



Ministry of
Transportation
and Infrastructure

BROADWAY SUBWAY PROJECT

REQUEST FOR PROPOSALS

Volume 1 – Instructions to Proponents

June 25, 2019

partnerships
British Columbia

SUMMARY OF KEY INFORMATION

This summary has been prepared as an overview summary only and is not intended to replace, supersede, alter or supplement the provisions set out in this RFP. It is the responsibility of each Proponent to ensure that it has received and fully understood the complete RFP including all Addenda.

RFP Title	RFP– Broadway Subway Project Please use this title in all correspondence.
Contact Person	The Contact Person for this RFP may be reached at: Email: BSPContact@gov.bc.ca Courier Address: Suite 1100 - 401 West Georgia Street Vancouver BC V6B 5A1
Initial Security Package Review Submittal Deadline	September 19, 2019
Interim Financial Review Submittal Deadline	11:00 AM local Vancouver time on October 11, 2019
Interim Workforce Requirements Submittal Deadline	11:00 AM local Vancouver time on October 11, 2019
Follow-up Security Package Review Submittal Deadline	November 22, 2019
Initial AIRS Submittal Deadline	11:00 AM local Vancouver time on January 6, 2020
Technical Submittal Deadline	11:00 AM local Vancouver time on January 31, 2020
Interim AIRS Submittal Deadline	11:00 AM local Vancouver time on February 14, 2020
Final Security Package Review Submittal Deadline	February 28, 2020
Final AIRS Submittal Deadline	April 14, 2020
Financial Submittal Deadline	11:00 AM local Vancouver time on April 21, 2020
Submission Location	Broadway Subway Project Suite 1100 – 401 West Georgia Street Vancouver BC V6B 5A1
Submission Location for Initial, Follow-up and Final Security Package Review Submittals	By email to the Contact Person: BSPContact@gov.bc.ca Or By USB flash drive, delivered to the Contact Person at the Submission Location.

<p>Submission Location for Interim Financial Review Submittals</p>	<p>By email to the Contact Person: BSPContact@gov.bc.ca Or By USB flash drive, delivered to the Contact Person at the Submission Location.</p>
<p>Submission Location for Interim Workforce Requirements Submittals</p>	<p>By email to the Contact Person: BSPContact@gov.bc.ca Or By USB flash drive, delivered to the Contact Person at the Submission Location.</p>
<p>Submission Location for Initial, Interim and Final AIRS Submittals</p>	<p>By email to the Contact Person: BSPContact@gov.bc.ca Or By USB flash drive, delivered to the Contact Person at the Submission Location.</p>

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1. INTRODUCTION

1.1. Project Scope Overview

The Broadway Subway Project (BSP or the Project) includes the design, construction, and partial financing during construction of an extension to the Existing Millennium Line from VCC-Clark Station to a new terminus at Arbutus Street.

The Project consists of 5.7 kilometres of advanced light rapid transit (SkyTrain) and six underground Stations. The Project will extend the existing elevated guideway approximately 700 metres westward from the tail track west of VCC-Clark Station to the first Station at Great Northern Way. From the Station at Great Northern Way, the alignment will continue underground to join Broadway at Main Street where it will travel west under Broadway to a new terminus at Arbutus Street. The Project will be fully integrated with existing SkyTrain systems and protocols. Major underground works are required to complete the Project.

1.2. Short-listed Respondents

Through the RFQ phase of the Competitive Selection Process, the following three Respondents were identified as eligible to receive this RFP and to be invited to participate further in the Competitive Selection Process as Proponents:

- Acciona-Ghella Joint Venture
- Broadway Connect
- West 9th Partners

1.3. Request for Proposals Overview

The Province is issuing this RFP as part of the Competitive Selection Process for the Project. It is anticipated that through the Competitive Selection Process, one of the Proponents will be identified as eligible to be selected as the Preferred Proponent and be offered the opportunity to enter into the Project Agreement for the delivery of the Project.

1.3.1. RFP Structure

This RFP contains the following five volumes:

- (a) Volume 1 – Instructions to Proponents;
- (b) Volume 2 – Initial Draft Project Agreement;
- (c) Volume 3 – Draft BCIB-Contractor Agreement;
- (d) Volume 4 – Broadway Subway ATC System

- (i) Part 1 – Form of Draft Base Supply Contract:

Part 1 of Volume 4 contains the Draft Base Supply Contract for the provision of the BSP ATC System for the Project; and

- (ii) Part 2 – Proponent Supply Contract Development Process:

Part 2 of Volume 4 explains the way in which Proponents may develop a Proponent Supply Contract for the provision of the BSP ATC System for the Project; and

- (e) Volume 5 - Forms

2. OVERVIEW OF THE PROJECT AGREEMENT AND PROJECT WORK

The Project Agreement will set out the rights and obligations of the parties in respect of the Project and will contain, among other things, the technical specifications for the design and construction of the Project, the scope of the Project Work and other commercial terms.

The BCIB-Contractor Agreement (BCA) will set out, among other things, the requirements for the supply of relevant labour to Project Co. Principal Contractors and Subcontractors will enter into separate BCIB-Subcontractor Agreements setting out, among other things, the requirements for the supply of relevant labour.

The Base Supply Contract will contain, among other things, the requirements and specifications for the BSP ATC System and commercial terms with respect to the BSP ATC System.

It is anticipated that the Initial Draft Project Agreement, Draft BCA, and Draft Base Supply Contract will be developed through processes, further detailed in this RFP and in the Proponent Agreement, that include:

- (a) issuance of an Initial Draft Project Agreement as Volume 2 of this RFP;
- (b) issuance of a Draft BCA as Volume 3 of this RFP;
- (c) issuance of a Draft Base Supply Contract as Part 1 of Volume 4 of this RFP;
- (d) consideration of comments, issues and proposed amendments to the Initial Draft Project Agreement, Draft BCA, and Draft Base Supply Contract, received from Proponents, in writing and as part of Workshops and Topic Meetings;
- (e) incorporation by one or more Addenda into the Initial Draft Project Agreement, Draft BCA and/or Draft Base Supply Contract of amendments, which amendments may include Proponent-proposed or Province-proposed language and other amendments; and
- (f) issuance by Addendum of a Definitive PA as Volume 2 of this RFP, a Definitive BCA as Volume 3 of this RFP and a Definitive Base Supply Contract as Part 1 of Volume 4 of this RFP.

Any description or overview of the Initial Draft Project Agreement, the Definitive PA, the Draft BCA, the Definitive BCA, the Draft Base Supply Contract, and/or the Definitive Base Supply Contract in this Volume 1 of this RFP is provided for convenience only and does not supersede, supplement or alter the Initial Draft Project Agreement, the Definitive PA, the Draft BCA, the Definitive BCA, the Draft Base Supply Contract, and/or the Definitive Base Supply Contract, as applicable. If there are any inconsistencies between the terms of the Initial Draft Project Agreement, the Definitive PA, the Draft BCA, the Definitive BCA, the Draft Base Supply Contract, and/or the Definitive Base Supply Contract and the description of those terms set out in this Volume 1 of this RFP, the terms of the Initial Draft Project Agreement, the Definitive PA, the Draft BCA, the Definitive BCA, the Draft Base Supply Contract, and/or the Definitive Base Supply Contract, as applicable, will prevail.

2.1. Project Agreement Parties

The parties to the Project Agreement will be the Province, the British Columbia Transportation Finance Authority (BCTFA) and Project Co.

2.2. Design and Construction

Project Co will be responsible for all aspects of design and construction of the Project in accordance with the Project Agreement.

The Province has completed a Reference Concept Alignment for the Project that was the basis for property acquisition and cost estimates. The Reference Concept Alignment is available in the RFP Data Website.

A summary of Project Co’s design and construction scope for the Project is provided in Table 1 below. This summary is not exhaustive. The full design and construction scope is set out in the Project Agreement.

Table 1 - Summary of Anticipated Design and Construction Scope

SUMMARY DESIGN AND CONSTRUCTION SCOPE	
<ul style="list-style-type: none"> • Obtain necessary permits, approvals and authorizations, including those required pursuant to applicable regulatory requirements and legislation. • Site preparation including, where applicable, demolition of existing buildings. • Design and construction of guideway along the approximately 5.7 km long alignment, including an elevated guideway for approximately 700 m and tunnelled guideway for approximately 5 km. • Design and construction of six new Stations, including Station Plazas, two bike parkades and one bus exchange facility. • Integration with the existing Broadway-City Hall Canada Line Station at one of the six new Stations, including coordination with InTransit BC on design, construction, and operations. • Design, supply and installation of trackwork and electrical and mechanical systems and subsystems, including the BSP ATC System. • Road and other civil works required to accommodate the Project. • Relocation and/or protection of existing utilities and construction of new utilities as required to accommodate the Project. • Traffic management during construction, including maintaining residential, institutional, and commercial access along the alignment. • Integration and tie-in of the Broadway Subway Project with the existing SkyTrain system near the VCC-Clark Station guideway tail track, including the existing automatic train control system, other electrical and mechanical systems and the existing vehicle fleet. 	

SUMMARY DESIGN AND CONSTRUCTION SCOPE

- Testing, commissioning and integration of all Project components, systems and subsystems including necessary coordination with rapid transit operating companies.

The items set out in the table below are not included in the scope of the Project Work.

SUMMARY OF EXCLUSIONS FROM DESIGN AND CONSTRUCTION SCOPE

- Advance Work and Concurrent Work.
- Supply, installation, testing and commissioning of Compass Card and Faregate Equipment.
- Supply of Vehicles.
- Operation and maintenance of the Broadway Subway, as a fully interoperable extension of the Existing SkyTrain System, following Substantial Completion.

2.2.1. Community Benefits

A Community Benefits Agreement (CBA) was executed between British Columbia Infrastructure Benefits Inc. (BCIB), and the Allied Infrastructure and Related Construction Council in July 2018. The CBA will contain an Appendix identifying how the agreement is relevant to the Project, which will be included on the RFP Data Website.

Project Co and applicable Principal Contractors and Subcontractors will be required to independently enter into agreements with BCIB (the BCA and the BCIB-Subcontractor Agreement, respectively) for supply of relevant labour for the Project. The form of the Draft BCA is provided in Volume 3 of this RFP. The form of the draft BCIB-Subcontractor Agreement is attached as Schedule 4 to the Draft BCA.

2.2.2. Indigenous Groups

The Province is in discussions with Indigenous Groups including Tsleil-Waututh, Squamish Nation and Musqueam Nation regarding contracting and employment opportunities. Project Co's requirements with respect to Indigenous Groups are set out in Schedule 22 [Indigenous Requirements] to the Project Agreement. It is anticipated that Project Co will be required to meet specified targets in relation to benefit agreements negotiated with Indigenous Groups. Failure to meet identified targets will result in consequences as described in Schedule 22 [Indigenous Requirements] to the Project Agreement.]

2.2.3. Rail

Due to the proximity of the Project Work to Burlington Northern Santa Fe Railway Co (BNSF) lands, Project Co will be responsible for coordinating any applicable Project Work activities with BNSF.

The Province is negotiating an agreement with BNSF to acquire property adjacent to VCC-Clark Station. The Province intends to make this property available to Project Co as part of the Project Lands.

The Province is also confirming with BNSF the requirements for acquiring temporary access rights to additional BNSF lands if required by Proponents to facilitate Elevated Guideway construction. These requirements are available on the RFP Data Website.

2.2.4. Utilities

The Province has contacted and received information from Utility Suppliers, including location data. This data will be available to the Proponents on the RFP Data Website. The Province is also negotiating Utility Agreements with Metro Vancouver and the City of Vancouver, and anticipates providing these agreements to Proponents in the RFP Data Website.

2.2.5. Broadway Subway ATC System

Project Co is responsible for delivering the BSP ATC System and is to assume, in all respects, responsibility for the BSP ATC System, including carrying out the provisions and requirements set out in the Definitive Base Supply Contract or in the Proponent Supply Contract, as the case may be.

The Broadway Subway is intended to be fully interoperable with the Existing SkyTrain System, which uses the proprietary Thales SELTRAC™ automatic train control system. As a result, the Province has undertaken discussions with Thales regarding the supply of the automatic train control system for the Project and has negotiated the Draft Base Supply Contract, the terms of which will form the basis of an agreement for the supply by Thales to Project Co of the BSP ATC System for the Project. The Draft Base Supply Contract is attached as Part 1 of Volume 4 of this RFP. The Draft Base Supply Contract may be modified and negotiated in accordance with the provisions of this RFP, including Part 2 of Volume 4 of this RFP.

2.2.6. Integration with Existing Transit Facilities and Working with Others

In accordance with the Project Agreement, the Project Work will require Project Co to interface with Existing Transit Facilities and operations, including the following:

- (a) VCC - Clark Station;
- (b) Broadway – City Hall Station (Canada Line).

Project Co will be required to work with TransLink, including its operating subsidiaries (i.e. British Columbia Rapid Transit Company Ltd. and Coast Mountain Bus Company), and InTransit BC in accordance with the Project Agreement. Project Co is to avoid disruptions to operating transportation lines including the Existing Millennium Line and Canada Line.

Proponents should refer to the terms of Articles 13 [Systems] and 18 [Integration with Existing Transit Facilities] of Part 2 of Schedule 4 [Design and Construction] to the Initial Draft Project Agreement with respect to the requirements for the integration of the Project Work with transit facilities.

2.2.7. Future Expansion and Integration

TransLink is currently in the early stages of studying a further expansion of the SkyTrain system west of Arbutus Street in Vancouver and between Surrey and Langley. The potential expansions are subject to development of business cases and appropriate approvals. Should these expansions proceed, the Province anticipates that they may be procured through a procurement process separate from the Project. The Initial Draft Project Agreement includes requirements with respect to designing and constructing the Project Work in a manner which supports and accommodates the potential future expansion and integration of the SkyTrain system.

2.2.8. Work by Others

Advance Work and Concurrent Work is being and will be undertaken for the Project, to facilitate Project Co's work and to satisfy third party requirements. Project Co will be required to coordinate the Project Work with third parties that are responsible for Advance Work and Concurrent Work. The timing, scope and cost responsibilities associated with Advance Work and Concurrent Work are described in Article 6 [Work by Others] of Part 1 of Schedule 4 of the Initial Draft Project Agreement.

2.2.9. Vehicles

TransLink will provide the Vehicles required for the Broadway Subway.

While Project Co will not be responsible for providing Vehicles, Project Co will be responsible for ensuring that all Vehicles (including Mark I Vehicles, Mark II Vehicles, and Mark III Vehicles used on the Existing SkyTrain System) can run seamlessly on and between the Existing SkyTrain System and the Broadway Subway in accordance with the Project Agreement.

2.2.10. Compass Card and Faregate Equipment

TransLink will provide the Compass Card and Faregate Equipment required for the Project.

Project Co will be required to ensure that the Stations are designed and constructed to provide space and infrastructure to physically accommodate the Compass Card and Faregate Equipment, including the supply of power and communication connections. Project Co will make relevant areas within Stations available to TransLink by no later than the Compass Card and Faregates Work Target Start Date. The Compass Card and Faregates Work will be carried out as Concurrent Work by others and is to be completed prior to Substantial Completion.

2.2.11. Traffic Management

Project Co will be required to comply with traffic management provisions set out in the Project Agreement, including Part 4 [Traffic Management] of Schedule 4 and Schedule 7 [Quality Management].

In accordance with the Project Agreement, including Schedule 10 [Payment and Performance Mechanism] of the Project Agreement, Project Co will be required to make payments to the Province if the traffic management requirements set out in the Project Agreement are not met.

2.2.12. Operations and Maintenance

TransLink will assume responsibility for the ongoing operations and maintenance of the Broadway Subway, as a fully interoperable extension of the Existing SkyTrain System, following Substantial Completion. Project Co will not be responsible for the ongoing operations and maintenance of the Broadway Subway following Substantial Completion.

2.2.13. Municipal Infrastructure

Project Co's obligations with respect to Municipal Infrastructure are set out in the Project Agreement, including Schedule 4 [Design and Construction]. The Province is finalizing the Municipal Agreement with the City of Vancouver and anticipates making it available to Proponents on the RFP Data Website.

2.2.14. Archaeology

An Archaeological Overview Assessment ("AOA") has been developed by the Province and is available in the RFP Data Website. The AOA has identified a limited number of areas within the Project Lands with Archaeological Potential. Areas with Archaeological Potential that overlap with the Project Lands are identified in maps in the addendum to the AOA. An Archaeological Impact Assessment ("AIA") is currently being undertaken by the Province in areas with Archaeological Potential. The results will be shared via the RFP Data Website.

Project Co will be required to develop and implement an Archaeological and Heritage Management Plan, during Construction in order to appropriately manage archaeological resources. Project Co will engage with Indigenous Groups during the development and implementation of the Archaeological and Heritage Management Plan.

2.2.15. Acceptable Equivalents

The Design and Construction Requirements are intended to generally be performance-based but include in some instances specific requirements related to design and construction that the Province considers important to meet the Province's objectives. However, the Province wishes to provide flexibility for Proponents to propose alternatives that when considered by the Province, in its discretion, continue to meet the Province's objectives (each an "Acceptable Equivalent").

A Proponent may submit an RFI marked “Commercial in Confidence – Acceptable Equivalent” that identifies the applicable section(s) in the Design and Construction Requirements that contain the requirement(s) and the Proponent’s proposed alternative that it considers will be equal to or better than the specified requirement(s) and that will still meet the Province’s objectives, along with supporting materials.

The Province may, in its discretion:

- (a) respond to indicate that the proposed equivalent is acceptable;
- (b) respond to indicate that the proposed equivalent is acceptable subject to the Proponent’s compliance with any conditions identified by the Province;
- (c) respond to indicate that the Province does not consider the proposed equivalent to be acceptable;
- (d) request clarification, further information or additional material;
- (e) not respond to the RFI; or
- (f) provide any other response in accordance with Section 4.4 [Communications and Enquiries] of this Volume 1 of this RFP.

The provisions of Section 4.4 [Communications and Enquiries] of this Volume 1 of this RFP, relating to “Commercial in Confidence” RFIs will apply, including with respect to withdrawal of an RFI, RFIs by more than one Proponent on the same or similar topics, or the Province’s determination if there is a matter which should be brought to the attention of all Proponents.

If the Province responds to a “Commercial in Confidence” RFI, or responds to any RFI that is not “Commercial in Confidence”, regarding a proposed equivalent to indicate that the proposed equivalent is acceptable, a Proponent may make its Technical Submittal on the basis of the response, and the use of the Acceptable Equivalent will not in and of itself be a failure to meet the requirements set out in Appendix B [Evaluation Criteria] of this Volume 1 of this RFP.

Unless the Province responds to indicate that a proposed equivalent is acceptable, a Proponent is at risk that the use of a proposed equivalent will not substantially meet the requirements set out in Appendix B [Evaluation Criteria] of this Volume 1 of this RFP, and that the Province may not invite the Proponent to provide a Financial Submittal.

The Province will be under no obligation to provide the indication of acceptability of the proposed equivalent to the Proponent or to any other Proponent.

Despite any indication by the Province of the acceptability of an equivalent, Project Co remains responsible for fulfilling all of its obligations and responsibilities under the Project Agreement.

Following selection of the Preferred Proponent, the Project Agreement will, in accordance with Section 3.10.1 [PA and BCA – Finalize Terms and Close] of this Volume 1 of this RFP, be amended to include all Acceptable Equivalent(s) used by that Preferred Proponent, or negotiated by the Province and the Preferred Proponent, whether or not proposed by any other Proponent.

2.3. Environmental

The Project is not subject to the environmental assessment processes under the *Environmental Assessment Act* (SBC, 2002) or the *Canadian Environmental Assessment Act* (SC 2012). The BC Environmental Assessment Office has provided documentation confirming that no provincial environmental assessment is required.

While an environmental assessment is not required under the acts, the Province has undertaken an Environmental and Socio-Economic Review (ESR) of the Project. Its purpose was to identify for the Province and Proponents the extent and nature of potential environmental effects that need to be considered to ensure environmental risks are appropriately managed.

The resulting ESR report documents existing environmental and socio-economic values, and potential Project-related effects, and mitigation measures. The scope of potential effects and identification of mitigation, presented in the ESR report, informed the development of Schedule 6 [Environmental Obligations] of the Project Agreement.

Project Co will be required to perform the Project Work in compliance with the environmental obligations, as described in Schedule 6 [Environmental Obligations] and Schedule 10 [Payment and Performance Mechanism] of the Project Agreement. These obligations include:

- (a) developing and implementing environmental management plans to avoid or mitigate potential construction-related effects on environmental and socio-economic values;
- (b) identifying and obtaining required environmental permits; and
- (c) working in compliance with Environmental Laws.

2.4. Quality Management

Project Co is to develop, implement, achieve and maintain third party certification as evidence of compliance to its Quality Management System in accordance with the terms of the Project Agreement, including Schedule 7 [Quality Management], and the ISO 9001:2015 Standard.

Project Co is required to employ independent testing and inspection companies, registered as corporations in Canada, and certified by organizations accredited by the Standards Council of Canada, for structural components manufactured outside of Canada or the United States of America. Testing and inspection at origin and re-inspection in Canada is required.

2.5. Lands

The Province will, subject to the requirements of this RFP and the Project Agreement, acquire all lands and land interests identified as Project Lands. Project Co will be provided access to the Project Lands (including the Temporary Project Lands) in accordance with the Project Agreement. No ownership or other registrable interest in such lands will be transferred to Project Co.

The RFP Data Website contains land identification AutoCAD drawings which identify Project Lands and Temporary Project Lands. Project Co may use Temporary Project Lands for the purposes of construction staging or other construction management activities. No permanent infrastructure may be constructed on Temporary Project Lands.

Proponents may request additions to the Project Lands and/or Temporary Project Lands to accommodate the Proponent's design, also referred to as Proponent Proposed Lands. Should the Province accept any such request, the Province will adjust the Proponent's Contract Price Proposal to take into account the Proposed Lands Costs. Proponents should refer to the Appendix F [Lands Process] of this Volume 1 for details regarding the lands for the Project and the process for proposing Proponent Proposed Lands.

2.6. Communications and Engagement

The Province has implemented a communications, community relations and business relations program which provides, and will continue to provide, opportunities for stakeholders and members of the public to learn about the Project and provide input.

Project Co's obligations regarding communications and engagement are set out in the Project Agreement, including Schedule 9 [Communications, Community Relations and Business Relations]. Key communications and engagement responsibilities include:

- (a) construction and traffic notification;
- (b) community and stakeholder relations;
- (c) business relations;
- (d) enquiry-response management;
- (e) supporting the Province with crisis communications and issues management; and
- (f) supporting the Province with media and government relations.

2.7. Financing

Project Co will be responsible for arranging and delivering financing to fund \$450 million of project costs in accordance with Schedule 10 [Payment and Performance Mechanism] of the Project Agreement. The Province does not anticipate accepting corporate financing (i.e. financing not from an independent third party).

2.8. Payment and Performance Mechanism

Project Co will receive payments and be required to comply with a performance mechanism in accordance with the terms of the Project Agreement, including Schedule 10 [Payment and Performance Mechanism].

2.8.1. Payments and Warranties

The Contract Price will be paid by a combination of ongoing Progress Payments (in respect of a portion of the Project costs as they are incurred and in accordance with the progress measurement principles contained in the Project Agreement) and the Substantial Completion Payment (in respect of all other project costs not paid by Progress Payments).

The Province will retain certain holdbacks from the Substantial Completion Payment, including:

- (a) the On-Time Performance Demonstration Completion Amount;
- (b) the TIDS Performance Demonstration Completion Amount;
- (c) the Deficiency Retention Amount;
- (d) the Warranty Holdback; and
- (e) the Builder's Lien Holdback.

The amounts withheld as part of a holdback from the Substantial Completion Payment will be paid to Project Co in accordance with the Project Agreement.

In addition to the remedying of Project Work Defects during the General Project Work Defect Warranty Period, Project Co will be required to remedy Latent Project Work Defects that are identified within the Latent Project Work Defect Warranty Period.

2.8.2. Key Aspects of the Performance Mechanism

The Project Agreement includes a performance mechanism which may, subject to and in accordance with its terms, trigger payment obligations of Project Co to the Province and/or the accumulation of NCE Points and/or Default Points as set out in Schedule 10 [Payment and Performance Mechanism] to the Project Agreement.

2.8.3. Liquidated Damages

Project Co will be required to pay Liquidated Damages in accordance with Schedule 10 [Payment and Performance Mechanism] to the Project Agreement if Project Co fails to achieve any of the following:

- (a) Substantial Completion by the Substantial Completion Target Date;
- (b) On-Time Performance Demonstration Completion on or before the On-Time Performance Demonstration Completion Target Date; and
- (c) TIDS Performance Demonstration Completion on or before the TIDS Performance Demonstration Completion Target Date.

3. OVERVIEW OF RFP PROCESS

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

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

- (a) the Proponent being identified as a Short-Listed Respondent pursuant to the RFQ and executing and delivering the Proponent Agreement in accordance with the RFQ; and thereafter:
- (b) the Proponent observing and ensuring that its Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them, observe the terms of this RFP and the Proponent Agreement, including the terms and conditions that may be required, or otherwise established by the Province, in respect of any waiver or permission to be issued by the Province under this RFP or the Proponent Agreement; and
- (c) the Proponent submitting a Proposal, with the exception of the Advanced Interest Rate Submittals, that substantially satisfies the requirements of this RFP.

Any failure(s) on the part of the Proponent or on the part of any Proponent Team Member or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them, to observe, satisfy, or comply with such requirements, terms and conditions may result in one or more of the following:

- (a) the Proponent being ineligible to continue further in the Competitive Selection Process or to receive any further invitations or information; and/or

- (b) the Proponent being disqualified from the Competitive Selection Process.

3.1. Affordability

3.1.1. Affordability Requirement

As part of their Proposals, Proponents should calculate a Contract Price Proposal in accordance with Section 3 of Volume 1 of this RFP. The Contract Price Proposal will be evaluated to determine whether it is less than or equal to the Affordability Requirement, which is \$1,730,000,000 in nominal dollars. The Contract Price Proposal and the Adjusted Contract Price Proposal, as applicable, each must not exceed the Affordability Requirement.

3.1.2. Risk Scope Levels

The Province has identified a mechanism to adjusting risk scope levels and ensuring that Proponent Contract Price Proposals meet the Affordability Requirement as follows:

(a) Tunnel Geotechnical Risk Sharing

- (i) Tunnel Geotechnical Risk Scope Level 1 – the delivery of the Project and the Project Work pursuant to the Definitive Project Agreement, but excluding the Tunnel Geotechnical Risk Sharing Provisions.
- (ii) Tunnel Geotechnical Risk Scope Level 2 – the delivery of the Project and the Project Work pursuant to the Definitive Project Agreement including the Tunnel Geotechnical Risk Sharing Provisions. For the purposes of the Ranking Process only, the Province will attribute an additional cost of \$50 million in nominal dollars to the Contract Price Proposal of any Proponent that selects Tunnel Geotechnical Risk Scope Level 2 in accordance with Appendix B [Evaluation Criteria] of Volume 1 of this RFP.

3.1.3. Priced Options

In addition to a Contract Price Proposal, Proponents should submit design information (as described in Section 3.1.5 g) of Table A-4 (Package 3 Content and Requirements) of Appendix A of Volume 1 of this RFP) in their Technical Submittals for the Priced Options set out in this Section 3.1.3 below.

Proponents should submit separate prices (as described in Section 5.1.5 of Table A-7 (Package 4 Content and Requirements) of Appendix A of Volume 1 of this RFP) in their Financial Submittals for the two Priced Options as set out in this Section 3.1.3 below.

The Priced Options are for the following:

- (a) Transit Police Facilities (Option 1) - As described in **Schedule 4, Article 10, Article 10.5.6(c)** of the

Initial Draft Project Agreement, this is the elimination of Transit Police Security Rooms at all six Stations, replaced by design and construction of:

- i. Transit Police Sub-Office at Mount Pleasant Station;
 - ii. Transit Police Sub-Office at Arbutus Station; and
 - iii. Transit Police Hub at Broadway-City Hall Station.
- (b) Machine Roomless (MRL) Elevators (Option 2) - As described in Schedule 4, Article 10, Article 10.4.5.4 of the Initial Draft Project Agreement, if a Proponent elects to include provision of Roped Hydraulic Elevators (RH) in its Proposal, the Proponent will also provide an optional price to provide MRL Elevators in lieu of RH elevators, including the design, construction, supply, and installation of machine roomless elevators.

At any time after the Financial Submittal Deadline but before the Priced Options Confirmation Date the Province may elect to include as part of the scope of the Project Work to be carried out by Project Co pursuant to the Project Agreement:

- (a) Option 1; and/or
- (b) Option 2.

The prices for the Priced Options provided by a Proponent in its Financial Submittal will not form part of the Contract Price Proposal and will not be taken into account for the purposes of the Ranking Process set out in Appendix B of Volume 1 of this RFP.

There will be no change to the Substantial Completion Target Date whether or not the Province exercises any one or more of the Priced Options.

If the Province exercises any one or more of the Priced Options, the work comprised within such exercised Priced Option(s) will be completed by Project Co as part of the Project Work, in accordance with the terms of the Project Agreement.

3.1.4. Contract Price Proposal

The Contract Price Proposal should be calculated by the Proponent using the Affordability Model provided by the Province. The Affordability Model is available on the RFP Data Website and is to be completed using the appropriate outputs from the Proponent's Financial Model. Proponents should incorporate the Affordability Model directly into their Financial Model, with inputs into the Affordability Model linked to live values in the Financial Model. Proponents should not alter the Affordability Model.

3.2. Indigenous Groups Business to Business Networking Event

The Province intends to coordinate a session with Proponent Teams and the Indigenous Groups and their associated businesses to provide an opportunity for:

- (a) those businesses which might be interested in working with, or providing products and services to the Preferred Proponent, to meet the Proponent Teams; and
- (b) Proponent Teams to enhance their knowledge, understanding and awareness of local goods and services and to build relationships with the Indigenous Groups and their associated businesses.

3.3. Business to Business Networking Event

The Province also intends to coordinate a session with Proponent Teams and local contractors, suppliers and businesses to provide an opportunity for:

- (a) local contractors, suppliers and businesses which might be interested in working with, or providing products and services to the Preferred Proponent, to meet the Proponent Teams; and
- (a) Proponent Teams to enhance their knowledge, understanding and awareness of local goods and services and to build relationships with local contractors, suppliers and businesses.

3.4. Consultation Process

The Province will facilitate a consultation process with the Proponents which will include exchanges of information, discussions and clarifications of issues through Workshops and Topic Meetings and the submission and consideration of comments on and proposed amendments to the Initial Draft Project Agreement, the Draft BCA and the Draft Base Supply Contract, including after the Technical Submittal Deadline. The terms, procedures, rules and protocols for the Workshops and Topics Meetings are set out in the Proponent Agreement, including in Section 8 to the Proponent Agreement [Workshops and Topic Meetings]. The Province may in its discretion, from time to time, amend, supplement, or replace Section 8 [Workshops and Topic Meetings] by delivery to the Proponent of written policies and procedures clarifying, supplementing, or otherwise modifying the terms of Section 8 [Workshops and Topic Meetings].

3.4.1. Workshops and Topic Meetings

In accordance with the Proponent Agreement, the Province may schedule and conduct Workshops and Topic Meetings during this RFP stage to enable communication between the Province and the Proponents as to issues relating to this RFP, the Initial Draft Project Agreement, the Draft BCA and Draft Base Supply Contract. Workshops will be conducted in three parts:

- (a) Workshop 1A and 2A, focused on the Initial Draft Project Agreement and RFP;
- (b) Workshop 1B and 2B, focused on the Draft BCA; and
- (c) Workshop 1C and 2C, focused on the Draft Base Supply Contract.

Topic Meetings will focus on specific technical aspects of the Project. Attendance by Proponents at Topic Meetings and Workshops will be required, unless otherwise designated by the Province.

Two Topic Meetings and two sets of Workshops are planned, as indicated below and further referenced in Table 2 in Section 3.12 of Volume 1 of this RFP:

- (a) a Topic Meeting in the form of an all-Proponent information meeting; and
- (b) Workshops that are anticipated to include:
 - (i) Workshop 1A – separate meetings between the Province and each Proponent to discuss the Proponent’s comments on the RFP and the Initial Draft Project Agreement;
 - (ii) Workshop 1B – separate meetings between the Province and BCIB and each Proponent to discuss the Proponent’s comments on the Draft BCA;
 - (iii) Workshop 1C – separate meetings between the Province and Thales and each Proponent to discuss the Proponent’s comments on the Draft Base Supply Contract;
 - (iv) Workshop 2A – separate meetings between the Province and each Proponent to discuss the Proponent’s comments on the RFP, the revised Initial Draft Project Agreement and the Interim Financial Review Submittal;
 - (v) Workshop 2B – separate meetings between the Province and BCIB and each Proponent to discuss the Proponent’s comments on the revised Draft BCA and the Interim Workforce Requirements Submittal; and
 - (vi) Workshop 2C – separate meetings between the Province and Thales and each Proponent to discuss the Proponent’s comments on the revised Draft Base Supply Contract.

Proponents should provide agendas for these workshops using the format set out in Collaborative Meeting Agenda Comments of Form 8 of Volume 5 of this RFP.

The Fairness Reviewer will be invited to all such Workshops and Topic Meetings.

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

3.4.2. Finalization of the Project Agreement, BCIB-Contractor Agreement, and Base Supply Contract

The Province will issue the initial and subsequent revised forms of the Initial Draft Project Agreement, Draft BCA, and Draft Base Supply Contract as Volume 2, Volume 3, and Volume 4 of this RFP, respectively. In addition to considering comments and issues discussed in the Workshops and Topic Meetings, the Province may from time to time invite Proponents to review and submit further comments in respect of the Initial Draft Project Agreement, Draft BCA, and Draft Base Supply Contract.

Any information or documentation provided to or which comes to the attention of the Province at or in connection with any Workshops or Topic Meetings, including in or as a result of questions raised during such meetings, and further Proponent-requested amendments or information relating to commercially sensitive matters, may be subject to disclosure to the other Proponents in the discretion of the Province.

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

The Province currently anticipates that the sequencing of submission and review of comments, issues and requested amendments and scheduling of Workshops will follow in the order outlined in Table 2 in Section 3.12 of Volume 1 of this RFP. The Province may, in its discretion, extend, accelerate and/or modify the sequencing at any time and from time to time.

Any issues, comments and requested amendments to the Initial Draft Project Agreement, Draft BCA, and Draft Base Supply Contract should be submitted in table format, identifying the agreement wording that is the subject of the issue, the comment or requested amendment, highlighting the Proponent's priorities and setting out the corresponding summary of the issue or comments, and where applicable the requested substitute wording and accompanying memorandum summarizing the rationale for the requested amendment.

The Province will consider comments, issues and requested amendments received from the Proponents. Without limiting any other provision of this RFP, including Section 5.1 of Volume 1 of this RFP, the Province may in its discretion, on its own initiative or as a result of Proponent comments or requests, at any time and from time to time, including after the Technical Submittal Deadline, by Addenda amend, restructure, or supplement the initial and any revised form of Initial Draft Project Agreement, Draft BCA, and/or Draft Base Supply Contract, including by incorporating any such Proponent-requested and any other changes.

The Province will issue by Addenda the Definitive PA, Definitive BCA, and Definitive Base Supply Contract.

3.5. Authorizations, Orders and Approvals

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

- (a) any approvals required under the *Financial Administration Act* (British Columbia);
- (b) issuance by the Lieutenant Governor in Council of orders in council made under the *Transportation Investment Act* (British Columbia) and the *Transportation Act* (British Columbia); and

- (c) any other regulatory or other approvals required under the laws of the Province of British Columbia or Canada.

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

3.6. Interim Submittals

3.6.1. Interim Financial Review Submittal

The Province will conduct the interim financial review as follows:

- (a) the purpose of the interim financial review is to facilitate an early review by the Province with Proponents regarding:
 - (i) the Proponents' understanding of the Project requirements; and
 - (ii) the Proponents' cost assumptions with respect to the Project requirements;
- (b) prior to the Interim Financial Review Submittal Deadline, each Proponent will submit to the Province an Interim Financial Review Submittal including:
 - (i) a completed capital cost summary table in the form of, and in accordance with the cost items, provided in Appendix C of Volume 1 of this RFP;
 - (ii) an assessment as to whether the Project Schedule and identified milestones as outlined in Schedule 3 [Project Schedule] of the Project Agreement can be achieved; and
 - (iii) an assessment as to whether the Designated Project Lands as identified in Table A-1 of Appendix A to Schedule 8 [Lands] of the Project Agreement are adequate to facilitate the delivery of the Project Work.
- (c) the Province is expecting the Interim Financial Review Submittal to include cost and input assumptions in sufficient detail to allow the Province to understand the Proponent's cost base (with at least all major cost headings included);
- (d) the Province will retain each of the Interim Financial Review Submittals as strictly confidential, and will invite each Proponent, as part of Workshop 2A, to discuss any aspect of its Interim Financial Review Submittal, including any recommendations for amendment of the Project requirements if a Proponent determines that the Project as described will exceed the Affordability Requirement; and
- (e) a Proponent's Interim Financial Review Submittal will not be considered part of its Proposal and the Province will not consider or evaluate it as to adequacy, quality, content or otherwise as part of the evaluation process described in Appendix B [Evaluation Criteria] of Volume 1 of this RFP.

