

Request for Proposals – Volume 3: Forms

Highway 1 - 264th Street Interchange Project

Issued: December 15, 2023

Addendum 8: May 10, 2024



Ministry of
Transportation
and Infrastructure

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Form 1 – Technical Submittal Certificate and Declaration

TECHNICAL SUBMITTAL CERTIFICATE AND DECLARATION

TO: HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (the “Province”)

RE: HIGHWAY 1 - 264TH STREET INTERCHANGE CONTRACT (the “Project”) as defined in the Request for Proposals entitled “Highway 1 - 264th Street Interchange Contract” dated December 15, 2023 as amended in accordance with its terms, (the “RFP”)

[Insert Proponent Name] (the “Proponent”)

Technical Submittal dated the <Insert Day> day of <Insert Month>, <Insert Year> (the “Technical Submittal”)

The Proponent, on behalf of itself and on behalf of each Key Individual,

AND

Each of the undersigned Proponent Team Members, other than the Key Individuals and the Proponent (herein, the “Members”), on behalf of itself:

- 1.** each hereby unconditionally and irrevocably represent, warrant, and certify from and after the date of this Certificate and Declaration, in connection with the Technical Submittal, the RFP and the Competitive Selection Process, including without limitation, any consideration and evaluation of the Technical Submittal as follows:
 - (a)** the Proponent is duly authorized to deliver this Certificate and Declaration on behalf of the Proponent and of each Key Individual, and each of the Members is duly authorized to deliver this Certificate and Declaration on their own behalf, and the Proponent and each of the Members separately represent and warrant to the Province that this Certificate and Declaration is duly and validly made and given and can be relied upon by the Province;

- (b)** all statements made in the Technical Submittal are and will be deemed to be separate and independent representations and warranties of the Proponent and, as applicable, of each Proponent Team Member by or on behalf of whom such statement is made, and this Certificate and Declaration is in addition to and does not limit the representations and warranties made by delivery of the Technical Submittal;
- (c)** the Proponent and each Proponent Team Member has received, reviewed, read and understood the RFP and this Certificate and Declaration;
- (d)** neither the Proponent nor any Proponent Team Member has discussed or communicated, directly or indirectly, with any other proponent or its proponent team members or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, agents or representatives, or any other person associated with any of them, regarding the preparation, content or presentation of their proposals, or any part thereof, relating to the RFP or the Competitive Selection Process, including without limitation their technical submittals;
- (e)** except as has been fully disclosed in writing to and consented to by the Province and any conditions corresponding to such consent having been and continuing to be satisfied, no Proponent Team Member, or any Affiliated Person of any Proponent Team Member, has participated as a member of any other proponent team;
- (f)** the Technical Submittal has been prepared and delivered without any collusion, comparison of information or arrangement with any other proponents or any of their proponent team members or any of their respective contractors, subcontractors, officers, directors, employees, consultants, advisors, agents or representatives or any other persons associated with any of them, or fraud, and in fair competition, including in fair competition with other proponents and proponent teams;

- (g)** to the best of the knowledge of the Proponent and each Proponent Team Member there has not been and as of the date of this Certificate and Declaration there is not any conflict of interest, actual or potential, that exists or may reasonably be expected to arise in the future with respect to preparation and submission of the Technical Submittal;
- (h)** neither the Proponent nor any Proponent Team Member has had access to or availed itself directly or indirectly of any confidential information of the Province, other than confidential information disclosed by the Province to all Proponents in connection with the preparation and submission of the Technical Submittal;
- (i)** neither the Proponent nor any Proponent Team Member is or has hired, retained or utilized the services of any Restricted Party, except as previously disclosed in writing to the Province in the Proponent's Qualification Response or otherwise and consented to in writing by the Province, and as detailed in Appendix A to this Certificate and Declaration, and in respect of such disclosure and consent, if any, any conditions imposed by the Province to the granting of such consent have been and continue to be satisfied;
- (j)** the Technical Submittal has been prepared, based and delivered, solely and exclusively, in reliance on independent due diligence, investigations, verifications, assessments, examinations, experience, knowledge, analyses, interpretation, information, opinions, conclusions, judgments, assessments, surveys and studies independently undertaken, formulated, obtained, formed and verified by or on behalf of the Proponent and the Proponent Team Members and that the Proponent and the Proponent Team Members considered necessary, desirable, beneficial or appropriate and to satisfy themselves as to all aspects of the Technical Submittal, the Project, the Definitive Design-Build Agreement, and the Competitive Selection Process, and not in reliance on information provided through or in connection with the RFP including the RFP Data Room or the

Competitive Selection Process, except to the extent such reliance is expressly permitted in accordance with the Definitive Design-Build Agreement;

- (k)** the Proponent and each of the Proponent Team Members has had sufficient time, opportunity, and resources to investigate and consider and have investigated and considered and satisfied themselves as to conditions and risks relating to the Project, the RFP, the Competitive Selection Process and the Technical Submittal, and the undertakings, formulations, and verifications referenced in paragraph 1(j) hereof;
- (l)** all statements made by or on behalf of the Proponent and each Proponent Team Member in the Qualification Response are continuing representations and warranties of the Proponent and/or such Proponent Team Member, as applicable, and remain true and correct as of the date of this Certificate and Declaration, save and except only

 - (i)** those which are expressly amended in the Technical Submittal, in which case they have been clearly identified in the Technical Submittal as corrections or departures from the statements made in the Qualification Response; and
 - (ii)** those otherwise expressly disclosed to the Province in writing and consented to in writing by the Province prior to the Technical Submittal Deadline;
- (m)** neither the Proponent nor any Member has, except as detailed in writing in Appendix B to this Certificate and Declaration, experienced either any material adverse change to its financial status or business since the most recent financial statement date as included in the Qualification Response or any one or more of the events described in Section 3.15 Volume 1 of the RFP;

- (n)** except as detailed in writing in Appendix C to this Certificate and Declaration neither the Proponent nor any Member has knowledge of any actions, suits or proceedings in excess of \$10 million pending or, to the best of the knowledge of the Proponent and each Member, threatened against or affecting any of them in law or in equity or before or by any foreign, federal, provincial, municipal or other governmental department, court, commission, board, bureau, or agency, or before or by an arbitrator or arbitration board which could if adversely determined, have a material adverse effect on the solvency, liquidity or financial condition of the Proponent or any Member;
- (o)** except as detailed in writing in Appendix D to this Certificate and Declaration, neither the Proponent nor any Member is aware of any ground on which any action, suit or proceeding described in paragraph 1(n) hereof might be commenced;
- (p)** the Proponent and each Proponent Team Member has read, reviewed and understood the Technical Submittal and authorized and consented to the submission of the Technical Submittal on behalf of the Proponent and each Proponent Team Member;
- (q)** the Proponent Team Members are as listed in Appendix E to this Certificate and Declaration;
- (r)** the representations, warranties and certifications set out in this Certification and Declaration are true and are made with the knowledge and intention that the Province will rely on the truth of them in accepting and evaluating the Technical Submittal and that despite any prior or subsequent investigation the Province will be deemed to have relied upon them;
- (s)** each Key Individual meets all applicable requirements for such Key Individual as set out in the Design-Build Agreement and/or the RFP;

- (t)** the Proponent, the Proponent Team Member and, to the knowledge of the applicable Proponent Team Member (after due and reasonable enquiry) any of its respective Affiliated Persons, have each conducted themselves with integrity and propriety and have not engaged in any inappropriate bidding practices or unethical behaviour in the course of the RFP and the Competitive Selection Process;
- (u)** to the knowledge of the Proponent and the applicable Proponent Team Member (after due and reasonable enquiry), each employee under the control of the Proponent or a Proponent Team Member, including former employees during the time the former employee was under the control of the Proponent or a Proponent Team Member, who had or might have the ability to influence the affairs of the Proponent or a Proponent Team Member, has conducted themselves with integrity and propriety and has not engaged in any inappropriate bidding practices or unethical behaviour in the course of the RFP and the Competitive Selection Process; and
- (v)** except as listed in Appendix F to this Certificate and Declaration, as of the date of this Certificate and Declaration, there are no convictions, charges or investigations by a public body relating to the Proponent, any of the Proponent Team Members or, to the knowledge of the applicable Proponent Team Member (after due and reasonable enquiry), any of its respective Affiliated Persons related to inappropriate bidding practices or unethical behaviour in relation to a public procurement or broader public competitive selection process in any jurisdiction that:

 - (i)** are related to the Project;
 - (ii)** may compromise the reputation or integrity of the Province or the British Columbia Government so as to affect public confidence in the Project;
 - (iii)** would contravene any applicable Laws; or
 - (iv)** could have a material adverse effect on the Proponent or a Proponent Team Member in a way which could impair the Proponent's or the

Proponent Team Member's ability to perform any obligations of the Design-Builder under the Design-Build Agreement;

2. each hereby unconditionally and irrevocably consent and authorize the Province and the authorized representatives of the Province to undertake or cause to be undertaken, in connection with the Technical Submittal, the RFP and the Competitive Selection Process, or any of them, any and all of the investigations, verifications, and reference, credit and other checks described in the RFP, including without limitation criminal record investigations, credit enquiries, litigation searches, bankruptcy registrations and taxpayer information investigations on the Proponent and each of the Proponent Team Members; and
3. each hereby acknowledge that the Province reserves the right to require the undersigned to provide proof, in a form and content acceptable to the Province, that the signatory of this Certificate and Declaration on behalf of each such party has the requisite authority to execute this Certificate and Declaration on behalf of the undersigned and, in the case of the Proponent, on behalf of the Key Individuals.

