other subdivision of this Agreement.
- 2.8 References to any statute or statutory provision or regulation include any statute or statutory provision or regulation 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.
- 2.9 (a) In this Agreement, a Person is considered to be an affiliate of another Person if one is a subsidiary entity of the other or if both are subsidiary entities of the same Person or if each of them is controlled by the same Person.

- (b) In this Agreement, 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,
 - A. 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
 - B. 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.

SCHEDULE II WORKSHOPS AND TOPIC MEETINGS

ARTICLE I INTRODUCTION

- 1.1 This Schedule II describes the process to be followed in connection with the arrangement of Workshops and Topic Meetings between Proponents and the Province (including officers, directors, managers, employees, consultants and advisors of and to the Province and Partnerships BC) prior to submission of Proposals. The Province may, in its discretion, issue written policies and procedures clarifying, expanding, simplifying or otherwise amending the provisions of this Schedule II.

ARTICLE II PURPOSE OF WORKSHOPS AND TOPIC MEETINGS

- 2.1 Topic Meetings and Workshops are intended to facilitate communication between the Proponent and the Province regarding matters related to the DBFO Project, the RFP and the Concession Agreement and to enable the Proponent to provide the Province with information and comments regarding their proposed changes to the Concession Agreement or their Proposals and to enable the Province to discuss issues arising in connection with the Proponent's Proposal or proposed changes to the Concession Agreement.
- 2.2 A Key Individual from each Proponent is required to attend the scheduled Workshops. The terms and conditions set out in this Schedule II and in Articles VII, VIII, IX and XI of the Agreement apply to each of the Workshops.
- 2.3 The Proponent may determine the appropriate persons to attend a Workshop or Topic Meeting on behalf of the Proponent, subject to any limits or restrictions established by the Province.
- 2.4 The Proponent will ensure that each Proponent Team Member and each individual in attendance on behalf of the Proponent at any part of the Workshop or Topic Meeting is familiar with and abides by the terms of Article VI of the Agreement and Schedules II and III.

ARTICLE III SCHEDULING OF TOPIC MEETINGS

- 3.1 The Province has scheduled Workshops to be held separately with each Proponent as set out in the table below. Each Workshop is expected to

run from 9:00 a.m. to 5:00 p.m. on the dates specified below or on such other date or dates as the Province may notify each Proponent from time to time. While it is anticipated that these workshops will address the topics listed below, Workshop agendas may be varied by the Province, with notice to the Proponents.

DATE	DELIVERABLE
Mid- November 2004	Proponents' submit proposed agenda items
Last week in November 2004	Agenda for Workshop A issued
Early December 2004	<p><u>Workshop A</u></p> <p>Topics to include:</p> <ul style="list-style-type: none"> ○ Risk Allocation ○ Technical Issues
2 nd week in December 2004	Agenda for Workshop B issued
3 rd week of December 2004	<p><u>Workshop B</u></p> <p>Topics to include:</p> <ul style="list-style-type: none"> ○ Proponents Comments on Concession Agreement ○ Financial Issues
1 st week of January, 2005	Proponents submit mark-up/drafted solutions/Proposed Amendments to the Draft Concession Agreement
Early March 2005	<p>Issue to Proponents:</p> <ul style="list-style-type: none"> ○ Revised Concession Agreement
1 st Week in March 2005	Agenda for Workshop C issued
Mid- March 2005	<p><u>Workshop C</u></p> <p>Topics to include:</p> <ul style="list-style-type: none"> ○ Revised Concession Agreement
March 2005	Proponents submit mark-up/drafted solutions/Proposed Amendments to the Revised Concession Agreement

DATE	DELIVERABLE
Late April, 2005	Issue to Proponents: <ul style="list-style-type: none">○ Definitive Concession Agreement
May 12 th , 2005	Closing Time for Proposals

- 3.2 Prior to each Workshop, and not later than two (2) days before the workshop agenda is due to be issued, each Proponent will provide to the Contact Person a list of requested agenda items. Following receipt of the Proponents' requested agenda items, the Province will develop a separate agenda for each Proponent which it will distribute to the applicable Proponent prior to the particular Workshop.
- The Province will assign Workshop dates for each session by random draw.
- 3.3 The Contact Person will inform Proponents of the Workshop dates assigned to them upon receipt of an executed Proposal Competition Agreement.
- 3.4 No part of the evaluation of the Proponent's Proposal will be based on information obtained or shared during the Workshops or the Topic Meetings, the conduct of the Proponent or the Province or on discussions that occur between the Province and the Proponent during the Workshops.
- 3.5 All communications with the Province should be submitted to the Contact Person using the form attached as Appendix A (the "RFI Form"). Completed RFI Forms are to be sent by e-mail or fax. It is the Proponent's responsibility to ensure that the RFI Forms are received within the times specified in this Schedule II for the applicable Workshop or Topic Meeting. Reference is made to Schedule III for a more complete description of the RFI procedure.
- 3.6 The Province may, at its discretion, arrange any number of Topic Meetings and invite Proponents to attend the Topic Meeting. If one or more Proponents requests additional Workshops, or if the Province considers it desirable or necessary to schedule additional Workshops, the Province in its discretion may schedule additional Workshops.
- 3.7 Each Proponent may from time to time, using the RFI Form included as Appendix A, request meetings with the Province on specific topics identified by the Proponent.

- 3.8 The Province may issue written responses to Proponents addressing some or all of the questions raised by Proponents during the Topic Meetings, and/or the Province may issue one or more clarifications or Addenda revising and/or supplementing the RFP or the form of Concession Agreement.
- 3.9 In determining whether and how many Topic Meetings to schedule, the Province will take into consideration any written requests it receives on RFI Forms.
- 3.10 Where practicable and where Topic Meetings with the same Proponent may involve many of the same personnel, the Province will endeavour to aggregate several Topic Meetings with that Proponent into a single Topic Meeting, or to coordinate two or more Topic Meetings with that Proponent to run consecutively.
- 3.11 To reduce the length of the Topic Meetings and to allow for meaningful discussions during the meetings, Proponents are strongly advised and encouraged to submit to the Province as early as possible all technical information and documents scheduled to be reviewed and discussed during the meeting.
- 3.12 No aspect of any Topic Meeting or Workshop is intended to provide any of the Proponents with access to information that is not similarly available to other Proponents.
- 3.13 Unless the Province advises Proponents that a Topic Meeting is mandatory, attendance at Topic Meetings is optional and any Proponent may in its discretion decline to attend the meeting by notice in writing to the Contact Person delivered to the Contact Person at least five (5) business days prior to the scheduled date for the Topic Meeting and it is up to Proponents to determine whether or not to take part in such Topic Meetings.
- 3.14 At each Topic Meeting, up to four (unless otherwise agreed to by the Province) officers, directors, employees, consultants, advisors and agents of the Proponent and the Proponent Team Members may be present.
- 3.15 Prior to the start of each Topic Meeting, the Proponent will and will ensure each individual attendee will review, execute and deliver to the Province a waiver and agreement in the form set out in Appendix B. Proponents will indemnify each of the Releasees for any Claim arising directly or indirectly from the failure by any individual present at such Topic Meeting to execute, deliver and abide by the terms of such waiver and agreement.
- 3.16 Proponents acknowledge that the terms and conditions set out in this Agreement apply **to each of the Workshop or Topic Meetings.**

- 3.17 If a Proponent wishes to rely upon anything said or indicated at a Topic Meeting or Workshop then such Proponent must submit an RFI describing the information it would like to have confirmed and requesting that the Province or Partnerships BC provide that information to the Proponent in written form and, if such information relates to a clarification, explanation or change to a provision of the RFP, Concession Agreement or Specifications, requesting the issuance of a clarification or an Addendum clarifying and amending the provision in question.

ARTICLE IV **AMENDMENTS TO CONSULTATION PROCESS**

- 4.1 The Province will, in its discretion, review the requirements of this Schedule II with the Proponents from time to time to try to clarify and simplify the process for Workshops and Topic Meetings and to expedite and facilitate the exchange of information at the Workshops and Topic Meeting. Accordingly, the Province reserves the right, in its discretion, to amend and supplement the provisions of this Schedule II at any time and from time to time as described in Article I of this Schedule II or by Addendum.

ARTICLE V **ATTENDANCE BY THE PROVINCE AND FAIRNESS AUDITOR**

- 5.1 The Province in its discretion will determine which officers, directors, representatives, managers, employees, consultants, advisors and agents of the Province and Partnerships BC will be present at any Workshop or Topic Meeting with Proponents.
- 5.2 Jane Shackell, Q.C. has been engaged with responsibility, as an independent observer, to review the development and implementation of the Consultation and Selection process from a fairness perspective. This includes, but is not limited to, participating in any or all aspects of the Workshops and Topic Meetings. The Fairness Auditor will report only to the Province and will provide, on an ongoing basis, an objective opinion as to the fairness of the Consultation and Selection Process.

SCHEDULE III

REQUESTS FOR INFORMATION, DISTRIBUTION OF INFORMATION AND FUNDERS' COUNSEL REVIEW LETTERS

REQUESTS FOR INFORMATION

- 1.1 All requests for Topic Meetings and all questions or requests for information ("RFI") must comply with and be subject to the following terms and conditions (as applicable):
- (a) Each RFI must be in writing and submitted by the Authorized Representative of the Proponent to the Contact Person by fax or email in accordance with the process described in this Schedule III, using the RFI Form attached as a schedule to this Appendix A. The Province would prefer that completed RFI Forms be sent via e-mail.
 - (b) Each RFI must give the Proponent's name and be numbered sequentially, stating the nature of the question, inquiry, request for information, request for clarification or other purpose of the communication, and the date by which a response is requested.
 - (c) To facilitate and expedite both responses and the tracking of responses to RFIs, where Proponents have a number of questions, requests for information or requests for clarification they are encouraged to break them up by subject matter and submit them as a number of separate and short RFIs.
 - (d) Written responses by the Province to an RFI will not be distributed to all Proponents if the RFI is of a minor or administrative nature that the Province, in its discretion, considers relates only to the Proponent who submitted the RFI and is not material to other Proponents.
 - (e) If a Proponent does not want a response to its RFI to be shared with other Proponents, the RFI must be clearly marked "Commercial in Confidence" by the Proponent. If the Province in its discretion considers that it should answer the RFI on a confidential basis, then it will be entitled to do so. However, if the Province in its discretion for any reason considers that it should (having regard to the fairness of the Consultation and Selection Process) not answer the query on a confidential basis, the Province will notify the Proponent who submitted such RFI marked "Commercial in Confidence" of its decision and the Proponent will have the

opportunity to withdraw the RFI. If the Proponent does not withdraw the RFI, then the Province in its discretion may provide its response to the RFI to all Proponents. The Province, nonetheless reserves the right to distribute an answer to a question marked "Commercial in Confidence" and withdrawn by the Proponent if, in the opinion of the Province, the question identifies an error or inconsistency in the document, the Data Room or any other material in connection with the Consultation and Selection Process, or otherwise requires an amendment.

- (f) If the Province identifies a need for general clarification on an issue which does not require an Addendum, or if it identifies a matter of substance which the Province in its discretion considers should be formally brought to the attention of all Proponents, a letter of clarification will be sent or an Addendum will be issued to Proponents at the same time, whether or not the matter is identified as "Commercial in Confidence".
- (g) The Province, in its discretion, may respond to an RFI from one Proponent by way of a circular or e-mail to all Proponents or an Addendum or may post the response in the Data Room.

DISTRIBUTION OF INFORMATION PROVIDED AT TOPIC MEETINGS AND WORKSHOPS

- 2.1 The Province will use reasonable efforts to distribute to all Proponents any new information provided by the Province to any Proponent during a Workshop or Topic Meeting, save and except any information which may be related to items raised by a Proponent in an RFI on the basis that such item would be treated as "Commercial in Confidence" and where the Province has confirmed it would be dealt with on that basis and information defined in Section 1.1(e) of this Schedule.