The Province understands that the values indicated in a Proponent's Interim Financial Review Submittal are not a commitment and that any and all aspects could change in the final Proposal.

3.6.2. Interim Workforce Requirements Submittal

Each Proponent will submit an Interim Workforce Requirements Submittal to the Submission Location for Interim Workforce Requirements Submittals on or before the Interim Workforce Requirements Submittal Deadline.

The purpose of the Interim Workforce Requirements Submittal is to facilitate an early review by the Province and BCIB with Proponents of their anticipated labour requirements for the Project under the BCA and BCIB-Subcontractor Agreements.

Prior to the Interim Workforce Requirements Submittal Deadline, each Proponent will submit an Interim Workforce Requirements Submittal, including the Proponent's best estimate of the anticipated labour force, with approximate numbers by Job Classifications of Employees (as those terms are defined in the Draft BCA), that will be required by Project Co and its anticipated Applicable Subcontractors (as defined in the Draft BCA) on a month by month basis for the first year, and annually thereafter to Substantial Completion.

The Province will retain each of the Interim Workforce Requirements Submittals as strictly confidential, and will invite each Proponent, as part of Workshop 2B, to discuss any aspect of its Interim Workforce Requirements Submittal.

A Proponent's Interim Workforce Requirements Submittal will not be considered part of its Proposal and the Province will not consider or evaluate it as to adequacy, quality, content or otherwise as part of the evaluation process described in Appendix B of Volume 1 of this RFP.

3.6.3. Security Package Review Submittals

The Province invites Proponents to submit their proposed Base Security Package and Alternate Security Packages in accordance with the process described in Appendix E of Volume 1 of this RFP.

3.7. Proposal Submittal Requirements

3.7.1. Technical Submittal and Financial Submittal

Proposal submittal requirements are set out in detail in Appendix A of Volume 1 of this RFP, and include formatting, packaging and content requirements relating to the Proposals. Proposals should be delivered in the following submittals, as further described in Appendix A of Volume 1 of this RFP.

Proponents are to provide a Technical Submittal and a Financial Submittal to the Submission Location, as described in Appendix A of Volume 1 of this RFP, before the Technical Submittal Deadline and the

Financial Submittal Deadline, respectively. The Technical Submittal should include no pricing information.

Subject to the terms of this RFP, the Province may issue an invitation to Proponents to submit a Technical Supplement.

3.7.2. Advanced Interest Rate Submittals (AIRS)

The Province is willing to provide interest rate movement certainty to Proponents from the Financial Submittal to the Effective Date or the Credit Spread Refresh Lock-in Date, as appropriate, if certain conditions are met. In order to qualify for this protection, Proponents must satisfy the AIRS requirements described in Appendix D of Volume 1 of this RFP.

3.7.3. Submittal Deadlines and Submission Location for Proposals

The Technical Submittal and the Financial Submittal are to be received at the Submission Location, and should be addressed to the Contact Person.

Each AIRS Submittal is to be received at the Submission Location for Initial, Interim and Final AIRS Submittals.

Proposals, with the exception of the Advanced Interest Rate Submittals, submitted by fax, telephone or other electronic means will not be accepted.

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

3.8. Evaluation Process

3.8.1. Technical Submittal Package Review

The Province may review a Technical Submittal for substantial completeness in accordance with this RFP.

3.8.2. Technical Submittal Evaluation

The Technical Submittal evaluation will be in accordance with the evaluation criteria set out in Section A (and, if applicable, Section B) of Appendix B of Volume 1 of this RFP.

3.8.3. Invitation to Submit Technical Supplement

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

- (a) any amendment, restructuring or supplement made after the Technical Submittal Deadline,
 - (i) is made to any of the schedules of the version of Definitive PA issued as at the Technical Submittal Deadline, or
 - (ii) is considered by the Province to impact on the elements of the Project Work provided for in or on the requirements of any such listed schedules; and
- (b) any document is posted to the RFP Data Website, after the Technical Submittal Deadline and contains information which is considered by the Province to impact on the elements of the Project Work provided for in or on the requirements of any such listed schedules, and
- (c) the Province considers any such amendment, restructuring or supplement, or any such impact, as applicable, to be so material, having regard to the applicable elements of the Project Work or the applicable requirements provided for in the schedule or schedules, as the case may be, as to necessitate review by the Proponents of their Technical Submittals.

The Province may in its discretion issue an invitation under this Section on its own initiative or on consideration of a Proponent's request delivered by RFI in accordance with Section 4.4 of Volume 1 of this RFP.

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

3.8.4. Technical Supplement Review and Evaluation

If a Technical Supplement is invited, the Province will review the Technical Supplement for substantial completeness and evaluate of the Technical Supplement in accordance with this RFP.

3.8.5. Invitation to Submit Financial Submittal

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

the Submission Location, as described in Appendix A of Volume 1 of this RFP, before the Financial Submittal Deadline. The Financial Submittal is to include the Contract Price Proposal and supporting information.

Proponents should prepare their Financial Submittal on the basis of:

- (a) the Affordability Requirement;
- (b) the Definitive PA, without amendment, and including any further information and documentation;
- (c) the Definitive BCA, without amendment, and including any further information and documentation;
and
- (d) the Definitive Base Supply Contract or the Proponent Supply Contract (as the case may be), without amendment, and including any further information and documentation.

3.8.6. Financial Submittal Package Review

The Province may review a Financial Submittal for substantial completeness in accordance with this RFP.

3.8.7. Financial Submittal Evaluation

The evaluation of the Financial Submittal will be in accordance with the evaluation criteria set out in Section C of Appendix B [Evaluation Criteria] of Volume 1 of this RFP.

3.8.8. Invitation to Deliver Preferred Proponent Security Deposit

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

- (a) substantially satisfies the requirements of this RFP, the Definitive PA, the Definitive BCA, and the Definitive Base Supply Contract;
- (b) receives the highest ranking in accordance with the evaluation criteria set out in Appendix B [Evaluation Criteria] of Volume 1 to this RFP; and
- (c) otherwise is considered, in accordance with this RFP, to be eligible to be selected to receive such an invitation,

to deliver the Preferred Proponent Security Deposit.

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

3.8.9. Preferred Proponent

The Province will, subject to the terms of this RFP, select as the Preferred Proponent, the Proponent that has delivered the Preferred Proponent Security Deposit in accordance with the invitation issued pursuant to Section 3.8.8 of Volume 1 of this RFP.

The Province may, in its discretion, invite the Preferred Proponent to commence certain works, including certain design works, on substantially the terms set out in Form 7 [Limited Notice to Proceed Agreement] of Volume 5 of this RFP.

3.9. Debriefing

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

3.10. Close Process

3.10.1. PA and BCA – Finalize Terms and Close

It is the intention of the Province that, subject to Section 3.10.4 of Volume 1 of this RFP, any issues with respect to the Initial Draft Project Agreement and Draft BCA must be finalized prior to the Financial Submittal Deadline so that the Definitive PA and Definitive BCA, once issued, will not be further modified and are to be executed by the Preferred Proponent without further negotiation or amendment, except for changes, modifications and additions:

- (a) relating to the determination by the Province, in its discretion, regarding which parts, if any, of the Proposal are to be incorporated by reference or otherwise into the Definitive PA or Definitive BCA or otherwise pursuant to express provisions of the Definitive PA or Definitive BCA, and changes and additions as a consequence of or in connection with such incorporations;
- (b) to those provisions or parts of the Definitive PA and Definitive BCA which are indicated as being subject to completion or finalization or which the Province determines in its discretion require completion or finalization, including provisions which require:
 - (i) the modification or the insertion or addition of information relating to the Proponent's formation (corporate, partnership or other) and funding structure; and
 - (ii) the modification or the insertion or addition of information in order to reflect accurately the nature of the Proponent's relationships with its principal subcontractors (including each of the Principal Contractors) and lenders;
- (c) required by the Province, in its discretion, to complete, based on the Proposal, any provision of the Definitive PA or Definitive BCA, including changes, modifications and additions contemplated

in or required under the terms of the Definitive PA or Definitive BCA;

- (d) that the Province, in its discretion, considers are necessary to create or provide for a duly authorized and legally complete, enforceable and binding agreement;
- (e) that the Province, in its discretion, considers are necessary solely to enhance clarity in legal drafting; and
- (f) that reflect Acceptable Equivalentents in accordance with Section 2.2.15 of Volume 1 of this RFP.

3.10.2. Finalize terms of Definitive Base Supply Contract

It is the intention of the Province that, subject to Section 3.10.4 and Section 3.10.3 of Volume 1 of this RFP, any issues with respect to the Draft Base Supply Contract will be finalized prior to the Financial Submittal Deadline so that the Definitive Base Supply Contract, once issued, will not be further modified and will be executed by the Preferred Proponent without further negotiation or amendment, except for changes, modifications and additions:

- (a) to those provisions or parts of the Definitive Base Supply Contract which are indicated as being subject to completion or finalization or which the Province determines in its discretion, require completion or finalization, including provisions which require:
 - (i) the modification or the insertion or addition of information relating to the Proponent's corporate and funding structure; and
 - (ii) the modification or the insertion or addition of information in order to reflect accurately the nature of the Proponent's relationships with its Subcontractors;
- (b) required to complete, based on the Proposal, any provision of the Definitive Base Supply Contract, including changes, modifications and additions contemplated in or required under the terms of the Definitive Base Supply Contract (including the finalization of the ATC Project Schedule as described in Part 2 of Volume 4 of this RFP);
- (c) that the Province, in its discretion, considers are necessary to create or provide for a duly authorized and legally complete, enforceable and binding agreement; and
- (d) that the Province, in its discretion, considers are necessary solely to enhance clarity in legal drafting;

where such changes, modifications, and additions have been agreed with Thales.

3.10.3. Finalize Terms of Proponent Supply Contract

If the Proponent has elected to negotiate a Proponent Supply Contract in accordance with Part 2 of Volume 4 of this RFP, it is the intention of the Province that any issues with respect to the Proponent Supply Contract will be finalized prior to the Financial Submittal Deadline, so that the Proponent Supply Contract once submitted will not be further modified and will be executed by the Preferred Proponent without further negotiation or amendment except for changes, modifications, and additions approved by the Province in its discretion:

- (a) to those provisions or parts of the Proponent Supply Contract which are indicated as being subject to completion or finalization or which the Province determines, in its discretion, require completion or finalization, including provisions which require:
 - (i) the modification or the insertion or addition of information relating to the Proponent's corporate and funding structure; and
 - (ii) the modification or the insertion or addition of information in order to reflect accurately the nature of the Proponent's relationships with its Subcontractors;
- (b) required to complete, based on the Proposal, any provision of the Proponent Supply Contract, including changes, modifications and additions contemplated in or required under the terms of the Proponent Supply Contract (including the finalization of the ATC Project Schedule as described in Part 2 of Volume 4 of this RFP);
- (c) that the Province, in its discretion, considers are necessary to create or provide for a duly authorized and legally complete, enforceable and binding agreement; and
- (d) that the Province, in its discretion, considers are necessary solely to enhance clarity in legal drafting,

where such changes, modifications, and additions have been agreed with Thales. If the Proponent has negotiated a Proponent Supply Contract, Section 3.10.2 of Volume 1 of this RFP will not apply.

3.10.4. Negotiations

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

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

Definitive BCA, the Definitive Base Supply Contract or Proponent Supply Contract (as the case may be), the Proposal and the Project Work.

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

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

- (a) proceed with the same Proponent as Preferred Proponent to finalize and settle the Definitive PA, Definitive BCA and Definitive Base Supply Contract or Proponent Supply Contract (as case may be) in which case the terms of Sections 3.10.1, 3.10.2 and 3.10.3 of Volume 1 of this RFP will apply;
- (b) discontinue the process with the Proponent, select another Proponent as Preferred Proponent and invite that Proponent to enter into the negotiations contemplated in this Section 3.10.4;
- (c) discontinue the process with the Proponent and select another Proponent as Preferred Proponent to finalize and settle the Definitive PA, Definitive BCA and Definitive Base Supply Contract or Proponent Supply Contract (as the case may be) in which case the terms of Sections 3.10.1, 3.10.2 and 3.10.3 of Volume 1 of this RFP will apply; or
- (d) any of the steps contemplated in Section 5.3 of Volume 1 of this RFP.

3.10.5. Required Insurance

At least 10 Business Days before the Effective Date, the Preferred Proponent shall provide to the Province drafts of a cover note and a certificate of insurance for each policy for the Required Insurance. Each cover note and certificate of insurance must be in a form and to be signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province, and must be sufficient to confirm the insurance and the terms and conditions thereof, as required by the Definitive Project Agreement, and, for such purposes, the Preferred Proponent will cause the cover note and the certificate of insurance to be revised as the Province may require.

At least five Business Days before the Effective Date, the Preferred Proponent shall deliver to the Province, for each policy for any Required Insurance, the cover note and certificate of insurance for the policy, as provided in draft to the Province and as revised as required by the Province pursuant to this Section 3.10.5, signed by an authorized signatory of the insurers or of the insurers' insurance broker or

insurance intermediary satisfactory to the Province, confirming that the insurance has been obtained and will on or before the required date be in full force and effect, in each case together with:

- (a) evidence satisfactory to the Province that the deposit premiums payable therefore have been paid; and
- (b) where the premium for any policy is not fully paid prior on or before the Effective Date, a statement to that effect certified by the Preferred Proponent setting out the due dates for payment of the remaining premiums and the amount payable on each due date.

3.11. Fairness Reviewer

Jane Shackell, Q.C. has been appointed as the Fairness Reviewer by the Province with responsibility to review the development and implementation of the Competitive Selection Process from a fairness perspective, including by participating in any or all aspects of the Workshops and the Topic Meetings. This includes, but is not limited to, monitoring the evaluation, including the ranking, of the Proposals and the selection, if any, of the Preferred Proponent. The Fairness Reviewer will report only to the Province and will provide, on an ongoing basis, an objective opinion as to the fairness of the Competitive Selection Process. In particular, the Fairness Reviewer will provide a written report in respect of the Proposal evaluation process which will be made public at the time of selection of the Preferred Proponent.

3.12. Timetable

The anticipated timetable for the Competitive Selection Process is set out in Table 2.

Table 2 - Anticipated Timetable for the Competitive Selection Process

Activity	Date
RFP Issued	June 25, 2019
Topic Meeting – All-Proponents Information Meeting	July 5, 2019
Proponents submit agendas for Workshop 1A and Workshop 1B and Workshop 1C	July 24, 2019
Workshop 1A – One-on-one Initial Draft Project Agreement meeting Workshop 1B – One-on-one Draft BCA meeting Workshop 1C – One-on-one Draft Base Supply Contract meeting	–August 12 to 23, 2019 (Each Proponent to be scheduled for two consecutive days)
Initial Security Package Review Submittal Deadline	September 19, 2019
Revised RFP (including Initial Draft Project Agreement and Draft BCA) issued	September 20, 2019
Identified Indigenous Groups Business to Business Networking Event	Week of September 30, 2019

Activity	Date
Business to Business Networking Event	Week of September 30, 2019
Proponent Proposed Lands Request Deadline	4:00 PM local Vancouver time on October 1, 2019
Interim Financial Review Submittal Deadline	11:00 AM local Vancouver time on October 11, 2019
Interim Workforce Requirements Submittal Deadline	11:00 AM local Vancouver time on October 11, 2019
Workshop 2A – One-on-one revised Initial Draft Project Agreement meeting and Interim Financial Review Submittal review Workshop 2B – One-on-one revised Draft BCA meeting and Interim Workforce Requirements Submittal review Workshop 2C – One-on-one revised Draft Base Supply Contract meeting	November 4 to 15, 2019 (Each Proponent to be scheduled for two consecutive days)
Follow-up Security Package Review Submittal Deadline	November 22, 2019
Definitive PA, Definitive BCA and Definitive Base Supply Contract issued	December 13, 2019
Initial AIRS Submittal Deadline	11:00 AM local Vancouver time on January 6, 2020
Technical Submittal Deadline	11:00 AM local Vancouver time on January 31, 2020
Interim AIRS Submittal Deadline	11:00 AM local Vancouver time on February 14, 2020
Final Security Package Review Submittal Deadline	11:00 AM local Vancouver time on February 28, 2020
Invitation to Submit a Financial Submittal	11:00 AM local Vancouver time on March 20, 2020
Final AIRS Submittal Deadline	11:00 AM local Vancouver time on April 14, 2020
Financial Submittal Deadline	11:00 AM local Vancouver time on April 21, 2020
Announcement of Preferred Proponent	Spring 2020

4. GENERAL INFORMATION AND INSTRUCTIONS

4.1. Background Investigations, Surveys and Studies

Investigations, surveys, and studies have been and are anticipated to continue to be undertaken with respect to the Project. Reports and other material relating to these activities are included in and will continue to be added to the RFP Data Website.

4.2. Investigations, Surveys and Studies by Proponents

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

Subject to Appendix F [Lands Process] of Volume 1 of this RFP, Proponents are responsible for making their own arrangements in respect of access to lands that are not owned or administered by the Province.

Proponents will coordinate any field work or any access to any non-public part or parts of the Project Lands and adjacent areas, including to any part of lands owned, operated, or administered by BNSF, through the Province by submission of a request to the Contact Person, to ensure that inconvenience to land owners, tenants, road users, and other contractors is kept to a minimum, and to ensure that environmental, safety and time constraints are taken into account. The request for access should be submitted as early as possible, and in any event at least 96 hours in advance of the time for any proposed access, and should include the requested access or field work date(s), time(s), location(s), and proposed field work or activities.

The Province will provide no insurance or workers compensation coverage for any matter whatsoever to any Proponents, Proponent Team Members, or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them. Access to the Project Lands and adjacent areas, or to any other facilities or premises, may be conditioned upon Proponents providing evidence acceptable to the Province that insurance and indemnities, acceptable to the Province, are in place and granted as the case may be; that the Proponent and its Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them are registered with WorkSafe BC in accordance with applicable Laws, or have employer's liability insurance in amounts and on terms and conditions acceptable to the Province; and that a Representative of the Province be present during the Proponent's works and activities at the access locations. Without limiting the foregoing, access to any part of the lands owned, operated, or administered by BNSF may be conditional on satisfaction of any additional requirements of BNSF, as the case may be.

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

4.3. RFP Data Website

The Province has established an RFP Data Website for the Project and the RFP phase of the Competitive Selection Process.

At any time and from time to time, during the Competitive Selection Process, the Province may, in its discretion and without any notification, update information in the RFP Data Website, including by adding, supplementing, replacing or modifying information. Proponents are solely responsible for checking the RFP Data Website frequently and on an ongoing basis to inform themselves of any such updates. Proponents are solely responsible for ensuring that they have software which allows them access to, and use of, any information in the RFP Data Website.

All information in the RFP Data Website is subject to the terms of the Proponent Agreement, the Confidentiality Agreement, Canada Line Waiver (as defined in the Proponent Agreement), and the RFP Data Website Terms of Access.

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

4.4. Communications and Enquiries

Except as expressly provided for in this RFP, Proponents will direct all communications in relation to this RFP or any part of the Competitive Selection Process, the Project, the Initial Draft Project Agreement, the Definitive PA, the Project Agreement, the Draft BCA, the Definitive BCA, the BCA, the Draft Base Supply Contract, the Definitive Base Supply Contract, the Base Supply Contract or the preparation of any Proposal, including questions, inquiries, comments, RFI, requests for clarification, and requests for Topic Meetings or Workshops to the Contact Person in writing by email, hand or courier and clearly marked “Broadway Subway Project RFP Enquiry”. All communications and enquiries to and responses from the Contact Person will be recorded.

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

Proponents will communicate with the Province or any of its representatives in relation to this RFP, any part of the Competitive Selection Process, the Project, the Initial Draft Project Agreement, the Definitive

PA, the Project Agreement, the Draft BCA, the Definitive BCA, the BCA, the Draft Base Supply Contract, the Definitive Base Supply Contract, the Proponent Supply Contract, the Base Supply Contract or the preparation of their Proposals, only:

- (a) in writing via the Contact Person using a Request for Information in accordance with the Requests for Information and Distribution of Information protocol set out in Schedule 3 to the Proponent Agreement;
- (b) in Workshops and Topic Meetings, and any additional meetings subject to the terms of this RFP and in accordance with the Workshops and Topic Meeting Schedule;
- (c) as may be otherwise expressly invited in writing by the Contact Person; and
- (d) as may be expressly permitted by this RFP, including in accordance with the response guidelines set out in Appendix A of Volume 1 of this RFP.

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

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

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

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

Each Proponent will notify the Province of requests for interviews or other requests from the media received by the Proponent or any of its Proponent Team Members and their respective contractors,

subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them, in connection with the Project or the Competitive Selection Process.

5. GENERAL MATTERS

5.1. Amendment or Cancellation of Competitive Selection Process

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

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

5.2. No Contract

This RFP is neither an offer nor an agreement to purchase goods or services. No contract of any kind arises from or is formed under or entered into pursuant to this RFP, including as a result of the submission or evaluation of a Proposal, and no legal obligations or duties of any kind, express or implied and whether in contract, tort or otherwise, are constituted by or arise from or out of this RFP, including the submission or evaluation of a Proposal, and including any actual or implied duty of good faith or actual or implied duty of fairness. Neither this RFP nor the submission or evaluation of a Proposal is to be interpreted or construed as constituting or giving rise to any contract or any such legal obligations or duties.

5.3. No Obligation to Proceed or Make any Selection

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

- (a) the Province receives only one Proposal that substantially satisfies the requirements of this RFP and the Definitive PA, the Definitive BCA and the Definitive Base Supply Contract;
- (b) only one Proponent remains to be considered for selection as the Preferred Proponent; or
- (c) the Province selects a Preferred Proponent;

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

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

- (a) accept, review or evaluate any one or all Proposals; or
- (b) extend any invitations, to consider any Proponent for selection as a Preferred Proponent; or
- (c) select a Preferred Proponent, or to continue with a Preferred Proponent; or
- (d) accept the Proposal that receives the highest ranking in accordance with the evaluation criteria set out in this RFP, or any Proposal; or
- (e) accept, reject, or disqualify any or all Proposals, including any that do not satisfy all requirements set out in this RFP or for which necessary orders, authorizations, and approvals, including governmental authorizations, orders and approvals, have not been obtained.

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

- (a) terminate the Competitive Selection Process, including this RFP; and
- (b) take any steps that the Province, in its discretion, considers to be in the interests of, or advantageous to the Province, including implement or issue any other procurement or other process including a negotiation process for, or to proceed in any other manner whatsoever, at any time and from time to time, with any part of parts of the Project or Project Work, including any part or parts of the design, construction, operation, maintenance, rehabilitation or financing of any part or parts of the lands and infrastructure comprising or anticipated to comprise the Project.

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

A negotiation process referenced in this Section 5.3 may:

- (a) proceed with the Proponent who submitted the Proposal which the Province considers, in its discretion, to be most advantageous to the Province, and the Province may attempt to finalize an agreement, including a Project Agreement, as applicable, with that Proponent on terms,

conditions, and as to scope acceptable to the Province; or

- (b) proceed with any Person whom the Province considers, in its discretion, to be capable of completing the Project, or any parts thereof, for a price and on terms and conditions acceptable to the Province, and to be otherwise appropriate.

5.4. Proposal Review and Evaluation

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

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

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

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

- (a) waive any such defect, ambiguity, alteration, qualification, omission, inaccuracy, misstatement or failure to satisfy, and any resulting ineligibility on the part of the Proponent, or any member of the Proponent Team;
- (b) independently consider, investigate, research, analyze, request or verify any information or documentation whether or not contained in any Proposal;
- (c) conduct credit, reference, criminal record, litigation, bankruptcy, tax payer information and other checks and obtain references from Persons, including Persons other than those listed by Proponents in any part of their Proposals;
- (d) not proceed to review and evaluate or discontinue the evaluation of any Proposal and disqualify the Proponent from this RFP and the Competitive Selection Process;

- (e) reject in whole or in part any Technical Supplement, if any are invited; and
- (f) seek clarification, rectification or more complete, supplementary, replacement or additional information or documentation from any Proponent or in connection with any Proposal.

Without limiting the foregoing, the Province may, in its discretion, decline to review, evaluate or rank, or may reject outright any Proposal which in the opinion of the Province is materially incomplete or irregular, which contains omissions, exceptions or variations not acceptable to or material to the Province, which contains a false or misleading statement, claim or information, or for which background investigations reveal any false statements, criminal affiliations or activities by a Proponent or Proponent Team Member and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them.

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

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

Proponents will not submit any clarifications, rectifications, information or documentation in respect of the Technical Submittal after the Technical Submittal Deadline and in respect of the Financial Submittal after the Financial Submittal Deadline, without the prior approval of the Province or at the invitation or request of the Province.

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

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

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

5.5. Participation in the Competitive Selection Process

If a Proponent fails to observe any term of this RFP or to comply with any term of the Proponent Agreement, or fails to ensure that its Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them observe the terms of this RFP or of the Proponent Agreement, or the Province becomes aware through investigations or checks, or otherwise, of false statements, criminal affiliations or activities by a Proponent or any Proponent Team Member or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them, as the case may be, the Province may, in its discretion at any time and from time to time, including during the review, evaluation, and ranking of any Proposal:

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

5.6. Conflicts in Documents

If a Proponent considers any term of this RFP or the Definitive PA, the Definitive BCA or the Definitive Base Supply Contract to be in conflict with any other part of this RFP or the Definitive PA, the Definitive BCA or the Definitive Base Supply Contract, then the Proponent will notify the Contact Person in writing in accordance with Section 4.4 of Volume 1 of this RFP, giving the details of such apparent conflict and seeking clarification. If any such conflict exists but notice is not given by a Proponent, the provision which, in the sole opinion of the Province, will provide the higher overall value or benefit to the Province, will govern and take precedence.

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

In the event of a conflict or inconsistency between the paper form as issued to Proponents of the Definitive PA, the Definitive BCA or the Definitive Base Supply Contract or this RFP and, either, the same document as issued to Proponents in digital, electronic or other computer readable form, or the same document as posted in the RFP Data Website, the paper form of the applicable document as issued to Proponents will govern and take precedence.

In the event of a conflict or inconsistency between the paper form of a document submitted in a Proposal and the digital, electronic or other computer readable form of the same document submitted in a Proposal, the paper form of the document will govern and take precedence.

5.7. Confidentiality and Freedom of Information and Protection of Privacy

All documents and other records in the custody of or under the control of any of the Province, the Province Parties, TI Corp, Partnerships BC, and BCIB are subject to the FOIPPA.

Subject to the terms of the FOIPPA, the Proponent Agreement and Section 5.10 of Volume 1 of this RFP, all Proposals and other documents and records submitted by a Proponent in connection with this RFP will be considered confidential.

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

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

5.8. No Communication or Collusion

Proponents and Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them will not discuss or communicate, directly or indirectly, with any other Proponent or Proponent Team Member or contractor, subcontractor, director, officer, employee, consultant, advisor, representative or agent, or any other Persons associated with any of them of such other Proponent, regarding the preparation, content or representation of their Proposals or any other aspect of the Competitive Selection Process.

Each Proponent is to ensure that its Proposal has been prepared and submitted without collusion or fraud and in fair competition with other Proponents and Proponent Teams. Proposals will be submitted without

any connection, including a connection arising solely through shareholdings or other equity interests in or of a Proponent or Proponent Team Member, knowledge, comparison of information, or arrangement, with any other Proponent or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent, including any Proponent Team Member of such other Proponent.

5.9. No Lobbying

Proponents are to ensure that they and their respective Proponent Team Members, and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them, will not in relation to the Project, this RFP, the Initial Draft Project Agreement, the Definitive Project Agreement, the Project Agreement, the Draft BCA, the Definitive BCA, the BCA, the Draft Base Supply Contract, the Definitive Base Supply Contract, the Proponent Supply Contract, the Base Supply Contract or the Competitive Selection Process, engage in any form of political or other lobbying whatsoever, and will not except as expressly contemplated by this RFP attempt to communicate in relation to any of these matters, directly or indirectly, with any representative of the Province, the Province Parties, TI Corp, Partnerships BC, BCIB, including any minister or deputy minister of the Province, any member of the Executive Council of the B.C. Government, any members of the Legislative Assembly, any Restricted Parties, or any director, officer, employee, consultant, advisor, representative or agent of any of the foregoing, as applicable, for any purpose whatsoever, including for purposes of:

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

5.10. Disclosure

The following information has been or will be publicly disclosed at <https://engage.gov.bc.ca/broadwaysubway/> and/or at www.partnershipsbc.ca:

- (a) the Request for Qualifications,

- (b) the names of the Short-Listed Respondents, and
- (c) the Relationship Review Process Description, and
- (d) the Protocol for Consultants on Major Projects.

Additional information that may be publicly disclosed, subject to government policy and FOIPPA, by posting it at <https://engage.gov.bc.ca/broadwaysubway/> and/or at www.partnershipsbc.ca includes:

- (e) Volume 1 of this RFP,
- (f) the name of a Preferred Proponent, and
- (g) the Project Report to be published shortly after the Effective Date.

The Initial Draft Project Agreement, the Definitive Project Agreement, the Draft BCA, the Definitive BCA, the Draft Base Supply Contract, and the Definitive Base Supply Contract are confidential and are not intended to be made publicly available unless otherwise required by government policy or Law. The Project Agreement, excluding those portions that may be severed pursuant to the FOIPPA, will be disclosed publicly following the Effective Date.

5.11. Changes to Proponents and Proponent Team Members

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

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

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

The Proponent will immediately notify the Province if, after submission of any component of the Proposal a material change in circumstances, including a Change, occurs which may:

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

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

5.12. Relationship Disclosure and Review Process

Without limiting any other term of this RFP, the Province may, in its discretion, notify any Proponent that it is or has become ineligible to participate in or continue participating in the RFP phase or any other part of the Competitive Selection Process where the Province, in its discretion, considers the Proponent or any of its Proponent Team Members to have an actual or perceived conflict of interest or unfair advantage or to have a relationship that has the potential for creating an actual or perceived conflict of interest or unfair advantage.

Each Proponent will, by written notice addressed to the Contact Person, promptly after becoming aware of any such relationship, whether before or after delivery of the Technical Submittal or the Financial Submittal, fully disclose all relationships that the Proponent or any of its Proponent Team Members has, or had, with the Province, or any agency, authority, board, tribunal, commission or department of the Province, BCTFA, BCIB, TI Corp, Partnerships BC, any Restricted Party or any other Person providing advice or services to the Province or the Province Parties with respect to the Project, and all relationships of which it or any of its Proponent Team Members is aware between any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them with the Province or any agency, authority, board, tribunal, commission or department of the Province, BCTFA, BCIB, TI Corp, Partnerships BC, any Restricted Party or any other Person providing advice or services to the Province or the Province Parties with respect to the Project that constitutes an actual or perceived conflict of interest or unfair advantage or has the potential for creating an actual or perceived conflict of interest or unfair advantage.

At the time of disclosure of such relationship, the Proponent will include sufficient information and documentation to demonstrate that appropriate measures have been or will be implemented to mitigate, minimize or eliminate any actual, potential or perceived conflict of interest or unfair advantage, as

applicable. The Proponent will provide such additional information and documentation and may be required to implement such additional measures as the Province may require in its discretion in connection with the Province's consideration of the disclosed relationship and proposed measures.

A description of the Project Relationship Review Process Description and the Protocol for Consultants on Major Projects is posted on the Project website (<https://engage.gov.bc.ca/broadwaysubway/>).

The Province may, in its discretion, waive any and all potential, actual or perceived conflicts of interest or unfair advantage, or the impacts of any existing relationships. Any waiver may be upon such terms and conditions as the Province, in its discretion, may require, to satisfy itself that the conflict or interest or unfair advantage, actual, potential or perceived, or impact, or consequence of the relationship, as the case may be, has been appropriately mitigated, minimized, or eliminated, including by requiring the Proponent, any Proponent Team Member, any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, and any other Persons associated with any of them and affected persons or entities to put into place such policies, procedures, measures and other safeguards as may be required by and are acceptable to the Province, in its discretion, to ensure that any and all Confidential Information the Proponent or any Proponent Team Member or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them may have continues to be kept confidential and not disclosed or used except as expressly permitted by the Province.

Without limiting the generality of the foregoing, the Province may, in its discretion, require the Proponent or Proponent Team Member or contractor, subcontractor, director, officer, employee, consultant, advisor, representative or agent, or other Person associated with any of them to substitute a new person or entity for the person or entity giving rise to the potential or actual conflict of interest or unfair advantage, or who has the existing relationship.

5.13. Relationships

5.13.1. Restricted Parties

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

- Allen Parker Consulting Inc.
- AMTG Consulting Ltd.
- Anthony Steadman and Associates Inc.
- Belyea Consulting Inc.
- Bindu Chembrakkalathil (1127801 BC Ltd.)
- Boughton Law Corporation

- D. A. Aberdeen & Associates Ltd.
- DCT Project Solutions Ltd.
- Debbie B Parhar Communications and Public Relations
- Diamond Land Consultants Inc.
- DL Shaw Consulting Inc.
- DM Fourchalk Property Consultants Inc.
- Edward LeFlufy Urban Design & Architecture
- ELC Rail Sdn Bhd
- The Elliot Consulting Group Inc.
- False Creek Construction Inc.
- Frank Margitan (669251 Alberta Ltd.)
- Gannett Fleming Canada ULC
- Gateway Land Services Ltd.
- Golder Associates Ltd.
- HDS Consulting Ltd.
- Harris & Company LLP
- Hemmera Envirochem Inc.
- Henriquez Partners Architects
- Howard Consulting Ltd.
- Infra-Link Consulting Ltd.
- JE Project Solutions Ltd.
- Jemma Scoble Consulting
- Jensen Hughes Consulting Canada Ltd.
- Kirk & Co Consulting Ltd.
- KPMG LLP
- Lucas Solutions Ltd.
- McMillen Jacobs Canada Corp.

- MCW Property Services Ltd.
- Miller Thomson LLP
- Modus Planning, Design, and Engagement Inc.
- Musson Cattell Mackey Partnership
- Norton Rose Fulbright Canada LLP
- Pacific Land Services Ltd.
- RML Solutions Ltd.
- Roper Greyall LLP
- Simmons Property Services Ltd.
- Stantec Consulting Ltd.
- Stratice Consulting Inc.
- Sun Coast Consulting Ltd.
- The Province, BCTFA, BCIB, BC Hydro, TI Corp, TransLink, Partnerships BC, and the City of Vancouver, including their former and current employees who fall within the definition of Restricted Party.
- Thomas Gale Design Consultants Inc.
- TJ Cooper Management
- Trost Consulting Inc.
- Wardley Consulting Group Inc.
- Westco Consulting Inc.
- White Land and Consulting Services Ltd.
- Winter Cove Consulting Group Inc.
- Zenith Appraisal & Land Consulting Ltd.

This is not an exhaustive list of Restricted Parties. A complete list of Restricted Parties can be found on the RFP Data Website. Additional Persons may be identified by the Province as Restricted Parties, including by being added to the list during the Competitive Selection Process.

The Province at its discretion may notify any Proponent that it is or has become ineligible to participate in or continue participating in the RFP phase or any other part of the Competitive Selection Process, or impose such conditions on the Proponent's participation or continued participation in the Competitive

Selection Process as the Province may consider to be in the public interest or otherwise appropriate if the Proponent, any of its Proponent Team Members or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives and agents, and any other Persons associated with any of them is a Restricted Party or if the Proponent, any of its Proponent Team Members or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives and agents, and any other Persons associated with any of them uses, directly or indirectly, a Restricted Party:

- (a) to advise or otherwise assist it; or
- (b) as an employee, advisor or consultant,

in connection with the Proponent's participation, including as an investor, in the Competitive Selection Process, including in connection with the preparation of the Proponent's Technical Submittal and Financial Submittal.

Each Proponent is responsible to ensure that, in connection with the Proponent's participation in the Competitive Selection Process, neither it nor any of its Proponent Team Members nor any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them is or includes or uses, consults or seeks advice, directly or indirectly, from any Restricted Party.