[INTENTIONALLY BLANK]

Unless otherwise expressly defined, the capitalized terms used in this Certificate and Declaration have the meanings given to them in the RFP.

THIS CERTIFICATE AND DECLARATION dated as of the **<Insert Date of TECHNICAL SUBMITTAL DEADLINE>** day of **<Insert Month>**, **<Insert Year>**.

Important Notes for Signature by the Proponent and Members

This Certificate and Declaration is to be duly executed by a director or senior officer of the “Proponent” and each of the other “Proponent Team Members”, other than the “Key Individuals”, in accordance with the definitions of such terms in the RFP. It is the responsibility of the Proponent to ensure that each such party and, where applicable, each entity comprising such party has been properly identified by its legal name in this Certificate (together with the capacity in which they are signing) and has duly executed this Certificate, all in accordance with the applicable laws of the jurisdiction of formation of such party (or the legal entities which comprise such party) as applicable.

Use more than one counterpart signature page where applicable AND ensure that this Certificate is dated as of the Technical Submittal Deadline.

TECHNICAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX A

Paragraph 1(i) Disclosure

[Left Empty if Nothing to Disclose]

TECHNICAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX B

Paragraph 1(m) Disclosure

[Left Empty if Nothing to Disclose]

TECHNICAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX C

Paragraph 1(n) Disclosure

[Left Empty if Nothing to Disclose]

TECHNICAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX D

Paragraph 1(o) Disclosure

[Left Empty if Nothing to Disclose]

TECHNICAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX E

List of Proponent Team Members

TECHNICAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX F

Paragraph 1(v) Disclosure

[Left Empty if Nothing to Disclose]

Form 2 – Financial Submittal Certificate and Declaration

FINANCIAL SUBMITTAL CERTIFICATE AND DECLARATION

TO: HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (the “Province”)

RE: HIGHWAY 1 - 264TH STREET INTERCHANGE CONTRACT (the “Project”) as defined in the Request for Proposals entitled “Highway 1 - 264th Street Interchange Contract” dated December 15, 2023 as amended in accordance with its terms, (the “RFP”)

[Insert Proponent Name] (the “Proponent”)

Technical Submittal dated the <Insert Day> day of <Insert Month>, <Insert Year> (the “Technical Submittal”)

Financial Submittal dated the <insert Day> day of <insert Month>, <Insert Year> (the “Financial Submittal”)

The Proponent, on behalf of itself and on behalf of each Key Individual,

AND

Each of the undersigned Proponent Team Members, other than the Key Individuals and the Proponent (herein, the “Members”), on behalf of itself:

1. each hereby unconditionally and irrevocably represent, warrant, and certify from and after the date of this Certificate and Declaration, in connection with the Proposal (herein defined), the RFP and the Competitive Selection Process, including without limitation, any consideration and evaluation of the Proposal that:
 - (a) the Proponent is duly authorized to deliver this Certificate and Declaration on behalf of the Proponent and of each Key Individual and each of the Members is duly authorized to deliver this Certificate and Declaration on their own behalf and the Proponent and each of the Members separately represent and warrant to the Province that this Certificate and Declaration is duly and validly made and given and can be relied upon by the Province;

- (b)** all clarifications, rectifications, and more complete, supplementary, replacement and additional information and documentation delivered by the Proponent from and after the Technical Submittal Deadline in response to any request of the Province in accordance with the RFP are incorporated into and form part of the Technical Submittal, which Technical Submittal together with such clarifications, rectifications, more complete, supplementary, replacement and additional information and documentation is ratified and confirmed and is herein referred to as the “Technical Submittal”;
- (c)** the Technical Submittal and the Financial Submittal collectively constitute the Proposal and is herein referred to as the “Proposal”;
- (d)** the Proponent and each Proponent Team Member has received, reviewed, read and understood the RFP and this Certificate and Declaration;
- (e)** all statements made in the Proposal are and will be deemed to be separate and independent representations and warranties of the Proponent and, as applicable, of each Proponent Team Member by or on behalf of whom such statement is made, and this Certificate and Declaration is in addition to and does not limit either the representations and warranties made by delivery of the Proposal or the representations and warranties and certifications made by delivery of the Technical Submittal;
- (f)** in preparing and delivering the Proposal the Proponent has complied with all applicable laws and regulations, including by obtaining from each Proponent Team Member and each other person any required consents and authorizations to the collection of information relating to such Proponent Team Member or other person and to the submission of such information to the Province as part of the Proposal for the purposes of the Proposal, the RFP and the Competitive Selection Process, or any of them;

- (g)** neither the Proponent nor any Proponent Team Member has discussed or communicated, directly or indirectly, with any other proponent or its proponent team members or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, agents, representatives, or any other person associated with any of them, regarding the preparation, content or presentation of their proposals, or any part thereof, relating to the RFP or the Competitive Selection Process, including without limitation their financial submittals;
- (h)** except as has been fully disclosed in writing to and consented to by the Province and any conditions corresponding to such consent having been and continuing to be satisfied, no Proponent Team Member, or any Affiliated Person of any Proponent Team Member, has participated as a member of any other Proponent team;
- (i)** the Proposal has been prepared and submitted without any collusion, comparison of information or arrangement with any other proponents or any of their proponent team members or any of their respective contractors, subcontractors, officers, directors, employees, consultants, advisors, agents or representatives, or any other persons associated with any of them, or fraud, and in fair competition, including in fair competition with other Proponents and Proponent Teams;
- (j)** to the best of the knowledge of the Proponent and each Proponent Team Member there has not been, and as of the date of this Certificate and Declaration there is not, any conflict of interest, actual or potential, that exists or may reasonably be expected to arise in the future with respect to preparation and submission of the Proposal;
- (k)** neither the Proponent nor any Proponent Team Member has had access to or availed itself directly or indirectly of any confidential information of the Province, other than confidential information disclosed by the Province to

all Proponents in connection with the preparation and delivery of the Proposal;

- (l)** neither the Proponent nor any Proponent Team Member is or has hired, retained or utilized the services of any Restricted Party, except as previously disclosed in writing to the Province in the Proponent's Qualification Response or otherwise and consented to in writing by the Province, and as detailed in Appendix A to this Certificate and Declaration, and in respect of such disclosure and consent, if any, any conditions imposed by the Province to the granting of such consent have been and continue to be satisfied;
- (m)** the Proposal has been prepared, based and delivered solely and exclusively in reliance on independent due diligence, investigations, verifications, assessments, examinations, experience, knowledge, analyses, interpretation, information, opinions, conclusions, judgments, assessments, surveys and studies independently undertaken, formulated, obtained, formed and verified by the Proponent and the Proponent Team Members and that the Proponent and the Proponent Team Members considered necessary, desirable, beneficial or appropriate and to satisfy themselves as to all aspects of the Proposal, the Project, the Definitive Design-Build Agreement and the Competitive Selection Process, and not in reliance on information provided through or in connection with the RFP including the RFP Data Room or the Competitive Selection Process, except to the extent such reliance is expressly permitted in accordance with the Definitive Design-Build Agreement;
- (n)** the Proponent and each of the Proponent Team Members has had sufficient time, opportunity and resources to investigate and consider and have investigated and considered and satisfied themselves as to conditions and risks relating to the Project, the RFP, the Competitive Selection Process and the Proposal, and the undertakings, formulations, and verifications referenced in paragraph 1(m) hereof;