APPENDIX A

REQUEST FOR INFORMATION

Request For Information

Kicking Horse Canyon DBFO PROJECT

Request For Information / Clarification / Meeting

Request Number: (Proponent name and sequential number)

Raised By: (contact name)

Date Raised:

Date Response Required:

Type of Request: Information Clarification Meeting
(please indicate with tick boxes)

Source of Query (reference document section and date, if applicable):

Meeting:

Date:

Other:

REQUEST / QUERY (One query / request per sheet)

Do you request this query to be "Commercial in Confidence"? YES NO

**Forwarded to prepare
draft response to:
(to be completed by the Province)**

Response:
(MOT to insert response)

Response Signed off by the Province's Lead: (Name of the Province's Lead):
Response Signed off by the Province's Contact Person:

Date Response Returned to Proponent by the Province's Project Office:

APPENDIX B
WAIVER AND AGREEMENT

The undersigned, on its own behalf and on behalf of [insert names of all applicable persons or entities], hereby confirms their intent to participate in the Consultation Process described in Schedule A hereto [**Attach Schedule II from the Proposal Competition Agreement**], agrees to the Consultation Process procedures set forth therein and waives any and all rights to contest and/or protest the Kicking Horse Canyon DBFO Project Request For Proposals process based on the fact that such meetings or workshops occurred or on the basis that information may have been received by a competing Proponent, Proponent Team Member or member of a Proponent Team Member that was not received by the undersigned.

By: _____

Name:

Title:

Date: _____, 2004

[If the undersigned is a corporation, only that entity need sign; if the undersigned is a joint venture, all joint venture members should sign; if the undersigned is a limited partnership, all general partners should sign; if the undersigned is a partnership, all partners should sign.]

APPENDIX C
FORM OF LETTER OF CREDIT

[Note: Letter of Credit must be issued by a Canadian chartered bank acceptable to the Province in its sole discretion and be callable at the bank's counters in Vancouver, British Columbia.]

TO: The Queen in Right of the Province of British Columbia

<>

(the "**Beneficiary**")

RE: SECURITY DEPOSIT

IRREVOCABLE LETTER OF CREDIT NO: _____

Dear Sirs:

At the request of our client, _____ (the "**Customer**"), we hereby issue in your favour our irrevocable letter of credit No. _____ ("Letter of Credit") for a sum not exceeding in the aggregate <> Canadian Dollars (CDN \$<>) effective immediately.

This bank guarantees and undertakes to immediately pay to you under this Letter of Credit any amount or amounts claimed, not exceeding in the aggregate the sum of CDN \$<>, upon your written demand(s) for payment being made upon us at our counter during normal business hours, <> [Note: insert address of Bank in Vancouver, British Columbia], Canada referencing this irrevocable Letter of Credit No. _____ dated _____.

Partial drawings are permitted.

This Letter of Credit is issued subject to Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500 and any subsequent amendments thereof.

Drawings up to the full amount of the Letter of Credit may be made where the drawing is accompanied by a certificate executed by an authorized signatory of the Beneficiary stating that:

- (a) The person signing the certificate is an authorized signatory of the Beneficiary.
- (b) The Beneficiary is entitled to draw upon this Letter of Credit.

Any drawings made under this Letter of Credit must be accompanied by the original or certified copy of this Letter of Credit, together with an original certificate complying with the conditions set out above.

We shall honour your written demand(s) for payment on presentation without enquiring whether you have a legitimate claim between yourself and our said Customer.

All banking charges are for the account of the Customer.

This Letter of Credit shall remain in full force and effect and, unless renewed, will expire at the close of business on **[insert date which is 1 year from the date of issuance of the Letter of Credit]**.

Authorized Signatory

Authorized Signatory

APPENDIX D
FORM OF RELEASE AND WAIVER

TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (the "**Province**")

AND TO: PARTNERSHIPS BRITISH COLUMBIA INC. ("**Partnerships BC**")

AND TO: BC TRANSPORTATION FINANCING AUTHORITY ("**BCTFA**")

RE: Proposal Competition Agreement made as of the _____ day of _____, 2004 between the Province, the undersigned and each Member (the "**Proposal Competition Agreement**")

Each of the undersigned, {insert name of Proponent} and {insert name of each Member}, (collectively, the "**Releasors**"), for good and valuable consideration, the receipt of which is hereby acknowledged, on behalf of each of the Releasors and their respective successors and assigns, hereby irrevocably and unconditionally waives, releases and forever discharges Partnerships BC, BCTFA, the Province and their respective directors, officers, representatives (including members of the Executive Council), managers, employees, consultants, advisors and agents, successors and assigns (collectively, the "**Releasees**") of and from all Claims which any of the Releasors now has or hereafter can, shall or may have against any or all of the Releasees for or by reason of or in any way arising out of any cause, matter or thing whatsoever existing up to the present time, known or unknown, contingent or otherwise for or by reason of or arising out of or in any way related to the Proposal Competition Agreement or the Consultation and Selection Process and including any and all claims for compensation, expenses, damages or other remuneration; provided however, for greater certainty, that if the Proponent is selected as the Preferred Proponent, the foregoing release is not intended to extend to any Claims arising solely in connection with the breach by the Province of any of its obligations under the executed Concession Agreement entered into between the Province, the Proponent and such other Person(s) as may be party to such agreement.

Each of the Releasors further covenants and agrees not to directly or indirectly, join, assist, aid or act in concert in any manner whatsoever with any other person in the making of any claim or demand or in the bringing of any proceeding or action in any manner whatsoever against any or all of the Releasees arising out of or in relation to the matters hereinbefore released or discharged.

Each of the Releasors further covenants and agrees not to make any claim or take any proceedings against any person who might claim, pursuant to the provisions of any applicable law or otherwise, contribution or indemnity or other relief from any or all of the Releasees.

And for the said consideration, each of the Releasors hereby represents, warrants and covenants that it has not assigned and will not assign to any other person any of the actions, causes of action, suits, debts, claims and demands which it is releasing herein.

This Release and the rights and obligations hereunder of the parties shall be governed by and construed in accordance with the laws of the Province of British Columbia, without regard to its conflicts of law rules.

Unless otherwise defined herein, all capitalized terms shall have the same meanings ascribed thereto in the Proposal Competition Agreement.

The provisions hereof shall enure to the benefit of each of the Releasees and their respective successors and assigns and shall be binding upon each of the Releasors and their respective successors and assigns.

DATED at this day of , 20 .

[PROPOSER]

Authorized Signatory

Name:

Title:

c/s

Authorized Signatory

Name:

Title:

[NAME OF MEMBER]

c/s

Authorized Signatory

Name:

Title:

[NAME OF MEMBER]

c/s

Authorized Signatory

Name:

Title:

Appendix 1E

Proposal Form

Project Title: Kicking Horse Canyon DBFO Project
and Location: British Columbia, Canada

Submitted to: Kicking Horse Canyon Procurement Office
c/o Partnerships BC
1260 – 999 West Hastings Street
Vancouver, BC V6C 2W2
Attention: Ms. Tara Moultrie

Re: **Kicking Horse Canyon DBFO Project Request for Proposals dated October 27, 2004 for Design Build Finance Operate Project ("DBFO Project")**

And Re: **Proposal submitted by _____**

In consideration of the Province evaluating our Proposal in accordance with the RFP, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, we hereby agree as follows:

1. Definitions

Unless otherwise defined herein, capitalized terms and expressions used herein and in our Proposal have the meanings given to them in the RFP.

2. General Representations

We, the undersigned, acknowledge, confirm and agree that we have:

- A) reviewed, read and understood all volumes of the Request for Proposals dated October 27, 2004 for the DBFO Project (including the Concession Agreement and each of the other volumes and their respective appendices) as amended by Addenda (collectively, the "RFP");
- B) satisfied ourselves as to the nature and location of the DBFO Project and the general, local and other conditions to be encountered in the performance of the Concession Agreement; and
- C) provided to the Province copies of all reports and data prepared or procured by the Proponent in respect of previous work done by the Proponent or any of its Proponent Team Members relating to the Highway, for inclusion in the Data Room.

3. Price

We confirm that all prices stated in our Proposal are expressed in Canadian currency and are all-inclusive, including all Taxes other than GST.

4. Conformance with Minimum Performance Requirements for Compliant Proposal

We represent and confirm that our Proposal satisfies the Minimum Performance Requirements as described in the RFP.

5. Definitive Concession Agreement

We represent and confirm that we are prepared to enter into the Definitive Concession Agreement without amendment.

6. Proposal Firm and Irrevocable

Our Proposal constitutes a firm offer to the Province, which we agree is irrevocable, binding on us, and cannot be withdrawn, altered or modified until nine (9) months after the date specified for the Closing Time in the RFP (or as such later date as may be extended by the Province by Addendum(a)).

7. Proposal complies with submission requirements

Our Proposal complies with the submission requirements set out in the RFP.

8. RFP and Proposal Competition Agreement

We acknowledge, confirm and agree that our Proposal is subject to the terms and conditions of the RFP and to the terms and conditions of the Proposal Competition Agreement, including all disclaimers and limitations of liability in favour of any one or more of the Province and other parties contained therein. For greater certainty and without limitation, we specifically acknowledge, confirm and agree to be bound by the terms of Sections 5.6 (Proponent Communications Protocol), 6.7 (No Lobbying) and 6.14 (No Reliance) of the RFP.

9. Information in RFQ

We hereby represent, warrant and confirm that all statements made in our Submission provided in response to the Request for Qualifications for the DBFO Project are continuing representations and remain true and correct as of the date hereof, save and except only (i) those which are expressly amended in our Proposal, in which case we have clearly identified them in our Proposal as corrections to or departures from the statements made in our Submission and (ii) those otherwise expressly disclosed to the Province in writing and consented to in writing by the Province before the Closing Time.

10. No Material Adverse Changes

We hereby represent and warrant that:

- we have not, except as described in detail in writing and attached to this letter, experienced any material adverse change to our financial status or business since the most recent financial statement date as included in the Submission provided in response to the Request for Qualifications for the DBFO Project;
- except as described in detail in writing and attached to this letter, there are no actions, suits or proceedings in excess of \$10 million pending or, to the best of our knowledge, after due enquiry, threatened against or affecting us in law or in equity or before or by any federal, provincial, municipal or other governmental department, court, commission, board, bureau, agency or instrumentality, domestic or foreign, or before or by an arbitrator or arbitration board which could, if adversely determined, have a material adverse effect on our solvency, liquidity or financial condition; and
- except as described in detail in writing and attached to this letter, we are not aware of any ground on which any action, suit or proceeding might be commenced.

11. No Collusion Or Conflict

11.1.1 In preparing and submitting our Proposal, we represent, warrant and confirm that we have not discussed or communicated, directly or indirectly, with any other Proponent or any officer, director, employee, consultant, advisor, agent or representative of any other Proponent regarding the content or presentation of their proposals. Our Proposal has been submitted without any connection (including a connection arising solely through shareholdings or other equity interests in or of a Proponent or any of its Proponent Team Members), knowledge, collusion, comparison of information or arrangement with any other Proponent, any of their Prime Members or any officer, director, employee, consultant, advisor, agent or representative of any other Proponent (including any Prime Member or Key Individual of such other Proponent), excluding HMC Services Inc. and Wyllie & Norrish Rock Engineers, both of whom are acknowledged as being a Proponent Team Member for more than one Proponent, but both of whom must otherwise comply with the terms of this Section 11.

11.1.2 We hereby represent, warrant and confirm that we do not have any knowledge or interest whatsoever in any Proposal of any other Proponent, either directly or indirectly, and we have not entered into any formal or informal arrangement, agreement or understanding before the submission of our Proposal that would have such a result.

11.1.3 Except as described in detail in writing, and attached to this letter, we hereby represent, warrant and confirm that there is not and there has not been, to the best of our knowledge, any conflict of interest, real or apparent, that exists now or may reasonably be expected to arise in the future, with respect to submitting our Proposal in response to the RFP, or in performing the services required of the Concessionaire.

11.1.4 We hereby represent, warrant and confirm that we have neither access to nor the ability to avail ourselves of any confidential information of the Province (other than confidential information which may have been disclosed by the Province to all Proponents).

11.1.5 We hereby represent, warrant and confirm that we have not knowingly hired, engaged or retained the services of any Restricted Party or Parties.

12. Dispute Resolution

We acknowledge, confirm and agree that in the event of any dispute arising in connection with the RFP or the Consultation and Selection Process , our Authorized Representative will, within 14 days of such dispute arising, submit written notice of the dispute to the Contact Person, and for disputes for which proper notice has been given and which remain unresolved 60 days after the date of the written notice, such disputes will be referred to and finally resolved by binding arbitration in accordance with the *Commercial Arbitration Act*.