5.13.2. Shared Use Persons

Shared Use Persons may enter into arrangements with any and all Proponents, but may not enter into exclusive arrangements with any Proponent and a Proponent may not enter into exclusive arrangements with any Shared Use Person. Shared Use Persons include Persons who have unique or specialized information or skills such that the Province considers, in its discretion, their availability to all Proponents to be desirable in the interests of the Competitive Selection Process. No Shared Use Persons have been identified. The Province may from time to time identify and add other Persons to the list of Shared Use Persons.

5.13.3. Indigenous Shared Use Persons

Indigenous Shared Use Persons may enter into arrangements with any and all Proponents, but may not enter into exclusive arrangements with any Proponent and a Proponent may not enter into exclusive arrangements with any Indigenous Shared Use Person. Identified Indigenous Shared Use Persons include Persons that request to be classified by the Province as such and are determined by the Province to conform to the definition of either an Indigenous Business or an Indigenous Joint Venture as set out in Section 7 of Volume 1 of this RFP.

No Indigenous Shared Use Persons have been identified for this Project. The Province may from time to time amend the list of Indigenous Shared Use Persons by adding or removing Persons.

5.13.4. Exclusivity

Proponent Team Members may participate as members of and are to be exclusive to only one Proponent Team.

5.13.5. Conflict of Interest Adjudicator

Doug Hopkins has been appointed as the Conflict of Interest Adjudicator to make decisions on conflicts of interest and unfair advantage and other relationships, including Connections involving participants and prospective participants in the Competitive Selection Process, including whether any Person is a Restricted Party. The decision of the Conflict of Interest Adjudicator on any issue, whether in response to a request for ruling or a request by the Province during any phase of the Competitive Selection Process, is final and binding on the Person requesting the ruling and on all other Persons, including all Proponents, their Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, any other Persons associated with any of them, and the Province.

5.13.6. Proponent Requests for Rulings

A Proponent, current or prospective Proponent Team Member or a current or prospective advisor or consultant to a Proponent or Proponent Team Member who has any concerns regarding whether it or any of its current or prospective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with it, is or may be a Restricted Party or becomes aware of circumstances that may constitute or give rise to an actual, potential or perceived conflict of interest or unfair advantage should request a ruling.

In order to request a ruling, the Person seeking the ruling should submit to the Contact Person by email, hand or courier delivery, not less than 10 Business Days prior to either the Technical Submittal Deadline or the Financial Submittal Deadline, all relevant information and documentation, including, the following information:

- (a) the names and contact information of the Proponent and the Person in respect of which the ruling is requested;
- (b) a detailed description of the relationship that may constitute or give rise to an actual, potential or perceived conflict of interest or unfair advantage;
- (c) a description of the steps taken to date and future steps proposed to be taken to eliminate or mitigate the conflict of interest or unfair advantage; and
- (d) copies of any relevant documentation.

Subject to the terms of this RFP, all requests for rulings will be treated in confidence. If any Person, including any Proponent or current or prospective Proponent Team Member or advisor or consultant is

identified as a Restricted Party, it may be listed in an Addendum to this RFP or in subsequent Competitive Selection Process documents as a Restricted Party.

5.13.7. Province Requests for Rulings

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

5.13.8. Connections

A “Connection” for the purposes of this RFP includes:

- (a) any connection arising directly or indirectly through the ownership or holding of shares or other equity interests, including the ownership or holding by a Proponent, any of its Proponent Team Members or their respective contractors, subcontractors, consultants, advisors, representatives and agents, of shares or other equity interests in another Proponent, any of its Proponent Team Members or their respective contractors, subcontractors, consultants, advisors, representatives and agents and including the ownership or holding by any Person, whether direct or indirect, of shares or other equity interests in:
 - (i) more than one Proponent;
 - (ii) Proponent Team Members of more than one Proponent;
 - (iii) contractors, subcontractors, consultants, advisors, representatives and agents of more than one Proponent or more than one Proponent Team Member

provided that the ownership or holding of shares or other equity interests that does not confer or result in, and which could not reasonably be considered to confer or result in, the ability to influence the activities of the relevant Proponent(s), Proponent Team Member(s) or their respective contractors, subcontractors, consultants, advisors, representatives and agents in connection with the Competitive Selection Process will not be considered to fall within this paragraph (a);

- (b) any comparison, transfer or exchange of knowledge or information in relation to the Project or the Competitive Selection Process or potential for the comparison, transfer or exchange of such knowledge or information, whether direct or indirect including by way of common contractors,

subcontractors, directors, officers, employees, consultants, advisors, agents or representatives or any other arrangement, between a Proponent or any of its Proponent Team Members and another Proponent or any of its Proponent Team Members; or

- (c) any other connection or relationship between a Proponent or any of its Proponent Team Members or their respective contractors, subcontractors, consultants, advisors, representatives and agents and another Proponent, any of its Proponent Team Members or their respective contractors, subcontractors, consultants, advisors, representatives and agents that the Province at its discretion considers has or may have the effect of materially adversely affecting the competitiveness or integrity of the Competitive Selection Process.

Without limiting Section 5.8 of Volume 1 of this RFP, the Province at its discretion at any time and from time to time may notify either or both of the relevant Proponents that they are ineligible to participate or continue participating in the Competitive Selection Process if a Connection is identified between them or any of their respective Proponent Team Members, or any of their respective contractors, subcontractors, consultants, advisors, representatives and agents, unless the Province is satisfied at its discretion that the parties between whom the Connection has been identified are not sharing or able to share information nor coordinating nor able to coordinate their activities in connection with the Competitive Selection Process in a manner that may have the effect of materially adversely affecting the competitiveness or integrity of the Competitive Selection Process. In the event that the Province is not so satisfied, the determination as to whether either or both of the relevant Proponents, or which of the relevant Proponents, are ineligible to participate or continue participating in the Competitive Selection Process may be made by the Province on any basis that the Province, at its discretion, considers appropriate and to be solely in the best interest of the Province or the Competitive Selection Process.

A Proponent or Proponent Team Member or a prospective Proponent or Proponent Team Member who has any concerns, whether before or after delivery of the Technical Submittal or the Financial Submittal, regarding whether a Connection exists is to make full disclosure of the possible Connection to the Province upon becoming aware of the relevant circumstances giving rise to the possible Connection. The Province may at its discretion provide an assessment or, at its option, the Province may seek a ruling on the matter from the Conflict of Interest Adjudicator.

In making its full disclosure, a Proponent or Proponent Team Member or a prospective Proponent or Proponent Team Member is to submit to the Contact Person by email, hand or courier delivery all relevant information and documentation, including:

- (a) names and contact information of the Proponent or Proponent Team Member or prospective Proponent or Proponent Team Member making the disclosure and the other relevant Proponent or Proponent Team Member;
- (b) a detailed description of the relationship or other circumstances that may constitute a Connection;
- (c) a detailed description of the steps taken to date and future steps proposed to be taken to

eliminate or mitigate any material adverse or potential material adverse effect of the Connection on the competitiveness or integrity of the Competitive Selection Process; and

- (d) copies of any relevant documentation.

The Province may require additional information or documentation to demonstrate to the satisfaction of the Province at its discretion that no such Connection exists or, if it does, that measures satisfactory to the Province at its discretion have been or will be implemented to eliminate or mitigate any risk to the competitiveness or integrity of the Competitive Selection Process.

5.14. Delivery and Receipt

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

Neither the Province, nor any of the Representatives will be in any way responsible or liable for or make any guarantee, warranty or representation whatsoever as to:

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

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

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

5.15. Proponent Team Members and Subcontractors

Proponents are responsible for ensuring that their Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them observe the terms of this RFP.

5.16. No Reliance

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

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

No actions or omissions, communications or responses, including Information, statements, opinions, comments, consents, waivers, acceptance or approvals made or raised by or on behalf of the Province or any of the Representatives, any Proponent or its respective Proponent Team Members or their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them, or any other Person, whether positive or negative, including if set out in any document or information provided by any Proponent or its respective Proponent Team Members or their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them, in relation to any matter, including the Competitive Selection Process, this RFP, the Initial Draft Project Agreement, the Definitive Project Agreement, the Project Agreement, the Draft BCA, the Definitive BCA, the BCA, the Draft Base Supply Contract, the Definitive Base Supply Contract, the Proponent Supply Contract, the Base Supply Contract, the Project Requirements or the Project, at any time or times during the Competitive Selection Process, including during this RFP stage or during or before any Workshop or Topic Meeting, will be binding on the Province or be relied upon in any way by the Proponent, or the Proponent Team Members or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them for any purpose whatsoever; will be deemed or considered to be an indication of a preference by the Province or any Representative even if adopted by the Proponent or another of the Proponents; or will amend or waive any term of this RFP in any way for any purpose whatsoever, unless and only to the extent expressly incorporated by Addendum, or expressly set out in a Response to Proponents issued by the Province to the Proponents.

By submitting a Proposal, each Proponent represents and warrants to the Province that its Proposal has been prepared, relies and has been submitted solely on investigations, examinations, knowledge, analyses, interpretation, information, opinions, conclusions, judgments, and assessments independently undertaken, formulated, obtained, and verified by the Proponent, its Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, and any other Persons associated with any of them, and not in any way upon any action or omission, the scope, timeliness, accuracy, completeness, relevance, or suitability of any Information.

Nothing in this RFP or otherwise relieves Proponents from undertaking their own investigations and examinations, including as they consider necessary, desirable, beneficial, or appropriate, and developing their own analysis, interpretations, opinions and conclusions, including in respect of any Factual Geotechnical Data, bore hole logs and test pit logs provided by or on behalf of the Province, with respect to the preparation and delivery of their Proposals, and with respect to this RFP, the Initial Draft Project Agreement, the Definitive Project Agreement, the Project Agreement, the Draft BCA, the Definitive BCA, the BCA, the Draft Base Supply Contract, the Definitive Base Supply Contract, the Proponent Supply Contract, the Base Supply Contract, the Project Requirements and the Project.

Any and all use of or reliance upon, in any way whatsoever, any Information, including as described in this Section 5.16 or any statements, representations, assurances, commitments or agreements which Proponents believe they may have received or reached with any stakeholders, interested parties, or other Persons will be at their sole risk and without recourse of any kind whatsoever against the Province or any of the Representatives.

5.17. No Liability

Notwithstanding any other provision of this RFP and except as expressly set out and only to the extent expressly set out in the Proponent Agreement, neither the Province nor the Representatives, will have any responsibility, obligation or liability whatsoever whether in contract, tort or otherwise, for or in respect of any Claims by any Person, including any Proponent, Proponent Team Member, prospective member of a Proponent Team or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them, for any matter whatsoever arising out of, in connection with, or relating in any way to the Competitive Selection Process, or any part of the Competitive Selection Process, including this RFP, matters or issues contemplated or considered in the opinion of the Fairness Reviewer, the Derivative Activities, or one or more Derivative Activity, or any of them, any Proponent or Proponents, the Proposal, or any Proposal, any Shared Use Person or arrangements involving a Shared Use Person, any Indigenous Shared Use Person or arrangements involving an Indigenous Shared Use Person, any use of or reliance on the Restricted Parties list, any identification of or failure to identify, in a timely manner or at all, any Person as a Restricted Party, any ruling or advice of or failure to provide a ruling or advice, in a timely manner or at all, of the Conflict of Interest Adjudicator.

5.18. Dispute Resolution

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

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

6. INTERPRETATION

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

The headings, captions and formatting of this RFP are inserted for convenience of reference only and do not form a part of this RFP, and in no way define, limit, alter or enlarge the scope or meaning of any provision of this RFP.

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

All monetary amounts referred to in this RFP are to lawful currency of Canada.

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

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

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

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

References in this RFP to a statute whether or not that statute is defined, means a statute of the Province of British Columbia, unless otherwise stated.

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

In this RFP, the words "include", "includes", "including" and others of like import, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting the general term

or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

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

References in this RFP to the Province entering into the Project Agreement, to the Province not entering into the Project Agreement, to the Province proceeding with any part or parts of the Project or the Project Work, to the Province contracting with any Person, including as contemplated in Section 5.3 of Volume 1 of this RFP, will be interpreted to include any one or more of the Province, alone, the Province together with BCTFA or BCTFA entering into the Project Agreement, not entering into the Project Agreement, proceeding with any part or parts of the Project or the Project Work, contracting with any Person, including as contemplated in Section 5.3 of Volume 1 of this RFP.

This RFP may be subject to the terms of one or more trade agreements.

7. DEFINITIONS

In this RFP, unless the context otherwise expressly requires,

- (a) the following definitions apply to the following terms, and
- (b) any other capitalized term has the meaning given to that term in the Initial Draft Project Agreement.

“Acceptable Credit Rating Agency” means Moody’s Investor Services, Standard & Poor’s, Dominion Bond Rating Service or Fitch Ratings, Ltd.

“Acceptable Equivalent” has the meaning given to it in Section 2.2.15 of Volume 1 of this RFP.

“Accepted Proposed Lands” has the meaning given to it in Section 2 of Appendix F [Lands Process] of Volume 1 of this RFP.

“Addenda” means the documents expressly identified as addenda and issued by the Province to Proponents in accordance with this RFP and **“Addendum”** means any one of such documents.

“Adjusted Contract Price Proposal” means a Contract Price Proposal adjusted in accordance with Section 3.1.2 and Part C of Appendix B of Volume 1 of the RFP.

“Adjustment Credit Facility” means

- (a) a Senior Credit Facility; and/or
- (b) any reinvestment product associated with the unused portion of a Senior Credit Facility (meaning bond proceeds that are drawn at the Effective Date but not deployed) proposed to be adopted by a Proponent, which in either case is designated by a Proponent as an Adjustment Credit Facility in the AIRS process. For certainty, a Junior Credit Facility, partner loan, short-term cash on deposit or any other investment product may not be so designated.

“Advance Interest Rate Submittal” or **“AIRS”** has the meaning set out in Appendix D of Volume 1 of this RFP.

“Affordability Model” means the Excel model provided by the Province to Proponents on the RFP Data Website to calculate the Contract Price Proposal.

“Affordability Requirement” means the amount set out in Section 3.1.1 of Volume 1 of this RFP.

“Alignment” means the physical alignment of the Project identified in the Reference Concept Alignment as revised from time to time by the Province.

“**Alignment Lands**” means the lands and land interests along the Alignment as described in the “Appendix F Part 1 Alignment Lands” document in the RFP Data Website and shown on the Alignment Lands Drawings.

“**Alignment Lands Drawings**” means the maps and drawings located in section 200 – Project Information of the RFP Data Website.

“**Alternate Security Package**” has the meaning set out in Appendix E of Volume 1 of this RFP.

“**Archaeological Potential**” means the likelihood that a property contains archaeological resources. The determination of archaeological potential is made by a professional archaeologist, taking into account physical features of the landscape (e.g., proximity to watercourse or shorelines, distinctive landforms etc.) and site specific information including proximity to confirmed archaeological sites and pre-contact land use.

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

“**Base Date**” has the meaning given to it in Section 5.2.1 of the Package 5 Table set out in Appendix A of Volume 1 of this RFP.

“**Base Rate**” means the base interest rate for any proposed Senior Credit Facility as shown in the Proponent’s Financial Model.

“**Base Security Package**” has the meaning set out in Appendix E of Volume 1 of this RFP.

“**Base Security Package Submittal**” means the submittal described in Section 3.6.3 of Volume 1 of this RFP.

“**Base Supply Contract**” means:

- (a) the Definitive Base Supply Contract or Proponent Supply Contract (as the case may be), as may be changed, modified or added to in accordance with Section 3.10 of Volume 1 of this RFP; and
- (b) after execution, the agreement or agreements, as the case may be, executed and delivered by the Thales and Project Co for the delivery of the BSP ATC System.

“**BCIB-Contractor Agreement**” or “**BCA**” means:

- (a) the Definitive BCA, as may be changed, modified or added to in accordance with Section 3.10 of Volume 1 of this RFP; and
- (b) after execution, the agreement or agreements, as the case may be, executed and delivered by BCIB and Project Co for the delivery of the Project.

“**BCIB-Subcontractor Agreement**” means the form of agreement described in Section 2.2.1 of Volume 1 of this RFP and attached as Schedule 4 to the Draft BCIB-Contractor Agreement provided in Volume 3 of this RFP.

“**Benchmarks**” has the meaning set out in Section 1 of Appendix D of Volume 1 of this RFP.

“**Change**” includes, in respect of a Proponent or Proponent Team or Proponent Team Member, a change in ownership (including by way of shareholdings, ownership of interests or units in a general or limited partnership or otherwise) or control or a re-designation, modification, removal, replacement, reorganization, addition, assignment or substitution of or in respect of such Person, and “**Changed**” and “**Changes**” has a corresponding meaning.

“**Change Process**” means the process for a Change described in Section 5.11 of Volume 1 of this RFP.

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

“**Commitment Letter**” means the letter or letters, as applicable, substantially in the form and containing the terms set out in the form of letter contained in Form 4 of Volume 5 of this RFP.

“**Competitive Selection Process**” means:

- (a) the procurement process for the Project and any part or phase or phases of the procurement process, and includes this RFP and the RFQ, the Proponent Agreement, any and all processes relating to the RFQ and this RFP, the Workshops, Topic Meetings, any additional meetings, and any consultations, meetings and participation relating to or arising from any of the Workshops, Topic Meetings or additional meetings, other consultative and facilitative/facilitated processes, relationship review processes, including processes conducted and reports, determinations, rulings, assessments and opinions issued by the Fairness Reviewer or the Conflict of Interest Adjudicator, or by the Province or committees of the Province pursuant to any relationship review process policies referenced in the RFQ or this RFP, processes and decisions and determinations made with respect to Changes, and the consultations, discussions, negotiations, closings and settling of agreements and documents relating to the Project; and
- (b) activities, participation, continued participation, waivers, evaluation, inclusion, exclusion,

disqualification, determinations, opinions, rulings, reports, comments, advice, notices including notices of ineligibility, and decisions, including rejection or acceptance of any responses, submissions, information, documents, Qualification Responses, Proposals, Conforming Proposal or any other proposals, whether they, or any of them, substantially satisfy the requirements of this RFP or otherwise,

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

“Confidentiality Agreement” means the Confidentiality Agreement executed and delivered by the Proponent in connection with the RFQ, as supplemented by the terms of the Proponent Agreement including Section 12 of the Proponent Agreement.

“Confidential Information” has the meaning given to it in the Confidentiality Agreement.

“Conflict of Interest Adjudicator” means the Person, appointed by the Province as the conflict of interest adjudicator, and described as such in Section 5.13.5 of Volume 1 of this RFP.

“Connection” has the meaning given to it in Section 5.13.8 of Volume 1 of this RFP.

“Contact Person” means the email address BSPContact@gov.bc.ca as may be amended from time to time by the Province in accordance with this RFP.

“Contract Price Proposal” means the output calculated using the Affordability Model that is described in Section 3.1.4 of Volume 1 of this RFP.

“Credit Rating” means a credit rating from an Acceptable Credit Rating Agency.

“Credit Spread” means for any Senior Credit Facility the rate of interest applicable to the amount of such Senior Credit Facility as shown in the Financial Model minus the applicable Base Rate.

“Credit Spread Hold Facilities” means form(s) of lending facility, if any, for which a Proponent will hold the Credit Spread from Financial Submittal to the Effective Date.

“Credit Spread Refresh Lock-in Date” has the meaning set out in Section 2.2 of Appendix D of Volume 1 of this RFP.

“Definitive Base Supply Contract” means the final draft of the Draft Base Supply Contract, as it may be subsequently amended by one or more Addenda issued in accordance with this RFP.

“**Definitive BCIB-Contractor Agreement**” or “**Definitive BCA**” means the final draft of the Draft BCIB-Contractor Agreement, as revised and amended from time to time by subsequent Addenda issued in accordance with this RFP.

“**Definitive Project Agreement**” or “**Definitive PA**” means the final draft form of the Initial Draft Project Agreement, as revised and amended from time to time by subsequent Addenda issued in accordance with this RFP.

“**Derivative Activities**” means the steps, activities, processes, and works described in Section 5.3 of Volume 1 of this RFP and “**Derivative Activity**” means any one of such steps, activities, processes and works.

“**Design-Build Contractor Guarantor(s)**” has the meaning given to it in the RFQ.

“**Documents Escrow Agreement**” means the form of escrow agreement set out in Form 5 of Volume 5 of this RFP.

“**Draft Base Supply Contract**” means the initial draft form of the Definitive Base Supply Contract, issued as Part 1 of Volume 4 of this RFP, as revised and amended from time to time by Addenda in accordance with this RFP.

“**Draft BCIB-Contractor Agreement**” or “**Draft BCA**” means the initial draft form of the Definitive BCA issued as Volume 3 to this RFP, as revised and amended from time to time by Addenda issued in accordance with this RFP.

“**Fairness Reviewer**” means the Person, appointed by the Province as the fairness reviewer, and described as such in Section 3.11 of Volume 1 of this RFP.

“**Final AIRS**” has the meaning set out in Appendix D of Volume 1 of this RFP.

“**Final AIRS Submittal Deadline**” means the date and time identified as such in Section 3.12 of Volume 1 of this RFP.

“**Final Security Package Review Submittal Deadline**” means the date and time identified as such in Section 3.12 of Volume 1 of this RFP.

“**Financial Close**” means the time when the Project Agreement and all financing and other agreements related to the Project have been executed and delivered and all conditions to the effectiveness of the Project Agreement and the Project financing agreements have been satisfied.

“**Financial Model**” means a financial model as described in Section 5.5 of the Package 5 Table set out in Appendix A of Volume 1 of this RFP.

“Financial Submittal” means the documentation and information described in Section 3.7.1 of Volume 1 of this RFP and comprising Package 4 as described in Appendix A of Volume 1 of this RFP, and submitted in response to and in accordance with this RFP, together with all clarifications, rectifications, and more complete, supplementary and additional information or documentation submitted by the Proponent in response to any request of the Province.

“Financial Submittal Deadline” means the date and time identified as such in Section 3.12 of Volume 1 of this RFP.

“Financing Plan” means a financing plan as described in Section 5.4 of the Package 5 Table set out in Appendix A of Volume 1 of this RFP.

“Follow-up Security Package Review Submittal Deadline” means the date and time identified as such in Section 3.12 of Volume 1 of this RFP.

“Freedom of Information Act” or **“FOIPPA”** means the *Freedom of Information and Protection and Privacy Act* (British Columbia).

“Funders” includes the Senior Lenders, Junior Lenders, Shareholders, Partners, Unit holders and Affiliates as defined in the Definitive PA.

“Indigenous Business” means a sole proprietorship, limited company, co-operative, partnership, or not-for-profit organization where:

- (a) at least 51% is owned and controlled by members of one or more Indigenous Groups; and,
- (b) if it has six or more full-time employees, at least 33% of the full-time employees are members of one or more Indigenous Groups.

“Indigenous Group” means each of Musqueam Nation, and Squamish Nation, and Tsleil-Waututh Nation.

“Indigenous Joint Venture” means two or more Indigenous Businesses or one or more Indigenous Businesses and one or more other businesses, provided that the Indigenous Business(es) has at least 51% ownership and control of the joint venture, and, if it has six or more full-time employees, at least 33% of the full-time employees are members of one or more Indigenous Groups.

“Indigenous Shared Use Person” means a Person described in Section 5.13.3 of Volume 1 of this RFP and includes each of the Persons listed in Section 5.13.3 of Volume 1 of this RFP and any other Persons that may, from time to time, be specifically identified as Indigenous Shared Use Persons by the Province.

“Information” means any and all information including facts, records, plans, designs, calculations, figures, models, documents, drawings, descriptions of soils, site, geotechnical, geological or subsurface conditions, dewatering, opinions or interpretations based on existing or assumed information, previous studies or optimization, layouts, the Reference Concept, projections, traffic information, volume counts, classification counts, data, including origin, destination and vehicle jurisdiction data, speed and travel time information, statements or estimates of quantities of any works, assumptions or descriptions as to means or methods, availability and quality of materials, photographs, maps, specifications, reports, studies, correspondence, working papers, drafts, notes, requirements of stakeholders or interested parties, investigations, statements, representations, opinions, interpretations, analyses, and conclusions in electronic, digital, hard copy or any other form whatsoever, which is given or made available, directly or indirectly, to Proponents and to Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, and other Persons associated with any of them, or any of them, including on the RFQ Data Website, by posting in the RFP Data Website, or during or before any Workshop or Topic Meeting, whether before or after issuance of this RFP, by or on behalf of the Province or any of the Representatives and related in any way to the Project, the Competitive Selection Process, including this RFP, the Initial Draft Project Agreement, the Definitive PA, the Draft BCA, the Definitive BCA, the Draft Base Supply Contract, the Definitive Base Supply Contract, the Proponent Supply Contract, the Project Agreement, the BCA, the Base Supply Contract, a Proposal, the Project Work, the Project Site, the Project Infrastructure, or any part of any of them, or the requirements of any Governmental Authority, or any requirement of any of them.

“Initial AIRS” has the meaning set out in Appendix D of Volume 1 of this RFP.

“Initial AIRS Submittal Deadline” means the date and time identified as such in Section 3.12 of Volume 1 of this RFP.

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

“Initial Security Package Review Submittal Deadline” means the date and time identified as such in Section 3.12 of Volume 1 of this RFP.

“Interim AIRS” has the meaning set out in Appendix D of Volume 1 of this RFP.

“Interim AIRS Submittal Deadline” means the date and time identified as such in Section 3.12 of Volume 1 of this RFP.

“Interim Financial Review Submittal” has the meaning set out in Section 3.6.1 of Volume 1 of this RFP.

“Interim Financial Review Submittal Deadline” means the date and time identified as such in Section 3.12 of Volume 1 of this RFP, as it may be amended from time to time by the Province in accordance with this RFP.

“Interim Workforce Requirements Submittal” means the submittal described in Section 3.6.2 of Volume 1 of this RFP.

“Interim Workforce Requirements Submittal Deadline” means the date and time identified as such in Section 3.12 of Volume 1 of this RFP, as it may be amended from time to time by the Province in accordance with this RFP.

“Irrevocability Agreement” means the form of irrevocability agreement set out in Form 6 of Volume 5 to this RFP.

“Key Individuals” means specific Persons, exclusive to one Proponent, including Project Co Representative, the Design-Build Director, Design Lead, and Systems Lead, as such Persons may be Changed in accordance with and subject to the permission of the Province pursuant to this RFP.

“Limited Notice to Proceed Agreement” means the form of agreement set out in Form 7 of Volume 5 to this RFP.

“Option 1” means the Priced Option for provision of Transit Police Facilities

“Option 2” means the Priced Option for design, construction, supply, and installation of machine roomless elevators

“Partnerships BC” means Partnerships British Columbia Inc.

“Person” has the meaning ascribed to “Person” in the Project Agreement.

“Preferred Proponent” means the Proponent described in Section 3.8.9 of Volume 1 of this RFP.

“Preferred Proponent Security Deposit” means the sum of \$20,000,000.00 by way of an irrevocable letter of credit in the form set out as Schedule 5 to the Proponent Agreement or otherwise in form and content acceptable to the Province in its sole discretion.

“Priced Options” means the options set out in Section 3.1.3 of Volume 1 of this RFP.

“Priced Options Confirmation Date” means the date of July 31, 2020 (approximately 1 month before Financial Close).

“Project” means the “Project” as defined in the Definitive PA.

“Project Agreement” or **“PA”** means:

- (c) the Definitive PA, as may be changed, modified or added to in accordance with Section 3.10 of Volume 1 of this RFP; and
- (d) after execution, the agreement or agreements, as the case may be, executed and delivered by the Province and Project Co for the delivery of the Project.

“Project Co” means the entity that enters into the Project Agreement with the Province and leads the Project team through the term of the Project Agreement.

“Proponent” means a Short-Listed Respondent, as that entity and its Proponent Team members, or any of them, may be changed or undergo a Change in accordance with and subject to the provisions of Volume 1 of this RFP. .

“Proponent Agreement” means each of the agreements relating to the Competitive Selection Process between the Province, each of the Proponents and their respective Proponent Team Members.

“Proponent Member” means, in the case of a Proponent that is an existing legal entity, that Proponent, and, in the case of a Proponent that is a partnership (general or limited) or a consortium or joint venture, includes each of the partners (general or limited) in the partnership and each of the entities comprising the consortium or joint venture, as the case may be, in each case as any such entity may be Changed from time to time in accordance with and subject to the provisions of Volume 1 of this RFP.

“

“Proponent Proposed Lands” means the lands or land interests that are selected by a Proponent in accordance with the provisions of Appendix F of Volume 1 of this RFP.

“Proponent Proposed Lands Request” means a completed Form A-2 submitted by a Proponent to the Province in accordance with the provisions of Appendix F of Volume 1 of this RFP.

“Proponent Proposed Lands Request Deadline” means the date and time identified as such in Section 3.12 of Volume 1 of this RFP, as it may be amended from time to time by the Province in accordance with this RFP.

“Proponent Supply Contract” means the amended form of the Definitive Base Supply Contract specific to a Proponent which is negotiated in accordance with paragraph 2 of Part 2 of Volume 4 of this RFP.

"Proponent Team" means, in the case of each Proponent, the Proponent Members and the Proponent's Key Individuals, the Design-Build Contractor, Design Contractor, Tunnel Contractor, Systems Integration Contractor, Tunnel Guarantor, and Design-Build Contractor Guarantor(s), in each case as Changed from time to time in accordance with and subject to the provisions of Volume 1 of this RFP.

"Proponent Team Member" means a member of a Proponent Team, in each case as Changed from time to time in accordance with and subject to the Change Process.

"Proposal" means the Technical Submittal, the Technical Supplement (if applicable), the Advance Interest Rate Submittals, and the Financial Submittal submitted by a Proponent in accordance with this RFP.

"Proposed Lands Costs" has the meaning given to it in Section 2 of Appendix F [Lands Process] of Volume 1 of this RFP.

"Province" means Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure.

"Province Party" or **"Province Parties"** means the Province, TI Corp, Partnerships BC, and BCTFA.

"Qualification Response" has the meaning given to it in the RFQ.

"Ranking Process" means the process described under the heading "Ranking Process" in Appendix B of Volume 1 of this RFP.

"Reference Concept Alignment" means the physical alignment of the Broadway Subway identified as the reference concept alignment in the RFP Data Website.

"Reinvestment Base Rate Benchmark" has the meaning set out in Appendix D of Volume 1 of this RFP.

"Relationship Review Consultant Protocol" has the meaning set out in Section 5.12.

"Relationship Review Process Description" means the Relationship Review Process Description Broadway Subway Project posted by the Province at: <https://engage.gov.bc.ca/broadwaysubway/>.

"Representatives" means the Province Parties, TI Corp, Partnerships BC, the Fairness Reviewer, the Conflict of Interest Adjudicator, or any of their or the Province's respective elected officials, directors, officers, employees, servants, representatives, agents, consultants and advisors, and includes members of the Executive Council.

"Respondent" has the meaning given to it in the RFQ.

"Respondent Team" has the meaning given to it in the RFQ.

“Response to Proponents” is a written document specifically identified as a “Response to Proponents” as described in Section 4.4 of Volume 1 of this RFP.

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

- (a) the Competitive Selection Process;
- (b) the design, planning or implementation of the Project; and/or
- (c) any other relationship with the Province, Province Parties, TI Corporation or Partnerships BC;

and as a result has an actual conflict of interest or may provide a material unfair advantage to any Proponent or their respective Proponent Team Members or may provide Confidential Information to any Proponent or their respective Proponent Team Members that is not, or would not reasonably be expected to be, available to other Proponents or their respective Proponent Team Members, and includes, if the Person is a corporate entity or a partnership, the Person’s former and current directors, officers, employees and partners, as applicable, and further includes each of the Persons listed in Section 5.13.1 of Volume 1 of this RFP and any other Persons that may, from time to time, be specifically identified by the Province as a Restricted Party.

“RFI” or **“Request for Information”** is the request for information described in Section 4.4 of Volume 1 of this RFP.

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

“RFP Data Website” has the meaning given in Section 4.3 of Volume 1 of this RFP.

“RFP Data Website Terms of Access” means the terms of access for the RFP Data Website identified as such on the main page of the RFP Data Website.

“RFP Title” means **“RFP – Broadway Subway Project”** as specified on the Summary of Key Information as it may be amended from time to time by the Province in accordance with this RFP.

“RFQ” or **“Request for Qualifications”** means the Request for Qualifications issued by the Province February 15, 2019, titled “Broadway Subway Project, RFQ”, including all “Addenda” thereto as defined in the RFQ.

“RFQ Data Website” has the meaning given to it in the RFQ.

“Selected Tunnel Geotechnical Risk Scope Level” means the single Tunnel Geotechnical Risk Scope Level selected and identified by the Proponent within the Proponent’s Financial Submittal as the Tunnel Geotechnical Risk Scope Level in respect of which the Proponent submits its Proposal.

“Senior Debt Base Rate Benchmark” has the meaning set out in Appendix D of Volume 1 of this RFP.

“Senior Debt Credit Spread Benchmark” has the meaning set out in Appendix D of Volume 1 of this RFP.

“Shared Use Person” means a Person described in Section 5.13.2 of Volume 1 of this RFP and includes each of the Persons listed in Section 5.13.2 of Volume 1 of this RFP and any other Persons that may, from time to time, be specifically identified as Shared-Use Persons by the Province.

“Short-Listed Respondents” means the Respondents listed in Section 1.2 of Volume 1 of this RFP.

“Submission Location” means the Broadway Subway Project Office, Suite 1100 – 401 West Georgia Street, Vancouver, BC, V6B 5A1.

“Submission Location for Initial, Follow-up and Final Security Package Review Submittals” means by e-mail to the Contact Person.

“Submission Location for Initial, Interim and Final AIRS Submittals” means by e-mail to the Contact Person.

“Submission Location for Interim Financial Review Submittals” means by e-mail to the Contact Person or by USB flash drive to the Contact Person at the Submission Location.

“Submission Location for Interim Workforce Requirements Submittals” means by e-mail to the Contact Person or by USB flash drive to the Contact Person at the Submission Location.

“Summary of Key Information” means the table named “Summary of Key Information” set out at the beginning of this RFP.

“Swapped Senior Debt Base Rate Benchmark” has the meaning set out in Appendix D of Volume 1 of this RFP.

“Systems Integration Contractor” has the meaning given to it in the RFQ.

“Technical Submittal” means the documentation and information as described in Section 3.7.1 and comprising Packages 1, 2 and 3 as described in Appendix A of Volume 1 of this RFP, and submitted in response to and in accordance with this RFP, together with all clarifications, rectifications, and more complete, supplementary and additional information and documentation submitted by the Proponent from

and after the Technical Submittal Deadline or the Financial Submittal Deadline in response to any request of the Province.

“Technical Submittal Deadline” means the date and time identified as such in Section 3.12 of Volume 1 of this RFP, as it may be amended from time to time by the Province in accordance with this RFP.

“Technical Supplement” means a supplement to a Proponent’s Technical Submittal that may be invited by the Province in accordance with Section 3.8.3 of Volume 1 of this RFP.

“TI Corp” means the Transportation Investment Corporation.

“Topic Meetings” means the meetings described in Section 3.4.1 of Volume 1 of this RFP, and in Section 8 and the Workshops and Topic Meetings Schedule of the Proponent Agreement, and **“Topic Meeting”** means any one of such meetings.

“Tunnel Contractor” has the meaning given to it in the RFQ.

“Tunnel Contractor Guarantor(s)” has the meaning given to it in the RFQ.

“Tunnel Geotechnical Risk Scope Level” means either of Tunnel Geotechnical Risk Scope Level 1 or Tunnel Geotechnical Risk Scope Level 2.

“Tunnel Geotechnical Risk Scope Level 1” means the Risk Scope Level described in Section 3.1.2(a) (i) of Volume 1 of this RFP.

“Tunnel Geotechnical Risk Scope Level 2” means the Risk Scope Level described in Section 3.1.2(a) (ii) of Volume 1 of this RFP.

“Tunnel Geotechnical Risk Sharing Provisions” includes Section 8.13 [Differing Site Conditions] of the Project Agreement, those definitions within Schedule 1 [Definitions and Interpretation] of the Project Agreement which relate to Differing Site Conditions, those parts of Schedule 16 [Dispute Resolution Procedure] of the Project Agreement which relate to the resolution of disputes relating to Differing Site Conditions and Schedule 26 [Subsurface Baseline Report] of the Project Agreement.

“Variable Terms” means all the terms of the Draft Base Supply Contract which are identified therein as Variable Terms.

“Workshops” means the workshops described in Section 3.4.1 of Volume 1 of this RFP, and in Section 8 and the Workshops and Topic Meetings Schedule of the Proponent Agreement, and **“Workshop”** means any one of such workshops.