- (o)** all statements made by or on behalf of the Proponent and each Proponent Team Member in the Qualification Response are continuing representations and warranties of the Proponent and/or such Proponent Team Member, as applicable, and remain true and correct as of the date of this Certificate and Declaration, save and except only

 - (i)** those which are expressly amended in the Proposal, in which case they have been clearly identified in the Proposal as corrections or departures from the statements made in the Qualification Response; and
 - (ii)** those otherwise expressly disclosed to the Province in writing and consented to in writing by the Province prior to the Financial Submittal Deadline;
- (p)** neither the Proponent nor any Member has, except as detailed in writing in Appendix B to this Certificate and Declaration experienced either any material adverse change to its financial status or business since the most recent financial statement date as included in the Qualification Response or any one or more of the events described in Section 3.15 Volume 1 of the RFP;
- (q)** except as detailed in writing in Appendix C to this Certificate and Declaration neither the Proponent nor any Member has knowledge of any actions, suits or proceedings in excess of \$10 million pending or, to the best of the knowledge of the Proponent and each Member, threatened against or affecting any of them in law or in equity or before or by any foreign, federal, provincial, municipal or other governmental department, court, commission, board, bureau, or agency, or before or by an arbitrator or arbitration board which could if adversely determined, have a material adverse effect on the solvency, liquidity or financial condition of the Proponent or any Member;

- (r)** except as detailed in writing in Appendix D to this Certificate and Declaration neither the Proponent nor any Member is aware of any ground on which any action, suit or proceeding described in paragraph 1(q) hereof might be commenced;
- (s)** the Proposal satisfies the requirements of the RFP, including without limitation, the Project Requirements;
- (t)** the Proponent and each Proponent Team Member has read, reviewed and understood the Proposal and authorized and consented to the submission of the Proposal;
- (u)** the representations, warranties and certifications set out in this Certification and Declaration are true and are made with the knowledge and intention that the Province will rely on the truth of them in accepting and evaluating the Proposal and that despite any prior or subsequent investigation the Province will be deemed to have relied upon them;
- (v)** each Key Individual meets all applicable requirements for such Key Individual as set out in the Design-Build Agreement and/or the RFP;
- (w)** the Proponent, the Proponent Team Member and, to the knowledge of the applicable Proponent Team Member (after due and reasonable enquiry) any of its respective Affiliated Persons, have each conducted themselves with integrity and propriety and have not engaged in any inappropriate bidding practices or unethical behaviour in the course of the RFP and the Competitive Selection Process;
- (x)** to the knowledge of the Proponent and the applicable Proponent Team Member (after due and reasonable enquiry), each employee under the control of the Proponent or a Proponent Team Member, including former employees during the time the former employee was under the control of the Proponent or a Proponent Team Member, who had or might have the ability to influence the affairs of the Proponent or a Proponent Team

Member, has conducted themselves with integrity and propriety and has not engaged in any inappropriate bidding practices or unethical behaviour in the course of the RFP and the Competitive Selection Process; and

(y) except as listed in Appendix E to this Certificate and Declaration, as of the date of this Certificate and Declaration, there are no convictions, charges or investigations by a public body relating to the Proponent, any of the Proponent Team Members or, to the knowledge of the applicable Proponent Team Member (after due and reasonable enquiry), any of its respective Affiliated Persons related to inappropriate bidding practices or unethical behaviour in relation to a public procurement or broader public competitive selection process in any jurisdiction that:

- (i)** are related to the Project;
- (ii)** may compromise the reputation or integrity of the Province or the British Columbia Government so as to affect public confidence in the Project;
- (iii)** would contravene any applicable Laws; or
- (iv)** could have a material adverse effect on the Proponent or a Proponent Team Member in a way which could impair the Proponent's or the Proponent Team Member's ability to perform any obligations of the Design-Builder under the Design-Build Agreement;

2. each hereby unconditionally and irrevocably consent and authorize the Province and the authorized representatives of the Province to undertake or cause to be undertaken, in connection with the Proposal, the RFP and the Competitive Selection Process, or any of them, any and all of the investigations, verifications, and reference, credit and other checks described in the RFP, including without limitation criminal record investigations, credit enquiries, litigation searches, bankruptcy registrations and taxpayer information investigations on the Proponent and each of the Proponent Team Members; and

3. each hereby acknowledge that the Province reserves the right to require the undersigned to provide proof, in a form and content acceptable to the Province, that the signatory of this Certificate and Declaration on behalf of each such party has the requisite authority to execute this Certificate and Declaration on behalf of the undersigned and, in the case of the Proponent, on behalf of the Key Individuals.

[INTENTIONALLY BLANK]

Unless otherwise expressly defined, the capitalized terms used in this Certificate and Declaration have the meanings given to them in the RFP.

THIS CERTIFICATE AND DECLARATION dated as of the **<Insert Date of FINANCIAL SUBMITTAL DEADLINE>** day of **<Insert Month>**, **<Insert Year>**.

Important Notes for Signature by Proponent and Members

This Certificate and Declaration is to be duly executed by a director or senior officer of the “Proponent” and each of the other “Proponent Team Members”, other than the “Key Individuals”, in accordance with the definitions of such terms in the RFP. It is the responsibility of the Proponent to ensure that each such party and, where applicable, each entity comprising such party has been properly identified by its legal name in this Certificate (together with the capacity in which they are signing) and has duly executed this Certificate, all in accordance with the applicable laws of the jurisdiction of formation of such party (or the legal entities which comprise such party) as applicable.

Use more than one counterpart signature page where applicable AND ensure that this Certificate is dated as of the Financial Submission Deadline.

FINANCIAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX A

Paragraph 1(l)

[Left Empty if Nothing to Disclose]

FINANCIAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX B

Paragraph 1(p) Disclosure

[Left Empty if Nothing to Disclose]

FINANCIAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX C

Paragraph 1(q) Disclosure

[Left Empty if Nothing to Disclose]

FINANCIAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX D

Paragraph 1(r) Disclosure

[Left Empty if Nothing to Disclose]

FINANCIAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX E

Paragraph 1(y) Disclosure

[Left Empty if Nothing to Disclose]

Form 3 – Contract Price Proposal

Refer to the Excel spreadsheet in the Data Room entitled “Form 3 – Contract Price Proposal”.

Form 4 – Undertaking of Liability Insurance

TO: HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation and Infrastructure (the “Province”)

UNDERTAKING OF COMMERCIAL GENERAL LIABILITY INSURANCE

We, the undersigned, as authorized representatives on behalf of _____ **[INSERT NAME OF BROKERAGE OR INSURANCE COMPANY]** do hereby undertake and agree to provide “Wrap-Up” Commercial General Liability insurance as specified in Insurance Specifications for the Highway 1 - 264th Street Interchange Contract (the “Project”) if a contract is awarded to _____ **[DESIGN-BUILDER NAME]**, subject to underwriting.

Dated at: _____

This _____ day of _____, 20__ .

SIGNED: _____ Printed Name: _____
Duly Authorized Representative of **Brokerage or Insurance Company**

Form 5 – Undertaking of Professional Liability Insurance

TO: HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation and Infrastructure (the “Province”)

UNDERTAKING OF PROFESSIONAL LIABILITY INSURANCE

We, the undersigned, as authorized representatives on behalf of _____ **[INSERT NAME OF BROKERAGE OR INSURANCE COMPANY]** do hereby undertake and agree to provide Project Specific Professional Liability insurance as specified in the Insurance Specifications for the Highway 1 - 264th Street Interchange Contract (the “Project”) if a contract is awarded to _____ **[DESIGN-BULDER NAME]**, subject to underwriting.

Dated at: _____

This _____ day of _____, 20__ .

SIGNED: _____ Printed Name: _____
Duly Authorized Representative of **Brokerage or Insurance Company**

Form 6 – Consent of Surety

CONSENT OF SURETY

DATE:

TO: HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation and Infrastructure (the “Province”)

in regard to

HIGHWAY 1 - 264TH STREET INTERCHANGE CONTRACT

(the “Project”)

We _____ **[Name of Surety]** a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety, are the Surety for _____ **[name of Proponent and Proponent Team Member(s) as applicable]** (in this letter together referred to as the “Clients”). The Clients have demonstrated to us in the past an ability to complete their projects in accordance with the conditions of their contracts and we have no hesitation in recommending their services to you.