13. Proof of Authority

We acknowledge that the Province may, in its discretion, require the undersigned to provide proof, in a form acceptable to the Province, that the signatory of this Proposal Form on behalf of each such party has the requisite authority to execute this Proposal Form on behalf of and to bind the undersigned.

14. Counterparts

This Proposal Form may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF we have executed this Proposal Form as of the _____ day of _____, 2005.

Proponent:

(Name)

C/S

(Street Address or Postal Box Number)

(City, Province & Postal Code)

Authorized Signatory:

Name & Title:

(Please Print or Type)

IF THE PROPONENT IS A JOINT VENTURE/CONSORTIUM OR A COMBINATION THEREOF OR OTHER ENTITY:

Executed and delivered by _____
[*NAME OF JOINT VENTURE/CONSORTIUM OR A COMBINATION THEREOF OR OTHER ENTITY] by its duly authorized agent, and by [insert signing details]:

[*NAME OF PROPONENT]

(Authorized Signatory)

(Authorized Signatory)

Each of the undersigned hereby:

- acknowledges that the Proponent is entering into the foregoing Proposal Form;
- acknowledges and confirms that it has read, reviewed and understood and that it agrees to each of the provisions of the Proposal and that the Proposal is being submitted with its knowledge and consent; and
- confirms and agrees that the provisions of Sections 9, 10, 11, 12 and 13 applies to it, mutatis mutandis.

DATED as of the _____ day of _____, 2005.

Prime Member
(Design):

(Name)

Authorized Signatory:

Name & Title:

(Please Print or Type)

Prime Member
(Construction):

(Name)

Authorized Signatory:

Name & Title:

(Please Print or Type)

Prime Member (O&M):

(Name)

Authorized Signatory:

Name & Title:

(Please Print or Type)

Equity Member

(Name)

Authorized Signatory:

Name & Title:

(Please Print or Type)

Appendix 1F

Submission Requirement

1. Proposal Submission Requirements

The following delivery, format, and content requirements must be followed for all Proposals in order to facilitate consistency in Proposal evaluation and to facilitate consideration of each Proposal.

1.1 Delivery

Proposals must be delivered by hand or courier to the Closing Location before the Closing Time in accordance with Section 4.2.1 of Volume 1.

If a Proponent chooses to submit more than one Proposal, each Proposal must be self-contained and complete, and must include all of the required information as set out in this Appendix 1F.

Proposals are to be delivered in one or more packages clearly labelled with the "RFP Title", "Contact Person", and "Closing Location" all as shown on the RFP Summary of Key Information.

Each package of the Proposal must be clearly labelled to identify the number of packages comprising the whole Proposal.

The name and mailing address of the Proponent must be clearly shown on the exterior of each Proposal package.

The Proponent is solely responsible for ensuring that all packages forming a part of its Proposal are securely sealed, clearly labelled to identify the number of parcels or boxes comprising the whole Proposal, the DBFO Project name, the contents of each package, and the Proponent.

One (1) original copy and five (5) identical copies of the Commercial/Financial Submission must be submitted. One (1) original copy (without punchholes) and five (5) identical copies of the Technical Submission must be submitted.

Each of the five (5) complete and identical copies of the Technical Submission must be loose-leaf or in 3-ring binder(s) each marked "Copy x of 5".

Text and tables must be on single sided 8.5" x 11" paper. Where practical, text should be 1.5 spaced and not smaller than 11-point typeface. Drawings submitted with the Technical Submission should be in format no larger than 11" x 17" paper.

Twenty (20) complete copies of the Technical Submission and five (5) complete copies of the Commercial/Financial Submission must also be submitted on CD, DVD or USB

Memory Stick in Adobe PDF format arranged in a directory structure that mirrors the hard copy submission. Each CD or DVD shall be marked "Copy x of 20" in respect of the Technical Submission or "Copy x of 5" in respect of the Commercial/Financial Submission.

1.2 Proposal Content

Note: Information provided by the Province on any specimen form required to be submitted as part of a Proposal must not be altered, qualified, or contradicted in any way by the Proponent either on the face of the submitted form or in any other part of their Proposal.

Each complete Proposal must include the following component packages, each as described in this Appendix 1F:

Package 1: Transmittal Package

Package 2: General and Proponent Team Information

Package 3: Financial/Commercial Submission

Package 4: Technical Submission

2. Transmittal Package Requirements

The Transmittal Package must be a separate, sealed envelope, clearly marked "Transmittal Package", identifying the Proponent's name and the DBFO Project name, and containing one (1) Proposal Form and the required Security Deposit as provided in the Proposal Competition Agreement.

The Proposal Form must be a properly executed original that is fully compliant in form and content with the specimen Proposal Form provided in Appendix 1E.

3. General and Proponent Team Information

3.1 Details of the Proponent

The Proponent must provide its full details, including:

- a) full legal name;
- b) registered office, telephone number, e-mail addresses and fax number;
- c) full incorporation details including certificate of incorporation, memorandum and articles of incorporation, and evidence that it is able to do business in British Columbia. If the Proponent is an unincorporated legal entity, please provide full details and proof of the existence of the legal entity;

- d) details of shareholdings and shareholders' agreements including names of Equity members; if the Proponent does not have an equity structure, provide details of the ownership structure and any relevant agreements;
- e) details of the equity, debt, or ownership structure of the Proponent back to its ultimate parent(s), including full details of any parent company guarantees or other forms of support for the Proponent with respect to the DBFO Project and consistent with the Proponent's Submission;
- f) details of any changes anticipated in equity, debt, or ownership structure prior to Financial Close;
- g) list of directors and senior officers;
- h) organizational description indicating key members of management, proposed staffing levels and reporting relationships;
- i) names, addresses and e-mail addresses of legal, technical, financial and all other relevant advisors;
- j) latest annual audited financial statements together with any interim audited or unaudited management reports of Equity Members and any other entity providing a guarantee or other support for the Proponent. If any required financial statement or information is not available, please provide a statement to that effect and provide any other document or information (e.g. financial statements prepared or reviewed by an independent public accountant) that would provide independent verification that every Proponent Team Member has the financial resources necessary to carry out its role in the DBFO Project;
- k) details of any changes to credit ratings or bank reference details since submission of the RFQ; and
- l) certified copy of board resolution(s) from the Proponent and its Equity Members approving Proposal(s).

3.2 Details of Prime Members

The Proponent must provide full details of Prime Members, as set out below and including a summary of all changes since the Proponent's Submission, including changes to identity, equity holdings, or relationship to the Proponent or changes to the Prime Members:

- a) full legal name;
- b) registered office, telephone number, e-mail addresses and fax number;
- c) full incorporation details including certificate of incorporation, memorandum and articles of incorporation, and evidence that it is able to do business in British Columbia. If the Prime Member is an

unincorporated legal entity, please provide full details and proof of the existence of the legal entity;

- d) details of shareholdings; if the Prime Member does not have an equity structure, provide details of the ownership structure and any relevant agreements;
- e) list of directors and senior officers;
- f) organizational description indicating key members of management, proposed staffing levels and reporting relationships;
- g) names, addresses and e-mail addresses of legal, technical, financial and all other relevant advisors;
- h) latest annual audited financial statements together with any interim audited or unaudited management reports of the Prime Members and any other entity providing a guarantee or other support for any Prime Member. If any required financial statement or information is not available, please provide a statement to that effect and provide any other document or information (e.g. financial statements prepared or reviewed by an independent public accountant) that would provide independent verification that each Prime Member has the financial resources necessary to carry out its role in the DBFO Project; and
- i) details of any changes to credit ratings or bank reference details since submission of the RFQ.

3.3 Details of Proponent Team Members

The Proponent must provide full details of the Proponent Team Members, as set out below and including a summary of all changes since the Proponent's Submission, including changes to identity, equity holdings, or relationship to the Proponent or changes to the Proponent Team Members:

- a) full legal name;
- b) registered office, telephone number, e-mail addresses and fax number;
- c) full incorporation details including certificate of incorporation, memorandum and articles of incorporation, and evidence that it is able to do business in British Columbia. If the Proponent Team Member is an unincorporated legal entity, please provide full details and proof of the existence of the legal entity; and
- d) list of directors and senior officers.

3.4 Details of the Contractual Structure and Relationships between the Proponent, its Proponent Team Members, and Prime Members

The Proponent must provide full details of the proposed organizational structure for design, construction operations and maintenance of the DBFO Project, including:

- a) an overall Project organizational chart identifying key responsibilities including the Key Individuals and reporting relationships for each of the Original Service Period and the Enhanced Service Period;
- b) the nature of the contractual relationship(s) to be entered into between the Proponent and any contractors who will be undertaking any part of the design or construction elements of the DBFO Project, including the nature of any sub-contracting arrangements including, in particular, details of the risk allocation between the parties; and
- c) the nature of the contractual relationship(s) to be entered into between the Proponent and the operation and maintenance service contractor(s), including the nature of any sub-contracting arrangements including, in particular, details of the risk allocation between the parties.

3.5 Additional Information

The Proponent must provide the following information to confirm, complement or update the information provided by the Proponent at the RFQ stage:

- a) identity, contact information and résumés of Key Individuals;
- b) the availability of the Key Individuals;
- c) the roles of the Proponent Team Members and tasks they will perform; and
- d) other details of the management structure of the Proponent.

Proponents must include in this package of their Proposal a copy of the communications plan provided as part of the Technical Submissions package.

4. Commercial/Financial Submissions Requirements

Package 3 must be submitted in three separate Parts as listed below:

- a) Part 1: Legal and Commercial
- b) Part 2: Price Proposal
- c) Part 3: Financial Plan

4.1 LEGAL AND COMMERCIAL

Part 1 of Package 3 of the Proposal must include a statement that the Proponent is prepared to accept the Definitive Concession Agreement without amendment as required in Volume 1 of the RFP.

4.2 PRICE PROPOSAL

Part 2 of Package 3 of the Financial/Commercial Submission must include full details of the Proponent's costings and price proposal.

4.2.1 Introduction

The payment stream to the Concessionaire is dependent on the Payment Mechanism. Proponents must submit a price proposal with their Proposal consistent with the format provided in the Payment Mechanism.

The following table sets out the indicative range for each component of the Payment Mechanism. Proponents must submit a price proposal which conforms to this table. Proposals will be tested for compliance with the indicative range by calculating the NPV of the Enhanced Service Period Performance Payments as of Financial Close, using a discount rate equal to the Project weighted average cost of capital. The Proponents will be asked to demonstrate that their price proposals is consistent with the table below.

Payment Component	Frequency of Payment	Amount
1. Original Service Period Performance Payments		
Pre-Completion Performance Payments	Quarterly	Up to \$62.5 million of Eligible Costs in total
Original Service Period Availability Payments	Monthly	\$2 million per annum
2. Enhanced Service Period Performance Payments		
Enhanced Service Period Availability Payments	Monthly	86-88% of total NPV of Enhanced Service Period Performance Payments over the Project Term
Traffic Volume Payments	Monthly	9-11% of total NPV of Enhanced Service Period Performance Payments over the Project Term
Safety Performance Payments	Annually	3% of total NPV of Enhanced Service Period Performance Payments over the Project Term
3. End of Term Payment		
End of Term Payment	Once	\$4-6 million

4.2.2 Price Proposal Submission Requirements

Proponents must provide a completed Payment Schedule Form below. This proposed schedule will change in accordance with changes in the Payment Mechanism.

The highest Annual Availability Payment proposed for a year may not be more than 20% higher than the lowest Annual Availability Payment proposed in any other year.

The Traffic Volume Payment rate per vehicle proposed for each successive band must be less than the rate proposed for the previous band (i.e., the rate for Band no. 2 must be lower than the rate for Band no. 1). The number of vehicles in each band is provided in the Concession Agreement.