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

Appendix A

RFP Response Guidelines

1. Response Guidelines Overview

This Appendix A and attachments describe the specific documentation that a Proponent is required to submit to satisfy the submittal requirements, and to demonstrate that they are capable of performing the responsibilities and obligations of Project Co under the Project Agreement. The Proponent's Proposal documents should comprehensively address the requirements set out in this Appendix A and the Definitive PA. Without limiting any other term of this RFP, including Section 5.4 of Volume 1 of this RFP, Proponents may provide additional information or supplemental material to clarify any Proposal item.

Proposals should be presented in the following submittals: a Technical Submittal, which may be amended by Technical Supplement subject to and in accordance with this RFP, the Advance Interest Rate Submittals, and a Financial Submittal, each of which consist of the following packages, and each of which is outlined in Section 3 of this Appendix A, Appendix D of Volume 1 of this RFP, and Section 4 of this Appendix A, respectively.

TECHNICAL SUBMITTAL:

1. PACKAGE 1: TRANSMITTAL

1. Contact information
2. Form 1 – Technical Submittal Certificate and Declaration of Volume 4 of this RFP
3. Form 7 – Limited Notice to Proceed Agreement
4. Overview Table of Contents for the Technical Submittal

2. PACKAGE 2: PROJECT AGREEMENT MANAGEMENT

Contents List

2.1 Proponent Information

- 2.2 Details of Project Co
- 2.3 Details of Design-Build Contractor
- 2.4 Systems Integration Contractor
- 2.5 Tunnel Contractor
- 2.6 Governance Structure

3. PACKAGE 3: IMPLEMENTATION STRATEGIES

- Contents List
- 3.1 Design
- 3.2 Systems
- 3.3 Geotechnical
- 3.4 Lands
- 3.5 Construction
- 3.6 Quality Management
- 3.7 Environmental Management
- 3.8 Supply Contract
- 3.9 Communications and Engagement
- 3.10 Indigenous Participation
- 3.11 Intellectual Property

ADVANCE INTEREST RATE SUBMITTAL

Process and submittal requirements are detailed in Appendix D of Volume 1 of this RFP.

FINANCIAL SUBMITTAL:

4. PACKAGE 4: TRANSMITTAL

- 1. Form 2 / Form 3 – Financial Submittal Certificate and Declaration
- 2. Form 4 – Commitment Letter

3. Form 5 – Documents Escrow Agreement
4. Form 6 – Irrevocability Agreement
5. Overview Table of Contents for the Financial Submittal

5. PACKAGE 5: FINANCIAL

- 5.1 Contract Price
- 5.2 Basis of Financial Submittal
- 5.3 Financial Capacity
- 5.4 Financing
- 5.5 Financial Model
- 5.6 Strategy for the Design-Build Contractor and Tunnel Contractor
- 5.7 Project Insurances
- 5.8 Affordability Model

2. Submittal Requirements

Proposals should follow the delivery, format and content requirements described in this Section 2, to facilitate consistency in Proposal review and evaluation and to facilitate consideration of each Proposal.

2.1 Language

Proposals should be in English. Any portion of a Proposal not in English may not be evaluated.

2.2 Delivery

The packages comprising the Technical Submittal are to be received at the Submission Location before the Technical Submittal Deadline.

The Advance Interest Rate Submittals submitted in accordance with Appendix D of Volume 1 of this RFP are to be received at the Submission Location for Initial, Interim and Final AIRS before the Initial AIRS Submission Deadline, the Interim AIRS Submission Deadline and the Final AIRS Submission Deadline, respectively.

The packages comprising the Financial Submittal are to be received at the Submission Location before the Financial Submittal Deadline.

2.3 Containers and Labeling

Proposals should be delivered in one or more containers clearly labeled with the “RFP Title”, “Contact Person”, and “Submission Location” all as shown on the RFP Summary of Key Information and with the Proponent’s name and mailing address.

Each container should be clearly labeled to identify the number of containers containing the Proposal, as “Number X of Y”, and to identify the package name and number contained therein.

The Proponent is solely responsible for ensuring that all containers containing its Proposal are securely sealed and clearly labeled in accordance with this Appendix.

2.4 Copies

All Submittals

Text and tables should be on double-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 Submittal should be in format no larger than 11” x 17” paper.

Technical Submittal

- a) Submit one (1) complete copy of the Technical Submittal marked as “Master” in one or more 3-ring binders.
- b) Submit the following in 3-ring binders with each marked “Copy x of y” as appropriate:
 - (i) two (2) identical copies of Package 1.
 - (ii) six (6) identical copies of Package 2.
 - (iii) six (6) identical copies of Package 3, sections 3.1 – 3.5.
 - (iv) three (3) identical copies of Package 3, section 3.6.
 - (v) three (3) identical copies of Package 3, section 3.7.
 - (vi) three (3) identical copies of Package 3, section 3.8.
 - (vii) three (3) identical copies of Package 3, section 3.9.
 - (viii) three (3) identical copies of Package 3, section 3.10.
 - (ix) three (3) identical copies of Package 3, section 3.11.
- c) The Technical Submittal should include one electronic copy on USB flash drive(s) of the Technical Submittal in the format described in Table A-1 below, in a file and directory structure that mirrors the hard copy of the Technical Submittal. Each USB flash drive should be clearly labeled with the RFP Title, the name of the Proponent, and, if more than one USB flash drive is provided, the applicable Package name and number.

Technical Supplement (if invitation is issued)

- a) Submit one (1) complete copy of the Technical Supplement marked as “Master” in a 3-ring binder, together with five (5) complete and identical copies of the Technical Supplement in 3-ring binders each marked “Copy x of 5”.
- b) The Technical Supplement should include one electronic copy on USB flash drive(s) of the Technical Supplement in the format described in Table A-1 below, in a file and directory structure that mirrors the hard

copy of the Technical Supplement. Each USB flash drive should be clearly labeled with the RFP Title, the name of the Proponent, and, if more than one USB flash drive is provided, the applicable Package name and number.

Advance Interest Rate Submittal

- a) One (1) copy of the Initial AIRS, Interim AIRS and Final AIRS emailed to the Submission Location for Initial, Interim and Final AIRS Submittals.

Financial Submittal

- a) Submit one (1) complete copy of the Financial Submittal marked as “Master” in one or more 3-ring binders, together with five (5) complete and identical copies of the Financial Submittal in 3-ring binders each marked “Copy x of 5” except that Proponents may include only ONE (1) complete hard copy of the Financial Model (without punch holes) and only THREE (3) complete hard copies of the information requested in Sections 5.3.1 c) and d) of Package 5 (without punch holes).
- b) The Financial Submittal should include one electronic copy on USB flash drive(s) of the Financial Submittal in the format described in Table A-1 below, in a file and directory structure that mirrors the hard copy of the Financial Submittal. Each USB flash drive should be clearly labeled with the RFP Title, the name of the Proponent, and, if more than one USB flash drive is provided, the applicable Package name and number.

Table A-1 Electronic File Formats

File Type	Software Package
Text based document	Adobe PDF format (unprotected and searchable)
Spreadsheet based documents including the Financial Model and Affordability Model	Microsoft Excel (unprotected)
Graphic files	Adobe PDF format
Drawing files	AutoCAD and Adobe PDF Format

2.5 Proposal Forms

Information provided by the Province on any form required to be submitted as part of a Proposal is not to 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 its Proposal.

3. Submission Requirements for Technical Submittal

Without limiting the terms of this RFP, this section summarizes the information and documentation that Proponents should submit in their Proposals for the Technical Submittal.

The Technical Submittal will be evaluated in accordance with the evaluation process described in Section A of Appendix B of Volume 1 of this RFP.

The Technical Submittal should be prepared on the basis of the version of the Definitive PA most recently issued prior to the Technical Submittal Deadline and, for purposes of Section 3.8.3(a) of Volume 1 of this RFP, this version will be considered the version of the Definitive PA issued as at the Technical Submittal Deadline.

Proponents should arrange the content of their Technical Submittals in accordance with the sequencing of and using the section numbers and corresponding titles shown in the following tables.

The Technical Submittal should provide information and documentation in accordance with the following tables.

Table A-2 Package 1 (Technical Submittal) Content and Requirements

Package 1: Transmittal Package

The transmittal package should contain the following information and documents.

- The contact person for all future communications between the Province and the Proponent, including name, employer, mailing address, telephone number, fax number and e-mail addresses;
- One (1) duly executed original Technical Submittal Certificate and Declaration in the form set out in Form 1 of Volume 4 of this RFP; and
- Overview table of contents for all parts of the Technical Submittal.

Table A-3 Package 2 Content and Requirements

Package 2: Project Agreement Management

Package 2 should provide information and documentation about the Proponent, including:

- Proponent Information
- Details of Project Co
- Details of Design-Build Contractor
- Details of Systems Integration Contractor
- Details of Tunnel Contractor
- Governance Structure

Package 2 of the Proponent's Proposal should address the requirements set out in the table below. Proponents should use the section numbers and corresponding titles shown in this table in their Proposals.

Section No.	Title	Contents
2.1	Proponent Information	
2.1.1	Confirmation of RFQ Qualification Response	Confirmation that, other than Changes consented to by the Province in accordance with Section 5.11 of Volume 1 of the RFP, there have been no changes to information provided in the Proponent’s Qualification Response regarding Project Co, the Design-Build Contractor, the Design Contractor, Systems Integration Contractor, Tunnel Contractor, the Design-Build Contractor Guarantor(s), and the Tunnel Contractor Guarantor(s) listed as part of the Respondent Team. If Changes were made to any of these Proponent Team Members with the consent of the Province, the Proponent should clearly identify each Change.
2.1.2	Confirmation of Key Individuals	Confirmation either: a) that the Project Co Representative, the Design-Build Director, Design Lead, and Systems Lead listed for the Respondent Team in the Proponent’s RFQ Qualification Response meet the qualification requirements set out in Section 3.1 of Schedule 2 [Representatives, Review Procedure and Consent Procedure], Section 2.3 of Part 1 of Schedule 4 [Design and Construction] and Section 2.4 of Part 1 of Schedule 4 [Design and Construction] of the Definitive PA respectively; or b) that one or more of these Key Individuals have been Changed, and such Change(s) has been consented to by the Province in accordance with Section 5.11 of Volume 1 of the RFP; accordingly, the qualification requirements in (a) are met. The Proponent should clearly identify each Change.
2.2	Details of Project Co	
2.2.1	Legal Name and Details	a) Description of the legal structure that the Proponent will adopt as Project Co including the proposed full legal name of Project Co and, if Project Co will not be a separate legal entity, each legal entity which will comprise Project Co, and the anticipated legal relationship between Project Co, or as applicable each legal entity which comprises Project Co. b) For each such legal entity which has been formed as at the Technical Submittal

Section No.	Title	Contents
		<p>Deadline, details of the incorporation number, or extra provincial registration number for British Columbia for Project Co or as applicable each legal entity that comprises Project Co and further details, including certificate of incorporation, memorandum and articles of incorporation, and documentation demonstrating that that Project Co or as applicable each legal entity which comprises Project Co, is duly authorized to carry on business in British Columbia.</p> <p>c) Provide the shareholder agreements or if the Proponent does not have an equity structure, provide details of the ownership structure and copies of all agreements related to ownership.</p>
2.3	Details of Design-Build Contractor	
2.3.1	Legal Name and Details	<p>a) Description of the legal structure that the Design-Build Contractor will adopt under the Project Agreement including the existing or proposed, as applicable, full legal name of the Design-Build Contractor and including, if applicable, the legal entities which will comprise each Design-Build Contractor Guarantor.</p> <p>b) For a legal entity which has been formed as at the Technical Submittal Deadline, full incorporation details, including certificate of incorporation, memorandum and articles of incorporation, and documentation demonstrating that the company is duly authorized to carry on business in British Columbia. If the Design-Build Contractor is proposed to be an unincorporated legal entity, details and proof of the existence of the individuals, corporations, other entities or the underlying legal entities that will make up joint ventures and partnerships who have the direct responsibility of the Design-Build Contractor and documentation demonstrating that the relevant individuals, corporations and entities are each duly authorized to carry on business in British Columbia.</p> <p>c) The Design-Build Contractor should clearly describe any changes to the Proponent Team members after the RFQ.</p>
2.3.2	Organization Structure and	Organizational description, including organization chart, indicating and listing the

Section No.	Title	Contents
	Details	members of the board of directors, the senior officers and key management officials, and reporting relationships.
2.5	Systems Integration Contractor	
2.5.1	Name	Full legal name(s)
2.5.2	Legal Details	For each member of the Systems Integration Contractor provide 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 a member of the Systems Integration Contractor is an unincorporated legal entity, please provide full details and proof of the existence of the individuals, corporations, other entities or the underlying legal entities that make up joint ventures and partnerships who have the direct responsibility for systems integration.
2.5.3	Organization Structure Details	Organizational description indicating key members/firms of the Systems Integration Contractor, their roles and responsibilities and contractual and reporting relationships, including an organizational structure for safety certification.
2.6	Tunnel Contractor	
2.6.1	Name	Full legal name(s)
2.6.2	Legal Details	For each member of the Tunnel Contractor provide 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 a member of the Tunnel Contractor is an unincorporated legal entity, please provide full details and proof of the existence of the individuals, corporations, other entities or the underlying legal entities that make up joint ventures and partnerships who have the direct responsibility for tunneling.
2.6.3	Organization Structure Details	Organizational description indicating key members/firms of the Tunnel Contractor, their roles and responsibilities and contractual and reporting relationships.

Section No.	Title	Contents
2.7	Governance Structure	<p>Project organization chart, which at a minimum identifies all Key Individual positions (no names of individuals) listed in Section 3.3 (a) of Schedule 2 [Representatives, Review Procedure and Consent Procedure] of the Definitive PA.</p> <p>Description of the relationships and reporting arrangements among the Proponent Team Members at critical stages of the Project:</p> <ul style="list-style-type: none"> a) reporting relationships between the Proponent and the Proponent Team Members; b) reporting relationships between the Proponent Team Members and Key Individuals. The nature of any contractual relationship(s) to be entered into between the Proponent and the Proponent Team Members; and the nature of any sub-contracting arrangements and details of the risk allocation between the parties.

Table A-4 Package 3 Content and Requirements

Package 3: Implementation Strategies

Package 3 should provide information and documentation that substantially satisfies the provisions of this RFP, including the requirements set out in this Appendix A and the Definitive PA.

Package 3 of the Proponent’s Proposal should address the requirements set out in the table below. Proponents should use the section numbers and corresponding titles shown in this table in their Proposals.

For Schedule 4, Part 2, Articles 11 [Mechanical], 12 [Electrical], 13 [Systems], 21 [Tunnel Ventilation System] and Appendix G [Systems General Requirements], the Proponent’s method of compliance for each technical requirement should be made within the DNG database. Each proponent will be given one secure DNG account. Detailed DNG RFP instruction will be provided (see DNG RFP Instructions provided as Disclosed Data).

Section No.	Title	Contents
3.1	Design	
3.1.1	Proposed Design and Construction Overview	Provide an executive summary of not more than three pages of the proposed approach to the Design and Construction of the Project. The executive summary should include the key risks, challenges, and proposed innovation(s) identified by the Proponent.
3.1.2	Alignment and Trackplan	<p>Address the Project alignment and trackplan requirements as set out in or otherwise referenced in Schedule 4 [Design and Construction] of the Definitive PA, and include the following:</p> <ul style="list-style-type: none"> a) Drawings showing the proposed horizontal alignment and the vertical profile at scales of 1:1000 horizontal and 1:200 vertically (scales appropriate for 11" x 17" paper size). Drawings to show: <ul style="list-style-type: none"> i. location of Stations (platform and building footprint outline); and propulsion power substations ii. location of crossovers and other special trackwork; iii. location of cross passages; iv. horizontal and vertical curve data and any speed restrictions; v. clearances to key features that directly affect the choice of both horizontal and vertical alignments (e.g. road, rail, utilities, buildings, and other critical horizontal and vertical clearances); and, vi. significant utility conflicts and / or protections required. b) Track plan showing diagrammatically the layout of the entire system including special trackwork, Stations and other key features. c) Description of the interfaces of the Alignment Design with Station Design and design at

Section No.	Title	Contents
		existing transit facilities, including VCC Clark tail track and Canada Line.
3.1.3	Guideway Design	<p>Address the Guideway design criteria and requirements as set out in or otherwise referenced in Schedule 4 [Design and Construction] of the Definitive PA, and include the following:</p> <ul style="list-style-type: none"> a) Outline of design approach for all Guideway structures, including foundations. b) Drawings showing the limits of proposed Guideway structures along the Alignment. <ul style="list-style-type: none"> i. The following types of Guideways should be identified (these may be illustrated on the drawings produced in response to Section 3.1.2 a) of this Table A-4 (Package 3 Content and Requirements): <ul style="list-style-type: none"> – Tunnel (bored, SEM, etc.) – below grade Reinforced Concrete Box Structures such as an open U-box section, Tunnel portal, Transition Tunnel, Station box Structure, crossovers box Structures (if applicable), etc.; – elevated Structures, including abutment, pocket track, any long-span and special structures; and – at-grade Structure near the high rail access. ii. For the elevated Guideway, provide the typical cross section, sideview and span length for the various types of proposed elevated Guideway, including rationale for column placements and span arrangements. Each section should show the system-wide elements, Vehicle static and dynamic envelope, walkways and other significant features in sufficient detail (to represent Combined Service Drawing for tangent and minimum radius curve). The various types of proposed elevated Guideway should include:

Section No.	Title	Contents
		<ul style="list-style-type: none"> - typical elevated Guideway section; - transition and center pocket track elevated Guideway; - elevated Guideway sections with special structures; - the proposed locations of piers and span lengths; and - For the section crossing over the existing QLT parking lot structure at 887 Great Northern Way, describe (if any) proposed modifications to the existing parking lot structure to accommodate column and foundations. <p>iii. For the Tunnel (Bored or Mined), Cross Passages, cross overs, Underground Box Structures (within Stations), Transition Tunnel, open U-box Structure and at-grade Guideway; provide cross-sections for each section representative of a combined service drawing and show:</p> <ul style="list-style-type: none"> - the system-wide elements, Vehicle dynamic envelope, walkways and other significant features, power distribution, trackwork and support system, walkways and railings, cable-ways and any other typical features, such as stand pipes, Automatic Train Control elements, LIM rail and Blue Light Stations. - Indicate the type(s) of substructure, including columns and foundation. <p>c) Describe, with appropriate reference to alignment drawings how the requirements for emergency evacuation from the underground Guideways will be met; include the number and location of cross passages and emergency exits.</p>
3.1.4	Tunnel Design (excluding Stations)	Address the Tunnel design criteria and requirements as set out in or otherwise referenced in Schedule 4 [Design and Construction] of the Definitive Project Agreement, and include the following in sufficient detail to enable the Proponent to order a TBM(s) upon the earlier of execution of a Limited Notice to Proceed Agreement and Financial Close, if selected as Preferred Proponent:

Section No.	Title	Contents
		<ul style="list-style-type: none"> a) Tunnel design, including Tunnel lining design (in the case of a Bored Tunnel to enable early ordering and manufacturing of the Tunnel lining); b) For Bored Tunnel(s): <ul style="list-style-type: none"> i. a detailed description of the proposed TBM(s) to be used, if applicable, with reference to the expected ground conditions (as presented in the Subsurface Baselines Report and Geotechnical Data Report), in sufficient detail to enable the Proponent to order a TBM(s) upon the earlier of execution of a Limited Notice to Proceed Agreement or Financial Close, if selected as Preferred Proponent; ii. tunnel shaft design at the east end of the Bored Tunnel near Thornton St. and Great Northern Way; c) For Mined Tunnel(s) including cross-passages: <ul style="list-style-type: none"> i. develop tunnel lining designs and tunnel temporary support designs with reference to the full range of expected ground conditions for the Project (Subsurface Baselines Report and Geotechnical Data Report); and d) A description, with appropriate reference to Alignment drawings, of how the requirements for emergency evacuation from underground Guideways will be met. Include the number and location of Cross Passages and emergency exits.
3.1.5	Stations and Station Plaza Design	<p>The Stations Design portion of the Proposal should describe the functional arrangement of the six Stations, the proposed architectural and urban design approach to station entrances, ventilation exhaust and exit stairs. The functional plans should define the overall size of, and relationships between, the major station components including entrances, entry halls, horizontal and vertical circulation elements, concourses, and platforms. The functional plans should show the proposed layout of all ancillary spaces, traction power equipment and transportation interfaces, and satisfy the room requirements specified in Schedule 4</p>

Section No.	Title	Contents
		<p>[Design and Construction] of the Definitive PA.</p> <p>The Stations Design section should include the following for each Station:</p> <ul style="list-style-type: none"> a) Site Plan 1:200 <ul style="list-style-type: none"> i. Location of station entrances and entry plazas ii. Location of exit stairs iii. Location of ventilation grilles and/or other ventilation structures iv. Location of AARUs v. For Arbutus only – bus exchange and Station Plaza. vi. Extent of required permanent lands to accommodate the Station entrances and Station Plazas. vii. Building grades and entrance floor elevation. viii. Provision for connection to future adjoining development(s) b) Functional Plans (all levels) 1:200 <ul style="list-style-type: none"> i. Overall dimensions of the physical facility including ancillary facilities ii. Location and dimensions of platforms; iii. Limit of station box

Section No.	Title	Contents
		<ul style="list-style-type: none"> iv. Layout of ancillary facility spaces v. Layout of concourse area showing area required for passenger circulation and emergency exiting (areas of refuge), as well as CRU and commercial kiosk space vi. Layout of key Station furniture and Equipment including faregates vii. Entrances and at-grade ancillary structures viii. Location and size of elevators, escalators, and stairs (both normal and emergency). For elevators, indicate type of elevator technology, either Roped Hydraulic (RH) or Machine Room-Less (MRL) elevators. ix. Number and location of ticket vending machines and faregates x. Limits of security and access controls xi. Size and location of station and tunnel ventilation equipment, plenums, shafts, and surface intake/exhaust grills; xii. Provisions for future entrances and/or connection to future adjoining development(s) xiii. For Broadway-City Hall Station only: Connections to existing Broadway-City Hall Canada Line Station including proposed limits of Proponent’s work <p>c) Longitudinal Section 1:200</p> <ul style="list-style-type: none"> i. Show relationship between floor levels and vertical circulation elements

Section No.	Title	Contents
		<ul style="list-style-type: none"> d) Cross Sections 1:200 <ul style="list-style-type: none"> i. Show relationships between floor levels, vertical circulation and future adjoining development(s). e) Exterior Elevations 1:100 <ul style="list-style-type: none"> i. Dimensioned building elevations of proposed station entrances, illustrating the features of the finished building, primary exterior materials, roof form and material, glazed areas, wall openings, entrances, structural members, and including the relationship to adjoining and integrated developments. ii. Dimensioned building elevations of above grade exit stairs illustrating the features of the finished structure, primary exterior materials, roof form and material, glazed areas, and wall openings. f) Narrative <ul style="list-style-type: none"> i. Provide a Station Design report, providing a narrative on the overall station design principles and approach, detailing the following for all Stations: <ul style="list-style-type: none"> – Description of the architectural approach, including the architectural parti – Key architectural elements, including primary materials, form, roof, structural components, key features, organization and circulation of key station elements, and station access; – Demonstration of how input from Stakeholder events, Design Advisory Process, community context, CPTED issues, and site considerations will be reflected in the design principles and approach; – quality and type of materials to be used in the stations and how they address

Section No.	Title	Contents
		<p>the function and design life of the stations.</p> <ul style="list-style-type: none"> - Description of the neighbourhood character and proposed features and architectural treatments to reflect the neighbourhood. - Description of the Design approach to satisfy the requirements of the Project Agreement including key elements such as: <ul style="list-style-type: none"> (i) integration with adjoining development(s), (ii) fire and life safety, (iii) specified Level of Service, (iv) maintenance and replacement access to major equipment, and (v) integration of mechanical, plumbing and electrical systems. <p>g) For the provision of Transit Police facilities identified as part of the Priced Options in Section 3.1.3 of Volume 1 of this RFP, this section will, separately from the requirements set out in Sections 3.1.5 a) to f) of this Table A-4 (Package 3 Content and Requirements), address the impact of accommodating these Transit Police facilities:</p> <ul style="list-style-type: none"> i. Plans 1:200 showing modifications and/or additions required for the Transit Police Hub at Broadway – City Hall Station and Transit Police Sub-Offices at Mount Pleasant Station and Arbutus Station. These plans should clearly identify and show the location and layout of the room spaces required for these Transit Police facilities.

Section No.	Title	Contents
3.2	Systems	
3.2.1	Systems	<p>The Definitive PA defines the Systems that are required to integrate with existing and proposed features of the SkyTrain System.</p> <p>Address the Systems engineering criteria and requirements, at a functional level of detail, as set out in or otherwise referenced in Schedule 4 [Design and Construction] of the Definitive PA, and include the following:</p> <ul style="list-style-type: none"> a) Description of the method of compliance for each technical requirement, which shall be made within the DNG database, as per “Package 3: Implementation Strategies” of this table ; b) Functional design drawings of each subsystem; c) Outline (description and drawings) of the scope of OMC upgrades including Control Room and Computer Room modifications; d) Proposed industry standards (including system engineering software design standards per Section 1.6.7 of Appendix G and safety program plan per Section 1.8.1 of Appendix G of Schedule 4 [Design and Construction] of the Definitive PA); e) Overview of approach to Systems integration at Broadway-City Hall Station; f) An outline design of the Tunnel Ventilation System; g) Approach and methodology to special track support features where anti-vibration measures are deemed appropriate to satisfy the noise and vibration criteria included in the Definitive PA. h) Overview of approach to working with TransLink to integrate the Broadway Subway with the Existing SkyTrain System including work at the Operations and Maintenance Centre; i) Overview of approach to integrating vehicles, as described in Article 15 [Vehicles] of

Section No.	Title	Contents
		<p>Part 2 of Schedule 4 [Design and Construction] to the Definitive PA onto the Broadway Subway;</p> <ul style="list-style-type: none"> j) Overview of approach to testing and commissioning of the Broadway Subway and the Integrated SkyTrain System; k) Overview of approach to managing the interface with Technical Safety BC; l) Confirmation that the PPS locations as identified in the design drawings submitted in accordance with Section 3.1.4 of this Table A-4 (Package 3 Content and Requirements) will meet the initial and future capacity as described in Article 13 of Part 2 of Schedule 4 [Design and Construction] of the Definitive PA; and m) Preliminary Safety Certification Plan describing the approach to implementing CENELEC standards including a description of anticipated exemptions and all assumptions. Specify the proposed approach to the requirement for an Independent Safety Assessment as described in CENELEC standards; n) Specify the software to be used for the fault tree analysis; and o) Simulations of train operations showing: <ul style="list-style-type: none"> i. speed and elapsed travel time between Stations in both directions; and ii. dwell times at all Stations.
3.3	Geotechnical	
3.3.1	Geotechnical	<p>Include a geotechnical design overview prepared by the Geotechnical Engineer in response to the geotechnical design criteria and requirements as set out in or otherwise referenced in Schedule 4 [Design and Construction] of the Definitive PA. Address geotechnical issues and constraints associated with the Design and Construction of the Work and describe how the Proponent expects to satisfy the geotechnical design criteria, at a functional level of detail, as set out in or otherwise referenced in Schedule 4 [Design and Construction] of the Definitive PA, and should include the following:</p>

Section No.	Title	Contents
		<ul style="list-style-type: none"> a) A description of geotechnical issues, conditions, constraints, and challenges related to the Proponent’s proposed Design and Construction methods, including stability and deformations of the Project Work (Elevated Guideway, Stations, Transition Tunnels, Tunnels, cross overs, Cross Passages, etc.); b) A description of the methodology to be used in geotechnical analysis and design and how the Proponent intends to mitigate and manage subsurface challenge; c) Identification of seismic design issues, including, deformation and stability of the Guideway structure and foundations, any retaining walls and embankments, soil liquefaction, and lateral load-deformation response of foundations, and a description of the methodology and techniques that will be used to solve these issues; and d) A summary of the geotechnical analysis and recommendations provided in support of the Proponent’s design in the Technical Submittal, including; <ul style="list-style-type: none"> i. site preparation and ground treatment; ii. foundation design approaches, including types and depths; iii. stability and settlement of embankments and retaining Structures including below grade U-box structure and underground reinforced concrete box structures; and iv. for the Tunnels and Stations, excavation and ground support designs, predicted ground loss and deformations (both during and following construction) and their anticipated impacts to existing structures, buildings, and utilities, including strategies to mitigate those impacts.
3.4	Project Lands	
3.4.1	Project Lands	<ul style="list-style-type: none"> a) A completed Form A-1 (Alignment Lands), listing the lands and land interests selected by the Proponent from the Alignment Lands that conform to the Proponent’s design and that are sufficient, together with the Proponent Proposed Lands and the proposed other lands (as described in Appendix F of Volume 1 of this RFP), to enable the Proponent,

Section No.	Title	Contents
		<p>should it become Project Co, to deliver the Project, based on the Proponent’s proposed Design, in accordance with the Definitive PA.</p> <p>b) If applicable, indicate which of the Accepted Proposed Lands the Proponent requires in connection with its Proposal, and include the “not before date” and “minimum notice period” provided by the Province in its response to the Proponent’s Form A-2.</p> <p>c) A completed Form A-3 (Proposed Other Lands), prepared in accordance with the process set out in Section 3 of Appendix F of Volume 1 of this RFP which provides full details of all lands and land interests in addition to the Designated Project Lands set out in the Proponent’s completed Form A-1 and the Proponent Proposed Lands set out in the Proponent’s completed Form A-2, which are proposed to be used by the Proponent in connection with or to facilitate the delivery of all or any part of the Project Work, including land proposed to be used for fabrication, materials, handling, disposal or storage, including all remote sites.</p> <p>d) Drawings substantially in the form of the Alignment Lands Drawings at a scale of 1:1000 horizontal and 1:200 vertically, which clearly identify:</p> <ul style="list-style-type: none"> i. the Designated Project Lands provided in Form A-1; ii. the Accepted Proposed Lands described in (b) above; iii. the Proponent’s proposed horizontal alignment, including the control line, stationing references and the edge of structures that are consistent with the proposed horizontal alignment drawings provided in accordance with the requirements set out in 3.1.2 a) of this Table A-4 (Package 3 Content and Requirements); iv. the limits of the right-of-way as provided for in Schedule 8 [Lands] of the Definitive PA and should include any additional lands that the Proponent may request; v. the location and outlines of all Stations; and vi. the Proponent’s proposed Tunnel vertical profile, including the control line,

Section No.	Title	Contents
		<p>stationing references, and top and bottom of the Tunnel.</p> <p>e) Confirmation that the Proponent has not changed its intended use of any of the Accepted Proposed Lands listed in the Proponent’s completed Form A-2 (Proponent Proposed Lands) as such use was disclosed to the Province in accordance with Appendix F of Volume 1 of this RFP and any RFIs arising therefrom.</p>
3.5	Construction	
3.5.1	Works Schedule	<p>a) A preliminary Works Schedule, in accordance with Schedule 3 [Project Schedule] of the Definitive PA, for the design, construction, and testing and commissioning of the work. The schedule should be a time-related network analysis diagram showing all the major activities from start to completion and their logical interdependencies.</p> <p>The preliminary Works Schedule should also show the Effective Date, Substantial Completion Date, Total Completion Date, On-Time Performance Demonstration Completion Date and TIDS Performance Demonstration Completion Date. The preliminary Works Schedule should provide content and detail that reasonably demonstrate that the Proponent understands the scope of the Project Work and sets out how the Proponent intends to plan and implement the Design and Construction of the Work in a logical sequence. At a minimum the preliminary Works Schedule should be consistent with the requirements set out in Section 1.3(c) of Schedule 3 [Project Schedule] of the Definitive PA and the following key Project Work elements should be identified (as applicable):</p> <ul style="list-style-type: none"> i. critical path; ii. environmental permits and approvals; iii. procurement, manufacturing, delivery and installation of the Tunnel Boring Machine(s) (as applicable); iv. design submissions/review including key dates for submissions; v. establishment of pre-cast yards and other production facilities;

Section No.	Title	Contents
		<ul style="list-style-type: none"> vi. production of pre-cast elements; vii. establishment of Tunnel support facilities and spoil disposal facilities; viii. foundation construction; ix. Guideway construction; x. Tunnel construction including expected rates of advance of tunnels; xi. earthworks/soft soils/consolidation periods; xii. Stations construction (each Station); xiii. permanent road works, including all work required to facilitate reinstatement of the trolley overhead wires; xiv. significant utility works; xv. systems and equipment installation; xvi. testing and commissioning, including all authorization to move trains for testing and commissioning, including Trial Running, as referred to in Section 1.17.6.2 of Appendix G of Schedule 4 [Design and Construction] of the Definitive PA; xvii. work to tie-in to the existing guideway at VCC-Clark Station; xviii. work at Broadway-City Hall Station; and xix. other significant Project Work functions on the critical path. <p>b) Time Distance chart showing key Project Work elements</p> <p>c) The rationale for durations shown in relation to major Project Work elements on the critical path.</p>

Section No.	Title	Contents
3.5.2	Limited Notice to Proceed Agreement – Schedule	<p>a) A completed draft schedule to Form 7 of Volume 5 of this RFP (Limited Notice to Proceed Agreement) listing the ordering of a TBM(s) and any additional activities identified on the Proponent’s preliminary Works Schedule, prepared in accordance with Section 3.1.4 of this Table A-4 (Package 3 Content and Requirements), that the Proponent deems necessary in order to achieve the Substantial Completion Target Date on the assumption that the Effective Date is August 28, 2020; and,</p> <p>b) A confirmation that the Proponent has accepted the terms of and is prepared to execute Form 7 of Volume 5 of this RFP (Limited Notice to Proceed Agreement) if selected as Preferred Proponent and if required to do so prior to Financial Close.</p>
3.5.3	Construction Approach and Management	<p>Describe how the Construction will be carried out in a safe, effective manner while demonstrating that the Proponent has the capability to achieve its proposed Work Schedule in a reasonable and realistic manner, having regard to the requirements of the Definitive PA. At a minimum, the following items should be addressed:</p> <p>a) key issues and constraints affecting construction and strategies to manage those issues;</p> <p>b) significant utility relocations, protections, installations and co-ordination activities;</p> <p>c) proposed noise, vibration, and light mitigation strategies for all components of construction where impact is expected;</p> <p>d) expected production rates for each tunnel section and for the range of expected ground conditions, and</p> <p>e) proposed construction methodologies and Project Work procedures for:</p> <ul style="list-style-type: none"> i. Methods to be used to construct tunnels, including temporary and permanent ground support, groundwater control, number of drives, description of the major equipment to be used. <ul style="list-style-type: none"> - For Bored Tunnels:

Section No.	Title	Contents
		<ul style="list-style-type: none"> (i) Layout of the work area to support the tunnel boring construction. - For Mined Tunnels: <ul style="list-style-type: none"> (ii) a description of the proposed excavation and lining methodology, with particular emphasis on methods to ensure ground control, limit ground movements and prevent excessive ground loss. Describe any specific measures (e.g. advance probing, ground conditioning, additional geotechnical exploration, etc.) proposed to minimize the risk of face instability and ground loss; (iii) The proposed layout and sequencing of the excavation and lining of all sections of the Tunnel and the proposed layout of the work areas; (iv) Description of any temporary works (access tunnels/shafts/anchors) as needed to carry out the proposed mining sequence; (v) Expected excavation and lining production rates for each tunnel section and for the range of expected ground conditions. Provide excavation advance rates, tunnel lining installation rates, and production rates for other aspects required to provide a complete Tunnel. ii. Methods to be used to construct each of the crossover tunnels including temporary and permanent ground support, groundwater control, any expected surface disruption and a description of the major equipment to be used; iii. Methods to be used for construction of cross passages, including temporary and permanent ground support, groundwater control, and description of the major equipment to be used; iv. Location and preliminary layouts of tunnel access sites and other temporary

Section No.	Title	Contents
		<p>work areas with special attention to the GNW and Arbutus work areas;</p> <ul style="list-style-type: none"> v. Location and preliminary layouts of pre-cast yard and production facilities; vi. Methods to be used to construct Stations including excavation design and temporary support considering the many buildings, utilities, and facilities in close proximity, staging and sequencing of the work to maintain business access, pedestrian and traffic flow; vii. Methods and construction sequencing required to construct the Broadway-City Hall Station including details of the tie-in to the existing Canada Line Broadway-City Hall Station, strategies to ensure continuous operation of Canada Line during all phases of construction, and strategies to ensure safe and efficient access to the station entrance at all times. viii. Approach to removal of excavated material including planned trucking routes and associated traffic management; ix. Methods to be used to construct Elevated Guideways with particular reference to, foundation type and construction, column placement and construction approach, approach to design/construction of the section at the 887 Great Northern Way QLT Building, the tie-in to the existing Guideways and the area west of the tie-in where the Guideway impacts existing development and/or railway lands; and, x. proposed foundation construction and structure erection strategies for structures adjacent to or spanning buildings, roadways and train tracks.
3.5.5	Traffic Management	<p>Describe the strategy that the Proponent will take to manage traffic during the execution of the Project Work in accordance with the requirements of the Definitive PA and provide, at a minimum, the following:</p> <ul style="list-style-type: none"> a) An overview of the Proponent’s approach and methods for addressing the traffic

Section No.	Title	Contents
		<p>management requirements outlined in Part 4 of Schedule 4 [Design and Construction], including:</p> <ul style="list-style-type: none"> i. general traffic management requirements; ii. traffic disruptions (Lane Closures, Stoppages, Full Closures, detour routes and Lane Shifts); iii. traffic engineering and traffic performance criteria; iv. accommodation of transit; and, v. development of a Traffic Management Plan. <p>b) An overview of the Proponent’s communications strategy with respect to traffic management in accordance with the requirements of Schedule 9 [Communications, Community Relations and Business Relations].</p> <p>c) A sample Traffic Site staging plan, showing proposed laning, equipment movement and storage, materials transport and storage, and truck staging plans.</p> <p>d) A sample transit queue jump plan for buses entering a sample Traffic Site.</p>
3.5.6	Utilities	<p>Describe the strategy that the Proponent will take in planning and carrying out the Utility relocations and/or protections required to deliver the Proponent’s proposed Design and complete the Work in accordance with the Definitive PA, and include:</p> <ul style="list-style-type: none"> a) A schedule of conflicts with existing utilities and the proposed treatment of each; b) An overview of the Proponent’s approach and methods for meeting the utility requirements set out in Article 8 of Part 2 of Schedule 4 [Design and Construction] of the Definitive PA, all categories of utilities; c) An overview of the Proponent’s approach to managing the interface with Relevant

Section No.	Title	Contents
		<p>Authorities for service connections of Stations; and,</p> <p>d) An overview of the proponent’s approach to managing the interface with Metro Vancouver for both relocations and proximal works.</p>
3.6	Quality Management	
3.6.1	Quality Management System	<p>Describe the Proponent’s approach to planning and delivering a Quality Management System, which reasonably demonstrates that the Quality Management System will satisfy the requirements of International Standard ISO 9001:2008, ISO 9000 quality management principles, and the minimum requirements stated in the Definitive PA, including in Schedule 7 [Quality Management] of the Definitive PA, and includes, at a minimum, the following:</p> <p>a) The Proponent’s Quality Policy and Quality Objectives;</p> <p>b) An overview of the Proponent’s quality management approach demonstrating their understanding of the Definitive PA requirements and their ability to meet these requirements;</p> <p>c) An outline of how the key management activities will interface with each other;</p> <p>d) An organizational chart identifying the title and positions of the key members of the Proponent’s quality management team; and</p> <p>e) A description of the process, including the timing, for how the Proponent intends to attain ISO 9001:2008 compliance and implementation of its Quality Management System in accordance with the requirements of the Definitive PA.</p>
3.7	Environmental Management Strategy	

Section No.	Title	Contents
3.7.1	Environmental Management Strategy	<p>Provide an overview of the strategy that the Proponent will take to meet the requirements of Schedule 6 [Environmental Obligations] of the Definitive PA, including all other environmental obligations of Project Co. This overview strategy will, at a minimum:</p> <ul style="list-style-type: none"> a) Demonstrate the Proponent’s understanding, commitment and capability to meet these requirements; b) Provide the key elements of the Proponent’s draft CEMP; and, c) Provide the Proponent’s strategy to comply with all environmental obligations.
3.7.2	Environmental Impact Report	<ul style="list-style-type: none"> a) Identify on Form A-4 attached to this Appendix A and on the Proponent’s lands drawings prepared in accordance with Section 3.3.1d) of this Table A-4 (Package 3 Content and Requirements) any elements of their design(s) that differ from the Reference Concept Alignment and that have an environmental impact (positive or negative). b) For each of the design changes identified in Form A-4, the Proponent should provide details of the design change and the environmental impacts together with an assessment of the environmental impacts and a mitigation strategy. The Proponent should demonstrate how they will ensure compliance with the requirements of the Definitive PA, including Schedule 6 [Environmental Obligations].
3.8	Supply Contract	
3.8.1	Supply Contract	<p>Provide <u>either</u>:</p> <ul style="list-style-type: none"> a) confirmation that the Proponent has accepted and has based its Proposal on the Definitive Base Supply Contract; or, b) Confirmation that the Proponent has settled Variable Terms for a Proponent Supply Contract with Thales in accordance with Section 2 of Part 2 of Volume 4 of this RFP, together with the form of Proponent Supply Contract which the Proponent has agreed with Thales.