Our Client wishes to be qualified as a Proponent on the captioned Project, which we understand will require a **Performance Bond of 50% of the Nominal Cost of the Proposal and a Labour and Materials Payment Bond of 50% of the Nominal Cost of the Proposal**. Based on the limited information available at this time and subject to our assessment of the captioned Project and our Client’s work program as at the time of this letter, we do not anticipate a problem in supporting the captioned Project and supplying the requisite bonds if asked to do so. However, the execution of any bonds will be subject to an assessment of the final contract terms, conditions, financing and bond forms by our Clients and ourselves.

If we can provide any further assurances or assistance, please don’t hesitate to call upon us.

(Insert Name of Surety)

Attorney in Fact (signed)

Attorney in Fact (printed name)

Form 7 – Letter of Credit

FORM OF LETTER OF CREDIT

[Note: Letter of Credit to 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: HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

(the "**Beneficiary**")

**RE: PREFERRED PROPONENT SECURITY DEPOSIT
IRREVOCABLE STANDBY LETTER OF CREDIT NO:**

To whom it may concern:

At the request of our client, _____ (the "**Customer**"), we hereby issue in your favour our irrevocable standby letter of credit No.

_____ ("**Letter of Credit**") for a sum not exceeding in the aggregate <> Canadian Dollars (CDN \$_____) effective immediately.

This bank shall 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 Letter of Credit No.

_____ dated _____.

Partial drawings are permitted.

This Letter of Credit is issued subject to International Standby Practices 98 (ICC Publication 590) (ISP 98) of the International Chamber of Commerce.

Drawings up to the full amount of this 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;
and
- (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 **[Note: Insert date which is 90 days from the date of issuance of the Letter of Credit]**. Notice of non-renewal will be provided to the Beneficiary in writing by registered mail by not later than 30 days before the expiry date.

Authorized Signatory

Authorized Signatory

Form 8 – Workshops and Topic Meetings Waiver and Agreement

WORKSHOPS AND TOPIC MEETINGS WAIVER AND AGREEMENT

This Waiver and Agreement dated the <> day of <>, 20<>.

TO:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (the “Province”)

**INFRASTRUCTURE BC INC.
 (“Infrastructure BC”)**

**BC TRANSPORTATION FINANCING AUTHORITY
 (“BCTFA”)**

RE: HIGHWAY 1 - 264TH STREET INTERCHANGE CONTRACT: WORKSHOPS AND TOPIC MEETINGS

WHEREAS:

- A.** The Province has implemented and <> [insert name of Proponent] (the “Proponent”) has agreed to participate in the Competitive Selection Process for the Highway 1 - 264th Street Interchange Contract.
- B.** As a further part of the Competitive Selection Process the Province has made arrangements to meet in Workshops and Topic Meetings with each of the proponents, together with those individual representatives of each of the proponents and their respective proponent team members selected by the proponents, both as a group and on a one-on-one basis.
- C.** The Province’s arrangements involve the dedication of extensive resources, including financial and labour by and on behalf of the Province, and have as their objective Workshops and Topic Meetings that will enable the candid communication of information, comments, and views from the proponents to the Province.

IN CONSIDERATION of these premises and of being permitted to participate in the Workshops and Topic Meetings and for other good and valuable consideration, the receipt and sufficiency of which each of the undersigned hereby acknowledges, each of the undersigned hereby confirms and agrees on its own behalf, as follows:

1. Each of the undersigned:
 - (a) has been selected by the Proponent to attend the Workshops and Topic Meetings as a representative of and on behalf of the Proponent in connection with the Project;
 - (b) is of the age of majority and of full mental capacity, and has been provided with a copy of and has reviewed and is familiar with the terms of the RFP pertaining to the Workshops and Topic Meetings;
 - (c) will observe, abide by, and comply with the terms of the RFP in respect of the Workshops and Topic Meetings;
 - (d) covenants and agrees with the Province on the same terms as set out in Section 3.4 [Consultation Process] of the RFP as if the same were repeated herein expressly;
 - (e) understands that the undersigned will not be permitted to participate in the Workshops or Topic Meetings unless they have signed this Waiver and Agreement;
 - (f) understands that any concerns with respect to fairness in connection with the Workshops or Topic Meetings should be brought to the attention of the Fairness Reviewer; and
 - (g) waives any and all rights to contest and/or protest the Competitive Selection Process or any part of the Competitive Selection Process based on the fact that the Workshops and Topic Meetings and any additional meetings or workshops occurred or on the basis that information or documentation may have been received by a competing Proponent, Proponent Team or Proponent Team Member that was not received by the applicable undersigned.

2. The Topic Meetings are for the purpose of enabling communication between the Province and the Proponents as to issues relating to the RFP, the Project, the Draft Design-Build Agreement, and the Workshops are for the purpose of enabling the Proponents to provide information and comments to the Province regarding changes proposed by the Proponents to the Draft Design-Build Agreement or regarding Proponent submissions, as the case may be, in response to the RFP and of facilitating the discussion between the Province and the proponents of issues arising in connection with the proponent submissions

and proposed changes to the Draft Design-Build Agreement all in accordance with the terms of the RFP.

3. No part of the evaluation of the Proponent's Proposal will be based on:

- (a)** information obtained or shared;
- (b)** the conduct of the Proponent, the Proponent Team Members, other Proponents or their respective Proponent Team Members, the Province, BCTFA, Infrastructure BC, or their respective representatives, including officers, directors, employees, consultants, agents and advisors, or of any of the undersigned; or
- (c)** discussions that occur;

at or during any Workshop or Topic Meeting.

4. Each of the undersigned acknowledges and agrees that no actions or omissions or communications or responses, including information, statements, opinions, comments, consents, waivers, acceptances or approvals made or raised by any of the Releasees, the Proponent or any of the Proponent Team Members, any of the other proponents or any of their respective proponent team members, any of the undersigned, any person, or any of them, whether positive or negative, including if set out in any document or information provided by the Proponent or any of the Proponent Team Members or any of the other proponents or any of their respective proponent team members, in relation to any matter, including the Competitive Selection Process, the RFP, the Draft Design-Build Agreement, the Definitive Design-Build Agreement, or the Project, at any time or times during the Competitive Selection Process, including during or before or after any Workshop or Topic Meeting, will:

- (a)** be binding on the Releasees, or any of them;
- (b)** be relied upon in any way by the Proponent or the Proponent Team Members for any purpose whatsoever;
- (c)** 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 of the proponents; or
- (d)** will amend or waive any part of the Competitive Selection Process, including any term of the RFP, the Draft Design-Build Agreement, the Definitive Design-Build Agreement in any way for any purpose whatsoever, unless and only to the extent expressly incorporated by Addendum to the RFP or expressly set out in a Response to Proponents issued by the Province to the proponents.

5. Each of the undersigned agrees to not:
 - (a) seek to obtain commitments from any of the Releasees or otherwise seek to obtain an unfair competitive advantage over any other proponent during the Workshops and Topic Meetings, including during any related communications; and
 - (b) use any aspect of the Workshops and Topic Meetings to provide the Proponent or any Proponent Team Member with access to information that is not equally available to the other proponents and their proponent team members or to the proponents and their proponent team members for any other Project procurement.
6. Any information provided by any of the undersigned at any meeting or otherwise during any of the Workshops or Topic Meetings, including questions raised by any of the undersigned during such Workshops and Topic Meetings and any responses in writing by the Province to such questions, may be subject to disclosure to the other proponents and to the proponents for the other Project procurements in the sole discretion of the Province as contemplated in the RFP.
7. The Province may in its sole discretion, on its own initiative or in response to an RFI from the Proponent or any other proponent, address any or all questions and matters raised by the Proponent or any of the other proponents or which otherwise come to the attention of the Province during or in connection with a Workshop or Topic Meeting by Responses to Proponents or by Addenda amending the RFP, including the Draft Design-Build Agreement.
8. The Province may also, in consultation with the Fairness Reviewer, determine that it is necessary to identify and share any information discussed in any Topic Meeting or Workshop with participants in the other Project procurements in order to mitigate against any actual or perceived conflict of interest or unfair advantage occurring as a result of any Proponent Team Member which has attended such Topic Meeting or Workshop participating in more than one Project procurement. Proponents are also required in accordance with the RFP to promptly notify the Province if they have any concerns in this regard arising as a result of any Topic Meeting or Workshop, or at any other time, so that such concerns can be appropriately taken into consideration by the Province.
9. Unless the context otherwise expressly requires, the definitions and their corresponding defined terms set out in Section 7 of the RFP will apply wherever such defined terms appear in this Waiver and Agreement, and Section 7 of the RFP is hereby expressly incorporated by reference and forms a part of this Waiver and Agreement as if set out at length herein.
10. This Waiver and Agreement is in addition to the RFP and nothing in this Waiver and Agreement is intended to or does in any way limit or narrow the application, interpretation, or operation of the terms of the RFP.