Enhanced Service Period Performance Payment			
Availability Payments	Period within the Enhanced Service Period	Proponent Bid	Payment to escalate by proportion of inflation (Acceptable Range 0-20%)
Year 1	\$[●] per month	[●%] of inflation	
Year 2	\$[●] per month	[●%] of inflation	
Year 3	\$[●] per month	[●%] of inflation	
Year 4	\$[●] per month	[●%] of inflation	
Year 5	\$[●] per month	[●%] of inflation	
Year 6	\$[●] per month	[●%] of inflation	
Year 7	\$[●] per month	[●%] of inflation	
Year 8	\$[●] per month	[●%] of inflation	
Year 9	\$[●] per month	[●%] of inflation	
Year 10	\$[●] per month	[●%] of inflation	
Year 11	\$[●] per month	[●%] of inflation	
Year 12	\$[●] per month	[●%] of inflation	
Year 13	\$[●] per month	[●%] of inflation	
Year 14	\$[●] per month	[●%] of inflation	
Year 15	\$[●] per month	[●%] of inflation	
Year 16	\$[●] per month	[●%] of inflation	
Year 17	\$[●] per month	[●%] of inflation	
Year 18	\$[●] per month	[●%] of inflation	
Year 19	\$[●] per month	[●%] of inflation	
Year 20	\$[●] per month	[●%] of inflation	
Year 21 and onwards	\$[●] per month	[●%] of inflation	
<hr/>			
Traffic Volume Payments	Year One Traffic Forecast	[●] Vehicles	
Year 1			
Band no. 1 (least vehicles)	\$[●]/vehicle	[●%] of inflation	
Band no. 2	\$[●]/vehicle	[●%] of inflation	
Band no. 3	\$[●]/vehicle	[●%] of inflation	
Band no. 4	\$[●]/vehicle	[●%] of inflation	
Band no. 5 (most vehicles)	\$[●]/vehicle	[●%] of inflation	

Year 2		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%] of inflation
Band no. 2	\$[•]/vehicle	[•%] of inflation
Band no. 3	\$[•]/vehicle	[•%] of inflation
Band no. 4	\$[•]/vehicle	[•%] of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%] of inflation
Year 3		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%] of inflation
Band no. 2	\$[•]/vehicle	[•%] of inflation
Band no. 3	\$[•]/vehicle	[•%] of inflation
Band no. 4	\$[•]/vehicle	[•%] of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%] of inflation
Year 4		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%] of inflation
Band no. 2	\$[•]/vehicle	[•%] of inflation
Band no. 3	\$[•]/vehicle	[•%] of inflation
Band no. 4	\$[•]/vehicle	[•%] of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%] of inflation
Year 5		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%] of inflation
Band no. 2	\$[•]/vehicle	[•%] of inflation
Band no. 3	\$[•]/vehicle	[•%] of inflation
Band no. 4	\$[•]/vehicle	[•%] of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%] of inflation
Year 6		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%] of inflation
Band no. 2	\$[•]/vehicle	[•%] of inflation
Band no. 3	\$[•]/vehicle	[•%] of inflation
Band no. 4	\$[•]/vehicle	[•%] of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%] of inflation
Year 7		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%] of inflation
Band no. 2	\$[•]/vehicle	[•%] of inflation
Band no. 3	\$[•]/vehicle	[•%] of inflation
Band no. 4	\$[•]/vehicle	[•%] of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%] of inflation
Year 8		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%] of inflation
Band no. 2	\$[•]/vehicle	[•%] of inflation
Band no. 3	\$[•]/vehicle	[•%] of inflation
Band no. 4	\$[•]/vehicle	[•%] of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%] of inflation
Year 9		
Band no 1 (least vehicles)	\$[•]/vehicle	[•%] of inflation
Band no. 2	\$[•]/vehicle	[•%] of inflation
Band no. 3	\$[•]/vehicle	[•%] of inflation
Band no. 4	\$[•]/vehicle	[•%] of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%] of inflation

	Year 10		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%]	of inflation
Band no. 2	\$[•]/vehicle	[•%]	of inflation
Band no. 3	\$[•]/vehicle	[•%]	of inflation
Band no. 4	\$[•]/vehicle	[•%]	of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%]	of inflation
	Year 11		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%]	of inflation
Band no. 2	\$[•]/vehicle	[•%]	of inflation
Band no. 3	\$[•]/vehicle	[•%]	of inflation
Band no. 4	\$[•]/vehicle	[•%]	of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%]	of inflation
	Year 12		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%]	of inflation
Band no. 2	\$[•]/vehicle	[•%]	of inflation
Band no. 3	\$[•]/vehicle	[•%]	of inflation
Band no. 4	\$[•]/vehicle	[•%]	of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%]	of inflation
	Year 13		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%]	of inflation
Band no. 2	\$[•]/vehicle	[•%]	of inflation
Band no. 3	\$[•]/vehicle	[•%]	of inflation
Band no. 4	\$[•]/vehicle	[•%]	of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%]	of inflation
	Year 14		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%]	of inflation
Band no. 2	\$[•]/vehicle	[•%]	of inflation
Band no. 3	\$[•]/vehicle	[•%]	of inflation
Band no. 4	\$[•]/vehicle	[•%]	of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%]	of inflation
	Year 15		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%]	of inflation
Band no. 2	\$[•]/vehicle	[•%]	of inflation
Band no. 3	\$[•]/vehicle	[•%]	of inflation
Band no. 4	\$[•]/vehicle	[•%]	of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%]	of inflation
	Year 16		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%]	of inflation
Band no. 2	\$[•]/vehicle	[•%]	of inflation
Band no. 3	\$[•]/vehicle	[•%]	of inflation
Band no. 4	\$[•]/vehicle	[•%]	of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%]	of inflation
	Year 17		
Band no. 1 (least vehicles)	\$[•]/vehicle	[•%]	of inflation
Band no. 2	\$[•]/vehicle	[•%]	of inflation
Band no. 3	\$[•]/vehicle	[•%]	of inflation
Band no. 4	\$[•]/vehicle	[•%]	of inflation
Band no. 5 (most vehicles)	\$[•]/vehicle	[•%]	of inflation

	Year 18		
Band no. 1 (least vehicles)	\$[●]/vehicle	[●%]	of inflation
Band no. 2	\$[●]/vehicle	[●%]	of inflation
Band no. 3	\$[●]/vehicle	[●%]	of inflation
Band no. 4	\$[●]/vehicle	[●%]	of inflation
Band no. 5 (most vehicles)	\$[●]/vehicle	[●%]	of inflation
	Year 19		
Band no. 1 (least vehicles)	\$[●]/vehicle	[●%]	of inflation
Band no. 2	\$[●]/vehicle	[●%]	of inflation
Band no. 3	\$[●]/vehicle	[●%]	of inflation
Band no. 4	\$[●]/vehicle	[●%]	of inflation
Band no. 5 (most vehicles)	\$[●]/vehicle	[●%]	of inflation
	Year 20		
Band no. 1 (least vehicles)	\$[●]/vehicle	[●%]	of inflation
Band no. 2	\$[●]/vehicle	[●%]	of inflation
Band no. 3	\$[●]/vehicle	[●%]	of inflation
Band no. 4	\$[●]/vehicle	[●%]	of inflation
Band no. 5 (most vehicles)	\$[●]/vehicle	[●%]	of inflation
	Year 21 and onwards		
Band no. 1 (least vehicles)	\$[●]/vehicle	[●%]	of inflation
Band no. 2	\$[●]/vehicle	[●%]	of inflation
Band no. 3	\$[●]/vehicle	[●%]	of inflation
Band no. 4	\$[●]/vehicle	[●%]	of inflation
Band no. 5 (most vehicles)	\$[●]/vehicle	[●%]	of inflation
Safety Performance Payments	Safety Performance Payment Base Bid	\$[●] per year	
	Payments to escalate by a proportion of inflation	[●%]	of inflation
End of Term Payment	Gross End of Term Payment	\$[●] on the Expiry Date	Acceptable Range \$4-6 million

4.2.3 Assumptions Underlying the Price Proposal

Proponents must provide the following information regarding assumptions:

- a) Original Service Availability Payments: State the estimated lane non-availability and minimum performance deductions, if any.
- b) Traffic Volume Payment: Describe the rationale for the proposed traffic rates for each traffic band, including details of all traffic assumptions used and any supporting analysis justifying these assumptions.
- c) Availability Payments:
 - (i) describe the rationale for the proposed gross availability payment for each year;

- (ii) if the gross availability payment bid differs in each year, provide a rationale;
 - (iii) the availability payments are not intended to support inflation-indexed financing. Describe the rationale behind the proposed escalation factors; and
 - (iv) provide detailed assumptions, if available, with regards to lane non-availability.
- d) Safety Performance Payments:
- (i) provide and describe the safety performance assumptions;
 - (ii) if the Proponent plans to undertake additional activities to manage safety performance of the DBFO Project, please provide details;
 - (iii) if the Proponent has estimated the standard deviation or variability of their safety performance forecast, please provide details;
- e) End of Term Payment: Describe the rationale for the assumptions used to derive the Proponent's End of Term Payment.

4.2.4 Details of Capital Costs

The Proponent must provide the details of capital costs during the Original Service Period in money of the day dollars on at least a monthly basis. The Proponent must use the following table to show their capital cost breakdown.

Item	Cost
1. General <ul style="list-style-type: none"> Mobilization Demobilization Utility Relocations Traffic Detours and Road Traffic Control CP Rail Interface Costs Site Maintenance During Construction 	
2. Design & Approvals <ul style="list-style-type: none"> Site Survey Geotechnical Investigations Highway Design Bridge Design Wall Design Tunnel Design All Other Design Work Approvals Design Folders and Record Drawings 	

Item	Cost
3. Highway Construction Clearing and Grubbing Grading and Drainage Granular Layers New and Rehabilitated Asphalt Pavements	
4. Bridge Structures Excavation and drainage Backfill Foundations Substructure Superstructure	
5. Retaining Walls Excavation and Drainage Backfill Foundations Walls	
6. Tunnels Excavation Portals Lining, Waterproofing and Drainage Ventilation, Safety and Emergency Systems Power and Lighting	
7. Construction Engineering Construction Management Quality Management General Engineering During Construction	
8. Finishing Works Barriers and Finishing Work Traffic and Guide Signs Highway Lighting Final Line Painting Landscaping	
9. Demolition and Removals Removal of Existing Pavement Demolition of Existing Park Bridge Structure All other removals	
10. Provisional Items To be determined	
TOTAL	

4.2.5 Details of Operations, Maintenance and Rehabilitation Costs

The Proponent must provide details of all expenses during the Enhanced Service Period in money of the day dollars on an annual basis, detailed as follows:

- a) staff wages
- b) staff benefits
- c) materials & consumables
- d) utilities
- e) plant & equipment
- f) insurance
- g) bonding costs
- h) administrative costs
- i) professional & legal fees
- j) taxes

The Proponent must also provide details of all rehabilitation and capital maintenance costs during the Enhanced Service Period, indicating the anticipated timing of this expenditure consistent with the maintenance plan submitted in the Technical Proposal.

4.3 FINANCIAL PLAN

Part 3 of Package 3 of the Proposal must include the following information.

4.3.1 Financing Plan

Proponents must show that they have planned sufficient financing for the DBFO Project for the Project Term, including all design and construction, operation, maintenance and rehabilitation funding, showing the timing of required funds for requirements such as maintenance, repair and required replacement. Proponents must set out:

- a) the sources of finance they intend to employ (the “**Financing Plan**”); and
- b) the level of commitment of the financing, as described below.

The Financing Plan must include full details of the financial structure and instruments proposed. The sources of financing must match the use of funds throughout the Original Service Period and Enhanced Service Period. The Financing Plan must include:

- c) a description of all sources of financing;

- d) a description of any and all insurance or bonding required to support the Financing Plan;
- e) the terms of any supporting guarantee(s) and details of how the Proponent will satisfy those terms;
- f) a description of the Proponent's likely hedging strategy and requirements;
- g) evidence, in the form of detailed term sheets or commitment letters, which have received formal credit approval, from providers of financing, of their commitment to provide the level of financing required;
- h) an indicative credit rating from one or more credit reference agencies, if the Financing Plan is dependent upon such a rating together with a timetable to achieve final ratings;
- i) a letter from the Funders together with a confirming letter from such Funders' legal counsel confirming that the Funders and their legal counsel have reviewed such agreement, identifying which comments and requested amendments were provided with respect to such agreement by or on behalf of the Funders and their legal counsel and confirming that the Funders have no additional material comments on the Revised Concession Agreement; and
- j) confirmation from the providers of financing that they have reviewed and are satisfied with the Financial Model subject to final audit by the Funders.