Section No.	Title	Contents
3.9	Communications and Engagement	
3.9.1	Communications and Engagement Approach	An overview of the Proponent’s approach that demonstrates the Proponent’s understanding of and capability to meet the requirements of Schedule 9 [Communications, Community Relations and Business Relations] to the Definitive PA and all other Communications and Engagement obligations of Project Co, including: <ul style="list-style-type: none"> a) Construction and Traffic Notification; b) Enquiry-Response Management; c) Issues Management and Crisis Communication; d) Community, Stakeholder and Business Relations; and e) Supporting the Province with media and government relations
3.10	Indigenous Participation	
3.10	Indigenous Participation Strategy	Description of the Proponent’s strategy for meeting the requirements Schedule 22 [Indigenous Requirements] of the Definitive PA.
3.11	Intellectual Property	
3.11.1	Intellectual Property	Provide all applicable deliverables required in accordance with Section 6.1 [Insurance Coverage] of the Definitive PA.

Form A-1 – Alignment Lands

Alignment Lands Drawings	Property Information		Permanent Lands		Temporary Lands		Minimum Notice Period
Dwg No.	Physical Address	P.I.D.	Extent of Taking	Specified Access Date	Extent of Taking	Specified Access Date	
Titled Fee Simple Lands							

Note:

** The drawing number should correspond with the drawings submitted under s. 3.3.1 d) under Appendix A - RFP Response Guidelines*

Form A-2 –Proponent Proposed Lands

Property Information		Permanent Lands		Temporary Lands		Description and Supporting Data
Physical Address	PID	Extent of Taking	Proposed Access Date (Proponent to propose an access date based on its construction schedule)	Extent of Taking	Proposed Access Date (Proponent to propose an access date based on its construction schedule)	(Proponent to provide details of the interest in lands requested, including a sketch plan and any other information pertinent to the property and its intended use)
<i>[Property Address]</i>	<i>[PID]</i>	<i>[Full/Partial]</i>	<i>[Date]</i>	<i>[Full/Partial]</i>	<i>[Date]</i>	<i>Text</i>

Form A-3 – Proposed Other Lands

Property Information			Description and Supporting Data
Physical Address	City	PID	(Proponent to provide details of the interest in lands requested, including property description, proposed use, anticipated access date, extent and duration of taking, sketch plans and any other information pertinent to the property and its intended use)

Form A-4 – Environmental Impact Report

Drawings*			Description
Dwg No.	Dwg Stationing	Size (ha)	

Note:

* The drawing number and drawing stationing references should correspond with the drawings submitted under s. 3.3.1 d) of Appendix A - RFP Response Guidelines

3A. Submittal Requirements for Technical Supplement (If Invitation is Issued)

Without limiting the terms of this RFP, this Section summarizes the information and documentation that Proponents should submit in a Technical Supplement.

If the Proponent receives an invitation to submit a Technical Supplement in accordance with Section 3.8.3 of Volume 1 of this RFP, the Proponent may amend its Technical Submittal in the manner that the Proponent considers necessary to reflect the amendments, restructuring, supplements or impacts, as applicable, described in Section 3.8.3 of Volume 1 of this RFP.

The Proponent should set out in the Technical Supplement either the confirmation in form and content described in the Technical Supplement Package Table set out in this Section 3A of this Appendix A or the information and documentation applicable to each amendment, if any, to the Proponent's Technical Submittal, in accordance with such Technical Supplement Package Table.

If the Technical Supplement contains amendments to the Technical Submittal, the Technical Supplement should demonstrate:

- a) that the Technical Submittal if modified in accordance with each amendment described in the Technical Supplement, separately, and with all such amendments, collectively, would substantially satisfy the requirements of this RFP, including the requirements set out in this Appendix A and the Definitive PA, in a manner equal to or better than did the Technical Submittal before incorporating the Technical Supplement amendments; and
- b) to the satisfaction of the Province that the Proponent continues to have a good understanding of the Project and of the Work and continues to be capable of performing the obligations and responsibilities of Project Co and delivering the Project in accordance with the Definitive PA.

Without limiting any other term of this RFP, the Proponent's eligibility to continue in the Competitive Selection Process, including to continue to have its Proposal reviewed,

evaluated or ranked is conditioned on the Technical Supplement containing only amendments, if any, that are demonstrated as being necessary to reflect the amendments, restructuring, supplements or impacts, as applicable, described in Section 3.8.4 of Volume 1 of this RFP, and as not having any further effects.

Without limiting any other term of this RFP, including Section 5.4 of Volume 1, the Province may in its discretion reject any amendments in the Technical Supplement that the Province determines in its discretion:

- a) are not necessary to reflect the amendments, restructuring, supplements or impacts, as applicable, described in Section 3.8.4 of Volume 1 of this RFP;
- b) have any effect beyond reflecting such amendments, restructuring, supplements or impacts; or
- c) do not demonstrate to the satisfaction of the Province the matters described in this Section 3A of this Appendix A.

The Province's decision in this regard will be final and the Province need not consult with the Proponent in making its decision.

The Province will notify each Proponent in writing as to whether its Technical Supplement is rejected in its entirety or in part, and if in part, which of the amendments set out in the Technical Supplement are rejected.

If all amendments set out in the Technical Supplement are rejected, then that Proponent's Technical Submittal will be deemed and considered for all purposes of this RFP phase and the Competitive Selection Process to be unamended in any way whatsoever by anything set out in the Technical Supplement. If none or one or more, but not all of the amendments set out in the Technical Supplement are rejected, then that Proponent's Technical Submittal will be deemed and considered for all purposes of this RFP phase and the Competitive Selection Process to be amended only by and to the extent expressly set out in the Technical Supplement amendments that are not rejected.

Table A-5 Technical Supplement Package Content and Requirements

Technical Supplement Package Table

The Technical Supplement should contain:

- a) either:
 - i. clear, unconditional and unqualified confirmation on behalf of the Proponent and each Proponent Team Member that the Proponent and each Proponent Team Member has reviewed and considered the amendments, restructuring or supplements or the impacts, as applicable, described in Section 3.8.3 of Volume 1 of this RFP and that each considers and has conclusively determined that no amendments to the Technical Submittal submitted by the Proponent are necessary; or
 - ii. a table identifying each amendment to the Proponent’s Technical Submittal by reference to the package number, the section number and corresponding title applicable to each section of the Technical Submittal and a summary description of the amendment, including, as applicable, identification of the part or parts of the Technical Submittal to be deleted as part of the amendment; and,
- b) information and documents in respect of each amendment to the Technical Submittal;
 - i. arranged in accordance with the sequencing and using the package number, the section number and corresponding title applicable to the section of the Technical Submittal to be amended; and
 - ii. clearly and comprehensively setting out the amendment to the Technical Submittal.

4. Submittal Requirements for Financial Submittal

This section summarizes the information and documentation that Proponents who have received the invitation under Section 3.8.5 of Volume 1 of this RFP should submit in their Proposals for the Financial Submittal.

The Financial Submittal should provide evidence that the Proponent has in place all necessary financial arrangements for the Project.

The Financial Submittal will be used to evaluate Proposals and select the highest ranked Proposal.

Proponents should prepare their Financial Submittal on the basis of the Definitive PA, without amendment, and on the basis of their Technical Submittal including any further information and documentation (including clarifications, rectifications, and more complete, supplementary, replacement and additional information and documentation delivered to the Province in accordance with this RFP). If Technical Supplements are invited pursuant to Section 3.8.3 then Proponents should also prepare their Financial Submittal on the basis of one of the following, as applicable to each Proponent:

- their confirmation that no amendments to the Technical Submittal are necessary, in accordance with Section 3A of this Appendix A;
- their Technical Submittal and any above-noted further information and documentation, as amended by those parts of the Technical Supplement that have not been rejected; or
- if all amendments set out in their Technical Supplement have been rejected, their Technical Submittal, and any above-noted further information and documentation, unamended.

Escrow Account

As described in the Documents Escrow Agreement, the Province has established an escrow account through an independent legal entity. Each Proponent should execute and deliver 3 originals of the Documents Escrow Agreement as part of Package 4 of the Financial Submittal. For purposes of this RFP, entering into the Documents Escrow Agreement will not constitute using, consulting, including or seeking the advice of the Escrow Agent within the contemplation of Section 5.13 of Volume 1 of this RFP.

Proponents should place all original files and materials in respect of pricing associated with the Proposal in the escrow account including, without limitation, documents containing information regarding the Proponent's assumptions made in determining the scope of work and price calculations used to prepare the Financial Submittal.

Without limiting the terms of the Documents Escrow Agreement, all electronic files and materials should be provided in both original hard copy format and as electronic files (where available). The electronic files should be provided as full active files (not read-only or password protected) in one of the file formats listed in Table A-1 of this Appendix.

Each Proponent's escrow files and materials should be packaged and labelled as:

Broadway Subway Project
"Proponent Name"
Response to Request for Proposals
ESCROW DOCUMENTS

The escrow files and materials should be received at the following address not later than 48 hours after the Financial Submittal Deadline.

*Miller Thomson LLP
400 – 725 Granville Street
Vancouver, BC
V7Y 1G5*

The escrow files and materials will not be used during the evaluation process.

As described in the Documents Escrow Agreement, the Province may request specific information from the escrow account as may be necessary to confirm details or assess errors or omissions in the submitted Proposal documents as may be necessary in connection with execution of the Definitive PA. The escrow files and materials will be returned to unsuccessful Proponents following execution of the Definitive PA.

Table A-6 Package 4 (Financial Submittal) Content and Requirements

Package 4: Transmittal Package

The transmittal package should contain the following information and documents.

- One (1) duly executed original of the applicable Financial Submittal Certificate and Declaration, and accompanying copies of the Financial Submittal Certificate and Declaration, in the form set out in Form 2 or Form 3 of Volume 5 of this RFP;
- Three (3) duly executed originals of the Documents Escrow Agreement in the form set out in Form 5 of Volume 5 of this RFP;
- Two (2) duly executed originals of the Irrevocability Agreement in the form set out in Form 6 of Volume 5 of this RFP;
- Overview table of contents for all parts of the Proposal.

Table A-7 Package 5 Content and Requirements

Package 5: Financial

Without limiting the requirements set out below and in the following table, the Proponent should include in Package 4:
a completed Affordability Model;

- a fully developed, robust Financial Model and Financing Plan; and
- written evidence that the Proponent has sufficient support and commitment from the Senior Lenders to support all financial aspects of the Project, and that the Proponent will:
 - execute the Project Agreement, substantially in the form of the Definitive PA, in accordance with Section 3.10.1 of Volume 1 of this RFP; and
 - perform all of the obligations of Project Co as set out in the Definitive PA.

Package 5 should provide sufficient information and documentation, in accordance with the requirements set out below, to allow the Province to evaluate whether:

- the Proposal satisfies the financial requirements set out in this RFP and the Definitive PA , including, but not limited to:
 - conformation that the Proponent has arranged sufficient committed financing for the Project in accordance with the requirements set out in this Appendix A and having regard to the requirements of the Definitive PA;
 - demonstration that the Proponent’s Financing Plan, including security, bonding, guarantees and insurance elements, is robust and deliverable; and
 - determining that the financing plan can be executed expediently if the Proponent is selected as Preferred Proponent;
- the Proponent, the Design-Build Contractor, the Tunnel Contractor (together with any Design-Build Contractor Guarantors and the Tunnel Contractor Guarantors), the Systems Integration Contractor, have the financial capacity to meet the obligations of the Project.

Package 5 should address the requirements set out in the table below. Proponents should use the section numbers and corresponding titles shown in this table in their Financial Submittals.

The Proponent should confirm that, other than Changes previously consented to by the Province, there has been no Change since the date of its Technical Submittal regarding:

- the Financial Sponsors and firms listed as Proponent Team Members;
- the identity of the providers of any parental guarantees for Key Firms; or
- the Key Individuals listed as Proponent Team Members.

The Proponent should provide the Financial Submittal on the basis of the Proponent Team Members without Change(s) unless such Change(s) has been permitted by the Province in accordance with Section 5.11 of Volume 1 of this RFP.

Section No.	Title	Contents
5.1	Contract Price	
5.1.1	Selected Tunnel Geotechnical Risk Scope Level	The Proponent should state its unqualified confirmation of its Selected Tunnel Geotechnical Risk Scope Level.
5.1.2	Approved Proposed Lands	If the Proposal includes the use of Approved Proposed Lands, confirmation of the total dollar value of the Approved Proposed Lands.
5.1.2	Contract Price Proposal and Adjusted Contract Price Proposal	Statement of Contract Price Proposal and Adjusted Contract Price Proposal corresponding to such value as calculated using the Affordability Model. The Price Proposal should comply with the requirements of Schedule 10 [Payment and Performance Mechanism] of the Definitive PA and should be shown gross of any Performance Incentive Payments.
5.1.3	Financing Arrangements	Confirmation that the portion of the Unadjusted Progress Amount funded by Project Co (as those terms are used in the Affordability Model) within its Proposal as of the Substantial Completion Date is \$450 million.
5.1.4	Forms - Sensitivities	Complete Forms A-5 and A-6 attached to this Appendix A and provide commentary to the outputs. The Province may, in its discretion, conduct additional sensitivities.
5.1.5	Priced Options	Include a separate price for implementing as part of the Project Work each of the two Priced Options contemplated in Section 3.1.3 of Volume 1 of this RFP, namely: Transit Police Facilities (Option 1): As described in Schedule 4, Part 2, Article 10, Section 10.5.6(c) of the Initial Draft Project Agreement.

Section No.	Title	Contents
		<ul style="list-style-type: none"> i. Elimination of Transit Police Security Rooms at all six Stations; ii. Design and construction of Transit Police Sub-Office at the following Stations in accordance with Schedule 4, Part 2, Article 10, Section 10.5.6(c) of the Initial Draft Project Agreement; <ul style="list-style-type: none"> ▪ Mount Pleasant Station; ▪ Arbutus Station; and iii. Design and construction of Transit Police Hub at Broadway-City Hall Station in accordance with Schedule 4, Part 2, Article 10, Section 10.5.6(c) of the Initial Draft Project Agreement. <p>(b) Machine Roomless Elevators (Option 2) – As described in Schedule 4, Part 2, Article 10, Section 10.5.6(c) of the Initial Draft Project Agreement.</p> <ul style="list-style-type: none"> i. Design, construction, supply, and installation of machine roomless elevators <p>Provide written confirmation that the prices the Proponent has provided in response to this Section 5.1.5 of Appendix A of Volume 1 of the RFP take account of any impact(s) of:</p> <ul style="list-style-type: none"> (a) each of the provisions set out in Schedule 4, Article 10, Article 10.5.6(c) of the Draft Project Agreement with respect to the price provided by the Proponent for Option 1; (b) each of the provisions set out in Schedule 4, Article 10, Article 10.4.5.4 of the Draft Project Agreement with respect to the price provided by the Proponent for Option 2;

Section No.	Title	Contents
		<p>(a) the assumptions with respect to the Priced Options set out in Section 3.1.3 of Volume 1 of the RFP; and</p> <p>(b) the amendments to the Draft Project Agreement set out in any Addenda that relate to the Priced Options.</p> <p>Prices should exclude GST but include all other taxes (including tax that is or will be imposed pursuant to the Provincial Sales Tax Act (British Columbia)) and be rounded to the nearest Canadian dollar.</p> <p>The Proponent should confirm that its prices for the Priced Options exclude any GST (as that term is defined in the Definitive Project Agreement) but include all other taxes (including tax that is or will be imposed pursuant to the Provincial Sales Tax Act (British Columbia)).</p> <p>Any costs associated with any timing differences between the payment and/or receipt of GST amounts and the net recovery and/or net remittance of GST amounts should be included in such prices.</p>
5.2	Basis of Financial Submittal	
5.2.1	Key Dates	The date to be used for the Effective Date is August 28, 2020.
5.2.2	Currency	Confirmation that prices and costs included in the Proposal are in Canadian Dollars.
5.2.3	Price Validity	Confirmation that, except for permitted adjustments to interest rates and credit spreads, all prices and input costs remain firm and valid for a period of 120 days from the Closing Time.

Section No.	Title	Contents
5.2.4	Interest Rates	<p>A table showing separately the assumed Base Rate, spreads and fees associated with the proposed Senior Debt.</p> <p>The Base Rate assumed for any Senior Debt that was designated as an Adjustment Credit Facility in accordance with the process described in Appendix D of Volume 1 of the RFP should equal the Base Rate agreed as part of the Final AIRS process if the Proponent’s relevant Senior Debt profile is unchanged between Final AIRS and Financial Submittal.</p> <p>If the Proponent’s relevant Senior Debt profile has changed between Final AIRS and Financial Submittal then the Proponent should recalculate its Base Rate based on the information provided by the Province as part of the Final AIRS process using the same methodology as was agreed as part of the Final AIRS process. If this paragraph applies, then the Proponent should submit with its Financial Submittal an update to the information submitted by the Proponent as part of the Final AIRS process.</p>
5.2.5	Interest Income Rate on Reinvestment Product(s)	<p>A table showing separately the assumed Base Rate, spreads and fees associated with any proposed reinvestment product.</p> <p>The Base Rate assumed for any reinvestment product that was designated as an Adjustment Credit Facility in accordance with the process described in Appendix D of Volume 1 of this RFP should equal the Base Rate agreed as part of the Final AIRS process if the Proponent’s relevant reinvestment profile is unchanged between Final AIRS and Financial Submittal.</p> <p>If the Proponent’s relevant reinvestment profile has changed between Final AIRS and Financial Submittal then the Proponent should recalculate its Base Rate based on the information provided by the Province as part of the Final AIRS process using the same methodology as was agreed as part of the Final AIRS process. If this paragraph applies, then the Proponent should submit with its Financial Submittal an update to the information submitted by the Proponent as part of the Final AIRS process.</p>

Section No.	Title	Contents
5.2.6	Tax	Full details of taxation assumptions to demonstrate that in preparing its Proposal, the Proponent has given full consideration to all tax implications, including GST, which affect the total project cost to the Province. Include the Proponent’s assumption with respect to any timing differences between the payment and/or receipt of GST amounts and the net recovery or remittance of GST amounts.
5.2.7	Payment Mechanism	Confirmation that, in preparing its Proposal, the Proponent has applied the payment mechanism as described in Schedule 10 [Payment and Performance Mechanism] of the Definitive PA without modification.
5.2.8	Design and Construction Costs	Description of the approach that the Proponent has taken with respect to the timing and amount of Design and Construction costs.

5.2.9	Limited Notice to Proceed Agreement – Cost	Provide one (1) revised completed Form 7 of Volume 5 of this RFP including a completed “Estimated Total Cost” column to reflect the activities identified by Proponents pursuant to paragraph b) of Section 3.1.4 of Table A-4 of Package 3 of Appendix A of Volume 1 of this RFP.
5.3	Financial Capacity	
5.3.1	Design-Build Contractor and Design-Build Contractor Guarantors	<p>The following information in respect of the Design-Build Contractor and Design-Build Contractor Guarantor, if any, and, if the Design-Build Contractor or a Design-Build Contractor Guarantor is a consortium, joint venture or special purpose vehicle, then the following information should be provided in respect of each entity comprising each consortium, joint venture or special purpose vehicle as the case may be.</p> <p>Where the Design-Build Contractor is guaranteed by a Design-Build Contractor Guarantor, provide all of the following information in respect of such Design-Build Contractor Guarantor and provide only the information items in 5.3.1a), 5.3.1b) and 5.3.1h) in respect of the Design-Build Contractor.</p> <ul style="list-style-type: none"> a) full legal name(s); b) confirmation of no material changes to the Proponent’s Design-Build Contractor or Design-Build Contractor Guarantors (if any) since the Qualification Response other than as consented to by the Province in accordance with Section 5.11 of Volume 1 of this RFP; c) if not provided at the RFQ stage, copies of annual audited financial statements, the audit letters and the notes to the financial statements, or other similar financial information, for each of the last three fiscal years (entire annual reports should not be provided) or, if no new annual audited financial statements are available since the RFQ stage, a confirmation as such; d) if not provided at the RFQ stage and if available, copies of the interim financial statements for the last quarter or, if produced only semi-annually, the last half year since the last annual audited financial statement provided in c) or, if not available,

		<p>an explanation as to why;</p> <p>e) details of any material off-balance sheet financing arrangement currently in place or, if none, a confirmation as such;</p> <p>f) details of any material events that may affect the entity’s financial standing since the last annual financial or interim statements provided or, if none, confirmation as such;</p> <p>g) details of any credit rating(s) including any updates since the RFQ stage or, if none, a confirmation as such; and</p> <p>h) details of any bankruptcy, insolvency, company creditor arrangement or other insolvency proceedings in the last three years, and any litigation or other material adverse proceedings (arbitration or regulatory investigations or proceedings) that are still outstanding that may affect the Design-Build Contractor’s or the Design-Build Contractor Guarantor’s (if any) ability to perform its obligations in relation to the Project or, if none, a confirmation as such.</p>
5.3.2	Tunnel Contractor and Tunnel Contractor Guarantors	<p>The following information in respect of the Tunnel Contractor and Tunnel Contractor Guarantors, if any, and, if the Tunneling Contractor or a Tunnel Contractor Guarantor is a consortium, joint venture or special purpose vehicle, then the following information should be provided in respect of each entity comprising each consortium, joint venture or special purpose vehicle as the case may be.</p> <p>Where the Tunnel Contractor is guaranteed by a Tunnel Contractor Guarantor, provide all of the following information in respect of such Tunnel Contractor Guarantor and provide only the information items in 5.3.2a), 5.3.2b) and 5.3.2h) in respect of the Tunnel Contractor.</p> <p>a) full legal name(s);</p> <p>b) confirmation of no material changes to the Proponent’s Tunnel Contractor or Tunnel Contractor Guarantors (if any) since the Qualification Response other than as consented to by the Province in accordance with Section 5.11 of Volume 1 of this RFP;</p> <p>c) if not provided at the RFQ stage, copies of annual audited financial statements, the</p>

		<p>audit letters and the notes to the financial statements, or other similar financial information, for each of the last three fiscal years (entire annual reports should not be provided) or, if no new annual audited financial statements are available since the RFQ stage, a confirmation as such;</p> <p>d) if not provided at the RFQ stage and if available, copies of the interim financial statements for the last quarter or, if produced only semi-annually, the last half year since the last annual audited financial statement provided in c) or, if not available, an explanation as to why;</p> <p>e) details of any material off-balance sheet financing arrangement currently in place or, if none, a confirmation as such;</p> <p>f) details of any material events that may affect the entity’s financial standing since the last annual financial or interim statements provided or, if none, confirmation as such;</p> <p>g) details of any credit rating(s) including any updates since the RFQ stage or, if none, a confirmation as such; and</p> <p>h) details of any bankruptcy, insolvency, company creditor arrangement or other insolvency proceedings in the last three years, and any litigation or other material adverse proceedings (arbitration or regulatory investigations or proceedings) that are still outstanding that may affect the Tunnel Contractor’s or the Tunnel Contractor Guarantor’s (if any) ability to perform its obligations in relation to the Project or, if none, a confirmation as such.</p>
5.4	Financing	
5.4.1	Financing Plan	<p>A Financing Plan which demonstrates that the Proponent has arranged sufficient financing for the Project and which complies with the following:</p> <p>a) Includes full details of the financial structure and instruments proposed, including a description of the Proponent’s anticipated hedging strategy and requirements.</p> <p>b) Indicates which form(s) of lending facility is an Adjustment Credit Facility.</p> <p>c) The sources of financing match the use of funds throughout the Term, and the Financing Plan includes:</p>

		<ul style="list-style-type: none"> i. a description of all sources of financing; ii. a description of how the Progress Payments, Substantial Completion Payment, On-Time Performance Demonstration Completion Amount, and TIDS Performance Demonstration Completion Amount have been integrated into the Financing Plan; and If used, a description of any Letter of Credit that will be applied in lieu of any On-Time Performance Demonstration Completion Amount, TIDS Performance Demonstration Completion Amount, Deficiency Holdback, Warranty Holdback or Builders' Lien Holdback. <p>d) Includes the following details for each Senior Lender:</p> <ul style="list-style-type: none"> i. confirmation of the Adjustment Credit Facilities that will be subject only to the AIRS adjustment; ii. fully executed and applicable original commitment letter(s) in the form set out in Form 4 of Volume 5 of this RFP from each Senior Lender; and iii. evidence, in the form of detailed term sheets which have received formal credit approval, from providers of financing, of their commitment to provide the level of financing required; and iv. if any of the term sheets submitted in accordance with this Section includes terms of flex, a clear and unqualified acknowledgement and confirmation that the exercise, including by the Senior Lenders, of any flex provisions in the lending or financing commitments is not a significant event within the contemplation of Section 5.3 of the Proponent Agreement; and v. evidence of its Credit Rating. If a Credit Rating is not available, provide the information required in Section 5.3.1 c) – h) of this Appendix A for the Senior Lender. <p>e) If a capital market and/or bond funding solution is proposed which depends on a Credit Rating, include:</p> <ul style="list-style-type: none"> i. an indicative Credit Rating together with a timetable to achieve final ratings; and
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		<ul style="list-style-type: none"> ii. a description of any risks to achieving the Credit Rating. <p>f) If a solution involving a financial guarantor (for example, a monoline insurer or similar entity) is proposed, include:</p> <ul style="list-style-type: none"> i. letters from all financial guarantors with confirming letters from such financial guarantors’ legal counsel confirming that the financial guarantors and their legal counsel have no additional comments on the Definitive PA; and ii. evidence, in the form of detailed term sheets or in the commitment letters referred to in Section 5.4.2 of Table A-7 of this Appendix A of the financial guarantor(s) to provide the guarantee required; and for each financial guarantor’s Credit Rating. If a Credit Rating is not available, provide the information required in Section 5.3.1 c) – h) of Table A-7 of this Appendix A for the financial guarantor. <p>g) If a solution involves a bond funding solution that will have a market clearing spread that is likely to differ from the credit spread determined at the Credit Spread Refresh Lock-in Date, include a description of how the issue spread adjustment will be determined and how the re-couponsing adjustment will work; and</p> <p>h) If a solution involves a green financing includes information how this financing will be achieved and what assistance will be required from the Province.</p>
5.4.2	Commitments by Design-Build Contractor Guarantors	<p>With respect to commitments by Design-Build Contractor Guarantors, the following information is required.</p> <p>Certified copies of board resolutions (or, in the event this is not possible, equivalent corporate documentation signed by a senior officer of the Guarantor to the satisfaction of the Province) of each person providing such guarantee or other support confirming:</p> <ul style="list-style-type: none"> i. the size, nature and extent of such guarantee; ii. that it is willing and able to provide such a guarantee; iii. that it will have financial standing to meet the obligations under such guarantee and all terms associated with the guarantee or other support;

		<p>and</p> <p>iv. form of guarantee</p>
5.4.3	Commitments by Tunnel Contractor Guarantors	<p>With respect to commitments by Tunnel Contractor Guarantors, the following information is required.</p> <p>Certified copies of board resolutions (or, in the event this is not possible, equivalent corporate documentation signed by a senior officer of the Guarantor to the satisfaction of the Province) of each person providing such guarantee or other support confirming:</p> <ul style="list-style-type: none"> i. the size, nature and extent of such guarantee; ii. that it is willing and able to provide such a guarantee; iii. that it will have financial standing to meet the obligations under such guarantee and all terms associated with the guarantee or other support; and iv. form of guarantee.
5.4.4	Financial Robustness	<ul style="list-style-type: none"> a) Description of the robustness of the Proponent’s proposed financial structure including, but not limited to, details of how key risks will be managed (e.g., interest rate, schedule overruns, cost overruns, inflation and Construction). Include details of the strategies to be adopted by the party ultimately responsible for bearing such risks. b) Demonstration that the Proponent’s Financing Plan, including security, bonding, guarantees and insurance elements, is robust and deliverable. To the extent that the Proponent’s Proposal contemplates or includes third party security, including performance bonds, parent company guarantees, insurances incremental to the PA requirements and/or letters of credit, describe in detail and with respect to each such security: <ul style="list-style-type: none"> i. the beneficiaries of such third party security; ii. the parties whose obligations are secured by such third party security; iii. the type, amount and anticipated provider of such third party security;

		<ul style="list-style-type: none"> iv. all circumstances in which such third party security may expire, be subject to termination, and can be called upon; v. if called upon, the purposes for which such third party security may be used; vi. specimen form of bond with any and all riders required or anticipated, if applicable; and, vii. consent of surety and form of bond, if applicable. <p>c) Provide a description and the results of any sensitivities required by the Senior Lenders.</p>
5.5	Financial Model	
5.5.1	Financial Model and Structure	<p>A Financial Model in electronic and hard copy, consistent with the following:</p> <ul style="list-style-type: none"> a) Produced in a Microsoft Excel version compatible with the 2010 version; b) Provide financial projections (cost and revenue projections) on a monthly basis; c) Be expressed in thousands of Canadian dollars; d) All financial instruments should be priced as described in Section 5.2.4 and 5.2.5 of this Table; e) Provide a list of necessary Excel “add-ins” required to run the Financial Model; f) If any macros are used in the model, a detailed description as to how they function in the model should be provided; g) If a calculation is circular, circularities should be solved. If circularities are included, a description of where and why these occur should be included; h) Present inputs in blue font and formulas in black font; i) Flow calculations down and to the right; j) Limit the number of “if” statements;

		<p>k) Include no hidden or password protected macros, cells or worksheets; and</p> <p>l) Include a print option macro and ensure all sheets are set up to be clearly printable and legible on 8.5 x 11” paper with row and column descriptions on each printed page.</p> <p>Without limiting any term of this RFP, including Section 5.4 of Volume 1 of this RFP, the Province may, in its discretion, take any one or more of the steps described in such Section, including correcting the Proponent’s Financial Model if the Province considers that there are inconsistencies, errors or omissions in the Financial Model.</p>
5.5.2	Required Inputs and Outputs of Financial Model	<p>The Financial Model , at a minimum, provide:</p> <p>Inputs:</p> <ul style="list-style-type: none"> a) capital costs (using the Cost Items set out in Schedule 10 [Payment and Performance Mechanism] of the PA); b) time-based assumptions (those that change over time); c) static assumptions (those that do not change over time); d) taxation; e) financing; f) payments associated with the payment mechanism, including Progress Payments, Substantial Completion Payment, On-Time Performance Demonstration Completion Amount, TIDS Performance Demonstration Completion Amount, Deficiency Holdback, Warranty Holdback and Builder’s Lien Holdback; and, g) any assumed revenue (in addition to the payments described above). <p>Outputs:</p> <ul style="list-style-type: none"> h) summary outputs; i) sources and uses of funding, with totals shown in thousands of nominal dollars; j) a schedule of payments by the Province that sets out the expected date of payment (i.e., Progress Payments, Substantial Completion Payment, On-Time Performance

		<p>Demonstration Completion Amount, TIDS Performance Demonstration Completion Amount, Deficiency Holdback Warranty Holdback and Builder’s Lien Holdback) and the amount to be paid by the Province, in nominal terms;</p> <ul style="list-style-type: none"> k) the proposed funding structure, with funding schedules that specify the expected debt repayment dates and the amount of debt service, in nominal terms only, to be repaid; l) financial statements (income statement, cash flow statement and balance sheet) presented in accordance with Canadian GAAP, including any relevant IFRS provisions; m) a cash flow statement that reflects the priority of access to cash flow based on the Proponent’s Financing Plan; n) financial ratios as required by Senior Lenders as appropriate to the capital structure set out in the Proponent’s Financing Plan; and o) Affordability Model – embed the Affordability Model into the Financial Model as separate worksheet and link the outputs of the Financial Model to the Affordability Model.
<p>5.5.3</p>	<p>Assumptions Book for Financial Model</p>	<p>An assumptions book for the Financial Model. The assumptions book for the Financial Model should provide sufficient detail for a duplicate Financial Model to be constructed from it (if so required). It should include the following areas:</p> <ul style="list-style-type: none"> a) a summary of the financing assumptions, including a breakdown of all fees and costs of the financing; b) capital cost and other 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. <p>The assumptions book should reconcile with the Financial Model. If the assumptions detailed in the assumptions book are not consistent with the assumptions in the</p>

		Financial Model, the Province may, in its discretion, take any one or more of the steps described in Section 5.4 of Volume 1 of this RFP, including requiring the Proponent to rectify either the Financial Model and/ or the assumptions book.
5.5.4	Instruction Manual for Financial Model	<p>An instruction manual, which explains the functionality of the Financial Model and how it is structured.</p> <p>The instruction manual is also to provide sufficient details to allow the Province to change model inputs for the sensitivities shown in Forms A-5 and A-6, Project sensitivities of this Appendix A and resolve the Financial Model for changes in interest rates as set out in Section 5.2.4 and Section 5.2.5 of this Package 5.</p>
5.5.5	Model Audit	<p>Submit an independent financial model audit for the benefit and reliance of the Province.</p> <p>This may be based on the same independent review of the Financial Model carried out to satisfy the Senior Lenders. After the Preferred Proponent is determined, the Preferred Proponent will provide the Province with a copy of the auditor’s terms of engagement (in a form satisfactory to the Province) and the Province will become an addressee or co-addressee on all future model audit reports including any interim model audit reports and related correspondence.</p> <p>The model auditor will carry minimum liability coverage of \$5,000,000. For clarity, the Province does not expect to have priority over the Senior Lenders should both the Senior Lenders and the Province make a claim against this coverage.</p> <p>If the Proponent’s Financing Plan involves a re-couponsing process, as described in Section 5.4.1 g) Financing Plan of this Appendix A, the model auditor should opine that the pre-re-couponsing and post-re-couponsing model are identical with the exception of the determination of the issue spread adjustment.</p>

5.5.6	Capital Costs	Populate column A for each Cost Item of Appendix C (Form of Statement of Progress) of Schedule 10 [Payment and Performance Mechanism] of the Definitive PA. The information provided should reconcile with the Financial Model.
5.6	Strategy for the Design-Build Contractor and Tunnel Contractor	
5.6.1	Strategy for the Design-Build Contractor and Tunnel Contractor	<p>Description of the Proponent’s contracting strategy for the Project that includes the structure of any contracting arrangements, including with the Design-Build Contractor and Tunnel Contractor.</p> <p>The Proponent should provide draft heads of agreement executed by all applicable parties for the Design-Build Contract and Tunnel Contractor.</p> <ul style="list-style-type: none"> a) Describe any contractual limit of liability which limit should be no less than 40% of the contract price. b) The Proponent is also to fully describe what security is being provided to Project Co by the Design-Build Contractor and Tunnel Contractor in respect of the performance of their obligations, including in case of default.
5.7	Project Insurances	

5.7.1	Project Insurances	<p>Demonstrate by way of undertakings or comfort letters from insurers or the Proponent’s insurance broker or adviser that it will be able to arrange Project insurances that comply with the requirements of the Definitive PA. The following details should be included in the Financial Submittal:</p> <ul style="list-style-type: none"> a) Amounts insured by type of insurance (e.g. Builder’s Risk/property coverages, liability coverages, etc.) to meet the requirements of the Definitive PA. b) Amounts insured by type of insurance (e.g. Builder’s Risk/property coverages, liability coverages, etc.) that exceed the requirements of the Definitive PA. <p>Estimated premiums for each type of insurance (excluding brokerage fees and commissions) in a) and b) above.</p>
5.8	Affordability Model	
5.8.1	Affordability Model	<p>A fully and duly completed Affordability Model in both electronic and hard copy. The electronic copy should be embedded within the Financial Model in accordance with Section 5.5.2 of Table A-7 of this Appendix A.</p> <p>The inputs that the Proponent includes in the Affordability Model should correspond to the outputs from the Financial Model.</p>

Form A-5 – Project Sensitivities

Sensitivities	Change	Contract Price
Base position as per submitted Financial Model		
Pre Effective Date Sensitivities (*):		
Change in interest rates	+100 bps	
	+50 bps	
	-50bps	

* Pre-Effective Date Sensitivities should show the sensitivity of changes prior to the Effective Date.