IN WITNESS WHEREOF this Waiver and Agreement has been executed as follows and is effective as of the day and year first above written.¹

Proponent:

[Insert legal name(s) and appropriate signature block(s) as per Note]

Proponent Representatives:

_____ Name	_____ Name	_____ Name
_____ Signature	_____ Signature	_____ Signature
_____ Name	_____ Name	_____ Name
_____ Signature	_____ Signature	_____ Signature

¹ Note: This Waiver and Agreement is to be duly executed by each Proponent (if a corporation, by its duly authorized signatories; if a consortium or joint venture, by each of the legal entities comprising the consortium or joint venture by their duly authorized signatories; if a limited partnership, by all general partners by their duly authorized signatories; if a general partnership, by all of the partners) and by each of the other Proponent Team Members and their respective individual representatives in attendance.

Form 9 – Release, Waiver and Confirmatory Assignment

RELEASE, WAIVER AND CONFIRMATORY ASSIGNMENT

[Note: This Release, Waiver and Confirmatory Assignment is to be duly executed by each “Proponent Team Member” in accordance with the definitions of that term in the RFP. It is the responsibility of the Proponent to ensure that each such party and, where applicable, each entity included in each such party has been properly identified by its legal name herein and has duly executed this Release, Waiver and Confirmatory Assignment, and the Province may in its sole discretion request an opinion from the relevant party’s legal counsel to that effect.]

THIS RELEASE, WAIVER AND CONFIRMATORY ASSIGNMENT DATED the _____ day of _____, 20<>.

FROM: <> [insert legal name(s) of Proponent], having a place of business at <>
(the “Proponent”)

and: <> [insert legal name of the Design-Builder], having a place of business at <>
[replicate for each entity comprising the Design-Builder]

and: <> [insert legal name of Design Firm], having a place of business at <>
[replicate for each entity comprising the Design Firm]

and: <> [insert legal name of Key Individual], having a place of business at <>
[replicate for each Key Individual]

(each a “Proponent Team Member” and collectively the “Proponent Team Members”)

TO: HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
(the “Province”)

BC TRANSPORTATION FINANCING AUTHORITY (“BCTFA”)

INFRASTRUCTURE BC INC. (“Infrastructure BC”)

RE: HIGHWAY 1 - 264TH STREET INTERCHANGE CONTRACT

WHEREAS:

- A. The Province implemented and <> **[insert name of Proponent]** (the “Proponent”) and each of the Proponent Team Members participated in the Competitive Selection Process for the Highway 1 - 264th Street Interchange Contract.
- B. In accordance with the RFP, each of the Proponent Team Members agreed, among other things, to grant this Release, Waiver and Confirmatory Assignment.

NOW THEREFORE

1.1 Each of the Proponent Team Members, **IN CONSIDERATION** of the premises and **FOR OTHER GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged by each of the Proponent Team Members (collectively, the “**Releasors**”):

- (a) on their own behalf and on behalf of their respective contractors, subcontractors, employees, officers, directors, managers, consultants, advisors, representatives, successors and permitted assignees, and, in accordance with section 1.1(b), any person who is or may be entitled to assert any moral rights or other rights with respect to any of the Proposal, the Work Product, the Background IP, the Intellectual Property and the Intellectual Property Rights, hereby irrevocably and unconditionally waives, releases and forever discharges the Releasees and each of them of and from any and all Claims 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, in connection with or in any way related to the Competitive Selection Process and any other consultative and facilitative or facilitated processes, including any actual or perceived conflict of interest or unfair advantage occurring as a result of any proponent team member of another proponent for the Project participating in more than one Project procurement, matters or issues contemplated or considered in any decision or ruling of the Province, the Conflict of Interest Adjudicator or in any opinion, commentary or report of the Fairness Reviewer, the Derivative Activities, and the use by or on behalf of the Province and/or any of its sub-licensees, successors or assigns of any of the material with

respect to the Proposal, the Work Product, the Intellectual Property, the Third-Party IP, the Background IP, the Permitted Use and the Intellectual Property Rights, or any of them;

- (b)** hereby represents and warrants that all necessary waivers of moral rights have been obtained by the Releasors from the individuals set out in section 1.1(a), with the ability to extend such waivers in favour of the Releasees, as may be required in relation to the matters described in section 1.1(a);
- (c)** covenants and agrees not to directly or indirectly join, assist, aid or act in concert with any other person, including any Proponent Team Member, in the making of any Claim in any manner whatsoever against any or all of the Releasees arising out of or in relation to the matters described in section 1.1(a);
- (d)** covenants and agrees not to make or bring in any way whatsoever any Claim against any person, including any Proponent Team Member, who might claim contribution or indemnity or other relief from any or all of the Releasees; and
- (e)** hereby represents, warrants and covenants that it has not assigned and will not assign to any other person, including any Proponent Team Member, any of the Claims arising out of or in relation to the matters described in this Release and Waiver.

1.2 Each of the Proponent Team Members hereby acknowledges, confirms and perfects the assignment to the Province, as set out in the RFP, of:

- (a)** the entire right, title and interest in and to all Intellectual Property and Intellectual Property Rights in the Work Product and all other rights and interests of a proprietary nature, whether registered or unregistered, in and associated with the Work Product throughout the world, including, without limitation, all copyright and patent rights therein;

- (b) the entire right, title, and interest throughout the world in and to the embodiments of all Intellectual Property and Intellectual Property Rights forming any part of the Work Product; and
- (c) the right to bring actions and other proceedings against third parties for the past, present or future infringement or misuse of the Intellectual Property and Intellectual Property Rights in the Work Product;

as may be more specifically set out in the attached Schedule A, and in each case free and clear of all liens and encumbrances.

- 1.3 This Release, Waiver and Confirmatory Assignment will be governed by, construed and interpreted in accordance with the laws of the Province of British Columbia, without regard to its conflicts of law rules and the laws of Canada applicable therein, and the courts of competent jurisdiction within the Province of British Columbia will have exclusive jurisdiction with respect to any actions to enforce the provisions of this Release, Waiver and Confirmatory Assignment.
- 1.4 The provisions of this Release, Waiver and Confirmatory Assignment will enure to the benefit of each of the Releasees and their respective successors and assigns and shall be binding upon each of the Releasers and their respective successors and assigns.
- 1.5 The Releasers, and each of them, acknowledge and confirm that the Releasers, and each of them, have received independent legal advice with respect to the execution of this Release, Waiver and Confirmatory Assignment and confirm that the Releasers, and each of them, know and understand the contents of this Release, Waiver and Confirmatory Assignment and grant and deliver this Release, Waiver and Confirmatory Assignment of their own free will.
- 1.6 Each term of this Release, Waiver and Confirmatory Assignment will be valid and enforceable to the fullest extent permitted by law. If any term or the application of any term to any person or circumstance is held to be invalid or unenforceable, then such term may be severed and the remainder hereof will not be affected or

impaired thereby and will be construed and enforced as if such invalid or unenforceable term had never been contained herein, and such invalidity or unenforceability will not affect or impair the application of such term to any other person or circumstance but such term will be valid and enforceable to the fullest extent permitted by law.

- 1.7 Each of the Proponent Team Members hereby acknowledges and agrees that it has observed and satisfied and, as at the date hereof, continues to observe and satisfy all of the terms of the Competitive Selection Process, including the RFQ and the RFP.
- 1.8 The Proponent Team Members hereby acknowledge and agree that they are not eligible for any further payment or compensation other than payment of the **[Stipend] <> [the Termination Fee]** to the Proponent in accordance with the RFP and that delivery of the **[Stipend] <> [the Termination Fee]** to or as directed by the Proponent shall be full and final settlement of any and all Claims arising out of or in relation to the matters described herein.
- 1.9 Unless the context otherwise expressly requires, the definitions and their corresponding defined terms set out in the RFP will apply wherever such defined terms appear herein.

IN WITNESS WHEREOF this Release, Waiver and Confirmatory Assignment has been duly executed by each of the undersigned as of the day and year first above written.