4.3.2 Terms of Financing

The terms of each source of financing identified in the Financing Plan must be set out.

- a) With respect to funding provided by the Proponent's Team members, the following must be provided:
 - (i) identity and credit status of each Funder;
 - (ii) amounts to be provided by each Funder;
 - (iii) the timing of injection;
 - (iv) the terms and conditions of subscription, including returns or yields;
 - (v) dividend rights;
 - (vi) voting rights; and
 - (vii) the conditions if any on which funds would be committed.

- b) With respect to each class of debt or other funding source (including leases), for each of arranger or underwriter, the following information is required in the form of a detailed term sheet or commitment letter:
- (i) the identity of the lender, arranger or underwriter;
 - (ii) the amount of financing proposed or committed;
 - (iii) the drawdown schedule;
 - (iv) details of grace periods, including duration and contingency;
 - (v) repayment or redemption schedules, maturity dates and prepayment terms (including make-whole clauses);
 - (vi) security, bonding or guarantee requirements (from either parents or third parties);
 - (vii) arrangement/underwriting, commitment, agency and all other must fees;
 - (viii) interest rates and margins including any step up/down mechanism;
 - (ix) material covenants, undertakings and other restrictions/requirements;
 - (x) requirements for reserve accounts;
 - (xi) events of default and other similar arrangements;
 - (xii) step-in arrangements;
 - (xiii) conditions precedent;
 - (xiv) due diligence requirements; and
 - (xv) any other restrictions, requirements or conditions that materially impact the Proponents' ability to raise financing or draw down on committed financing after Financial Close.

4.3.3 Financial Robustness

Proponents must provide a description of their financial robustness, including, but not limited to, details of how key risks are managed (e.g., interest rate, inflation, traffic, O,M&R Services and construction).

4.3.4 Risk Capital Financial Commitment

The level of commitment that the Province expects at submission of Proposals is that all sponsor equity and quasi equity, bonding and guarantees (collectively, "**Risk Capital**") must be fully committed subject only to documentation and Material Adverse Change.

This commitment must be evidenced by board resolutions related to the terms set out. If equity or quasi equity is to be provided by third parties, similar commitment is required from an underwriter for the full amount.

4.3.5 Sub-Contracting Strategy

To the extent that risk is to be managed or mitigated through subcontracting the Concessionaire's responsibilities to Proponent Team Members or others, additional financial measures will be required from those subcontractors to provide assurances to the Province that sufficient funding is available to manage reasonable downside risk. This is particularly important during the Original Service Period in relation to the supply of civil construction services, equipment supply and integration services but may also apply during the Enhanced Service Period. Proponents must set out their subcontracting strategy for the DBFO Project that includes the structure of any subcontracting arrangements and summary details of the mechanisms and/or standby that would be put in place to give comfort to the Province and lenders.

4.3.6 Financial Model

Proponents must submit a financial model (the "**Financial Model**") in both electronic and hard copy. The Financial Model will be supported by:

- a) an assumptions book, detailing all model inputs; and
- b) an instruction manual to assist the Province to change inputs and run sensitivities.

4.3.7 Structure of the Financial Model

The Financial Model must be consistent with the assumptions and be structured as follows:

- a) it must be well-constructed and professional in appearance;
- b) it must be produced in Microsoft Excel version 2000 or later;
- c) it must extend for the Project Term ;
- d) it must be presented in thousands of Canadian dollars;
- e) no sheets or cells must be hidden or password protected;
- f) calculations must flow down and to the right;
- g) calculations must be sufficiently disaggregated so that they can be followed logically on screen (without examining the content of cells) or on paper;
- h) a limited number of nested "if" statements must be used;
- i) cells containing hard-coded entry must be coloured blue;

- j) financial statements must not include formula other than mathematical signs;
- k) all sheets must be set up to print clearly and legibly on 8.5 X 11" paper to include row and column descriptions on each printed page;
- l) if a calculation is circular, circularities must be solved;
- m) the Financial Model start date must be Financial Close;
- n) the Financial Model must be structured in quarterly periods (or more frequently) during construction and semi-annual periods (or more frequently) thereafter;
- o) Financial Close must be assumed to be November 30, 2005; and
- p) all financial instruments must be priced as at the close of the business day April 12, 2005.

4.3.8 Required Inputs and Outputs of Financial Model

The Financial Model must, at a minimum, have the following input and output sheets:

- a) Inputs
 - (i) time-based assumptions (those that change over time);
 - (ii) static assumptions (those that do not change over time);
 - (iii) capital, operating, maintenance and rehabilitation costs assumptions;
 - (iv) taxation assumptions;
 - (v) Payment Mechanism assumptions; and
 - (vi) a scenario control section.
- b) Outputs
 - (i) summary outputs;
 - (ii) sources and uses of funding;
 - (iii) financial statements (income statement, cash flow statement and balance sheet) presented in accordance with Canadian private sector GAAP;
 - (iv) a cash flow statement that reflects the priority of access to cash flow based on the investor covenants and requirements set out in the Financing Plan;

- (v) calculation and results of covenants; and
- (vi) financial ratios as required by equity and debt investors as appropriate to the capital structure set out in the Financing Plan.

4.3.9 Required Functionality of Financial Model

The Financial Model must allow sensitivities to be run in the following areas:

- a) changes to inflation rates in all areas up to Financial Close;
- b) changes to inflation rates post Financial Close separated between areas where the Province is taking inflation risk and Concessionaire is taking inflation risk;
- c) changes to interest rates;
- d) changes to capital, operating, maintenance and rehabilitation costs;
- e) delays in completion;
- f) Payment Mechanisms;
- g) relative weight of debt and equity; and
- h) traffic volume.

4.3.10 Assumptions Book for Financial Model

The assumptions book for the Financial Model must provide sufficient detail for a duplicate Financial Model to be constructed from it. It must cover the following areas:

- a) a summary of the Financing Plan;
- b) capital, operating, maintenance and rehabilitation costing schedules;
- c) macro-economic assumptions;
- d) taxation assumptions;
- e) depreciation rates and other accounting policies; and
- f) all other assumptions required to construct the Financial Model.

The assumptions book must reconcile with the Financial Model. If the assumptions detailed in the assumptions book are not consistent with the assumptions in the Financial Model, the Province may require the Proponent to change the Financial Model to reflect the assumptions book.

4.3.11 Instruction Manual for Financial Model

The instruction manual must explain the functionality of the Financial Model and how it is structured. It must provide sufficient details to allow the Province to change inputs and run sensitivities in the areas mentioned above.

4.3.12 Bonding and Insurance

Having regard for the mandatory minimum insurance coverage outlined in the Definitive Concession Agreement, and the mandatory minimum bonding requirements during construction and operations contemplated by the Definitive Concession Agreement, Proponents are invited to provide a Proposal on the insurance and the bonding that would be most advantageous to both the Concessionaire and the Province during the DBFO Project, with particular regard for:

- a) cost of such facilities;
- b) availability of such security facilities, including the risk that some or all will become unavailable; the party best able to obtain such security facilities (the Province, Concessionaire, or Prime Member);
- c) the recommended terms of such security facilities including the amount; the term when it will be available; amount of deductibles and the party responsible for deductibles; related risks during the Project Term; and
- d) the Proponent's capacity to provide the insurance and bonding arrangements described must be demonstrated by appropriate letters from the relevant insurance brokers, surety companies or providers of letters of credit.

5. Technical Submission

5.1 Introduction

Technical Submissions must include the following documents:

- Project Management Plan;
- Technical Reports; and
- Project Plans.

The Technical Submissions must be submitted in the form described in the following sections and must materially conform to all of the design criteria and performance specifications set out in Volume 3 of this RFP and must identify and fully justify any proposed exceptions.

The purpose of the Technical Submission is to provide the Province with sufficient information regarding the following:

- the Proponent's intended approach to the management, scheduling, design, construction and environmental permitting of the Works described for Phase 2;
- verify that the Proponent has a reasonable understanding of all aspects of the DBFO Project and all Works obligations;
- establish a reasonable level of confidence in the Province that the project management, quality management, design, and construction activities for Phase 2 as described by the Proponent in their Technical Submission will provide a finished product consistent with all Provincial requirements regarding quality, safety, functionality, durability, and timeliness; and
- establish a reasonable level of confidence in the Province that the operation, maintenance and rehabilitation of the Highway will for the duration of the Concession Agreement be consistent with traditional levels of performance.

5.2 Technical Format Requirements

The Technical Submissions shall be formatted in accordance with the following criteria:

- text in 8.5" x 11" format with 1.5 line spacing and 11-point typeface;
- tables in 8.5" x 11" format or where more appropriate 11" x 17" format with minimum 10-point typeface;
- drawings in 11" x 17" format at exactly half the scale of the drawing requirements described below.

In addition the following drawings shall also be provided with digital copies provided on the CD or DVD:

- ten (10) plan / profile drawing at 1:2000 / 1:200 scale with a photomosaic background showing the scope and form of Phase 2 of the Highway;
- one (1) set of full size drawings in (A1) format on reproducible mylar; and
- five (5) bound sets of design cross sections in 11" x 17" format in the format described below.

To facilitate evaluation by the Province, each required section of the Technical Submission (e.g. Road Design Report, Structural Design Report, etc.) must be a stand-alone document that follows the information format and sequence indicated and, as well, includes all the stipulated requirements.

6. Project Management Plans

The Project Management Plan shall address all Works required to satisfy the Concessionaire's responsibilities for the DBFO Project. The Project Management Plan will include, but not be limited to the following requirements.

6.1 Organization Structure

The Proponent shall provide organization charts identifying the Proponent's corporate team members and relationships and Key Individuals, by name for each phase and supporting documentation describing the proposed organization structure(s) for the duration of the DBFO Project.

The organization chart(s) and supporting documentation will:

- Provide details of the reporting requirements and proposed interfaces with the Province;
- Provide details of all reporting relationships of the following listed functions:
 - project management;
 - quality management;
 - safety management;
 - avalanche and weather program management;
 - bridge/structural design;
 - tunnel design;
 - roadway design;
 - avalanche mitigation and design;
 - geotechnical design;
 - pavement design;
 - utility design;
 - electrical design;
 - traffic engineering;
 - traffic management;
 - construction management;

- bridge/structural construction;
- tunnel construction;
- construction safety;
- environmental management;
- existing bridge decommissioning;
- operation, maintenance and rehabilitation;
- risk management;
- asset management.

The organization chart(s) will identify the individuals directly responsible for signing-off on each of the above functions.

In all cases, the subcontracted firms and individuals, including construction subcontractors, must be shown on the organization chart(s) and their reporting relationships with the Proponent described.

The Proponent must identify the Works to be performed by the Proponent's own resources, and Works that will be performed by subcontractors.

6.2 Scheduling and Reporting

The Proponent must provide a description of the Proponent's scheduling and reporting systems and how they are integrated into the Project Management Plan.

The Proponent's shall submit a time-scaled critical path schedule prepared using "Microsoft Project 2000" or "Primavera SureTrak" software and shall depict the design and construction phase from project commencement to site remediation and demobilization in gantt chart and network diagram format. The schedule shall also identify the critical path for both design and construction and shall include all of the major elements of design and construction, key milestones and the logical interdependencies between the tasks and milestones.

The design and construction schedule must include milestones, anticipated start dates and anticipated completion dates for all major tasks including the following:

- environmental permitting and approval process;
- preliminary design;
- major material and subcontract procurement tasks;
- final design, including required submissions;

- construction mobilization and permitting;
- construction of temporary or offsite facilities;
- all significant off-site construction tasks;
- all significant on-site construction tasks;
- temporary Kicking Horse River restrictions (e.g. works inside the wetted perimeter);
- temporary CP Rail restrictions;
- activation of the Phase 2 segment of the Highway;
- existing bridge decommissioning;
- site remediation and demobilization;
- Substantial Completion; and
- Final Completion.

The schedule shall form the basis of the Construction Schedule for the Concession Agreement.