Form A-6– Post Effective Date Project Sensitivities

Proponents are required to complete the form to show the percentage changes to model parameters that breach the specified Senior Lender financial ratios.

	Event of default under Senior Lending Agreements
per cent increase in construction costs	

Note: Proponents should provide the extent of change necessary to invoke the event of default and specify the Senior Lenders financial ratio which breaches in that instance assuming the Progress Payments are unchanged. If the Proponent is unable to perform a scenario listed, the Proponent can describe, in the relevant scenario, the reason as to why the sensitivity cannot be performed.

Appendix B

Evaluation Criteria

Evaluation Process

A - Technical Submittal

Subject to the terms of this RFP, the Technical Submittal evaluation will consider whether the Technical Submittal substantially satisfies the requirements of this RFP, including the requirements set out in Appendix A, and the Definitive PA, the Definitive BCA and the Definitive Base Supply Contract, and demonstrates to the satisfaction of the Province that the Proponent is capable of performing the obligations and responsibilities of Project Co and delivering the Project in accordance with the Project Agreement and that the Proponent has a good understanding of the Project and the Project Work.

B – Technical Supplement – Applicable Only if the Province Issued an Invitation to Submit a Technical Supplement

If the Province issued an invitation to submit a Technical Supplement and the Proponent submits a Technical Supplement containing amendments, then subject to the terms of this RFP, the Technical Supplement evaluation will consider whether:

1. the Technical Supplement contains only amendments that are demonstrated as
 - a. necessary to reflect the amendments, restructuring, supplements or impacts, as applicable, described in Section 3.8.3 [Invitation to Submit Technical Supplement] of Volume 1 of this RFP; and
 - b. not having an effect beyond reflecting such amendments, restructuring, supplements or impacts, as applicable; and
2. the Technical Submittal, if modified in accordance with each amendment, separately, and with all the amendments collectively that have not been rejected, would
 - a. substantially satisfy the requirements of this RFP, including the requirements set out in this Appendix B and the Definitive PA, in a manner equal to or better than the Technical Submittal prior to incorporating the Technical Supplement amendments that have not been rejected, and

- b. demonstrate to the satisfaction of the Province that the Proponent continues to have a good understanding of the Project and the Project Work and continues to be capable of performing the obligations and responsibilities of Project Co and delivering the Project in accordance with the Project Agreement.

If the Province issues an invitation to submit a Technical Supplement, and the Proponent submits a Technical Supplement containing no amendments, then subject to the terms of this RFP, the evaluation of the Technical Supplement will consider whether the Proponent has submitted written clear, unconditional and unqualified confirmation on behalf of each Proponent Team Member that the Proponent and each Proponent Team Member has reviewed and considered the amendments, restructuring, supplements or impacts, as applicable, described in Section 3.8.3 [Invitation to Submit Technical Supplement] of Volume 1 of this RFP, and that each considers and has conclusively determined that no amendments to the Technical Submittal submitted by the Proponent are necessary.

C – Financial Submittal

Proposals will be examined to determine whether the requirements of this RFP in respect of the Affordability Requirement have been satisfied and that a Proponent's Contract Price Proposal is less than or equal to the Affordability Requirement.

Subject to the terms of this RFP, the Financial Submittal evaluation will consider whether the Financial Submittal substantially satisfies the requirements of this RFP, including the requirements set out in Appendix A of Volume 1 of this RFP, and the Definitive PA, the Definitive BCA and the Definitive Base Supply Contract.

Ranking Process

Subject to the terms of this RFP, each Proposal, including the Technical Submittal, the Technical Supplement, if any, and the Financial Submittal, that substantially satisfies the requirements of this RFP and the Definitive PA will be ranked according to the following process.

1. For the purposes of the application of this Ranking Process only, the Province will calculate an Adjusted Contract Price Proposal (the "**Adjusted Contract Price Proposal**") through a summation of the following:
 - a. the Contract Price Proposal;
 - b. an addition to the Contract Price Proposal based on the Selected Tunnel Geotechnical Risk Scope Level (\$0 for any Proposal that includes Tunnel Geotechnical Risk Scope Level 1 and \$50 million for any Proposal that includes Tunnel Geotechnical Risk Scope Level 2); and

- c. an addition to the Contract Price Proposal of any Proposal that includes Accepted Proposed Proponent Lands for the applicable Proposed Lands Costs, in accordance with Appendix F [Lands Process] of Volume 1 of this RFP.
2. Each Proposal will be examined to determine if the Adjusted Contract Price Proposal is less than or equal to the Affordability Requirement.

Each Proposal meeting the foregoing requirements will be an “**Accepted Proposal**”.

3. Subject to paragraphs 4 to 6 below, the Accepted Proposal with the lowest Adjusted Contract Price Proposal will receive the highest ranking and be designated the highest-ranked Proposal.
4. If two or more Accepted Proposals have the same Adjusted Contract Price Proposal, the highest ranked Proposal will be:
 - a. the Proposal that includes Tunnel Geotechnical Risk Scope Level 1, if only one Accepted Proposal includes Tunnel Geotechnical Risk Scope Level 1; or
 - b. the Proposal selected by the Province, in its discretion, from among the Accepted Proposals having the same:
 - i. Adjusted Contract Price Proposal; and
 - ii. Tunnel Geotechnical Risk Scope Level.
5. If there is only one Accepted Proposal, then that Proposal will receive the highest ranking and be designated the highest-ranked Proposal.
6. If no Proposal offers an Adjusted Contract Price Proposal that is less than or equal to the Affordability Requirement, the Province may in its discretion select the Proposal which offers the lowest Adjusted Contract Price Proposal (as applicable) and which otherwise substantially satisfies the requirements of this RFP to receive the highest ranking and be designated the highest-ranked Proposal.

Appendix C

Interim Financial Review Submittal

Capital Cost Summary Table

Cost Categories	Cost Item	Cost Category Amounts (\$ Nominal)
Financing Costs	Financing costs	Category Total:
Project Management	Project management and special purpose vehicle	Category Total:
Mobilization	Mobilization	Category Total:
Design	Design	Category Total:
Elevated Guideway	Guideway Beams Guideway Foundations Guideway Columns Erect Guideway Beams	Category Total:
At Grade Guideway	Guideway Foundations Guideway Structure Guideway Protection	Category Total:
Tunnel/Underground Works	Supply of Equipment Tunnel 1 Tunnel 2 Cross Overs Transition Tunnel Tunnel Systems Tunnel Ventilation	Category Total:
Stations	Great Northern Way Station Mount Pleasant Station Broadway– City Hall Station Fairview-VGH Station South Granville Station Arbutus Station	Category Total:
City of Vancouver	Roadworks Structures	Category Total:
Systems	Automatic Train Control Power Distribution and Back-up Power SCADA, Communications, Cabling and Station	Category Total:

	Equipment Testing and Commissioning Guideway Equipment	
Specific Cost Items Total		Category Total:
Total Nominal Cost		

Appendix D

Rate Setting Process and Advance Interest Rate Submittals

1. Rate Setting Process

To facilitate the rate setting process, an AIRS process will be used over the RFP phase prior to the selection of a Preferred Proponent. Once a Preferred Proponent is selected, detailed base rate setting protocols as applicable will be developed by the Preferred Proponent for review by the Province.

Any facility identified by a Proponent as an Adjustment Credit Facility in the AIRS process may have components of its pricing between Financial Submittal and Effective Date adjusted for benchmarks (“**Benchmarks**”) as outlined in this appendix.

Benchmarks are:

- a) Senior Debt Base Rate Benchmark: established by reference to Government of Canada benchmark bonds.

This Benchmark is used to establish the Senior Debt base rate for the Proponent’s Financial Submittal and to establish the calculation for determining the relevant base rate at Effective Date.

- b) Swapped Senior Debt Base Rate Benchmark: established by reference to CAD swap yields and CAD basis swap yields.

This Benchmark is used to establish the Senior Debt swapped base rate for the Proponent’s Financial Submittal and to establish the calculation for determining the relevant swapped base rate at Effective Date.

- c) Reinvestment Base Rate Benchmark: established by reference to either of the approaches outlined in (a) and (b) above depending on the nature of the reinvestment product.

This Benchmark is used to establish the reinvestment product base rate for the Proponent’s Financial Submittal and to establish the calculation for determining the relevant reinvestment product base rate at Effective Date.

- d) Senior Debt Credit Spread Benchmark: established by reference to a basket of comparable bonds agreed between the Province and the Proponent.

This Benchmark is used to measure the change in spread of a basket of bonds between Financial Submittal and the Credit Spread Refresh Lock-in Date. The Proponent's relevant credit spreads will be adjusted by the same amount (either up or down).

Benchmarks (excluding the Reinvestment Base Rate Benchmark) may be applied to any Senior Credit Facility that is designated by a Proponent during the Advance Interest Rate Submittal process as an Adjustment Credit Facility. Any Senior Credit Facility not so designated will not be adjusted following the Financial Submittal.

The Reinvestment Base Rate Benchmark may be applied to any reinvestment product that is included in the Proponent's Financial Model and that is associated with any portion of the Senior Credit Facilities. Such reinvestment product must be designated by the Proponent during the Advance Interest Rate Submittal process as an Adjustment Credit Facility. Any reinvestment product not so designated will not be adjusted following the Financial Submittal.

2 Advance Interest Rate Submittals (AIRS)

There are three Advance Interest Rate Submittals (AIRS) to determine the method for calculating the Benchmarks and their values: Initial AIRS, Interim AIRS and Final AIRS. Details and submission requirements relating to each of these AIRS are described in Sections 4.2, 5.2 and 6.2 of this Appendix.

2.1 Senior Debt Base Rate Fluctuation Risk (including reinvestment products)

If a Proponent submits all of an Initial AIRS, an Interim AIRS and a Final AIRS with respect to Base Rates in accordance with the provisions of this RFP, and the Province has advised the Proponent that such AIRS are acceptable to the Province, then subject to the provision of this RFP the Province will assume the risk of any changes in Base Rates (both up and down) affecting the relevant Adjustment Credit Facilities only, in respect of the period commencing from and including the date the Province provides the information with respect to the Final AIRS (as contemplated in Section 6.1 of this Appendix) up to and including the Effective Date.

2.2 Senior Debt Credit Spread Fluctuation Risk

If a Proponent submits all of an Initial AIRS, an Interim AIRS and a Final AIRS with respect to Credit Spreads in accordance with the provisions of this RFP, and the Province has advised the Proponent that such AIRS are acceptable to the Province, then subject to the provision of this RFP the Credit Spread on each relevant Adjustment Credit Facility only will be reset on the Credit Spread Refresh Lock-in Date to reflect the movement (if any) in the Senior Debt Credit Spread Benchmark since the date on which the Final AIRS acceptable to the Province was submitted.

The “**Credit Spread Refresh Lock-in Date**” will be the Business Day immediately prior to the date on which the Base Rates for the Senior Credit Facilities are set in accordance with the pre-agreed rate setting protocol, when the Preferred Proponent is either to:

- a) confirm the Credit Spread applicable to each relevant Adjustment Credit Facility (where there has been no change in the Credit Spread); or
- b) change the Credit Spread applicable to each relevant Adjustment Credit Facility (whether such change is upwards or downwards) by submitting to the Province:
 - 1) the revised Credit Spreads calculated using the Senior Debt Credit Spread Benchmark approved by the Province in accordance with this RFP, including all information that the Province requires to confirm the movement in the Senior Debt Credit Spread Benchmark and applicable revision to each Credit Spread;
 - 2) a fully completed Appendix D-3;
 - 3) a fully optimized Financial Model that has been revised only to reflect the then-current value for the Base Rate and revised Credit Spread on each relevant Adjustment Credit Facilities;
 - 4) Financial Submittal forms in Appendix A revised only with respect to the then-current value for the Base Rate and Credit Spread on each Adjustment Credit Facilities; and
 - 5) any other supporting information that the Province may reasonably request.

With effect from the Credit Spread Refresh Lock-in Date, but without prejudice to any other rights of the Province under this RFP, the revised Credit Spreads on the relevant Adjustment Credit Facilities and any re-optimization of the Financial Model and any revisions to its Financing Plan provided by the Preferred Proponent will apply without any further adjustment to Credit Spreads through to Effective Date.

2.3 Credit Spread Re-Couponsing Process

If a Proponent’s Financing Plan involves a solution that has a market clearing spread that differs from the Credit Spread in respect of any Adjustment Credit Facility at the Credit Spread Refresh Lock-in Date, the Province will not be involved in the determination of the issue spread adjustment.

Any activity by the Proponent to determine the issue spread adjustment and the post-re-couponsing Financial Model and reconcile with the Proponent’s financing documents (e.g. Note/Bond Indenture) must be done independently of Effective Date. The Financial Model will only reflect the Credit Spread in respect of any Adjustment Credit Facility agreed by the Province and the Proponent at the Credit Spread Refresh Lock-in Date in accordance with this Appendix.

If the Proponent has indicated in its Financial Submittal that a post-recouping Financial Model should be included as a closing document, the explanation and rationale for its inclusion (e.g. for the purposes of a termination payment) must be discussed and accepted by the Province, in its discretion, during the Preferred Proponent stage.

2.4 Interest Rate Assumptions in the Financial Submittal Financial Model

If a Proponent submits all three of an Initial AIRS, an Interim AIRS and a Final AIRS with respect to Base Rates in accordance with the provisions of this RFP, and the Province has advised the Proponent that all three such AIRS are acceptable to the Province, then subject to the provision of this RFP the Proponent is to use the Base Rate in respect of any Adjustment Credit Facility agreed by the Province and the Proponent during the Final AIRS process in accordance with this Appendix for the relevant Adjustment Credit Facilities in its Financial Model submitted as part of its Financial Submittal.

2.5 Dry Runs

If the Preferred Proponent is a Proponent that submitted all three of an Initial AIRS, an Interim AIRS and a Final AIRS in accordance with the provisions of this RFP, and the Province has advised the Proponent that such AIRS were acceptable to the Province, then prior to the Effective Date the Preferred Proponent will undertake several “dry runs” with the Province so that the parties are familiar with, and agree on, the technical process for determining the Base Rates and incorporating the results into the Financial Model.

3 General Approach to Pricing the Benchmarks

Benchmarks	Advance Interest Rate Submittals (excluding Initial)	Preferred Proponent Stage
Senior Debt Base Rate Benchmark (not swapped, based on Government of Canada benchmark bonds)	Bid-market rates for Government of Canada benchmark bonds to be provided by the Province. Interpolation (if any) to be calculated by the Proponent using a methodology agreed during the Initial AIRS process. The calculated Senior Debt Base Rate Benchmark, including the calculation methodology, will be subject to the Province’s approval.	At Effect Date: Senior Debt Base Rate Benchmark to be provided by the Preferred Proponent in accordance with a pre-agreed rate setting protocol. Proponent to source its own bid-market data. Interpolation methodology to match that agreed during the AIRS process. The Senior Debt Base Rate Benchmark will be subject to the Province’s approval.
Swapped Senior Debt Base Rate Benchmark (swapped, based	Mid-market CAD swap and mid-market CAD basis swap data will be provided by the Province. Proponent will use the information provided by the Province to calculate the appropriate Swapped Senior	At <u>Effective Date</u> : Swapped Senior Debt Base Rate Benchmark to be provided by the Preferred Proponent in accordance with a pre-agreed

Benchmarks	Advance Interest Rate Submittals (excluding Initial)	Preferred Proponent Stage
on a forward swap curve)	<p>Debt Base Rate Benchmark using a methodology agreed during the Initial AIRS process.</p> <p>Proponent will provide the terms of the swap structure per the template provided in Appendix D-2 unless an alternative structure is proposed by the Proponent and agreed by the Province. Proponent will assume that the terms provided including, but not limited to, the notional schedule and the fixed rate assume that Financial Close happened on the same day that the day the rates were provided by the Province under Appendix D-1.</p> <p>The calculated Swapped Senior Debt Base Rate Benchmark, including the calculation methodology, will be subject to the Province’s approval.</p>	<p>rate setting protocol.</p> <p>Proponent to source its own mid-market data. Calculation methodology to match that agreed during the AIRS process.</p> <p>The Swapped Senior Debt Base Rate Benchmark will be subject to the Province’s approval.</p>
Reinvestment Base Rate Benchmark	<p>An approach similar to the Senior Debt Base Rate Benchmark or the Swapped Senior Debt Base Rate Benchmark depending on the nature of the relevant reinvestment product.</p>	<p>At <u>Effective Date</u>:</p> <p>An approach similar to the Senior Debt Base Rate Benchmark or the Swapped Senior Debt Base Rate Benchmark depending on the nature of the relevant reinvestment product.</p>
Senior Debt Credit Spread Benchmark	<p>Proponent to provide the mid-market rates of a basket of bonds agreed during the Initial AIRS process.</p> <p>Proponent will calculate the Senior Debt Credit Spread Benchmark using a methodology agreed during the Initial AIRS process.</p> <p>Mid-market rates and calculated mid-market Credit Spreads will be subject to approval by the Province.</p>	<p>On the <u>Credit Spread Refresh Lock-in Date</u>:</p> <p>Proponent to provide a fully completed Appendix D-3.</p> <p>Proponent to provide the mid-market rates of a basket of bonds agreed during the AIRS process.</p> <p>Proponent to calculate the Senior Debt Credit Spread using the same methodology agreed during the AIRS process.</p> <p>Mid-market and calculated mid-market Credit Spreads will be subject to approval by the Province.</p>

The “Senior Debt Base Rate Benchmark” will be calculated at the bid-market rate, excluding any execution spread, Credit Spread, liquidity spread or any other form of margin, spread or fee.

The “Swapped Senior Debt Base Rate Benchmark”, and the “Reinvestment Base Rate Benchmark” will all be calculated at the mid-market rate excluding any execution spread, Credit Spread, liquidity spread or any other form of margin, spread or fee.

The Proponent's Financial Model included in its Financial Submittal should include any execution and/or swap Credit Spread/charge required to execute the relevant benchmark and, for the avoidance of doubt, such execution and/or swap Credit Spread/charge will not be subject to any adjustments after Financial Submittal.

4 Initial AIRS

4.1 Information to be Provided by the Province

The Province expects to provide Proponents with an updated Appendix D-1 one week prior to the Initial AIRS Submittal Deadline based on market rates as at 08:00 Pacific Time on that day.

4.2 Information to be Provided by the Proponent

In its Initial AIRS the Proponent is to provide:

- a) A statement of which of its Senior Credit Facilities it elects to designate as an Adjustment Credit Facility. If the Proponent does not elect to designate any Senior Credit Facility as an Adjustment Credit Facility, then a statement to that effect.

If no Senior Credit Facilities are designated as an Adjustment Credit Facility then, except as required by this Section 4.2a), the Proponent is not required to submit any further information in respect of the AIRS process.

The terms of any Senior Credit Facility designated as an Adjustment Credit Facility may be adjusted in the Proponent's Financial Model, but only in accordance with this RFP, between Financial Submittal and Effective Date. Any Senior Credit Facility not designated as an Adjustment Credit Facility may not be adjusted following Financial Submittal.

- b) A statement of which of the Benchmarks the Proponent elects to apply to each of the designated Adjustment Credit Facilities.
- c) If a Proponent elects to apply the Senior Debt Base Rate Benchmark:
 - 1) Confirmation that the Government of Canada benchmark bonds identified by the Province in Appendix D-1 are suitable for the anticipated debt structure contemplated by the Proponent. When selecting the Government of Canada benchmark bonds, Proponents should utilize Canadian bond market pricing convention which is to price amortizing bonds using an underlying benchmark bond with a term to maturity that approximates the average life date, not the maturity date.

- 2) If the Government of Canada benchmark bonds identified by the Province in Appendix D-1 are not suitable for the anticipated debt structure contemplated by the Proponent, then alternate security or securities for consideration by the Province.

In such instances, the Proponent is to provide sufficient information to allow the Province to confirm that the Government of Canada benchmark bonds identified by the Province in Appendix D-1 are not suitable for the Proponent's anticipated debt structure. If other alternate security or securities are submitted for consideration by the Province, the information provided must demonstrate why they are suitable and possess similar characteristics in terms of information access, rating, duration, liquidity and amortization as the Government of Canada benchmark bonds identified by the Province in Appendix D-1.

Alternate security or securities may be accepted or rejected by the Province at its discretion.

- 3) A detailed explanation, including a worked example, of how and in what circumstances the Proponent will calculate an interpolated rate from the alternate security or securities if approved by the Province.
- d) If a Proponent elects to apply the Swapped Senior Debt Base Rate Benchmark:
- 1) A completed indicative swap term sheet substantially in the form shown in Appendix D-2 except that for the purpose of the Initial AIRS, terms and conditions marked on the indicative term sheet with an asterisk (*) need not be submitted.
 - 2) A detailed explanation, including a worked example indicating the periodic payments and reset rates expected as calculated by the Proponent, of how the Swapped Senior Debt Base Rate Benchmark will be calculated from the information provided to the Proponent by the Province.
- e) If a Proponent elects to apply the Reinvestment Base Rate Benchmark:
- 1) A description of the reinvestment products to which the Benchmark will apply and the association between those reinvestment products and the Senior Credit Facilities.
 - 2) Confirmation as to whether the Reinvestment Base Rate Benchmark is to be based on a swapped rate product;
 - 3) If the Reinvestment Base Rate Benchmark is not to be based on a swapped rate product then the same information requested in Section 4.2c) of this Appendix in relation to the Reinvestment Rate Benchmark;

- 4) If the Reinvestment Base Rate Benchmark is to be based on a swapped rate product then the same information requested in Section 4.2d) of this Appendix in relation to each Reinvestment Base Rate Benchmark.

- f) If a Proponent elects to apply the Senior Debt Credit Spread Benchmark:
 - 1) A proposed Senior Debt Credit Spread Benchmark, such Senior Debt Credit Spread Benchmark being a security (i.e., an index) or weighted “basket” of securities that the Proponent believes possesses similar credit characteristics to the relevant Adjustment Credit Facility in terms of rating, duration, size and currency and for which observable rates are verifiable by the Province. Complete and submit Section 2, area labeled “i” columns B through G inclusive in Appendix D-3.

The basket must include at least 10 securities, but may include more at the discretion of the Proponent. If certain securities are rejected by the Province during the AIRS process, the Proponent must propose additional securities, subject to the Province’s approval, in order to get back to the minimum.

- 2) Rationale for the suitability of the Senior Debt Credit Spread Benchmark including consideration for relevance, liquidity and diversification within the “basket”;

- 3) Information and documentation to support, and to enable a third party to verify, the proposed Senior Debt Credit Spread Benchmark pricing including:
 - details of how the Senior Debt Credit Spread Benchmark will be priced and software that will be applied; and

 - details of the pricing conventions inherent in the pricing.

4.3 Process following Initial AIRS

Within a reasonable period determined by the Province after the Initial AIRS Submittal Deadline, the Province will advise the relevant Proponent whether, in the Province’s discretion, the information contained within the Initial AIRS is acceptable.

If the Province advises a Proponent, with particulars, that any Initial AIRS is not acceptable, the Proponent is to submit a revised Initial AIRS to the Province that addresses the Province’s concerns within 5 Business Days (or other such reasonable period determined by the Province in its discretion) after receiving such notice.

The Province may, in its discretion, request a meeting with the Proponent to discuss its Initial AIRS.

This process will be repeated (at the discretion of the Province) until an Initial AIRS is proposed that is acceptable to the Province, in the Province's discretion. A Proponent that has submitted an Initial AIRS that is acceptable to the Province will be invited to submit an Interim AIRS.

A Proponent may make a supplementary submission after the Initial AIRS (on the same basis as the Initial AIRS) and before the Interim AIRS. It is in the Province's discretion whether to accept the supplementary submission. If there is insufficient time for the Province and the Proponent to agree on revised Benchmarks, the Proponent will use the Benchmarks approved at the Initial AIRS.

5 Interim AIRS

5.1 Information to be Provided by the Province

The Province expects to provide Proponents with an updated Appendix D-1 one week prior to the Interim AIRS Submittal Deadline based on market rates as at 08:00 Pacific Time on the day it is provided.

5.2 Information to be Provided by the Proponent

In its Interim AIRS the Proponent is to provide (including where appropriate, an indication of information that has been amended since its Initial AIRS, for example, by providing a blackline of any swap term sheet):

- a) If a Proponent elected in its Initial AIRS to apply the Senior Debt Base Rate Benchmark:
 - 1) Acceptance of the information provided one week prior to the Interim AIRS Submittal Deadline by the Province to the Proponent.
 - 2) The calculation used by the Proponent to determine the Senior Debt Base Rate Benchmark from the information provided by the Province.
 - 3) Confirmation that the Senior Debt Base Rate Benchmark is calculated using the rates provided by the Province and excludes all margins, spreads and fees.

- b) If a Proponent elected in its Initial AIRS to apply the Swapped Senior Debt Base Rate Benchmark:
 - 1) Acceptance of the information provided one week prior to the Interim AIRS Submittal Deadline by the Province to the Proponent.
 - 2) A completed indicative swap term sheet substantially in the form shown in Appendix D-2.
 - 3) The Swapped Senior Debt Base Rate Benchmark determined by the Proponent using the information provided by the Province.

- 4) The calculation used by the Proponent to determine the Swapped Senior Debt Base Rate Benchmark.
 - 5) Confirmation that the Swapped Senior Debt Base Rate Benchmark is calculated using the rates provided by the Province and excludes all margins, spreads and fees (with the exception of any swap spread/charge implied within the mid-market CAD swap curve). Any execution and/or swap Credit Spread/charge required to execute the Swapped Senior Debt Base Rate Benchmark should be included in the Proponent's Contract Price Proposal submitted as part of its Financial Submittal and will not be subject to any adjustments after Financial Submittal.
- c) If a Proponent elected in its Initial AIRS to apply the Reinvestment Base Rate Benchmark:
- 1) Acceptance of the information provided one week prior to the Interim AIRS Submittal Deadline by the Province to the Proponent.
 - 2) If relevant, a completed indicative swap term sheet substantially in the form shown in Appendix D-2. If an indicative swap term sheet is not relevant to the Reinvestment Base Rate Benchmark then a confirmation as such.
 - 3) The Reinvestment Rate Benchmark determined by the Proponent using the information provided by the Province.
 - 4) The calculation used by the Proponent to determine the Reinvestment Base Rate Benchmark from the information provided by the Province;
 - 5) Confirmation that the Reinvestment Base Rate Benchmark is calculated using the rates provided by the Province and excludes all margins, spreads and fees (with the exception of any swap spread implied within the mid-market CAD swap curve, if relevant).
- d) If a Proponent elected in its Initial AIRS to apply the Senior Debt Credit Spread Benchmark:
- 1) The Senior Debt Credit Spread Benchmark determined by the Proponent as at 07:00 Pacific Time the day before the Interim AIRS Submittal Deadline based on the basket agreed by the Province in accordance with Section 4.2f) of this Appendix. Complete and submit Section 2, area labeled "ii", columns H through M inclusive in Appendix D-3;
 - 2) Information and documentation to support, and to enable a third party to verify, the proposed Senior Debt Credit Spread Benchmark price including:
 - details of how the Senior Debt Credit Spread Benchmark was priced and the software that was applied;

- a brief description on any bonds that were previously included in the basket that have now been dropped;
- copies of the price quotes (using a Bloomberg screen shot or similar); and
- details of the pricing conventions inherent in the pricing.

Confirmation that the Senior Debt Credit Spread Benchmark is a mid-market spread that is calculated from the difference in the relevant mid-market rates and excludes all margins, profits and fees.

5.3 Process following Interim AIRS

Within a reasonable period determined by the Province after the Interim AIRS Submittal Deadline, the Province will advise the relevant Proponent whether, in the Province's discretion, the information contained within the Interim AIRS is acceptable.

If the Province advises a Proponent, with particulars, that any Interim AIRS is not acceptable, the Proponent is to submit a revised Interim AIRS to the Province that addresses the Province's concerns within 5 Business Days (or other such reasonable period determined by the Province in its discretion) after receiving such notice.

The Province may, in its discretion, request a meeting with the Proponent to discuss its Interim AIRS.

This process will be repeated (at the discretion of the Province) until an Interim AIRS is proposed that is acceptable to the Province, in the Province's discretion. A Proponent that has submitted an Interim AIRS that is acceptable to the Province will be invited to submit a Final AIRS.

6 Final AIRS

6.1 Information to be Provided by the Province

The Province expects to provide Proponents with an updated Appendix D-1 one week prior to the Final AIRS Submittal Deadline based on market rates as at 08:00 Pacific Time on the day it is provided.

6.2 Information to be Provided by the Proponent

In its Final AIRS the Proponent is to provide (including where appropriate, an indication of information that has been amended since its Interim AIRS, for example, by providing a blackline of any swap term sheet):

- a) If a Proponent elected in its Initial AIRS to apply the Senior Debt Base Rate Benchmark:

- 1) Acceptance of the information provided one week prior to the Final AIRS Submittal Deadline by the Province to the Proponent.
 - 2) The calculation used by the Proponent to determine the Senior Debt Base Rate Benchmark from the information provided by the Province.
 - 3) Confirmation that the Senior Debt Base Rate Benchmark is calculated using the rates provided by the Province and excludes all margins, spreads and fees.
- b) If a Proponent elected in its Initial AIRS to apply the Swapped Senior Debt Base Rate Benchmark:
- 1) Acceptance of the information provided one week prior to the Final AIRS Submittal Deadline by the Province to the Proponent.
 - 2) A completed indicative swap term sheet substantially in the form shown in Appendix D-2.
 - 3) The Swapped Senior Debt Base Rate Benchmark determined by the Proponent using the information provided by the Province.
 - 4) The calculation used by the Proponent to determine the Swapped Senior Debt Base Rate Benchmark.
 - 5) Confirmation that the Swapped Senior Debt Base Rate Benchmark is calculated using the rates provided by the Province and excludes all margins, spreads and fees (with the exception of any swap spread implied within the mid-market CAD swap curve).
 - 6) With the exception of any swap spread implied within the mid-market CAD swap curve, an execution and/or Credit Spread/charge required to execute the relevant rate (for the Swapped Senior Debt Base Rate Benchmark should be included in the Proponent's Availability Payments submitted as part of its Financial Submittal and will not be subject to any adjustments after Financial Submittal).
- c) If a Proponent elected in its Initial AIRS to apply the Reinvestment Base Rate Benchmark:
- 1) Acceptance of the information provided one week prior to the Final AIRS Submittal Deadline by the Province to the Proponent.
 - 2) If relevant, a completed indicative swap term sheet substantially in the form shown in Appendix D-2. If an indicative swap term sheet is not relevant to the Reinvestment Base Rate Benchmark then a confirmation as such.

- 3) The Reinvestment Rate Benchmark determined by the Proponent using the information provided by the Province.
 - 4) The calculation used by the Proponent to determine the Reinvestment Base Rate Benchmark from the information provided by the Province;
 - 5) Confirmation that the Reinvestment Base Rate Benchmark is a mid-market rate and excludes all margins, spreads and fees (with the exception of any swap spread implied within the mid-market CAD swap curve, if relevant).
- d) If a Proponent elected in its Initial AIRS to apply the Senior Debt Credit Spread Benchmark:
- 1) The Senior Debt Credit Spread Benchmark determined by the Proponent as at 07:00 Pacific Time the day before the Final AIRS Submittal Deadline based on the basket agreed by the Province in accordance with Section 5.2d) of this Appendix. Update and submit Section 2, area labeled “ii” columns H through M inclusive in Appendix D-3;
 - 2) Information and documentation to support, and to enable a third party to verify the proposed Senior Debt Credit Spread Benchmark including:
 - details of how the Senior Debt Credit Spread Benchmark was priced and the software that was applied;
 - a brief description on any bonds that were previously included in the agreed basket that have now been dropped;
 - copies of the price quotes (using a Bloomberg screen shot or similar); and
 - details of the pricing conventions inherent in the pricing.
 - 3) Confirmation that the Senior Debt Credit Spread Benchmark is a mid-market spread that is calculated from the difference in the relevant mid-market rates and excludes all margins, profits and fees (with the exception, if relevant, of any swap spread implied within the mid-market CAD swap curve).

6.3 Process following Final AIRS

Within a reasonable period determined by the Province after the Final AIRS Submittal Deadline, the Province will advise the relevant Proponent whether, in the Province’s discretion, the information contained within the Final AIRS is acceptable.

If the Province advises a Proponent, with particulars, that any Final AIRS is not acceptable, the Proponent is to submit a revised Final AIRS to the Province that addresses the Province's concerns within 5 Business Days (or other such reasonable period determined by the Province in its discretion) after receiving such notice.

The Province may, in its discretion, request a meeting with the Proponent to discuss its Final AIRS.

This process will be repeated (at the discretion of the Province) until a Final AIRS is proposed that is acceptable to the Province, in the Province's discretion.

APPENDIX D-1

Rate Sheet

Provided as a separate pdf document.