PROPONENT TEAM MEMBERS:

[insert legal name and appropriate signature block for each Proponent Team Member]

SCHEDULE 1 TO RELEASE, WAIVER AND CONFIRMATORY ASSIGNMENT

The following works form part of the Work Product:

Title or Description of Work	Nature of Work (i.e. artistic / literary / trademark / invention)	Author / Owner / Inventor	Year of Publication (if any)	Registration Number (if any)

Form 10 – Waiver of Moral Rights

WAIVER OF MORAL RIGHTS

Note: This Waiver of Moral Rights is to be duly executed by each individual (employee, contractor etc.) who generated the Proponent’s Work Product.

For good and valuable consideration, (the receipt and sufficiency of which is hereby acknowledged) I, **[insert name of individual (employee, contractor etc.)]** hereby waive in favour of **HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** (the “Province”), its servants, agents and employees, any and all of my moral rights established under the *Copyright Act* (Canada), as amended from time to time, in any of the Work Product (as defined in the **[insert title and date of the RFP]**) including but not limited to the right to prevent distortion, mutilation or modification of the Work Product, the right to prevent the Work Product from being used in association with a product, service, cause or institution, and the right to have my name associated with the Work Product, and I will not make any claim against the Province, its servants, agents or employees with respect to these moral rights. I further acknowledge and agree that the Province may license or assign the Work Product to third parties and agree that the preceding sentence will extend to all such parties, and their assignees and licensees.

EXECUTED at <>, this <> day of <>, 20<>.

SIGNED AND DELIVERED BY

[insert name of individual]

in the presence of:

(Witness)

[insert name of individual]

Form 11 – Limited Notice to Proceed Agreement

LIMITED NOTICE TO PROCEED AGREEMENT

THIS AGREEMENT (the “Agreement”) is made as of the **[Insert Date]** day of _____, 20~~20~~.

B E T W E E N :

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Ministry of Transportation and Infrastructure (the “Province”)

AND

[NTD – INSERT DETAIL OF THE PROPONENT HAVING REGARD TO THE INSTRUCTIONS AT THE END OF THIS AGREEMENT AND THIS NOTE TO DRAFT THEN DELETED] (the “Proponent”)

[NTD – INSERT DETAILS OF PRINCIPAL CONTRACTOR CONDUCTING THE APPROVED ACTIVITY HAVING REGARD TO THE INSTRUCTIONS AT THE END OF THIS AGREEMENT AND THIS NOTE TO DRAFT THEN DELETED] (the “Principal Contractor”)

WHEREAS

- A.** The Province issued a request for proposals dated **[insert date of final RFP]** for the Highway 1 - 264th Street Interchange Contract (the “Project”) as amended by addenda (the “RFP”).
- B.** The Proponent was selected by the Province as the Preferred Proponent (as defined in the RFP) for the Project in accordance with the RFP.
- C.** The Province and the Proponent wish to enter into this Agreement to facilitate the commencement by the Proponent of such works and in the circumstances specified in this Agreement to make provision for the compensation to be paid for such work.

- D. The Principal Contractor has been identified as the appropriate entity to carry out such works and wishes to be party to this Agreement to give effect to the terms of Section 9 of this Agreement.

NOW THEREFORE in consideration of the premises and mutual agreements hereinafter set out and of other consideration (the receipt and sufficiency of which are acknowledged by each party), the parties agree as follows:

1. DEFINITIONS

- 1.1 In this Agreement, all capitalized words, unless expressly defined otherwise, shall have the meanings given to them in the Design-Build Agreement (as defined below). The terms set out below are defined in this Agreement as follows:
- (a) **“Actual Costs”** means the reasonable and proper costs actually incurred by the Proponent in completing the Approved Activity for the Province after the date of this Agreement;
 - (b) **“Agreement”** means this limited notice to proceed agreement together with all schedules attached hereto;
 - (c) **“Approved Activity”** means those activities described in Schedule A to this Agreement;
 - (d) **“Approved Activity Costs”** means the Actual Costs incurred by the Proponent which are payable by the Province pursuant to this Agreement in respect of each item of Approved Activity up to each maximum amount corresponding to each item of Approved Activity as described in Schedule A under the column heading “Estimated Total Cost”;
 - (e) **“Approved Activity Intellectual Property”** means the Intellectual Property and all Intellectual Property Rights therein, which is created, brought into existence, acquired, licensed or used by the Proponent, any contractor, any subcontractor of the Proponent or any other third party, directly or indirectly,

for the purposes of the Approved Activity or otherwise for the purposes of or in connection with this Agreement;

- (f) **“Competitive Selection Process”** has the meaning given to it in the RFP;
- (g) **“Design-Build Agreement”** means the Definitive Design-Build Agreement, as defined in the RFP, including all schedules and attachments thereto as such Definitive Design-Build Agreement may be finalized and settled within the contemplation of the RFP;
- (h) **“Proponent Agreement”** means the proponent agreement including all schedules and attachments thereto made as of the • day of •, 202X and made among the Province, the Proponent and each of the Proponent Team Members (all as defined therein);
- (i) **“Target Project Close Date”** means [NTD – Date to be Inserted – to be set by the Province], or such other date as the Province and the Proponent may otherwise in writing agree, each acting reasonably; and
- (j) **“Term”** means the term of this Agreement specified at Section 12 of this Agreement.

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

2. LIMITED AUTHORIZATION TO PROCEED

2.1 The Province wishes to proceed with the Approved Activity in accordance with the terms of this Agreement.

2.2 In consideration of the Proponent working diligently to maintain the project schedule attached to this Agreement at Schedule B the Province hereby

authorizes the Proponent to proceed with the Approved Activity on the terms set out in and subject to the terms of this Agreement.

2.3 The Proponent will ensure that the Approved Activity is conducted and completed at least to the standards and in all respects accordance with the requirements of the Design-Build Agreement including but without limitation to the generality of the foregoing, Part 3 of Schedule 4 to the Design-Build Agreement.

2.4 Without prejudice to the terms of Section 2.3:

(a) the Proponent is responsible for all errors, failures, non-conformances, omissions or deficiencies whatsoever in relation to the Approved Activity howsoever the same shall arise and notwithstanding any design review, comment, or other examination by or on behalf of the Province; and

(b) the Proponent and the Principal Contractor and separately [insert entity (which will have signed this agreement) that will be the Prime Contractor] agree that [insert entity as above] is the Prime Contractor for the purposes of the Approved Activity and that [insert entity as above] shall take all steps and measures necessary to fulfil all its obligations and functions as Prime Contractor in accordance with all health and safety laws including but not limited to the Workers Compensation Act and all accompanying regulations.

2.5 The Proponent agrees and acknowledges that notwithstanding any provision of this Agreement and without prejudice to or limitation of the terms of the RFP or the Proponent Agreement, the Province is not in any way obligated to continue with or complete any stage of the Competitive Selection Process and the Province may in its sole discretion at any time do any one or more of the following:

(a) terminate, amend or modify the Competitive Selection Process;

(b) not award the Design-Build Agreement to the Proponent or at all;

- (c) implement or issue any other procurement or other process for, or to proceed in any manner whatsoever including using the Province's own forces or consultants in connection with any part or parts of the Project;
- (d) proceed with all or any part of the design, construction, operation, maintenance, rehabilitation or financing of any part or parts of the lands and infrastructure comprising or anticipated to comprise the Project through any other procurement or selection or other process of any kind whatsoever including negotiation or execution of works using the Province's own forces or consultants;
- (e) terminate this Agreement upon the terms set out in Section 3; and
- (f) terminate any negotiations with the Proponent which may have been entered into between the Province and the Proponent pursuant to the terms of the RFP and the Proponent further acknowledges and agrees without prejudice to or limitation of the terms of the RFP or the Proponent Agreement that in the event that any negotiations do not progress satisfactorily in the sole discretion of the Province or do not result in agreement upon terms which are satisfactory to the Province, in the sole discretion of the Province, the Province shall have the right to terminate this Agreement upon the terms set out in Section 3.

2.6 The Proponent agrees and acknowledges that pursuant to Section 28(2) of the Financial Administration Act (British Columbia), it is a term of every agreement providing for the payment of money by the Province including this Agreement 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.