6.3 Co-ordination of Work

The Proponent shall provide the following information on co-ordination of its work activities:

- the Proponent's plan to integrate work by others into its DBFO Project scheduling and reporting systems;
- the Proponent's approach to re-scheduling of its own activities as well as the activities of the subcontractor's to achieve recovery of the schedule if required; and
- the Proponent's proposed plans to enforce rescheduling the work of its subcontractors.

7. Quality Management and Reporting

The Technical Submission must include a written description of how the Proponent will develop a quality management plan describing the Proponent's compliance with all of the RFP requirements and approach to quality during the design, construction, operation, maintenance and rehabilitation of the DBFO Project assets. The Proposal must include a commitment to:

- (a) compliance with ISO 9001:2000 for the design and construction component of the Quality Management System;

- (b) an ISO 9001:2000 certified Quality Management System for the operations, maintenance and rehabilitation component of the QMS;
- (c) manage and operate in conformance with the terms of that system;
- (d) provide written response to the MOT audits of the performance of the Concessionaire in terms of its Quality Management System and the requirements; and
- (e) prioritize and act on quality issues in a timely manner.

The minimum requirements for quality management and reporting are to provide an outline of the quality management plan for the DBFO Project demonstrating that the Proponent has the ability to develop and implement a Quality Management System in accordance with the requirements of ISO 9001:2000 International Standard for Quality Management Systems. The QMS shall be consistent with the Concessionaire accepting total responsibility for all quality assurance and quality control activities necessary to manage their processes including design, construction, operation and maintenance and those of their subcontractors and suppliers.

At a minimum, quality management plan must include:

- (a) an outline description of the quality process that the Proponent will put in place to ensure the delivery of quality infrastructure. This includes practices, resources or particular sequences of activities it will use in its engineering, design, construction, operation and maintenance activities;
- (b) a description of both the quality control and quality assurance procedures the Proponent will implement;
- (c) a description of quality control and quality assurance procedures that will address all testing, inspection and monitoring required to ensure the end products and services will meet the requirements;
- (d) the process that the Proponent will follow for developing and implementing the QMS with deliverables defined at each stage for documentation, implementation and compliance audit and certification; and
- (e) an organization chart showing reporting relationships and identifying by name the quality manager and his/her inspection staff. Resumes of all key personnel must be provided.

In addition to the above, the Proponent shall submit specific examples of how the Quality Control and Quality Assurance requirements presently contained in the material, work methodology and end product sections of the MOT's *Standard Specifications for Highway Construction, 2004 Edition*, are integrated into their own inspection and testing planning process.

The purpose of these examples is to demonstrate that the Proponent has a clear understanding of the transfer of responsibility for the quality assurance functions that were previously performed by or on behalf of the Province.

7.1 Technical Reports

The following Technical Reports must be submitted as part of the Technical Submission. All technical reports must conform to the requirements of the design criteria and performance specifications provided in Volume 3 of this RFP.

Each report must clearly and completely describe the Proponent's design and where applicable must provide adequate information describing how the design meets or exceeds the requirements set out in the RFP.

7.1.1 Road Design Report

The Proponent must provide a Road Design Report reflecting the requirements of the scope of work, design criteria and performance specifications and other technical and physical requirements as described in this RFP.

At a minimum, the Road Design Report must provide the following:

- A brief description of the proposed design including supporting attributes and issues;
- A summary description with adequate detail to depict proposed construction staging for all major components including:
 - roads;
 - structures;
 - drainage and environmental issues;
 - rock fall and avalanche catchment;
 - utility conflicts and relocation proposals;
 - access; and
 - traffic detours, relocations, laning restrictions.
- Design criteria tables for each affected roadway. The tables will show "standard" and "achieved" design criteria values. Document and justify any proposed deviations from the design criteria as stated in Volume 3 of this RFP;
- Description of road safety elements of the design as they relate to traffic operations.

The minimum requirements for drawings to accompany the Road Design Report are as follows and shall be in general conformance with *Section 1200 of the BC Supplement to TAC Geometric Design Guide 2001 Edition* and as described in the following lists:

- Laning and geometric drawings in accordance with the following:

- scale 1:1000 (provide larger scale drawings where more detail and clarity required to understand proposed design);
- show all geometric elements on each control line. Radii and spiral lengths must be shown on the drawing. Other geometric details may be provided using computer printouts. All control lines must be stationied;
- all paint markings;
- location and limits of all structures including retaining walls;
- location and messaging for all guide signs;
- location of any ITS if proposed;
- location and limits of all concrete roadside barrier and curb and gutter;
- basic dimensioning of lanes and other elements;
- toes and tops of all slopes;
- All major drainage elements including:
 - all pipes and culverts complete with diameter, length, grade and material type;
 - location of all catch basins;
 - location of all oil and silt chambers;
 - all ditches and direction of flow; and
- Location and form of all environmental works (provide supplementary drawings of required);
- Location and type of all avalanche control structures and catchment areas;
- All utilities including but not necessarily limited to power and telephone poles and all underground utilities;
- Existing and proposed property lines clearly showing the area, in square metres, of surplus lands or additional lands required;
- Profiles of all main roads and ramps that illustrate:
 - scale 1:2000 H/1:200 V;
 - proposed profile along geometric control line;
 - existing ground line;

- vertical geometry including vertical curves, curve points and grades;
 - culverts, major utilities and bridges;
 - intersecting roads; and
 - stationing along control lines.
- Typical sections showing:
 - scaled for appropriate viewing;
 - each roadway type and condition;
 - pavement structure;
 - width of functional elements including ditches; and
 - back slopes and fore slopes.
- Design cross sections at 20m intervals for the entire extent of Phase 2 extending at least 20m beyond toes and tops of slopes. Design cross sections shall be presented in 11" x 17" using PDF file type format at a 1:1000 H/ 1:1000 V scale to fit on the sheets. Design cross sections shall show:
 - proposed property lines;
 - rock and soil horizons;
 - pavement structure;
 - ditching and culverts;
 - structures; and
 - utilities.
- Construction staging plan showing:
 - scale 1:1000;
 - each major stage of the construction.

7.1.2 Structural Design Report

The Structural Design Plan must conform to the scope of work and design criteria and performance specifications set out in Volume 3 of this RFP for bridge structures and retaining wall.

The minimum requirements for drawings to accompany the Structural Design Report are as follows:

General arrangement drawings of all bridge structures proposed for Phase 2, generally in accordance with the requirements of the *BC MOT Manual of Bridge Standards and Procedures* showing:

- a scale of 1:500;
- plan;
- elevation;
- typical cross sections;
- erection plan;
- construction staging general arrangement showing the location of temporary concrete barrier(s), detour lane(s) and work area(s), if required. Identified construction staging is to be in conformance with the proposed construction staging plan;
- horizontal and vertical geometry, type of structure, structure depth, vertical clearance, span arrangement, total length, lane arrangement, etc.;
- hydrotechnical information, including design discharge, high water elevation and required freeboard;
- aesthetic considerations including surface finishes;
- deck joint details;
- bearing details;
- parapet and railing details including details of transitions between the bridge railings and the approach road railings;
- surface treatment of areas under the structures;
- foundation details; and
- approach fill details;

For each retaining wall structure showing:

- at a scale of 1:500;
- elevation;
- typical cross sections;
- details;
- type of structure;

- joint details;
- foundations, drainage and backfill;
- aesthetic considerations including surface finishes; and
- any other relevant details.

The minimum requirements for the contents of the Structural Design Report are as follows:

- description of the strategies to address issues of safety and operation prevalent in mountainous terrain due to curvilinear alignments, steep grades, unpredictable surface conditions and any other relevant details (cross referenced to the Road Design Report and the Road Safety Audit);
- description of the proposed construction strategy including detours, accessibility requirements and strategy for shipment and erection of structural components;
- description of maintenance issues;
- description of the protection systems required for the protection of new structures from the effects of de-icing salts;
- description of the design approach used for all new structures;
- a description of the type of soil, preliminary recommendation as to type of foundation, (spread and/or piled footings) and respective elevations, factored bearing capacities. Stability conditions for approach fills and any other recommendations specific to the structure(s) being recommended for Phase 2;
- a plan identifying environmental issues and a description of methodology to resolve these issues;
- CP Rail issues to be dealt with;
- identification of utilities attached to or in conflict with the structure;
- description of bridge and construction staging to complement the general arrangement drawings and the Proposed Construction Staging Plan;
- approach to be used in the design of retaining walls, if any, including:
 - groundwater and hydraulic issues;
 - aesthetics considerations;
 - geotechnical data and considerations; and
 - seismic design considerations.

7.1.3 Tunnel Design Report

The Tunnel Design Report shall provide, at a minimum, the following:

- A description of the tunnelling methods and issues including:
 - sources of geological and geotechnical information;
 - geological and hydrogeological setting;
 - ground characterization for all relevant work components that may be influenced by geological, geotechnical and hydrogeological conditions including roadways, retaining structures, bridge foundations, natural slopes, excavated cuts, and tunnels;
 - design and construction issues including excavation geometry, stability, support requirements, groundwater inflows and control;
 - disposal of materials including tunnel spoil;
 - instrumentation;
 - groundwater conditions;
 - preliminary proposal for tunnel support; and
 - issues and proposed approach to resolution.
- General arrangement drawings to a level of detail sufficient to clearly show the intent of the design of all tunnel structures proposed for Phase 2 including: plan, profile and cross section drawings showing:
 - at a scale of 1:500;
 - dimensions, chainages and elevations;
 - tunnel support arrangements and details;
 - final lining arrangements;
 - portal excavation geometry and stabilization measures;
 - drainage details;
 - emergency cross-passage location(s) and details;
 - lighting;
 - fire and life safety arrangements; and
 - power arrangements.

7.1.4 Railway Impact Assessment Report

The Proponent shall prepare a railway impact assessment report to assess design, construction and operational impacts of Phase 2 on CP Rail facilities and operations. The report shall identify and assess:

- Rail-related impacts associated with the design of Phase 2 improvements in accordance with the design criteria and performance specifications provided in Volume 3 of this RFP;
- Rail-related impacts associated with the construction of Phase 2 improvements and any related decommissioning work; and
- Rail corridor and railway operation impacts associated with Phase 2 improvements.

Issues included, but are not necessarily limited to: access to railway property; public access; track protection during construction; surface drainage and groundwater changes; construction impacts on slope/soils and rock stability; utility and rod crossing impacts.

The Proponent shall provide, in this report, a letter from CP Rail accepting the design, construction and rail corridor impacts as stated in the report.

7.2 Safety Management Reports

7.2.1 Road Safety Audit

The Proponent must commit to completing a Road Safety Audit at the following stages:

- at the preliminary design offered as part of this Technical Submission for this RFP;
- at the 50% detailed design completion (after award);
- at the 100% detailed design completion (after award);
- as part of any design changes during construction; and
- at the completion of construction for Phase 2 (Pre-opening stage).

The preliminary design safety audit report to be submitted by the Proponent as part of its Proposal must focus on the fundamental principles of the design, shall be based on a review of the Proponent's design, and must document the safety audit team's assessment of the safety performance of the design elements and the interaction of all the road users with the design.

The Road Safety Audits must be conducted by a highly experienced team of safety specialists with the capabilities to fully relate to the unique project issues described below:

- extreme rugged topography;
- curvilinear alignment and steep grades;
- road elevation between 920-1150 metres which is conducive to extreme winter conditions which include snow, freezing conditions, avalanches and the potential for black ice and fog; and
- sudden changes in driving conditions with little or no advance warning (open road surface, tunnel, bridge, all with unique driving characteristics).

The preliminary design Road Safety Audit must describe how the Proponent's design has effectively considered competing interests of such factors as cost, environmental, geotechnical and aesthetics and the following:

- consideration of safety for all road users, including those who may be more susceptible to the difficulties presented by highways in difficult terrain and weather conditions;
- collision mitigation measures aimed at eliminating or reducing any identified safety problems;
- consideration towards the frequency and severity of preventable collisions;
- consideration towards the human factor component aimed at accommodating predictable driver behaviour (e.g. drivers approach a bridge surface the same way as they approach any section of highway surface); and
- consideration towards the issues identified above.

The Proponent shall include in the Technical Submission a description of how the safety audit reports for the 50% design, 100% design and at completion of construction for Phase 2 will be undertaken.