Note: If any Government of Canada benchmark bond switches to an alternative Government of Canada benchmark bond prior to Effective Date, the pricing of any Adjustment Credit Facilities based on the affected Government of Canada benchmark bond will also switch to the applicable alternative Government of Canada benchmark bond.

APPENDIX D-2

Swap Term Sheet

Provided as a separate spreadsheet.

APPENDIX D-3

Senior Debt Credit Spread Benchmark

Provided as a separate worksheet.

Appendix E

Security Package Review Submittals

1. Security Package Review Process

To provide Proponents with an indication of the acceptability of their potential security packages, Proponents may submit potential security packages and supporting information, including estimated costs, for review by the Province. The Province will provide written feedback to Proponents which will indicate the suitability of the potential security packages and may include comments on certain components of the potential security packages.

The Proponents may submit the information requested in this Appendix for the Base Security Package and up to three Alternate Security Packages at each submittal time. The Province will review each package and expects to provide written feedback to Proponents approximately four weeks after the relevant submittal deadline. Proponents will have a total of three opportunities to submit potential security packages for feedback. Submittal deadlines are indicated in Section 3.12 of Volume 1 of this RFP.

Proponent participation in this process is not mandatory; however, it may assist Proponents in preparing a Financial Submittal that substantially meets the Province's requirements. Proponents may request a Topic Meeting relating to this process at any time.

This process is not binding and any feedback by the Province is based on the information provided by Proponents at the time of submittal and is indicative in nature.

2 Base Security Package

The Base Security Package proposed by Proponents should be responsive to the submission requirement in Section 5.4.4 of Table A-7 in Appendix A of Volume 1 of this RFP: "demonstration that the Proponent's Financing Plan, including security, bonding, guarantees and insurance elements, is robust and deliverable."

The Base Security Package proposed by Proponents must at a minimum include the following:

- a) parental company guarantee(s) in favour of Project Co, from the Design-Build Contractor Guarantor and Tunnel Contractor Guarantor guaranteeing the respective obligations of the Design-Build Contractor and Tunnel Contractor

- b) performance and labour and materials bonds, each valued at no less than 30% of the anticipated Contract Price Proposal excluding financing costs.

Evidence should include:

- a) proposed draft form of parental company guarantee;
- b) consent of surety in the form of the Specimen Surety Prequalification Letter (Appendix E-1) for a multiple obligee performance bond (valued at no less than 30% of the anticipated Contract Price Proposal excluding financing costs) and a multiple obligee labour and materials bond (valued at no less than 30% of the anticipated Contract Price Proposal excluding financing costs) from a surety registered to provide surety bonds in Canada;
- c) specimen forms of bond, including any and all riders required or anticipated;
- d) indicative term sheet from lenders (if available);
- e) an undertaking to provide insurance (draft policies not to be provided) for relevant types of insurance and limits incremental to the requirements in Schedule 15 to the Draft PA;
- f) a description of the types and amounts of other proposed security instruments (e.g. letters of credit);
- g) an estimated cost of each component of the Base Security Package, inclusive of all items contemplated.

For the Base Security Package, the Province requires the specified bonding and parental company guarantee(s). Any additional forms of security, such as other types of instruments and additional insurance, are in addition to the Province's minimum requirements.

3 Alternate Security Packages

In addition to the Base Security Package, Proponents may submit up to three Alternate Security Packages with each submittal. Any Alternate Security Package should be robust and deliverable, but is not required to meet the requirements specified for the Base Security Package.

For each Alternate Security Package, Proponents should describe how the Province's requirement in Section 5.4.4 of Table A-7 in Appendix A of this RFP that the Proponent's Financing Plan, including security, bonding, guarantees and insurance elements, is robust and deliverable is met.

Proponents should include the following for each Alternate Security Package:

- a) for each parental company guarantee, a proposed draft form of parental company guarantee, if different from that of the Base Security Package
- b) specimen forms of bond, including any and all riders required or anticipated, if different from the Base Security Package;
- c) an undertaking to provide insurance (draft policies not to be provided) for relevant types of insurance and limits incremental to the requirements in Schedule 15 to the Draft PA or Definitive PA (as applicable);
- d) the beneficiaries of each third party security;
- e) the parties whose obligations are secured by each third party security;
- f) the type, amount and anticipated provider of each third party security;
- g) all circumstances in which each third party security may expire, be subject to termination and can be called upon;
- h) if called upon, the purposes for which each third party security may be used; and
- i) an estimated cost of each component of the Alternate Security Package.

4 Province Review

The Province will review each Base Security Package and Alternate Security Package and provide non-binding feedback in writing to each Proponent as to whether the Base Security Package and/or the Alternate Security Package is anticipated to substantially satisfy the Province's requirement that the Proponent's Financing Plan, including security, bonding, guarantees and insurance elements, is robust and deliverable.

The Province will also conduct a confidential review of the value of each Alternate Security Package relative to that of the Base Security Package.

Proponents may request a Topic Meeting to discuss the Province's written feedback.

5 Submission Instructions

All security package review submittals should be submitted by e-mail to the Contact Person on or before the relevant submittal deadline as described in Section 3.12 of Volume 1 of the RFP. Files should be in a format compatible with Adobe Acrobat, Microsoft Excel or Microsoft Word.

Proponents may make their initial submittal at any of the submittal deadlines. To participate in the process, Proponents must submit evidence for a Base Security Package with their initial submittal and may, at their option, update their Base Security Package submittal at any subsequent submittal deadline. Submittals of a Base Security Package should be clearly identified as “[Proponent Name] - Base Security Package.”

Proponents may also submit up to three Alternate Security Packages at any submittal deadline. The Alternate Security Packages submitted may be updated, replaced or discontinued at any subsequent submittal deadline at the Proponent’s discretion.

Each Alternative Security Package should be clearly identified as “[Proponent Name] - Alternate Security Package # [sequential number].” Should an Alternate Security Package be updated and resubmitted, Proponents should retain the sequential number from the previous submittal. If a new security package is submitted with the follow-up or final submittal, Proponents should identify it by a new sequential number.

6 Security Package at Financial Submittal

Proponents are under no obligation to submit a security package identical to one submitted under this process as part of their Financial Submittal. All security packages will be subject to the same evaluation process (in accordance with Appendix A of Volume 1 of the RFP), regardless of whether or not they have been submitted under the Security Package Review Process.

APPENDIX E-1

SPECIMEN SURETY PREQUALIFICATION LETTER

DATE:

NO.:

TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE in regard to THE BROADWAY SUBWAY PROJECT (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 Team Members 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 prequalified as a proponent on the captioned Project, which we understand will require a Performance Bond in the amount of _____ Million Dollars (\$) and a Labour and Material Payment Bond in the amount of _____ Million Dollars (\$_____). Based on the limited information available at this time and subject to our assessment of the BROADWAY SUBWAY 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.

(Name of Surety)

_____(Seal)_____

Attorney - In - Fact

Appendix F

Lands Process

1. Alignment Lands

Each Proponent will, in accordance with the provisions of this RFP, select lands from the Alignment Lands that conform to the Proponent's design and that are sufficient, together with the Proponent Proposed Lands and the Other Lands, to enable the Proponent, should it become Project Co, to deliver the Project Work in accordance with the Project Agreement.

Information regarding the Alignment Lands can be found in the RFP Data Website.

The lands selected by Proponents in accordance with the provisions of this RFP and set out in Form A-1 submitted by Proponents pursuant to paragraph 3.4.1a) of Table A-4 of Appendix A of Volume 1 of this RFP will, if the Proponent becomes the Preferred Proponent, become Designated Project Lands and form part of Table A-1 of Appendix A to Schedule 8 [Lands] of the Project Agreement.

The drawings to be submitted pursuant to paragraph 3.4.1d) of Table A-4 of Appendix A of Volume 1 of this RFP will, if the Proponent becomes the Preferred Proponent, be inserted in Appendix C to Schedule 8 [Lands] of the Project Agreement.

2. Proponent Proposed Lands

Each Proponent may identify lands or land interests that are not included in the Alignment Lands for consideration by the Province as Proponent Proposed Lands specific to that Proponent. Any Proponent wishing to propose the use of Proponent Proposed Lands should submit to the Contact Person on or before the Proposed Lands Request Deadline a completed Form A-2 by cover of an RFI clearly marked as "Commercial in Confidence", together with drawings in Adobe PDF format and supporting AutoCAD file clearly highlighting the requested land as an overlay to the Alignment Lands. If a Proponent does not wish to identify lands or lands interests, as set out above, that Proponent should submit to the Contact Person on or before the Proposed Lands Request Deadline a completed Form A-2 clearly marked to indicate that no Proponent Proposed Lands will be required by that Proponent.

The Province will review each completed Form A-2 submitted by a Proponent and, determine in the Province's discretion, which, if any, of the lands or land interests identified by a Proponent in its Form A-2 that the Province is willing to acquire as Designated Project Lands. In carrying out its review of each Form A-2, the Province may, in its discretion, take any steps or carry out any investigations, estimations, research and analysis that the Province considers appropriate and consider any factors it deems appropriate, including:

- (a) the effect on the Project, including any Permits;
- (b) the effect on stakeholder interests or commitments or requirement for additional stakeholder consultation;
- (c) the effects on environment or the amenity of the areas in which such lands are situated;
- (d) whether a successful negotiation for the acquisition of all or any of the lands or land interests listed is likely or whether there is likely to be a need for the exercise of statutory powers of expropriation in relation to any part of the lands listed;
- (e) the cost of acquiring such lands, including all direct and indirect costs;
- (f) whether all or any of the proposed lands or lands interests or the use of such lands or interests may negatively affect other aspects of the Project, including anticipated land use or availability constraints and constraints on existing infrastructure; and
- (h) any risks associated with the proposed uses and the corresponding proposed access dates, including in connection with Project Schedule, costs, claims or liabilities,

and in so doing the Province may rely upon the terms of this RFP, including to seek and apply additional, replacement, clarifying and rectifying information and documentation, as the case may be, in connection with this review.

The Province will, subject to the provisions of this RFP, provide to each Proponent on a "Commercial in Confidence" basis a Response to Proponents setting out which, if any, of the lands or land interests identified by the applicable Proponent in its Form A-2 the Proponent may elect to treat as accepted Proponent Proposed Lands (the "**Accepted Proposed Lands**") and confirm a "not before date" and a

“minimum notice period” required for the acquisition of such lands. The Province anticipates providing these Responses to Proponents within one calendar month of the receipt by the Province of the Proponent’s completed Form A-2.

In providing its Response, the Province will include the amount by which the Province will adjust the Proponent’s Contract Price Proposal to include all direct and indirect costs and expenses (the **“Proposed Lands Costs”**) the Province determines, in its discretion, that it will incur to acquire any Accepted Proposed Lands. Each Proponent will indicate as part of its Technical Submittal in accordance with Section 3.4.1b) of Table A-4 of Appendix A of Volume 1 of this RFP, which of the Accepted Proposed Lands it requires in connection with its Proposal and the Province will adjust the Contract Price Proposal of such Proponent in respect of such Accepted Proposed Lands by an amount equal to the relevant Proposed Lands Costs in accordance with Section C of Appendix B to this RFP.

The Accepted Proposed Lands included by a Proponents in its Technical Submittal will, if the Proponent becomes the Preferred Proponent, become Designated Project Lands and form part of Appendix A to Schedule 8 [Lands] of the Project Agreement.

3. Other Lands

Each Proponent may identify, as part of its Technical Submittal in accordance with Section 3.4.1c) of Table A-4 of Appendix A of Volume 1 of this RFP, and submit in a Form A-3 details of all lands or land interests in addition to the Alignment Lands and the Proponent Proposed Lands, which are proposed to be used by the Proponent in connection with or to facilitate the delivery of all or any part of the Project Work, including land used for fabrication, materials, handling, disposal or storage, including all remote sites.

Following the selection of the Preferred Proponent, the Province will consider whether any such lands or land interests referred to above identified by the Preferred Proponent in its Technical Submittal are, in the discretion of the Province, important to the continuous and uninterrupted delivery of the Project Work. Any such lands or land interests determined by the Province, in its discretion, to be important to the continuous and uninterrupted delivery of the Project Work shall be “Other Lands” and the Preferred Proponent will be required to ensure that, if the Project Agreement is terminated prior to the Substantial Completion Date, the Other Lands are made available to the Province and BCTFA at the

Proponent's sole risk, cost and expense, upon such terms as the Province may in its discretion require, until the completion of the Project Work or for such other period as the Province may in its discretion require.

If the Proponent becomes the Preferred Proponent, details of the Other Lands will be set out in Table A-3 of Appendix A to Schedule 8 [Lands] of the Project Agreement and the Other Lands will be subject to the provisions of Section 3.11 of Schedule 8 [Lands] of the Project Agreement.



Ministry of
Transportation
and Infrastructure

BROADWAY SUBWAY PROJECT

REQUEST FOR PROPOSALS

Volume 2 – Initial Draft Project Agreement

June 25, 2019

partnerships
British Columbia



Ministry of
Transportation
and Infrastructure

BROADWAY SUBWAY PROJECT

REQUEST FOR PROPOSALS

Volume 3 – Draft BCIB-Contractor Agreement

June 25, 2019

partnerships
British Columbia

*****CONFIDENTIAL DRAFT*****

**BCIB-CONTRACTOR AGREEMENT
BROADWAY SUBWAY PROJECT**

BC INFRASTRUCTURE BENEFITS INC.

AND

[CONTRACTOR]

[INSERT DATE]

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BCIB-CONTRACTOR AGREEMENT

THIS BCIB-CONTRACTOR AGREEMENT is made effective as of the <*> day of <*>, 201<*>

BETWEEN:

BC INFRASTRUCTURE BENEFITS INC., a company incorporated under the laws of British Columbia having its head office at <*> (“**BCIB**”)

AND:

<*> (the “**Contractor**”)

WHEREAS:

- A. BCIB has entered into a Community Benefits Agreement dated the 17th day of July, 2018, as may be amended, supplemented or restated from time to time (the “**Community Benefits Agreement**”) with the Allied Infrastructure and Related Construction Council of British Columbia (the “**Council**”) which governs the terms and conditions of employment for Employees in respect of the Project;
- B. BCIB has entered into an agreement with the Owner made and dated for reference as of the <*> day of <*>, 201<*> whereby BCIB has, subject to the Community Benefits Agreement, the sole and exclusive right to provide Employees to contractors who will perform work or provide services at the Site in respect of the Project;
- C. The Owner and the Contractor have entered into the Construction Contract;
- D. The Construction Contract requires the Contractor to enter into this Agreement with BCIB;
- E. The Contractor requires Employees in order to discharge its obligations under the Construction Contract; and
- F. The parties wish to enter into a formal contract for the provision of Employees to the Contractor by BCIB.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Hundred Dollars (\$100.00) now paid by each of the Contractor and BCIB to the other (the receipt of which sum by the Contractor and by BCIB is hereby irrevocably acknowledged) and of the mutual promises and agreements contained in this Agreement, the parties agree as follows:

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms have the meanings set out in Schedule 1.

2.0 REPRESENTATIVES

2.1 Within two Business Days after the Effective Date, and thereafter from time to time as BCIB deems necessary, BCIB will designate one person (“**BCIB’s Representative**”), and an alternate in the event BCIB’s Representative is absent, to be BCIB’s single point of contact for the Contractor with respect to this Agreement. BCIB will, upon designating such person, advise the Contractor in writing of the name, address, telephone number and email address of BCIB’s Representative.

2.2 Within two Business Days after the Effective Date, and thereafter from time to time as the Contractor deems necessary, the Contractor will designate one person (the “**Contractor’s Representative**”), and an alternate in the event the Contractor’s Representative is absent, to be the Contractor’s single point of contact for BCIB with respect to this Agreement. The Contractor will, upon designating such person, advise BCIB in writing of the name, address, telephone number and email address of the Contractor’s Representative. If, at any time, BCIB’s Representative, acting reasonably, objects to the Contractor’s Representative, then the Contractor will replace the Contractor’s Representative with a person acceptable to BCIB’s Representative.

2.3 As soon as practicable after the Effective Date, and thereafter from time to time as may be necessary, BCIB’s Representative will advise the Contractor’s Representative of the name, address, telephone number and email address of the Council’s Representative.

2.4 The Contractor acknowledges that BCIB will have a presence on the construction Site. The parties will, within ten Business Days after the Effective Date, establish a system for ongoing communication and liaison for the purpose of ensuring the timely exchange of information that the parties agree is required for the effective coordination and implementation of this Agreement.

3.0 OBLIGATION TO OBTAIN EMPLOYEES

3.1 The Contractor will obtain from BCIB all Employees required by the Contractor to fulfill its obligations under the Construction Contract.

3.2 Notwithstanding the powers expressly delegated by this Agreement to the Contractor by BCIB, all Employees provided to the Contractor by BCIB will be employed by BCIB, and BCIB will retain, with respect to all such Employees, the exclusive rights as employer in all aspects of labour relations and in all aspects of the employment relationship. The Contractor will not in any way derogate or attempt to derogate from the rights and authority of BCIB as employer.

4.0 OBTAINING EMPLOYEES

4.1 The Contractor will participate in any pre-job conference(s) arranged by BCIB, and will present, after collaboration with BCIB and the Council, details of the Work, including schedule, work type and anticipated numbers and Job Classifications of Employees.

4.2 The Contractor will provide the following forecasts and requests:

(a) *Six Month Forecast.* The Contractor will no later than five Business Days after the Effective Date, provide to BCIB's Representative:

(i) the Contractor's best estimate of the anticipated Employees that will be required by the Contractor and all of the Applicable Subcontractors for the first six months of the Work, giving estimates of the numbers and Job Classifications of Employees that will be required on a month-by-month basis; and

(ii) the Contractor's then current overall Work schedule that includes manpower resource loading that the Contractor anticipates will be utilized by the Contractor and all of the then known Applicable Subcontractors for the performance of the Work.

(b) *Three Month Forecast.* The Contractor will, on the first Business Day of each month starting with the second month after the Effective Date, provide to BCIB's Representative:

(i) the Contractor's best estimate of the anticipated Employees that will be required by the Contractor and all of the Applicable Subcontractors for the then current month and the next following two months of the Work, giving details of the numbers and Job Classifications of Employees required on a month-by-month basis; and

(ii) the Contractor's then current overall Work schedule that includes manpower resource loading that the Contractor anticipates will be utilized by the Contractor and all of the then known Applicable Subcontractors for the performance of the Work.

(c) *Employee Request.* The Contractor will, from time to time during the term of this Agreement, provide to BCIB's Representative a request for Employees (each, an "**Employee Request**") in the form and format required by BCIB, and setting out the following information:

(i) the number and Job Classifications of Employees required by the Contractor;

(ii) the 'name hires' requested by the Contractor;

- (iii) the names of prospective Employees the Contractor wishes to name request from the information provided pursuant to Section 4.5 or from other information that may be available to the Contractor;
 - (iv) the number and type of apprentices requested by the Contractor;
 - (v) the date upon which each such Employee will be required to commence working under the direction of the Contractor;
 - (vi) the Contractor's best estimate of the time period each such Employee will be required by the Contractor;
 - (vii) the details of any special experience or technical or other qualifications required in respect of any particular Employee;
 - (viii) the intended work assignments in compliance with Article 6 of the Community Benefits Agreement; and
 - (ix) such other information with respect to potential Employees as BCIB's Representative may request, or that the Contractor may consider beneficial, in order to enable BCIB to provide the Employees required by the Contractor.
- (d) The parties agree that the forecasts provided pursuant to Section 4.2(a) and Section 4.2(b) are non-binding and are estimates only, but that such forecasts will be used by BCIB to source an appropriate workforce for the Project.
- 4.3 BCIB will, in accordance with the dispatch provisions of the Community Benefits Agreement, including Articles 8.200, 8.600 and 9.100 of the Community Benefits Agreement, and subject to the minimum time period described in Section 4.4, use reasonable efforts to provide the Contractor with Employees to perform the Work in the numbers and Job Classifications set out in the Employee Request submitted pursuant to Section 4.2(c) to the extent that BCIB is itself able to obtain Employees in such numbers and Job Classifications. Unless those individuals requested by the Contractor as 'name hires' have already been provided or committed by BCIB to another contractor or such individuals are unavailable due to circumstances beyond BCIB's control, in each case at the time of the Employee Request, BCIB will provide to the Contractor, in accordance with the dispatch provisions of the Community Benefits Agreement, those individuals that are requested by the Contractor as 'name hires'.
- 4.4 The Contractor acknowledges that BCIB requires a minimum of three Business Days prior written notice of the date upon which the Contractor requires an Employee or Employees to commence performance of the Work in order to be able to provide the requested Employee(s).

- 4.5 BCIB will promptly provide to the Contractor's Representative information that BCIB:
- (a) has in its possession which relates to work task or activity accommodations that are to be made in respect of the Employees provided to the Contractor by BCIB; and
 - (b) receives from the Affiliated Unions with respect to prospective Employees that may be available to work on the Project for the purpose of the Contractor name requesting prospective Employees from the Affiliated Unions.
- 4.6 The Contractor will, if and when requested by BCIB's Representative from time to time:
- (a) if BCIB is unable to fulfill an Employee Request, provide information already in the possession of the Contractor with respect to individuals who may be available to become Employees, who are suitable for performing the Work and who, if hired by BCIB as Employees, could allow BCIB to fulfill the Employee Request. Unless such identified individuals refuse to become Employees, or have already been provided or committed by BCIB to another contractor, or such individuals are unavailable due to circumstances beyond BCIB's control, in each of the latter two cases at the time the information is provided to BCIB, BCIB will provide such identified individuals to the Contractor; and
 - (b) provide one representative of the Contractor to assist in the interviewing of individuals who are proposed to be hired by BCIB for subsequent assignment to the Contractor.

5.0 EMPLOYEE RELATIONS

- 5.1 To the extent necessary to enable the Contractor to perform its obligations under this Agreement, BCIB does hereby delegate to the Contractor, consistent with the provisions of Article 7.400 of the Community Benefits Agreement, BCIB's right to operate, direct and supervise on a day-to-day basis the Employees provided to the Contractor by BCIB. For certainty, but without limiting the foregoing, the Contractor, pursuant to the delegation provided by this Section 5.1, has the authority:
- (a) to assign work tasks and activities to such Employees and to reassign such Employees to other work tasks and activities;
 - (b) to issue warnings to Employees as described in Section 8.2; and
 - (c) to require such an Employee to cease performing work or vacate the Site or to report to BCIB's Representative for further action by BCIB, or all of the foregoing.

- 5.2 The Contractor will, with respect to the Employees provided to the Contractor by BCIB:
- (a) be solely responsible for the operation, direction, supervision and performance of the Work by the Employees pursuant to the delegation of such responsibility in accordance with Section 5.1;
 - (b) promptly advise BCIB's Representative in writing of any requested changes in the status of any Employee, including any changes which may be necessitated by changes in work assignment, completion of work, lack of work or absence of the Employee from the Work for whatever reason;
 - (c) give full consideration to a request from BCIB to transfer an Employee from the Contractor to another entity which has a contract with BCIB, recognizing that, pursuant to Article 7.600 of the Community Benefits Agreement, any such transfer will require the agreement of the appropriate Affiliated Union, the contractors involved, the Employee and BCIB;
 - (d) promptly upon receipt of a written request from BCIB's Representative, provide BCIB's Representative with such information and documents relating to the Employees who are under the direction of the Contractor as BCIB may from time to time require;
 - (e) comply with any instruction which may be given by BCIB or BCIB's Representative with respect to the Job Classifications of any Employee to be used with respect to any type of Work;
 - (f) not use or seek to use any full-time Employee for anything other than performing the Work;
 - (g) not do anything which could cause and will not direct a lockout of Employees;
 - (h) recognize the Council's Representative and any Affiliated Union's representative and, provided reasonable written notice has been provided to the Contractor's Representative, provide such representatives access to all parts of the Site as may be necessary for the administration and application of the Community Benefits Agreement. All such representatives will be required to comply with the health and safety protocols for attendance on the Site as required by the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia);
 - (i) to the extent necessary to reflect Work-specific and Site-specific matters, provide orientation to Employees that is required by the Community Benefits Agreement and applicable law on the following topics:
 - (i) general matters, including, at a minimum, Site orientation and a discussion of housekeeping, environmental stewardship and cultural awareness; and

- (ii) occupational health and safety matters, including health and safety training and health and safety-related skills training; and
- (j) to the extent necessary and applicable to the Contractor or the performance of the Work, comply with and give effect to the results of negotiations and any rulings, interpretations, orders and decisions made in labour relations matters of which BCIB notifies the Contractor's Representative and that relate to the Employees.

5.3 BCIB will:

- (a) notify the Contractor in writing of any change under the Community Benefits Agreement, including changes to:
 - (i) initiation fees or dues, or of assessments by the Affiliated Unions;
 - (ii) steward appointments;
 - (iii) hourly wage rates and trade provisions; and
 - (iv) new or revised Job Classifications and associated wage rates and trade provisions;
- (b) acting in the best interests of the Project and to uphold the spirit and intent of the Community Benefits Agreement, enforce its rights under the Community Benefits Agreement, it being acknowledged that it is in the mutual best interest of BCIB and the Contractor to prevent and resolve strikes, lockouts, slowdowns or other interruptions in the orderly performance of the Work;
- (c) seek input from the Contractor regarding and will act in good faith in all labour relations matters which are relevant to the Contractor, including in collective bargaining negotiations and in grievance, arbitration and jurisdictional proceedings, it being acknowledged that it is in the mutual best interest of BCIB and the Contractor to prevent strikes, lockouts, slowdowns or other interruptions in the orderly performance of the Work; and
- (d) keep the Contractor's Representative informed of the results of any negotiations and any rulings, interpretations, orders and decisions made in labour relations matters which are relevant to the Contractor so that the Contractor may, to the extent necessary and applicable to the Contractor or the performance of the Work, comply with and give effect to any such results and rulings, interpretations, orders and decisions.

6.0 COMMUNITY BENEFITS AGREEMENT

- 6.1 A true copy of the Community Benefits Agreement has been made available to the Contractor. The Contractor represents and warrants it has full knowledge of and understands the provisions of the Community Benefits Agreement.

- 6.2 The Contractor acknowledges that for all purposes of this Agreement any reference to the Community Benefits Agreement will include all amendments to, supplements to or restatements of the Community Benefits Agreement.
- 6.3 Unless otherwise expressly modified by the terms of this Agreement, the Contractor, in performing its obligations under this Agreement and to fulfill its obligations under the Construction Contract, will give effect to, and will observe, comply with and perform all terms and conditions of the Community Benefits Agreement that are specified to apply to the Contractor as a “Contractor” (as that term is used in the Community Benefits Agreement), as well as all consequent functions, obligations and responsibilities that are associated with such terms and conditions.
- 6.4 The Contractor, on behalf of BCIB, will give effect to, and will observe, comply with and perform all of BCIB’s functions, obligations and responsibilities described in the provisions of the Community Benefits Agreement set out in Schedule 2, as well as all consequent functions, obligations and responsibilities that are associated with such terms and conditions.
- 6.5 The Contractor will not act in any way which may obstruct, interfere with or impede BCIB’s ability to observe, comply with and perform each and every provision of the Community Benefits Agreement.
- 6.6 The Contractor will perform such acts and do such things, including attending meetings, whether or not with the Council, as BCIB may from time to time reasonably require in order to permit BCIB to perform its obligations under and to comply with the Community Benefits Agreement.
- 6.7 The Contractor acknowledges BCIB’s authority to act on behalf of the Contractor in all matters related to the interpretation, application, administration or alleged violation of the Community Benefits Agreement, including BCIB’s sole responsibility for discussing, resolving or arbitrating any grievance that may arise under the Community Benefits Agreement. BCIB will keep the Contractor informed of, involve the Contractor in and seek input from the Contractor regarding such matters, to the extent those matters are relevant to the Contractor or the performance of the Work.

7.0 PAYROLL

- 7.1 Whenever required by BCIB, the Contractor will provide to BCIB payroll administration support by providing information reasonably requested by BCIB in the form and format required by BCIB. Such information will include recruitment information, hours of work schedules, timesheets, change of status requests and termination information, and any other information deemed necessary by BCIB. If requested by BCIB’s Representative, the Contractor will review and approve the timesheets prior to submitting them to BCIB.

- 7.2 BCIB will prepare and deliver an invoice (each, a “**Payroll Invoice**”) to the Contractor for each pay period. The Payroll Invoice will set out the amount owing by the Contractor to BCIB (the “**Payroll Amount**”) in respect of:
- (a) all amounts required by the Community Benefits Agreement (to the extent each is applicable to the Project):
 - (i) to be paid to Employees provided to the Contractor by BCIB during the applicable pay period; and
 - (ii) to be paid to third parties other than the Employees provided to the Contractor by BCIB based on the number of hours worked by the Employees provided to the Contractor by BCIB, such as the Funds described in Article 13.200 of the Community Benefits Agreement;
 - (b) all applicable payroll taxes and assessments, including Employment Insurance, Canada Pension Plan, and Employer Health Tax; and
 - (c) all other applicable taxes.

Promptly upon receipt of a Payroll Invoice, the Contractor will review the Payroll Invoice against the Contractor’s records and advise BCIB’s Representative of any necessary changes. If any changes to a Payroll Invoice are necessary, BCIB will endeavour to revise and reissue the Payroll Invoice in sufficient time to allow the Contractor to comply with Section 7.3. If there is not sufficient time, BCIB will capture the necessary changes on the next issued Payroll Invoice.

- 7.3 The Contractor will pay to the account specified in the Payroll Invoice the Payroll Amount no later than five Business Days after receipt of each initial Payroll Invoice.
- 7.4 If BCIB delivers Employee payroll cheques or payslips, or both, to the Contractor’s Representative, the Contractor will promptly distribute such documents to the applicable Employees.
- 7.5 In the event that an Employee or other person or authority on behalf of such Employee was overpaid by BCIB, BCIB and the Contractor will cooperate to obtain repayment of such overpaid amount from such Employee or other person or authority who received such overpayment.
- 7.6 The Contractor will remit to WorkSafeBC the WorkSafeBC assessments calculated by the Contractor on each payroll, at the rate or rates which are applicable to the Contractor according to the classification and rates determined by WorkSafeBC. The rate or rates will be applied to the applicable gross amounts earned in accordance with the *Workers Compensation Act* (British Columbia).

8.0 DISCIPLINE, DISMISSAL, REINSTATEMENT AND TERMINATION OF EMPLOYMENT

- 8.1 The Contractor acknowledges the provisions of Article 10 of the Community Benefits Agreement and agrees to give effect to, and to observe, comply with and perform the terms and conditions set out in that Article.
- 8.2 Notwithstanding anything to the contrary contained in this Agreement, the Contractor will be permitted to issue warnings to the Employees provided to the Contractor by BCIB. As soon as practicable after issuing a warning, the Contractor's Representative will notify BCIB's Representative in writing providing details of the warning.
- 8.3 Without limiting the Contractor's abilities as described in Section 5.1 and Section 8.2, if and whenever:
- (a) BCIB has knowledge of any conduct of an Employee who is under the direction of the Contractor which would justify discipline, dismissal or the taking of other corrective or rehabilitative action in respect of such Employee, whether it be for incompetence, insubordination, unreliability or otherwise; or
 - (b) the Contractor's Representative recommends to BCIB that an Employee be disciplined or dismissed or that other corrective or rehabilitative action be taken in respect of an Employee, whether it be for incompetence, insubordination, unreliability or otherwise,

BCIB will, in its sole and absolute discretion:

- (c) take no action where the circumstances do not support the application of discipline or the taking of other corrective or rehabilitative action; or
 - (d) promptly discipline or take such other corrective or rehabilitative action in respect of such Employee as the situation requires; or
 - (e)
 - (i) promptly remove such Employee from the direction of the Contractor; and
 - (ii) terminate such Employee's employment with BCIB in accordance with the provisions of the Community Benefits Agreement and applicable law.
- 8.4 In the event that any Employee whose employment has been terminated pursuant to Section 8.3 initiates a grievance under the Community Benefits Agreement, the Contractor and BCIB will make every effort to complete Stage I of the grievance procedure under the Community Benefits Agreement before the grieving Employee leaves the Site.
- 8.5 With respect to any Employee that has been removed, whether temporarily or permanently, from the direction of the Contractor pursuant to Section 8.3, if the Contractor's Representative requests in writing a replacement Employee, BCIB will, in accordance with the dispatch provisions of the Community Benefits Agreement,

including Articles 8.200, 8.600 and 9.100 of the Community Benefits Agreement, and within three Business Days of such request, provide a replacement Employee to the Contractor, such replacement Employee to be in the same Job Classification as and with comparable qualifications, certifications, if any, and experience to the Employee being replaced.

- 8.6 The Contractor will provide such assistance as BCIB may reasonably request with respect to any investigation into Employee conduct which may lead to BCIB taking action pursuant to Section 8.3 and with respect to any grievance procedure.
- 8.7 The Contractor will comply with the terms of any grievance award, and any order, judgment, direction or interpretation made under the procedures set forth in the Community Benefits Agreement, or by any arbitrator or court having jurisdiction over the Employees which in any way relates to the Employees provided to the Contractor by BCIB, including awards of the Jurisdictional Assignment Plan Umpire of Work Assignment as described in Article 6.103 of the Community Benefits Agreement, and including any reinstatement order, judgement or direction, to the extent that the Contractor's compliance is necessary in order to enable BCIB to comply with any such award, order, judgment, direction or interpretation.
- 8.8 The Contractor will provide to BCIB, at a location designated by BCIB, any information required by BCIB in a form and format required by BCIB to enable BCIB to complete end of employment documentation in respect of an Employee whose services have been terminated.

9.0 SUBCONTRACTING

- 9.1 The Contractor will notify BCIB's Representative in writing of the names of all of the Contractor's subcontractors (of any and all tiers) (each, a "**Subcontractor**") engaged to perform a portion of the Work at the Site, whether or not such Subcontractor requires Employees. Except in circumstances where two weeks prior notice is not commercially reasonable, the Contractor will provide such notice no less than two weeks prior to the Subcontractor commencing work at the Site.
- 9.2 The Contractor will not permit any Subcontractor to perform any work at the Site unless and until that Subcontractor:
- (a) confirms in writing to BCIB that the Subcontractor will not require any Employees to be provided by BCIB, and BCIB agrees with such determination;
 - (b) is granted a permit pursuant to Article 8.400 of the Community Benefits Agreement; or
 - (c) executes a BCIB-Subcontractor Agreement pursuant to Section 9.3.
- 9.3 The Contractor will cause each Subcontractor (other than a Subcontractor described in Section 9.2(a) or Section 9.2(b)) (each, an "**Applicable Subcontractor**") to enter into an agreement with BCIB (each, a "**BCIB-Subcontractor Agreement**") to obtain from

BCIB the Employees that the Applicable Subcontractor will require for the performance of its portion of the Work at the Site. Each BCIB-Subcontractor Agreement will be in the form attached to this Agreement at Schedule 4, subject only to variations in form required by BCIB, in its sole and absolute discretion, to suit the circumstances.

- 9.4 Without duplication of recovery under Section 12.0, if, under any BCIB-Subcontractor Agreement, an Applicable Subcontractor becomes indebted to BCIB and delinquent in its payment to BCIB, then, upon written notice to the Contractor, the Contractor will pay the amount of any such indebtedness to BCIB no later than five Business Days after receipt of such notice.

10.0 PERMITTEES

- 10.1 The Contractor may request that permits be granted to Subcontractors or employees (who would ordinarily be “Employees” for the purposes of the Community Benefits Agreement), or both, as described in Article 8.400 of the Community Benefits Agreement.

- 10.2 For any permit request, the Contractor will be responsible for completing a permit request form (in the form required by the Council), and will submit the completed permit request form along with the required fee made payable to the Council to BCIB’s Representative for review. Provided the permit request form and associated fee comply with the provisions of Article 8.400 of the Community Benefits Agreement, BCIB will promptly sign the permit request form and submit it and the fee to the Council. If BCIB refuses to sign the permit request form, then BCIB’s Representative will promptly return the form and fee to the Contractor’s Representative with reasons for BCIB’s refusal to sign the form.

- 10.3 BCIB will, to the extent necessary, arrange meetings between the Contractor and the Council to resolve any issues with respect to the granting of permits, however, the Contractor remains fully responsible for satisfying the conditions required for the granting of a permit.

- 10.4 The Contractor acknowledges the provisions of Articles 8.403 and 8.409 of the Community Benefits Agreement and agrees to give effect to, and observe, comply with and perform the terms and conditions set out in those Articles.