3. COMPENSATION FOR APPROVED ACTIVITY

- 3.1** The Province may at any time and for any reason whatsoever in the sole discretion of the Province (including without limitation if the Province elects for any reason to not continue with the Proponent as the Preferred Proponent, including but not limited to circumstances where negotiations do not result in agreement upon terms which are satisfactory to the Province, in the sole discretion of the Province) and/or if the Proponent is in breach of the terms of this Agreement deliver written notice to the Proponent to that effect for the purposes of this Agreement terminating this Agreement. Subject to the terms of this Agreement, including but not limited to Section 6, the Province will pay the Proponent the Approved Activity Costs for the Approved Activity performed in accordance with the terms of this Agreement by or on behalf of the Proponent up to and including the date of the Province's written notice but the Province shall have no further liability or obligation to the Proponent whatsoever or howsoever in connection with the termination of this Agreement.
- 3.2** The Proponent acknowledges and agrees that if the Province delivers written notice to the Proponent pursuant to Section 3.1, the Province may in the sole discretion of the Province and in addition to and without prejudice to any other rights of the Province pursuant to the RFP or the Proponent Agreement or otherwise at any time and from time to time contract with any person including but not limited to one or more Proponent Team Members (as defined in the RFP) or any contractors, advisers or other person engaged by or through the Proponent or the Project and the Proponent will fully co-operate with the Province and do all things reasonably required by the Province to assist the Province in entering into such arrangements with such parties as the Province shall in its sole discretion deem expedient.
- 3.3** Without prejudice to or limitation of Section 3.2, the Proponent acknowledges and agrees that if the Province delivers written notice to the Proponent pursuant to Section 3.1 the Province may in the sole discretion of the Province at any time and from time to time contract with or enter into any other arrangement whatsoever in the sole discretion of the Province with the Principal Contractor or any contractor,

subcontractor, affiliate, consultant, adviser or representative of the Principal Contractor which contract or other arrangement may in the sole discretion of the Province include but not be limited to provisions or obligations relating to one or more of the Approved Activities.

- 3.4** If the Design-Build Agreement is executed and delivered and the transaction contemplated by and comprising the grant of the Design-Build Agreement completed there will be no payment for or reimbursement of the Approved Activity Costs or any other costs or expenses of the Proponent except as provided in the Design-Build Agreement.

4. EVIDENCE OF APPROVED ACTIVITY COSTS

- 4.1** Payment by the Province to the Proponent of the Approved Activity Costs pursuant to this Agreement, is subject to and conditional upon the Proponent satisfying the requirements of Section 6 and providing to the Province (in the form of an invoice in form satisfactory to the Province, acting reasonably) full details of the costs incurred for which payment is claimed pursuant to the terms of this Agreement and the invoice will be accompanied by any supporting material reasonably required by the Province including, without limitation all invoices and receipts to establish to the reasonable satisfaction of the Province that the expenses are Approved Activity Costs, details of dates, hours of use of relevant equipment and number of design hours charged.

5. PAYMENT DUE DATE

- 5.1** Subject to the terms of this Agreement, the Province shall pay the Proponent the Approved Activity Costs or any part or parts thereof within 30 days following the satisfaction of the requirements of Section 4 and Section 6 as the requirements of Section 4 and Section 6 apply to the relevant part or parts of the Approved Activity Costs provided that any dispute with respect to any invoice rendered by the

Proponent pursuant to this Agreement will be resolved in accordance with the Dispute Resolution Procedure.

6. APPROVED ACTIVITY INTELLECTUAL PROPERTY

6.1 Subject to the terms of Section 6.4, the Proponent shall, or shall cause its agents, employees, contractors and subcontractors to, make available to the Province, without charge and in paper based or machine readable form as required by the Province, all Approved Activity Intellectual Property which might reasonably be required by the Province whether during or after the Term for the purposes of exercising rights or carrying out duties under this Agreement or carrying out any statutory, public or other duty or function.

6.2 In respect of each of the items required to be made available to the Province under Section 6.1 the Proponent shall covenant, represent and warrant that, as at the time such item is made available to the Province, either:

(a) such item is original; or

(b) if such item is not original, the Proponent has obtained, or prior to such item being acquired or brought into existence in any manner whatsoever will have obtained, all rights necessary in order to enable:

(i) such item to be so acquired or brought into existence and to be used for the purposes of the Approved Activity and the Project by the Proponent and the contractors and subcontractors; and

(ii) the Proponent to comply with its obligations under this Agreement;
and

in any event, such item does not and will not infringe any third party's Intellectual Property Rights.

- 6.3** The Proponent agrees that, at no cost to the Province it shall provide to the Province, upon request, executed waivers in favour of the Province of all moral rights in the Approved Activity Intellectual Property from all persons who generated or created Approved Activity Intellectual Property.
- 6.4** The Proponent hereby grants to the Province a Complete License to use, both during and after the Term, all and any Approved Activity Intellectual Property and any Background IP and Third Party IP comprised in the Approved Activity Intellectual Property for any purpose, including the carrying out of any statutory, public or other duties or functions, in connection with this Agreement, the Project, the Project Work, the Project Site, the Project Infrastructure or any part of any of them, provided that:
- (a)** with respect to any Approved Activity Intellectual Property and any Background IP and Third Party IP comprised in the Approved Activity Intellectual Property that is created after the Effective Date but pursuant to the terms of this Agreement (if any), such Complete License shall take effect immediately upon the coming into existence of such Approved Activity Intellectual Property, Background IP and Third Party IP;
 - (b)** to the extent that any of the Approved Activity Intellectual Property and any Background IP and Third Party IP comprised in the Approved Activity Intellectual Property is generated by or maintained on a computer or in any other machine readable format, the Proponent shall obtain for the benefit of the Province at no charge to the Province, the grant of a license or sub-license, as applicable, for and the supply of any relevant software or database (on equivalent terms to the equivalent license or sub-license granted to the Proponent) to enable the Province and its respective employees, agents, contractors, subcontractors and other nominees to access and otherwise use such Approved Activity Intellectual Property, Background IP and Third Party IP for any purpose (whether during or after the Term);

- (c) where any Approved Activity Intellectual Property and any Background IP and Third Party IP comprised in the Approved Activity Intellectual Property is vested in any third party, the Proponent shall grant or cause the grant of a license or sub-license to the Province with like effect to the Complete License granted in relation to all other Approved Activity Intellectual Property and any other Background IP and Third Party IP comprised in the Approved Activity Intellectual Property hereunder to the Province; and
- (d) if the Proponent is unable to grant or cause the grant of a Complete License in relation to any Approved Activity Intellectual Property and any Background IP and Third Party IP comprised in the Approved Activity Intellectual Property pursuant to this Section, the Proponent shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of any and all losses and claims which the Province and the Province Indemnified Persons, or any of them, may suffer or incur arising as a result of:
 - (i) the use or disclosure of such Approved Activity Intellectual Property, Background IP and Third Party IP; and
 - (ii) allegations of or findings of infringement of Intellectual Property Rights of other persons, including breach of confidence, breach of moral rights, unauthorized use by the Province or any of the Province Indemnified Persons, or failure to obtain waivers of moral rights, in respect of such Approved Activity Intellectual Property, Background IP and Third Party IP.

7. INSURANCE AND LICENCES

7.1 Before accessing any portion of any site or sites required for the conduct of the Approved Activity the Proponent shall:

- (a) deliver to the Province originals or certified copies (at the option of the Province) of either:

- (i) all insurance policies and necessary endorsements to ensure compliance by the Proponent with the insurance requirements contained or referred to in the Design-Build Agreement in so far as the same are applicable to the Approved Activity provided that the applicability of the said insurance requirements shall in the event of disagreement be determined in the sole discretion of the Province;
or
 - (ii) all insurance policies and endorsements required by the Province in respect of such risks, in such amounts and upon such terms as is required to ensure compliance by the Proponent with the insurance requirements for the time being of the Province including the requirements from time to time of the Ministry of Transportation and Infrastructure in respect of each of the relevant activities which comprise the Approved Activity;
- (b) at all times maintain in force, pay for and, as necessary, renew the insurance required pursuant to and in accordance with the terms of Section 7.1(a); and
- (c) comply with the requirements from time to time of the Province in relation to access to and use of land owned or controlled by the Province which may be required by the Proponent in order to carry out the Approved Activity, and without prejudice to the generality of the forgoing, not enter upon any land owned or controlled by the Province howsoever in connection with the Approved Activity without first obtaining the consent in writing of the Province to such entry.

8. INDEMNITIES

- 8.1** The Proponent shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, from and against any and all claims, losses, expenses, actions, liability, and costs at any time suffered or incurred by,

or brought or made against, the Province and/or the Province Indemnified Persons, or any of them, that arise directly or indirectly out of, in the course of, in connection with or as a result of:

- (a) the Approved Activity or any part or parts thereof;
- (b) any event, loss or occurrence that arises directly or indirectly as a result of anything done or omitted to be done by the Proponent (or any of its directors, officers, employees, agents, consultants, contractors or any other party or entity for whom or which the Proponent is at law responsible), on, relating to, or in connection with, any site at which any Approved Activity is conducted; and
- (c) any act or omission of the Proponent (or any of its directors, officers, employees, agents, consultants, contractors or any other party or entity for whom or which the Proponent is at law responsible) under or in connection with this Agreement.