All safety audit reports shall as a minimum consider the following:

- general project parameters;
- traffic operation;
- control devices;
- human factors;
- environment; and
- needs of all road users.

7.2.2 Geotechnical Design Report

The Geotechnical Design Reports must conform to the scope of work, design criteria and performance specifications as set out in Volume 3 of this RFP. Geotechnical Design Reports are to be provided for the road alignment and each structure. The format of the reports is to follow Technical Bulletin GM9801, "Guidelines for Technical Reports", March 30, 1998.

These reports shall demonstrate the Proponent's understanding of geotechnical conditions, constraints and issues and are to include, but not limited to, the following:

Sources of Geotechnical Information

Provide a summary, with reference to sources, of the geotechnical information used in the design development including that obtained through other sources and the Proponent's own field investigations.

Geotechnical Conditions

- brief overview of the geotechnical, geological and groundwater setting with reference to the plans and other documents;
- plans, profiles and significant cross sections, showing borehole locations, generalized stratigraphy, soil/rock units and stick logs of boreholes;
- physical characteristics and occurrences of soil and rock units, including fill;
- measured, estimated or assumed properties for material types, with justification and rationale for selection of design values; and
- estimate of groundwater conditions along the route.

Design Considerations

For geotechnical designs, provide descriptions of geotechnical and groundwater parameters used, and methodology proposed to ensure the conformance with design criteria.

Provide assessments and recommendations for:

- stability in soil and bedrock excavations;
- settlement (total and differential) and stability of embankments;
- stability of waste disposal areas;
- foundation design for structures.

Provide:

- geotechnical assessment of the impact of the construction on CP Rail operations and description of mitigation methods to be used;
- assessment for and mitigation of potential erosion;
- description of assumptions, or deficiencies in information, related to subsurface conditions, including groundwater and pavements, for the proposed designs;
- description of anticipated construction difficulties or concerns due to geotechnical or groundwater conditions; and
- description of the proposed approaches to resolve concerns and issues.

Geotechnical Investigations

Details of work plan for subsurface investigations to be carried out to satisfy deficiencies in subsurface information.

Testing and Monitoring

- identification of geotechnical and materials testing, instrumental installation, and monitoring requirements during construction; and
- description of how these requirements will be addressed in the Proponents quality management plan.

Geotechnical Risks

- identify, describe and assess geotechnical risks along the design alignment, including rockfall, debris flow, avalanche, slope movement; and
- describe methodology for mitigation of impacts from risks.

Aggregates

- identification of the proposed material sources and brief history of the quality of materials from that source, and identification of any required permits.

7.2.3 Drainage Design Report

The Drainage Design Report must conform to the scope of work, design criteria and performance specifications as set out in Volume 3 of this RFP. The Drainage Report must describe the drainage facilities required for Phase 2 and at a minimum, shall provide the following information:

- description of the construction procedures and proposed staging to be used in conformance with the Road Design Report, the Construction Staging Plan and the Environmental Management Plan highlighting how construction of the

drainage structures, both temporary and permanent, will be integrated with the overall construction strategy;

- trench, ditch and surface restoration and stabilization methodology;
- a schedule for the work as it pertains to the sediment and drainage management plan;
- construction procedures to limit the potential for erosion and sediment production;
- site specific measures for runoff and drainage management, including drainage from haul roads and any permanent and temporary bridges;
- site specific measures for erosion prevention and control;
- measures for ensuring adequate water quality at points of discharge to streams and other water bodies, including sizes and specifications for any proposed water treatment facilities;
- drawings in suitable scale and detail of mitigation measures coordinated with the other drawing submissions;
- commitment of on-site equipment such as water pumps and materials for erosion, sediment and drainage control to deal with emergency situations that may arise; and
- plan showing drainage catchment areas and related calculations.

7.2.3.1 For Longitudinal Drainage

- typical plan drawing and cross-section of proposed pavement and right-of-way drainage system showing type of system and location of drainage system components;
- open ditch designs;
- batch basin spacing and drainage area to catch basin;
- address groundwater issues;
- sub-drain requirements;
- proposed measures relative to the environmental requirements for storm-water quality control facilities.

7.2.3.2 For Transverse Drainage

- identification of type(s), sizing and configuration of culverts proposed to be used for the transverse water crossings;

- dub-drain requirements;
- address groundwater issues;
- the timing required to construct each crossing in conformance with the proposed Project Schedule;
- for any proposed pre-cast components, the source of supply and supporting documentation relative to adequacy of design and proven performance in similar applications.

7.2.3.3 Drawings

The minimum requirements for drawings to accompany the Drainage Design Report are as follows:

- at a scale of 1:1000 and 1:500 as appropriate;
- show any culverts complete with diameter, length, grade and material type;
- show location of any swales and sedimentation catchment areas;
- show location and form of any environmental works and drainage improvements in sufficient detail to allow comparison to the information already submitted to the environmental agencies and in the CEAA screening report;
- show all ditches with direction of flow.

7.2.4 Pavement Reports

The pavement reports shall be provided for the design of road alignments and all structures.

These reports shall include, but are not limited to the following:

- condition assessment of existing pavements where such pavements are proposed to be incorporated in the new pavement infrastructure;
- preliminary pavement structure design by section including parameters, rationale, criteria, methodology, testing results and recommendations by section;
- preliminary design of pavement structure including rationale, criteria and analysis;
- summary of any geotechnical concerns and outstanding issues;
- summary of the construction methodology for each major road component and structure where work is proposed;
- summary of the proposed material sources, quantities, and any outstanding issues such as pit development requirements;

- summary of the investigation and design to be conducted for each major road component and structure where work is proposed;
- description of planned enhancements to the pavement structure during the Project Term.

7.2.5 Aesthetics and Landscape Design Report

The Aesthetics and Landscape Design Report must, at a minimum, include the following:

- a brief description of how aesthetics and visual quality will be considered in this project and how Phase 2 will be integrated into the area setting. The Proponent must provide a narrative and illustrations that clearly address the evaluation criteria contained under the aesthetics component in Appendix 1G;
- a brief description of the specific elements of the landscape design with details necessary for the reviewer to assess the plan, including how re-vegetation requirements will be developed and implemented for both functional, e.g., erosion control, and aesthetic purposes;
- a description of how bridge aesthetics are accounted for in the bridge configuration and surface finishes;
- a needs analysis outline, showing how factors such as utility services, road access, site features, traffic volumes, etc. will be considered and how they may influence the provision of roadside amenities;
- plans showing access to and potential co-development of the joint-use rest area and Rafter's Pullout;
- plans showing proposals for any other points of interest, lookouts etc that the Proponent may propose.

8. Project Plans

8.1 Construction Management Plan

The Proponent shall provide an outline of their Construction Management Plan describing how the Works will be carried out in a safe, effective manner while demonstrating that the Proponent has the ability to achieve Substantial Completion and all other milestones described in the Concession Agreement.

The Proponent shall address, as a minimum, the following items:

- key issues and constraints affecting construction;
- proposed construction methodologies and work procedures;

- construction sequencing and strategy, including but not limited to:
 - work headings;
 - temporary works;
 - temporary facilities;
 - survey and layout;
 - procurement of fixed plant;
 - sources and handling of bulk materials;
 - disposal and storage of surplus materials;
 - seasonal considerations;
 - access issues and equipment;
 - human resources management.

8.2 Construction Staging Plan

The Construction Staging Plan shall conform to the scope of work, design criteria and performance specifications as set out in Volume 3 of this RFP. The Construction Staging Plan must describe the Proponent's approach to construction staging and how that approach is coordinated with the Project Schedule.

The Construction Staging Plan must, at a minimum, provide a description of the construction staging sequence and ties to the Project Schedule and will demonstrate how the Proponent intends to:

- carry out the required construction including identification of all associated major milestones, which must also appear in the Project Schedule;
- provide for local access and operational requirements during construction with a corresponding appropriate level of sensitivity to local issues and must identify any temporary access requirements;
- coordinate construction work when working adjacent to or over the CP Rail right-of-way and plant;
- coordination of construction work when working adjacent to the Phase 1 work underway;
- construct, replace, widen or extend all drainage works and environmental mitigation works;
- construct new embankments;

- construct temporary roadwork and detours, if required;
- close traffic lanes for construction activities, if required;
- install traffic signs.

8.3 Traffic Management Plan

The Proponent shall submit an outline of its Traffic Management Plan which includes, at a minimum, the following:

- description of the specific construction staging related traffic impacts that are proposed on all roadway components, if any, showing lane configuration, lane widths, and placement of traffic control devices; e.g., night work, restricted lane work, or traffic barrier installations;
- details of the proposed method of making the travelling public and other local stakeholders (i.e. businesses, police, fire department and emergency services) aware of potential impacts to them from construction and staging;
- accesses or intersections affected by the work zone and provisions to maintain accesses/intersections at each stage;
- accesses through and to adjacent properties.

8.4 Environmental Management Plan

The Proponent must submit a summary Environmental Management Plan that shall demonstrate the Proponent's understanding, commitment and ability to manage the requirements of the protection of the environment as described in the Concession Agreement. The CEAA screening submission will be prepared by the Province for the corridor surrounding the Highway in which the Works is most likely to be performed, as described in Section 2.6.3.1 of the RFP, and input to that submission is not required from the Proponent. If any Works are to be performed outside the boundaries of such corridor, the Concessionaire will be solely responsible for preparing the necessary CEAA screening submission with respect to such Works outside the said corridor.

This part of the Proposal shall contain the following information as a minimum:

- a description of the formal Environmental Management Plan that the Proponent must put in place to ensure the delivery of construction in accordance with the environmental protection requirements. This description must include all processes, procedures, resources and sequence of tasks that the Proponent will use in its construction activities to address environmental issues. The plan must be of sufficient detail to permit the assessment of construction on environmentally sensitive areas;
- identify impacts on hydrology and potential impacts on groundwater regimes resulting from below ground considerations, and identify any mitigation measures to avoid, reduce or eliminate impacts;

- provide a description of the strategy and approach to the environmental monitoring of the construction work, including a construction mitigation plan for the various stages of the Works;
- show how the drainage management report, sediment management plan and the Environmental Management Plan are coordinated;
- a commitment that the Proponent must revise the Environmental Management Plan and maintain it as a live document throughout the duration of the Works;
- identification of the Proponent's environmental management team members that will be responsible for environmental management and monitoring services, including their credentials;
- provide a letter of commitment that protection of the environment shall be carried out according to Section 165 (Protection of the Environment) of the *Standard Specifications for Highway Construction*.

8.5 Construction and User Safety Program

The Proponent must describe the key elements of its proposed construction safety plan.

This Plan must identify any safety issues relating to construction site personnel, visitors to the Site and Adjacent Areas, and members of the public that may be affected by the implementation of the Works and describe the measures that will be used to satisfy the WCB requirements and manage these safety issues.

8.6 Permits and Approvals Plan

Describe the Proponent's plan and intended timeline for obtaining governmental approvals and permits required for the Works. The Proponent's plan shall:

- List the permit and approval requirements of approving agencies anticipated for the Works together with their linkage to the Project Schedule;
- Demonstrate how the proposed work will enable permits and approvals to be obtained in a timely manner to meet the Project Schedule requirements;
- Include a discussion demonstrating the Proponent's understanding of the respective roles and responsibilities of the approving agencies;
- Include a statement of commitment indicating the Proponent's intentions to comply with the environmental management requirements.

8.7 Hours of Work

The Proponent must describe the Proponent's intended hours of work to ensure compliance with all regulatory requirements.

8.8 Risk Management Plan

The Proponent's Proposal must include a report describing the process for identifying and prioritizing the technical and physical risks associated with the Works as well as the Proponent's plans to mitigate the impact of identified risks and contingency plans to deal with the risks if they actually occur.

The report must also describe the major Works risks, priority, and mitigation and contingency plans.

8.9 Asset Management Strategy

The Proponent must provide an Asset Management Strategy that demonstrates the Proponent's compliance with the requirements in Volume 3 - Part C for the Project Term.

The following two required documents are described in detail:

- Operations and Maintenance Plan;
- Asset Management Plan.

8.9.1 Operations and Maintenance Plan

The Technical Submission must include an Operations and Maintenance Plan, demonstrating the Proponent's material compliance with the requirements of Volume 3 Part C and indicating the approach to be undertaken to deliver the range of services for the duration of the Concession Agreement.