9. PRINCIPAL CONTRACTOR

9.1 In consideration of the sum of \$1.00 receipt of which is hereby acknowledged by the Principal Contractor and in consideration of the agreement of the Province to enter into the terms of this Agreement with the Proponent which will indirectly benefit the Principal Contractor, the Principal Contractor agrees to be a party to this agreement solely in order to:

- (a) covenant and agree with the Province that the Principal Contractor hereby accepts and undertakes to be jointly and severally liable with the Proponent to the Province for all of the obligations and liabilities of the Proponent contained or referred to or arising pursuant to or in connection with this Agreement including but not limited to those liabilities which may arise as a consequence of, pursuant to or in connection with any breach, non-observance or non-performance by the Proponent of its obligations set out in or arising pursuant to or otherwise in connection with this Agreement;

- (b) give effect to the representation and warranty on the part of the Principal Contractor on the terms set out at Section 15.6 of this Agreement; and
- (c) **[give effect to the agreement in Section 2.4(b)] [NTD: to be included if the Principal Contractor will be the Prime Contractor named in Section 2.4(b)]**

9.2 The Principal Contractor unconditionally and irrevocably acknowledges and agrees with the Province that the Principal Contractor shall have no right, interest or entitlement whatsoever and shall claim no right, interest or entitlement whatsoever or howsoever arising pursuant to or in connection with it being party to this Agreement and confirms to the Province with the intention that the Province shall rely upon such confirmation that it enters into this Agreement exclusively to give effect to the terms of Section 9.1 of this Agreement.

10. OTHER AGREEMENTS AND REQUEST FOR PROPOSALS

10.1 The parties agree that nothing in this Agreement, including the payment of the Approved Activity Costs, affects or amends the terms and conditions of the RFP or any other agreement entered into between the parties and made pursuant to or in connection with the RFP including but not limited to the Proponent Agreement.

11. FURTHER ASSURANCES

11.1 The parties will execute and deliver all other necessary or appropriate supplemental agreements and other instruments and take any other action necessary to give full effect to terms and intent of this Agreement and to make this Agreement legally effective, binding, and enforceable as between them.

12. TERM AND SURVIVAL OF PROVISIONS

12.1 The term of this Agreement shall commence on the date hereof and, unless earlier terminated by the Province pursuant to Section 3.1 or otherwise by agreement of the parties in writing, shall end on the Effective Date upon the entering into of the Design-Build Agreement by the Province and the Design-Builder or such other date as the Proponent and the Province may in writing agree. If the Province delivers notice to the Proponent pursuant to Section 3.1, this Agreement shall end on the date specified in such notice. Notwithstanding the termination or cancellation of this Agreement by the Province, the provisions of Sections 2.3, 2.4, 2.5, 3, 4, 6, 8, 9, 10, 11 and this Section 12 shall survive and continue to be binding upon the parties hereto and their successors and assigns.

13. COUNTERPARTS

13.1 This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties to this Agreement will constitute a full, original and binding agreement for all purposes. Counterparts may be executed in original, or electronic scanned or PDF file type (Adobe Acrobat Portable Document Format) form. This Agreement may be delivered by hand or electronic mail, provided that if delivered by electronic mail, then in electronic scanned or PDF file type.

14. NOTICES

14.1 In this Agreement:

(a) any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been given if delivered by hand, transmitted by electronic transmission or mailed by prepaid registered post in Canada, to the address or electronic transmission address of each party set out below:

(i) if to the Province:

His Majesty the King in right of the Province of British Columbia

Highway 1 - 264th Street Interchange Contract
Suite 1220 – 800 West Georgia Street
Vancouver, BC V6C 1J8

Attention: Contact Person

Email: contact.264interchange@gov.bc.ca

(ii) if to the Proponent

[NTD – Proponents to complete this detail and then delete this note to draft]

Attention: [NTD – Detail to be inserted]

Email: [NTD – Detail to be inserted]

(iii) if to the Principal Contractor

[NTD – Proponents to complete this detail and then delete this note to draft]

Attention: [NTD – Detail to be inserted]

Email: [NTD – Detail to be inserted]

or to such other address or electronic transmission address as a party may designate in the manner set out above; and

(b) notice or communication will be considered to have been received:

(i) if delivered by hand during business hours on a business day, upon receipt by a authorized representative of the receiver, and if not delivered during business hours, upon the commencement of business on the next business day;

(ii) if sent by electronic transmission during business hours on a business day, upon the sender receiving confirmation of the transmission, and if not transmitted during business hours, upon the commencement of business on the next business day; and

- (iii) if mailed by prepaid registered post in Canada, upon the fifth business day following posting; except that, in the case of a disruption or an impending or threatened disruption in postal services every notice or communication will be delivered by hand.

15. GENERAL

- 15.1** This Agreement constitutes the entire agreement between the parties, expressly superseding all prior agreements and communications (both oral and written) between any of the parties hereto with respect to all matters contained herein.
- 15.2** No amendment to this Agreement shall be binding unless it is in writing and signed by each of the parties hereto.
- 15.3** Except as expressly provided otherwise in this Agreement, any waiver of any provision of this Agreement shall only be effective if in writing signed by the waiving party, and no other failure by any party at any time to exercise a right or remedy under or to enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement shall be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms. Any waiver shall only apply to the specific matter waived and only in the specific instance and for the specific purpose for which it is given.
- 15.4** Not Used
- 15.5** The Proponent shall not assign, transfer or pledge as security howsoever or mortgage its interest in this Agreement whether directly or indirectly.
- 15.6** The Proponent and the Principal Contractor each hereby represent and warrant 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; and

(c) this Agreement constitutes a legal, valid and binding agreement enforceable against it in accordance with its terms.

15.7 The Province may in its sole discretion request each party executing this Agreement to provide and, on such request, each party will deliver to the Province, proof, in a form and content 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.

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

15.9 Nothing contained in this Agreement nor any action taken pursuant hereto shall be deemed to constitute the Province and the Proponent and the Principal Contractor as a partnership, joint venture or any other similar such entity.

15.10 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 and each party to this Agreement irrevocably attorns to the jurisdiction of the courts of British Columbia.

15.11 Time is of the essence of this Agreement.

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

**HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA by
a duly authorized signatory of THE MINISTER OF TRANSPORTATION AND
INFRASTRUCTURE**

Authorized Signatory

Full Name and Title

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

[PROPONENT]

Important Notes for Execution by the Proponent

This Agreement is to be duly executed by the “Proponent” in accordance with the definition of such term in the RFP. It is the responsibility of the Proponent to ensure that each such party and, where applicable, each entity comprising such party has been properly identified by its legal name in this Agreement (together with the capacity in which they are signing) and has duly executed this Agreement, all in accordance with the applicable laws of the jurisdiction of formation of such party (or the legal entities which comprise such party) as applicable.

Use more than one counterpart signature page where applicable

The Province will rely upon the representation and warranty provided at Section 15.6 of this Agreement

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

[PRINCIPAL CONTRACTOR]

Important Notes for Execution by Principal Contractor

This Agreement is to be duly executed by the party conducting the Approved Activity. It is the responsibility of the Principal Contractor to ensure that such party and, where applicable, each entity comprising such party has been properly identified by its legal name in this Agreement (together with the capacity in which they are signing) and has duly executed this Agreement, all in accordance with the applicable laws of the jurisdiction of formation of such party (or the legal entities which comprise such party) as applicable.

Use more than one counterpart signature page where applicable

The Province will rely upon the representation and warranty provided at Section 15.6 of this Agreement

SCHEDULE A

APPROVED ACTIVITY AND APPROVED ACTIVITY COSTS

APPROVED ACTIVITY	ESTIMATED TOTAL COST

[NTD: Proponents should list activities from the Proponent's Project Schedule that the Proponent deems necessary. The Province intends to negotiate the approved list and cost based on the Proponent's submission.]

SCHEDULE B

PROJECT SCHEDULE

[NTD - Insert project schedule referred to at 2.2 of this Agreement – this will be the “Project Schedule” to be included within the Design-Build Agreement, as defined in the Design-Build Agreement (Appendix 3A to Schedule 3 of the Design-Build Agreement)]