The Operations and Maintenance Plan must provide details of the Proponent's strategy for operation and maintenance for the DBFO Project that provides:

- (a) an understanding of the Operational Performance Measures and Key Performance Measures;
- (b) specific indicative plans to address the following key issues:
 - running surface maintenance;
 - bridge maintenance;
 - winter maintenance;
 - avalanche hazard management and search and rescue procedures;
 - emergency response; and
 - public relations/customer care;
- (c) commitment to health, safety and environment.

The plan must provide a written description of the resources to be used to complete the operations and maintenance services identified including labour, plant, materials and facilities. If the resources have not yet been obtained, details of the proposed procurement source and timing must be provided.

8.9.2 Asset Management Plan

The Proponent must include an Asset Management Plan, demonstrating the Proponent's material compliance with the requirements of Volume 3 - Part C and indicating the approach to be undertaken to deliver the services for the duration of the Project Term.

The Proposal shall provide details of the Proponent's Asset Management Plan for the DBFO Project considering:

- (a) understanding of the Key Performance Measures and Asset Preservation Performance Measures;
- (b) understanding of life cycle approach to asset maintenance and rehabilitation;
- (c) understanding of the approach for asset condition, inspection, work identification, programming, prioritization and delivery of asset rehabilitation;
- (d) specific indicative asset management plans to address:
 - highway running surfaces; and
 - structures;
- (e) use of asset management systems and processes to achieve cost effectiveness, and identify/implement innovation to improve performance; and
- (f) commitment to minimizing risk to the Province.

The Proposal must provide a written description of the resources to be used to complete the asset management services identified including labour, plant, materials and facilities. If the resources have not yet been obtained, details of the proposed procurement source and timing must be provided.

The Proposal must provide an organization chart and associated narrative that indicates the reporting relationships, roles and responsibilities for all aspects of the operation, maintenance and rehabilitation management structure.

Appendix 1G

Evaluation Categories and Evaluation Criteria

PART ONE: FINANCIAL CRITERIA (60 Points)

Risk Adjusted NPV

Proposals will be evaluated on the basis of the information requested in Section 4 of Appendix 1F, and to the extent that the Proposal offers:

- a) a Payment Mechanism and profile which meet the minimum requirements specified in Section 4 of Appendix 1F and is consistent with the Proponent's approach to satisfying the objectives of the DBFO Project. Factors which will be considered include:
 - (i) Pre-Completion Performance Payments stipulated by the Province;
 - (ii) Original Service Period Availability Payments;
 - (iii) Enhanced Service Period Availability Payments;
 - (iv) Traffic Volume Payments;
 - (v) Safety Performance Payments; and
 - (vi) End of Term Payment.

The rationale underlying the assumptions with regards to the derivation of each Payment Mechanism component will be reviewed to assess whether they are reasonable;

- b) forecast capital costs which are reasonable and justifiable; and
- c) forecast operating and maintenance and rehabilitation costs which are reasonable and justifiable.

Price Proposals will be evaluated on the basis of the lowest risk-adjusted NPV of the Total Performance Payments required by the Concessionaire. The discount rate used to calculate the NPV of the Total Performance Payments will be based on the Province's estimate of the typical weighted average cost of capital of a private sector project of a similar type to the DBFO Project.

Value for Money

The Province intends to select the Proposal that offers the best overall value for money and that provides solutions that meet the Project Objectives.

The NPV of the Total Performance Payments plus the expected value of any additional Performance Payments (as a result of higher traffic forecasts or improved safety outcomes) will be compared to the risk adjusted public sector comparator. The public sector comparator is a hypothetical risk adjusted estimate of the Total Performance Payments a concessionaire would require in order to be able to undertake the DBFO Project which will be updated to current market conditions shortly prior to receipt of commercial proposals.

For the purposes of consistent evaluation of all Proposals, the following common assumptions will be applied to the evaluation. These common assumptions will only affect calculation of the NPV of the Total Performance Payments to the Concessionaire for the purpose of the evaluation of the risk adjusted NPV. Each Proponent should make its own assumptions as to the Total Performance Payments it will receive in its Financial Model and Financing Plan. However, the Province will use a set of predetermined assumptions and sensitivity tests to assess the net present value and robustness of the Financing Plan. Proponents should demonstrate that their financing plan is robust, as indicated in Section 4.3.3 of Appendix 1F, on the basis of these assumptions:

- a) Treatment of inflation
 - The general rate of inflation applied will be an average of 2% per annum over the Term.
- b) Traffic forecasts
 - The traffic volume payments will be calculated utilizing a range of standardized traffic forecasts. The NPV of the likely Enhanced Service Period Payments over the Term will be calculated using not only the Province's traffic forecast but the Province's estimates of high and low case traffic scenarios. The same traffic scenarios will be used in the calculation of the NPV for each individual Proponent's financial submission.
 - In calculating the NPV it is anticipated that the Province's financial advisors will utilize a stochastic modeling approach to determine the most likely and the range of NPVs from each Proponent's financial submission.
 - The Province is currently finalizing its estimates of high and low case traffic scenarios and these will be made available to Proponents.
- c) Availability Payments
 - Each Proponent will be assumed to receive the full value of the requested availability payments without any deductions.
- d) Safety Payments
 - Each Proponent will be assumed to achieve the safety performance estimated by the Province.

- e) End of Term Payment
Each Proponent is assumed to receive the 100% of the gross End of Term Payment.
- f) Pre-Completion Performance Payments
Pre-completion Performance Payments will be assumed to be paid quarterly in equal amounts over a four year period to a maximum of \$62.5 million in total.

PART TWO: TECHNICAL AND COMMERCIAL CAPABILITY (20 Points)

A) Technical Capability

The Technical Submissions will be subjected to a pass/fail evaluation. To achieve a pass, the Proposal must at least meet the minimum requirements as embodied in the scope of work and design criteria and performance specifications contained in Sections 5 to 8 (inclusive) of Appendix 1F.

Beyond the pass/fail requirements, the evaluation criteria will be based on the overall capability of the Technical Submissions.

B) Commercial Capability

Proposals will be evaluated on a pass/fail basis for each of the requirements detailed in Sections 3 and 4 of Appendix 1F. Beyond the pass/fail requirements, the evaluation criteria will be based on the overall capability of the Financial/Commercial Submissions.

Proponents who offer certainty of commercial and financial terms and Financial Close will be scored higher. The Province anticipates selecting the Preferred Proponent at the RFP stage. Therefore the Proponents are expected to provide the highest level of commitment and the greatest amount of detail possible in respect of their Financial Plan at submission of their Proposal at the RFP stage. The Province does not anticipate entering into a BAFO stage (although the Province may elect to do so).

In addition, each Proposal should demonstrate:

Legal/Commercial

- a) an appropriate legal structure and contractual relationship between the various parties to the transaction, including satisfactory sub-contracting arrangements where relevant,
- b) an appropriate and coordinated organizational structure for both the design and construction phase and the long term operations and maintenance phase of the DBFO Project,
- c) appropriately qualified and experienced personnel to undertake planning and delivery of all aspects of the DBFO Project,

- d) an understanding and commitment to developing and maintaining a cooperative partnership relationship with the key interested parties in the DBFO Project,
- e) an understanding of the requirements specified in the Concession Agreement and a commitment to execute the Definitive Concession Agreement,
- f) a strong understanding of the public consultation and community relations requirements of the DBFO Project.

For each of the preceding criteria evidence provided in a Proposal will be evaluated, as appropriate, as to whether relationships, arrangements, structures, qualifications, understandings, and commitments are sufficient to allow the Proponent to execute the Concession Agreement and deliver the DBFO Project as required by this RFP.

Financial Plan

The level of financial commitment demonstrated by Proponents will be evaluated. It is expected that the minimum level of commitment at the RFP stage relating to all aspects of the financing structure and Financing Plan will be sufficiently advanced to provide the Province with a very high degree of confidence and certainty that the Financing Plan can be implemented. This would include confidence that all Risk Capital has been approved, that detailed term sheets or commitment letters for the debt instruments have received formal credit approvals where applicable subject only to documentation and material adverse change, that at least indicative credit ratings have been provided if required along with a timetable to achieve final ratings, with only identified provisions of the Definitive Concession Agreement under negotiation and only specific due diligence to be completed and only a limited number of reasonable conditions precedent to drawdown of funding.

Committed Risk Capital should be evidenced by board resolutions related to the terms set out. If equity or quasi equity is to be provided by third parties, similar commitment is required from an underwriter for the full amount.

Proposals will be evaluated on the basis of the information requested under the Commercial Submission Requirements, and to the extent that the Proposal demonstrates:

- a) a robust capital structure and Financing Plan evidencing that sufficient Risk Capital is in place to accommodate a reasonable range of downside risk in the context of the Proponent's proposed Payment Mechanism without triggering default or step-in. Factors which will be considered include: the headroom offered by forecast project cashflows above the debt covenants; the annual debt service coverage ratios; and the resilience of the financial model to downside sensitivities;
- b) the long term commitment of Risk Capital in the DBFO Project. Factors which will be considered include: the identity and financial strength of the equity investor; the independence of equity returns from other returns from the DBFO Project such as construction profit margins; certainty and level of commitment, including board resolutions or equivalent; the quantum of equity and quasi equity investment, including any contingent

equity support; the reasonableness of the rate of return on equity investment; the profile of the return on investment, including annual yield projections and the nominal equity payback period;

- c) the availability of long term debt financing for the DBFO Project. Factors which will be considered include: identity, financial strength and experience of debt providers or arrangers; certainty and level of commitment, including credit committee approvals or equivalent subject only to documentation and material adverse change; whether interest rates are fixed and whether the Province is exposed to any interest rate risk prior to Financial Close; qualifications to any commitment and conditions precedent to drawdown; status of the development of financing documentation; maturities of the debt facilities and amortization profiles, including any refinancing risk;
- d) a plan to achieve Financial Close within a reasonable timeframe which meets the schedule outlined in Section 1.6 of the RFP;
- e) evidence of the Proponent's ability to obtain a bonding program during the DBFO Project which meets the minimum requirements of the Concession Agreement and which supports the overall risk profile;
- f) evidence of the Proponent's ability to obtain an insurance program during the DBFO Project which meets the minimum requirements of the Concession Agreement and supports the overall risk profile; and
- g) appropriate security for the performance of the Proponent's obligations. Factors which will be considered include: the strength of any corporate covenants, guarantees, letters of credit, bonding or other performance securities.

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PART THREE: SAFETY ENHANCEMENTS (20 Points)

The Province values the safety of travellers using public transportation facilities. This includes all users and all modes of transportation.

The Province's objective for highway safety specific to the Highway, is to achieve a significant improvement in the safety performance (a reduction in the current vehicle collision frequency and severity) so that the Highway performs as well as or better than similar modern high-speed controlled access arterial highways. Factors that influence the safety aspects of the Highway and which are controllable by the Concessionaire include engineering and design of the New Highway in Phase 2.

The Highway is located within the Kicking Horse Canyon with a road elevation that varies between 900 m and 1150 m above sea level. At those elevations weather can change very quickly from above to below the freezing level resulting in unexpected conditions including snow, freezing rain, black ice and fog. Also, the New Highway in Phase 2 alignment could

result in little or no notice to the driver of sudden and extreme changes in road characteristics as it traverses from open road to tunnel and to long high bridges.

Reduction of the negative effects of weather and extreme changes in road characteristics is an important Provincial objective. To ensure the Provincial objectives are met the Proposals will be evaluated in terms of the safety enhancements of the Phase 2 design they offer in using the following safety related criteria:

- **Grade** - Alignments that provide lower grades on the New Highway in Phase 2, including on bridges and in tunnels will score higher;
- **Radius** - Alignments that provide higher radius curves with longer spiral runoffs on the New Highway in Phase 2, including on bridges and in tunnels will score higher;
- **Geometry** - Alignments that provide a combination of horizontal and vertical geometry that exceed the basic minimum design criteria will score higher; and
- **Other** - Design enhancements that contribute to the safe performance of the Proposed design.

Up to 20 points will be awarded for Proposals that offer designs that best satisfy the criteria described above. The Province may award some or all of the points depending on the relative benefit to the Province offered in the Proposals.