11.0 BCIB COSTS

- 11.1 In addition to paying the Payroll Amount, the Contractor will pay to BCIB the following costs and expenses reasonably incurred by BCIB (“**BCIB Costs**”) in respect of the Employees provided to the Contractor by BCIB, without duplication of items included in the Payroll Amount:

- (a) the following costs described in the Community Benefits Agreement, to the extent each is applicable to the Project:
- (i) Article 14.602 (pay in lieu of meal);

- (ii) Article 17.200 (for mileage or ferry costs);
 - (iii) Article 17.401 (weekend checkout);
 - (iv) Article 21.100 (transportation to Project on initial hire);
 - (v) Article 21.201 (transportation from Project when an Employee on the job for 30 days or more);
 - (vi) Article 21.700 (compassionate leave transportation); and
 - (vii) Article 22.100 (daily travel reimbursement);
- (b) the fees and disbursements charged to BCIB by those lawyers, accountants, consultants, witnesses or other professionals or experts retained by BCIB at the request of the Contractor;
 - (c) the amount of any damages, salary, severance pay, expenses, costs, penalties, fines or other monies which BCIB is ordered to pay by any arbitrator, court or other authority having jurisdiction, or which BCIB reasonably agrees to pay after consultation with the Contractor, in respect of any Employee;
 - (d) the costs incurred by, including third party fees and disbursements charged to, BCIB in investigating complaints made by an Employee against the Contractor or against an employee or other representative of the Contractor (who is not an Employee) under the Workplace Discrimination and Harassment Policy and Procedures, but only in circumstances where the investigation determines that the Contractor or such Contractor employee or representative has violated the Workplace Discrimination and Harassment Policy and Procedures;
 - (e) notwithstanding Section 12.01 of the Workplace Drug and Alcohol Policy and Procedures, the cost of all Substance Testing (as defined in the Workplace Drug and Alcohol Policy and Procedures) conducted under the Workplace Drug and Alcohol Policy and Procedures;
 - (f) the amount paid to or on behalf of any Employee by BCIB in respect of transportation to or from the Site at the time of hire, upon termination of employment, or in order to facilitate such Employee undergoing tests or examinations which may be required in connection with such Employee's employment and compensated by BCIB pursuant to the Community Benefits Agreement, or in connection with any special training provided for such Employee at the request of or with the approval of the Contractor;
 - (g) the amount of any medical doctor's charges or other charges paid by BCIB in connection with the provision of food handling certificates, underground certificates, audio certificates or any other certificate relating to the fitness or qualifications of any Employee;

- (h) advances on salary and any special payments in respect of labour relations matters made by BCIB to or on behalf of any Employee which are required to be made by the Community Benefits Agreement;
 - (i) the costs of any items or services required to be provided to or for any Employee by the provisions of the Community Benefits Agreement which are the responsibility of the Contractor to provide pursuant to the provisions of this Agreement, but which were not provided by the Contractor, including the costs of providing orientation, training, tools, safety equipment, clothing and transportation;
 - (j) in the event that BCIB requests an amount from the Owner under the provisions of Section 12.0, the sum of \$1,000.00 for each such request as compensation to BCIB for its costs of administering such request to the Owner; and
 - (k) the Contractor's *pro rata* share of any WorkSafeBC levies, assessments, reassessments, penalties or other amounts required to be paid by BCIB in respect of the Employees under the *Workers' Compensation Act* (British Columbia) and which are not payroll WorkSafeBC assessments as described in Section 7.6. Such levies, assessments, reassessments, penalties and other amounts will be shared amongst all entities having a contract with BCIB in respect of the Project and be calculated based on the total number of hours worked by the Employees provided to each such entity up to the date of such levy, assessment, reassessment, penalty or other amount.
- 11.2 BCIB will, from time to time but not more frequently than monthly, prepare and deliver an invoice (each, a "**Cost Invoice**") to the Contractor setting out the amount of BCIB Costs owing by the Contractor to BCIB for the relevant time period. The Contractor will pay to the account specified in the Cost Invoice the amount of such BCIB Costs plus all applicable taxes no later than ten Business Days after receipt of the Cost Invoice. The Contractor will pay the full amount set out in the Cost Invoice without prejudice to the Contractor's rights of dispute under Section 23.0.
- 11.3 The Contractor or its authorized agent may, at the Contractor's discretion and expense, at any time and from time to time during the time BCIB is required to keep records pursuant to applicable law, during normal business hours and with reasonable notice and without undue disturbance of BCIB's business operations, enter upon BCIB's premises and, subject to solicitor-client privilege, audit the records of BCIB which relate in any way to BCIB Costs. BCIB will make all such records available for examination and copying by the Contractor at BCIB's premises.
- 12.0 PAYMENT BY OWNER UPON A FAILURE TO PAY**
- 12.1 The Contractor acknowledges that if at any time the Contractor or any Applicable Subcontractor fails to pay any amount required to be paid to BCIB under this Agreement or under a BCIB-Subcontractor Agreement, as the case may be, BCIB may advise the Owner in writing and may request payment by the Owner of such amount.

12.2 In the event that the Owner pays BCIB the amount requested by BCIB under the provisions of Section 12.1, and provided that the Contractor compensates BCIB for its administration costs as described in Section 11.1(j) in accordance with Section 11.2, then the Contractor will not be in default of its obligation to pay such amount under this Agreement. For clarity, the payment by the Owner of an amount requested by BCIB will be deemed to satisfy the Contractor's obligation to pay that same amount to BCIB.

13.0 OCCUPATIONAL HEALTH AND SAFETY

13.1 The parties acknowledge that each has obligations under applicable law as an "employer" for the health and safety of the Employees provided to the Contractor by BCIB. For the purposes of clearly defining and establishing respective responsibilities without duplication of any overlapping responsibilities, and for the purposes of achieving a consistent, proactive and preventative health and safety culture, and implementing effective health and safety programs, the following will apply with respect to occupational health and safety:

- (a) The Contractor will comply with all applicable law relating to occupational health and safety, including:
 - (i) the *Workers Compensation Act* (British Columbia); and
 - (ii) the *Mines Act* (British Columbia).
- (b) The Contractor will be responsible for and will fulfill all of its obligations as an "employer" (as that term is used in Part 3 of the *Workers Compensation Act* (British Columbia)) pursuant to Part 3 of the *Workers Compensation Act* (British Columbia), including as such obligations relate to the Employees provided to the Contractor by BCIB.
- (c) The Contractor will, as an "employer" (as that term is used in Part 3 of the *Workers Compensation Act* (British Columbia)), ensure that any Employee provided to the Contractor by BCIB that is acting in the capacity of "supervisor" (as that term is used in Part 3 of the *Workers Compensation Act* (British Columbia)) has the information, instruction, training and supervision necessary to effectively discharge their responsibilities.
- (d) The Contractor acknowledges receipt of the Health and Safety Policy and Program. The Contractor will, as part of and not in substitution for any health and safety obligations that the Contractor must meet under the Construction Contract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Health and Safety Policy and Program in order to achieve or exceed the objectives set out in the Health and Safety Policy and Program.
- (e) Each party acknowledges that the Health and Safety Policy and Program and the Contractor's health and safety program, policies and work procedures will in no way fetter the authority and responsibilities of the applicable designated "prime

contractor” under the *Workers Compensation Act* (British Columbia), and each of the parties will recognize the authority of such “prime contractor” and will comply with such “prime contractor’s” health and safety program, policies, systems, processes and procedures.

- (f) The parties will, within ten Business Days after the Effective Date, establish a system for ongoing communication and liaison for the purpose of ensuring the timely exchange of information that the parties agree is required for the effective coordination and implementation of the Health and Safety Policy and Program and the Contractor’s health and safety program, policies and work procedures, and the ongoing health and safety of all Employees provided to the Contractor by BCIB.
- (g) The Contractor will, in respect of the Employees provided to the Contractor by BCIB, fulfill all health and safety-related obligations required by the Community Benefits Agreement, and the Contractor will, for certainty:
 - (i) provide to all such Employees such safety equipment and clothing as required by the Community Benefits Agreement, the Health and Safety Policy and Program and applicable law, including the *Workers Compensation Act* (British Columbia) and the *Mines Act* (British Columbia); and
 - (ii) bear transportation costs not covered by WorkSafeBC for sick or injured Employees from the Site to the Point of Hire (as defined in the Community Benefits Agreement) as well as the transportation costs of such Employee’s tools to the Point of Hire.

Where the Contractor fails to meet the requirements of this Section 13.1(g), the same may be provided by BCIB and the Contractor will reimburse BCIB in accordance with Section 11.1(i).

- (h) Where the Contractor fails to meet the requirements of Section 5.2(i) within a reasonable time after receipt of written notice from BCIB’s Representative to provide such orientation, the same may be provided by BCIB and the Contractor will reimburse BCIB in accordance with Section 11.1(i).
- (i) The Contractor will, provided reasonable written notice has been provided to the Contractor’s Representative and to the applicable designated “prime contractor” under the *Workers Compensation Act* (British Columbia), provide BCIB representatives full access to all parts of the Site and the activities of the Contractor on the Site. All BCIB representatives will be required to comply with the health and safety protocols for attendance on the Site as required by the applicable designated “prime contractor” under the *Workers Compensation Act* (British Columbia).

- (j) The Contractor will fully cooperate with BCIB in any activity performed by BCIB to ensure the Contractor's fulfilment of the Contractor's health and safety obligations under this Agreement, including inspections, investigations, and attending and participating in initiatives such as Joint Health and Safety Committee meetings and tool box talks.
- (k) Prior to commencing performance of the Work at the Site, and at any time on BCIB's Representative's request, the Contractor will deliver to BCIB's Representative a statement from WorkSafeBC that the Contractor is registered and in good standing.
- (l) The Contractor will provide to BCIB's Representative:
 - (i) notice of any worker compensation claims that are made against the Contractor by the Employees provided to the Contractor by BCIB; and
 - (ii) copies of all correspondence and forms, including claim forms, papers and reports, received by or sent to governmental authorities concerning any such claims and any other health and safety matters on the Site.
- (m) The Contractor acknowledges and agrees that any claims made by Employees provided to the Contractor by BCIB under and pursuant to the *Workers Compensation Act* (British Columbia), although such claims will be reported to WorkSafeBC under BCIB's account with WorkSafeBC, will, by reason of a mechanism agreed to with WorkSafeBC and provided to the Contractor, be considered and reflected in and may therefore adversely affect, the experience rating (for purposes of assessments made under the *Workers Compensation Act* (British Columbia)) of the Contractor and not of BCIB, and BCIB will not be liable to the Contractor, and the Contractor will have no claim against BCIB, for any loss, cost, damage, assessments, reassessments, penalties or expense suffered or incurred by the Contractor by reason of any claim brought under the *Workers Compensation Act* (British Columbia) by any such Employee, including for any increase in the Contractor's experience rating under the *Workers Compensation Act* (British Columbia) arising as a result of any such claim.
- (n) BCIB hereby gives and grants to the Contractor authority to act on behalf of BCIB in all matters related to WorkSafeBC claims management and in all adjudications of WorkSafeBC claims, as such relate to the Employees provided to the Contractor by BCIB, and the Contractor undertakes to provide all such claims management and adjudications of claims. For certainty, in all such matters involving Employees provided to the Contractor by BCIB, the Contractor will keep BCIB informed of the status and progress of such matters, and will consult and collaborate with BCIB, and take into account BCIB's input, prior to resolving any such matters with WorkSafeBC.

14.0 GENERAL TRAINING AND APPRENTICESHIPS

- 14.1 The Contractor will provide, at its sole cost and expense, any and all on-the-job skills development and specialized task-specific training beyond that provided under a general trade curriculum.
- 14.2 The Contractor acknowledges receipt of the Apprenticeship and Training Targets. The Contractor will, as part of and not in substitution for any apprenticeship and training obligations that the Contractor must meet under the Construction Contract, implement the Apprenticeship and Training Targets in order to achieve or exceed the objectives set out in the Apprenticeship and Training Targets.

15.0 WORKPLACE DISCRIMINATION AND HARASSMENT POLICY AND PROCEDURES

- 15.1 The Contractor acknowledges receipt of the Workplace Discrimination and Harassment Policy and Procedures. The Contractor will, as part of and not in substitution for any workplace discrimination and harassment obligations that the Contractor must meet under the Construction Contract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Workplace Discrimination and Harassment Policy and Procedures in order to achieve or exceed the objectives set out in the Workplace Discrimination and Harassment Policy and Procedures.
- 15.2 Any complaint made by or against an Employee provided to the Contractor by BCIB under the Workplace Discrimination and Harassment Policy and Procedures will be processed and investigated pursuant to the Workplace Discrimination and Harassment Policy and Procedures, and the outcome will be binding on the Contractor.

16.0 WORKPLACE DRUG AND ALCOHOL POLICY AND PROCEDURES

- 16.1 The Contractor acknowledges receipt of the Workplace Drug and Alcohol Policy and Procedures. The Contractor will, as part of and not in substitution for any workplace drug and alcohol obligations that the Contractor must meet under the Construction Contract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Workplace Drug and Alcohol Policy and Procedures in order to achieve or exceed the objectives set out in the Workplace Drug and Alcohol Policy and Procedures.

17.0 INDEMNIFICATION

- 17.1 The Contractor will indemnify and save harmless BCIB, the Owner, their respective officers, directors, servants (including BCIB's Representative), agents and shareholders (collectively, the "**Indemnified Parties**"), from and against any and all losses, liabilities, damages, fines, penalties, costs, expenses and claims of any and every kind whatsoever which at any time or from time to time may be paid, incurred or asserted by or against any of them for, with respect to, or as a result of:

- (a) any act or omission of the Contractor, the Contractor's Representative, or any other person or entity not subject to or otherwise excluded from coverage of the Community Benefits Agreement but who is engaged by the Contractor to perform a portion of the Work;
- (b) any act or omission of an Employee which occurs while such Employee is under the direction of the Contractor whether or not such losses, liabilities, damages, fines, penalties, costs, expenses or claims arise by reason of the employment relationship existing between BCIB and such Employee;
- (c) any failure by the Contractor to perform its obligations under this Agreement, including any failure to give effect to, observe, comply with or perform the terms and conditions of the Community Benefits Agreement, or the functions, obligations or responsibilities of the Community Benefits Agreement, that have been expressly delegated or allocated to the Contractor by this Agreement; and
- (d) any failure by the Contractor to perform its obligations under applicable law.

For certainty, the obligations of the Contractor set forth in this Section 17.1 shall not apply to the extent that the losses, liabilities, damages, fines, penalties, costs, expenses and claims for which indemnity is being sought were caused by the negligence or willful misconduct of any of the Indemnified Parties.

- 17.2 The obligations of the Contractor set forth in Section 17.1 will survive termination of this Agreement and will continue in full force and effect.

18.0 CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

- 18.1 Subject to Section 18.3, each party will keep confidential all matters respecting the Employees provided to the Contractor by BCIB and all commercial, financial and legal issues relating to or arising out of this Agreement and will not disclose such information, except as follows:

- (a) with the prior written consent of BCIB's Representative or the Contractor's Representative, as the case may be, which consent may be arbitrarily withheld;
- (b) in strict confidence to the party's professional advisors; or
- (c) as otherwise required by applicable law.

- 18.2 The obligations of confidentiality described in Section 18.1 will not apply to:

- (a) information that is, or subsequently becomes, publicly available other than through a breach of this Agreement or through a breach of a confidentiality agreement which another entity has entered into concerning such confidential information;

- (b) information which the disclosing party already possessed before commencing to participate in the Project;
- (c) information which is rightfully received from a third party without breach of any obligation of confidence by such third party; or
- (d) information which is independently developed without the use of such confidential information.

18.3 Notwithstanding anything to the contrary contained in this Agreement, the Contractor acknowledges and agrees that BCIB may disclose any and all information created or obtained as a result of this Agreement or in respect of the Contractor performing its obligations under this Agreement, or both, including the existence and terms of this Agreement and any BCIB-Subcontractor Agreement, the nature and number of permits requested and issued as described in Section 10.0, the Contractor's fulfillment of its obligations pursuant to Sections 13.0, 14.0, 15.0 and 16.0, the Contractor's fulfillment and compliance with the functions, obligations and responsibilities set out in Schedule 2 and any other Records, to any provincial ministry, other Governmental Authority and educational institutions which requires or requests the information in relation to the Project or to permit BCIB to comply with applicable law.

19.0 FREEDOM OF INFORMATION AND PRIVACY PROTECTION

19.1 The Contractor acknowledges that:

- (a) it is aware that FOIPPA applies to this Agreement and to all documents and records relating to this Agreement;
- (b) BCIB is required to fully comply with FOIPPA; and
- (c) no action taken or required to be taken by BCIB for the purpose of complying with FOIPPA shall be considered a breach of any obligation under this Agreement.

19.2 To the extent the Contractor has access to, whether direct, indirect or incidental, or the opportunity to access, any Personal Information, the Contractor will inform all of its personnel and Subcontractors having access to any Personal Information in the course of performing the Work of the confidential nature of the Personal Information and will ensure that its personnel and Subcontractors maintain the confidentiality of the Personal Information in accordance with the terms of Schedule 3. BCIB and the Contractor will have the respective rights and obligations applicable to each of them as provided in Schedule 3, and Section 18.0 will not apply in respect of such Personal Information.

20.0 CONTRACTOR'S RECORDS

20.1 The Contractor will record and maintain within British Columbia during the term of this Agreement, and for so as long as required by applicable law, full, true, proper and

accurate records relating to the Employees provided to the Contractor by BCIB (collectively, the “**Records**”), including:

- (a) records of the time worked by Employees;
- (b) records relating to the Contractor’s fulfillment of its obligations pursuant to Sections 13.0, 14.0, 15.0 and 16.0; and
- (c) records relating to the Contractor’s fulfillment and compliance with the functions, obligations and responsibilities set out in Schedule 2,

utilizing such recording system and in such form as BCIB may from time to time require. Promptly upon the reasonable written request of BCIB’s Representative, the Contractor will deliver such Records to BCIB at BCIB’s expense.

- 20.2 The Contractor will advise BCIB’s Representative of the location of the Records upon the written request of BCIB.
- 20.3 Prior to disposing of any Records, the Contractor will notify BCIB in writing as to what the Contractor intends to do with such Records. BCIB may, within 40 days of receipt of such notice, require the Contractor to deliver to BCIB, at BCIB’s sole cost and expense, all such Records.
- 20.4 BCIB or its authorized agent may, at BCIB’s discretion and expense, at any time and from time to time during the time the Contractor is required to keep the Records under this Agreement, during normal business hours and with reasonable notice and without undue disturbance of the Contractor’s business operations, enter upon the Contractor’s premises and audit the Records and any other records of the Contractor which relate in any way to the Employees provided to the Contractor by BCIB. The Contractor will make all such records available for examination and copying by BCIB at the Contractor’s premises.

21.0 TERMINATION

- 21.1 This Agreement will continue in effect for so long as the Contractor requires Employees to perform the Work at the Site.
- 21.2 The obligations of the Contractor to pay any amounts which are payable to BCIB under this Agreement will survive termination of this Agreement and will continue in full force and effect.

22.0 DISCLAIMERS

- 22.1 BCIB does not warrant nor guarantee to the Contractor that BCIB will provide to the Contractor any particular quality of Employee or that BCIB will provide all or any of the Employees for which the Contractor may submit Employee Requests.

- 22.2 BCIB will not be responsible or liable (whether in contract, tort (including negligence), for breach of statutory duty, pursuant to equitable principles or under any other theory of law) to the Contractor, and the Contractor will have no claim against BCIB, for any loss, cost, damage or expense, including for economic loss, loss of anticipated revenue, overhead or profit, loss of production, business or contracts, loss by reason of shutdowns, slowdowns, non-operation or increased costs of construction, manufacturing or operation, or loss of business reputation or opportunities, and whether or not such losses, costs, damages or expenses were foreseeable even if BCIB was advised of the possibility of them, suffered or incurred by the Contractor by reason of or in respect of any act, omission or statement by BCIB or any of BCIB's officers, directors, servants (including BCIB's Representative), agents and shareholders, or by reason of or in respect of the Contractor being delayed in performing the Work or having to re-perform the Work, whether such delay or re-performance is caused by work stoppage, labour shortages, lack of appropriately qualified or skilled labour or otherwise. The Contractor acknowledges that its sole remedies, if any, in respect of any such foregoing matters lie against the Owner under the Construction Contract.
- 22.3 Except as specifically provided under the Construction Contract (and then solely with respect to the rights and obligations as between the Owner and the Contractor), nothing done as a result of this Agreement or omitted to be done will be cause for a justifiable delay by the Contractor under the Construction Contract or a justifiable increase in the Contractor's price under the Construction Contract, and the Contractor will not have any right to or claim for an extension of time under the Construction Contract nor any right to or claim for any payment or additional payment from BCIB or the Owner as a result of such matters.
- 22.4 BCIB will not be responsible for the operation, direction or supervision of Employees provided to the Contractor by BCIB nor for the performance of the Work by such Employees.
- 22.5 BCIB will not be responsible for paying any of the Contractor's costs of providing Employees with room or board or commissary facilities or commissary supplies whether or not such costs are recovered or are recoverable by the Contractor from Employees.
- 22.6 The Contractor will be fully responsible for all costs and expenses incurred by it in performing its obligations under this Agreement and in providing assistance or input to and in cooperating, consulting or collaborating with BCIB as contemplated by this Agreement and in participating in any formal process set out in the Community Benefits Agreement, and including for all costs and expenses incurred by the Contractor with respect to grievances initiated by the Contractor. The Contractor will not be entitled to, nor will BCIB be liable to the Contractor for, any compensation or reimbursement of such costs and expenses in respect of the foregoing, such compensation and reimbursement will be deemed to be fully addressed pursuant to the Construction Contract.

23.0 DISPUTE RESOLUTION

- 23.1 The parties agree that, both during and after the term of this Agreement, each of them will make *bona fide* efforts to resolve any disputes arising between them by amicable negotiations.
- 23.2 Either party may require the dispute be mediated by a skilled commercial mediator chosen jointly by the parties. If a mediator is appointed pursuant to this Section 23.2, the mediated negotiations will be terminated ten Business Days after the appointment unless the parties agree otherwise.
- 23.3 Any unresolved dispute arising out of or in connection with this Agreement or in respect of any defined legal relationship associated with it or derived from it, will be referred to and finally resolved by arbitration under the rules of the British Columbia International Commercial Arbitration Centre. Any arbitration will be conducted in Vancouver, British Columbia and heard by a single arbitrator chosen jointly by the parties, or in the absence of mutual agreement appointed by a court of competent jurisdiction.
- 23.4 If the parties agree, any unresolved disputes referred to arbitration under this Agreement may be:
- (a) held in abeyance until completion of the Work; and
 - (b) consolidated into a single arbitration.
- 23.5 Notwithstanding any dispute, the parties will continue to fulfill their obligations pursuant to this Agreement, without prejudice to either party's rights relating to the dispute.

24.0 NOTICES

- 24.1 Unless otherwise expressly required to be given to BCIB's Representative or the Contractor's Representative pursuant to this Agreement, any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given when delivered by hand or by email to the address or email address of the applicable party set out below:

- (a) if to BCIB:

[insert address]

Attn: [insert appropriate addressee, i.e. President]

Email: [insert appropriate email address];

(b) if to the Contractor:

[insert address]

Attn: [insert appropriate addressee, i.e. President]

Email: [insert appropriate email address]; or

(c) to such other address or email address as either party may, from time to time, designate in the manner set out above.

24.2 Any such notice or communication will be considered to have been received:

(a) if delivered by hand or by a courier service during business hours on a Business Day, when delivered, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and

(b) if sent by email during business hours on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day, provided that:

(i) the receiving party has, by email or by hand delivery, acknowledged to the notifying party in writing that it has received such notice; or

(ii) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

25.0 ASSIGNMENT RESTRICTED

25.1 This Agreement and the rights, duties and obligations of the Contractor under this Agreement will not be assigned, transferred, encumbered or otherwise alienated in whole or in part by the Contractor without the prior written consent of BCIB, which consent may be arbitrarily withheld, and any attempt by the Contractor to assign, transfer, encumber or otherwise alienate its rights, duties or obligations under this Agreement without such consent will be of no effect. Notwithstanding the above, BCIB will provide its consent to any assignment, transfer, encumbrance or other alienation of this Agreement to the extent necessary to give effect to any permitted assignment, transfer, encumbrance or other alienation of the Construction Contract.

26.0 MISCELLANEOUS

26.1 Schedules. The following Schedules are incorporated into this Agreement by reference and are deemed to be fully included as part of this Agreement and to be an integral part of this Agreement:

(a) Schedule 1 – Definitions and Interpretation;

(b) Schedule 2 – Functions, Obligations and Responsibilities;

- (c) Schedule 3 – Privacy Protection; and
 - (d) Schedule 4 – Form of BCIB-Subcontractor Agreement.
- 26.2 No Agency. The Contractor acknowledges and agrees that BCIB is entering into this Agreement for itself and on its own behalf as principal and that BCIB is not an agent of the Owner or the Government of British Columbia for purposes of this Agreement or for purposes of the Construction Contract or otherwise.
- 26.3 Third Party Beneficiary. The provisions of Section 22.3 are intended for the benefit of the Owner and will be enforceable by the Owner and are in addition to, and not in substitution for, any other rights that the Owner may have by contract or otherwise. For clarity, BCIB will also be able to enforce the provisions of Section 22.3.
- 26.4 Independent Contractor. The Contractor is an independent contractor in the performance of the Work and nothing in this Agreement will constitute the Contractor as an agent, partner, joint venture or employee of BCIB for any purpose.
- 26.5 Currency. All payments to be made pursuant to this Agreement will be made in lawful money of Canada.
- 26.6 Public Announcements. The Contractor will not make any public releases, announcements, other disclosure or issue advertising pertaining to this Agreement or the Community Benefits Agreement without the prior written approval of BCIB, approval of which may be arbitrarily withheld. The Contractor will refer any media enquiries to BCIB's Representative, but will not otherwise respond to media enquiries.
- 26.7 Further Assurances. Each of the parties hereby covenants and agrees to execute any further and other documents and instruments and to do any further and other things that may be reasonably necessary to implement and carry out the intent of this Agreement.
- 26.8 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia which will be deemed to be the proper law of this Agreement.
- 26.9 Survival. All rights, obligations and remedies of the parties which accrued prior to the termination of this Agreement, or which are by their nature continuing, or which by their express terms survive, and all other provisions necessary for the interpretation or enforcement of such rights, obligations and remedies, will survive termination of this Agreement.
- 26.10 Modification and Waiver. No amendment or waiver of this Agreement or any provision of this Agreement will be binding unless executed in writing by both the parties. No waiver of any provision of this Agreement will be deemed or will constitute a waiver of any other provision nor will any such waiver constitute a continuing waiver unless otherwise expressly provided in writing signed by each of the parties.

- 26.11 Enurement. This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, personal representatives, successors and permitted assigns.
- 26.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, expressing superseding all prior communications, understandings and agreements (both oral and written) between the parties with respect to all matters contained in this Agreement. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory, between the parties other than as expressly set forth in this Agreement.
- 26.13 Counterparts. This Agreement may be executed by counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery by email in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the Effective Date.

BC INFRASTRUCTURE BENEFITS INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

[INSERT LEGAL NAME OF CONTRACTOR]

Per: _____
Name:
Title:

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

1. Definitions. In this Agreement, except as otherwise expressly provided or unless the context otherwise requires:
- (a) “**Affiliated Unions**” has the meaning set out in the Community Benefits Agreement;
 - (b) “**Agreement**” means this BCIB-Contractor Agreement as it may be amended, restated or supplemented from time to time;
 - (c) “**Applicable Subcontractor**” has the meaning set out in Section 9.3;
 - (d) “**Apprenticeship and Training Targets**” means the apprenticeship and training targets established by BCIB dated [insert date of plan];
 - (e) “**BCIB**” has the meaning set out on the first page of this Agreement;
 - (f) “**BCIB Costs**” has the meaning set out in Section 11.1;
 - (g) “**BCIB-Subcontractor Agreement**” has the meaning set out in Section 9.3;
 - (h) “**BCIB’s Representative**” has the meaning set out in Section 2.1;
 - (i) “**Business Day**” means a day other than a Saturday, Sunday or Recognized Holiday (as described in Article 16.100 of the Community Benefits Agreement) on the days observed in British Columbia;
 - (j) “**Community Benefits Agreement**” has the meaning set out in Recital A;
 - (k) “**Contractor**” has the meaning set out on the first page of this Agreement;
 - (l) “**Contractor’s Representative**” has the meaning set out in Section 2.2;
 - (m) “**Construction Contract**” means the agreement between the Owner and the Contractor dated on or about the date of this Agreement pursuant to which the Contractor will undertake the Work;
 - (n) “**Cost Invoice**” has the meaning set out in Section 11.2;
 - (o) “**Council**” has the meaning set out in Recital A;
 - (p) “**Council’s Representative**” means the person designated from time to time by the Council who will represent the Council in the administration and application of the Community Benefits Agreement;
 - (q) “**Effective Date**” means the effective date of this Agreement as set out on the first page of this Agreement;

- (r) “**Employees**” has the meaning set out in the Community Benefits Agreement, but for clarity, does not include employees of Subcontractors described in Section 9.2(a) or Section 9.2(b) or employees granted a permit pursuant to Article 8.400 of the Community Benefits Agreement;
- (s) “**Employee Request**” has the meaning set out in Section 4.2(c);
- (t) “**FOIPPA**” means the *Freedom of Information and Protection of Privacy Act* (British Columbia);
- (u) “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local authority, quasi-governmental authority, court, government, or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of the Construction Contract, this Agreement or the Project;
- (v) “**Health and Safety Policy and Program**” means the health and safety policy and program established by BCIB dated **[insert date of policy and program]**;
- (w) “**Indemnified Parties**” has the meaning set out in Section 17.1;
- (x) “**Job Classifications**” means those job classifications set out in the applicable “Trade Sections” of the Community Benefits Agreement;
- (y) “**Owner**” means, collectively, Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure, and BC Transportation Financing Authority;
- (z) “**Payroll Amount**” has the meaning set out in Section 7.2;
- (aa) “**Payroll Invoice**” has the meaning set out in Section 7.2;
- (bb) “**Personal Information**” means recorded information about an identifiable individual, other than contact information (as defined in FOIPPA), collected, created or otherwise acquired by the Contractor as a result of this Agreement or any previous agreement between BCIB and the Contractor dealing with the same subject matter as this Agreement;
- (cc) “**Project**” means the Broadway Subway Project;
- (dd) “**Records**” has the meaning set out in Section 20.1;
- (ee) “**Site**” means “Project Site” as defined in the Construction Contract, and will be deemed to include the sites of all facilities purpose built for the Project;
- (ff) “**Subcontractor**” has the meaning set out in Section 9.1;

- (gg) “**Work**” means “Project Work” as defined in the Construction Contract;
- (hh) “**Workplace Discrimination and Harassment Policy and Procedures**” means the workplace discrimination and harassment policy and procedures established by BCIB dated [insert date of policy and procedures]; and
- (ii) “**Workplace Drug and Alcohol Policy and Procedures**” means the workplace drug and alcohol policy and procedures established by BCIB dated [insert date of policy and procedures].

Any words or phrases defined elsewhere in this Agreement will have the particular meaning assigned to such words or phrases.

2. Interpretation. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the provision of headings and the division of this Agreement into Sections, paragraphs and other subdivisions are for convenience only and will not define or limit the scope, extent or intent of this Agreement or affect the interpretation of this Agreement or any provision of this Agreement;
- (b) any reference to a statute will include such statute and its corresponding regulations, together with all amendments made to such statute and regulations and in force from time to time, and any statute or regulation that may be passed which has the effect of amending, supplementing or superseding the statute referred to or such statute’s corresponding regulations;
- (c) any reference to the *Mines Act* (British Columbia) will include the Health, Safety and Reclamation Code for Mines in British Columbia, together with all amendments made to such code and in force from time to time, and any instrument established pursuant to the *Mines Act* (British Columbia) which has the effect of amending, supplementing or superseding the Health, Safety and Reclamation Code for Mines in British Columbia;
- (d) any reference to an entity will include and will be deemed to be a reference to any entity that is a successor to such entity;
- (e) words in the singular include the plural, and vice-versa, wherever the context requires;
- (f) references in this Agreement to a Recital, a Section, a paragraph, a Schedule or other subdivision are to the corresponding Recital, Section, paragraph, Schedule or other subdivision of this Agreement, unless otherwise indicated;
- (g) where a reference is made to a “day”, “week”, “month” or “year”, the reference is to the calendar period;
- (h) the word “including” is deemed to be followed by “without limitation”;

- (i) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (j) in the calculation of time, the first day will be excluded and the last day included;
and
- (k) the parties confirm that they each have obtained independent legal advice, or elected not to obtain such advice, and accordingly agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of this Agreement.

**SCHEDULE 2
FUNCTIONS, OBLIGATIONS AND RESPONSIBILITIES**

The following are the functions, obligations and responsibilities referred to in Section 6.4 of this Agreement:

1. General:

The Contractor will provide to Employees:

- (a) all food and beverages; and
- (b) all room and board and living out allowances, as applicable,

as required by the Community Benefits Agreement.

2. Master Section:

CBA Article	Function, Obligation or Responsibility
14.501	The Employer may establish a flex work week schedule which allows for a work week starting on a day other than Monday (for example: Tuesday to Saturday).
17.402 (if applicable to the Project)	Where the accommodation is a hotel/motel the Employee may be required to vacate the room and remove all belongings out of the room. If an Employee wishes to store belongings, a lockup shall be provided.
19.100	A suitable heated lockup must be provided by the Employer for workers using their own tools.
19.201	In case of fire or burglary the Employer shall protect the value of an Employee's work clothes up to a total of three hundred and fifty dollars (\$350.00), required tools up to the total value of the tools, (tool for tool, make for make).
23.100	On commercial and institutional projects, heated lunchroom and women's and men's change rooms shall be provided for Employees for drying clothes, and changing clothes. The lunch and change rooms shall have tables, and benches, and provision for drying clothes. Such lunch and change rooms shall have windows and venting with adequate lighting and provision for continuous heat twenty-four (24) hours a day. The lunch and change rooms will be cleaned on each working shift and kept cleared of working materials and other construction paraphernalia. Lunchrooms shall provide enough room for all the workers to be seated at a table for lunch.
23.301	The Contractor/Employer shall be responsible for the provision, maintenance and cleanliness of sanitary facilities on the Site and for keeping all areas free of hazards and debris.

CBA Article	Function, Obligation or Responsibility
23.302	Chemical or flush toilets shall be provided for both women and men from the commencement of work on all jobs. Toilet paper shall be provided and facilities shall be cleaned on each working shift.
23.304	Where clean-up facilities are not provided and in mechanical and trade shops, hand cleanser and paper towels shall be provided at no cost to the Employee.
23.401	When working in a Fabrication Shop, proper ventilation shall be provided. In the event of a dispute, WorkSafeBC Regulations shall prevail.
23.402	When working in confined spaces with fibreglass or toxic fumes or smoke, proper ventilation and/or proper respiratory equipment shall be provided.
23.700	Telephone service shall be made available to all Employees at all times for incoming or outgoing emergency purposes and incoming emergency messages shall be relayed immediately.

3. Interior Road Building Addendum, if applicable to the Project:

CBA Article	Function, Obligation or Responsibility
14.201(e)	During inclement weather, where practical, the Employer shall provide a warm, dry area, such as an assembly room, equipment cab, or crew vehicle in which Employees may take their meal breaks.
14.202(d)	During inclement weather, where practical, the Employer shall provide a warm, dry area, such as an assembly room, equipment cab, or crew vehicle in which Employees may take their rest breaks.
General re Trade Sections – 1(b)	Where the Employer requires a specific Employee to upgrade or renew a certification or license, or perform a private procedure skills test on Site, unless the applicable Trade Sections indicates another party will pay, the Employer will pay the applicable costs and provide the time necessary.

4. Lower Mainland Road Building Addendum, if applicable to the Project:

CBA Article	Function, Obligation or Responsibility
14.201(e)	During inclement weather, where practical, the Employer shall provide a warm, dry area, such as an assembly room, equipment cab, or crew vehicle in which Employees may take their meal breaks.
14.202(d)	During inclement weather, where practical, the Employer shall provide a warm, dry area, such as an assembly room, equipment cab, or crew vehicle in which Employees may take their rest breaks.
General re Trade Sections –	Where the Employer requires a specific Employee to upgrade or renew a certification or license, or perform a private procedure skills test on Site, unless the applicable Trade Sections indicates another party will pay, the

CBA Article	Function, Obligation or Responsibility
1(b)	Employer will pay the applicable costs and provide the time necessary.

5. Appendices:

If applicable to the Project, all references to a BCIB function, obligation and responsibility in the Camp Standards Appendix will be read as a function, obligation and responsibility of the Contractor.

6. Trade Sections:

CBA Article	Function, Obligation or Responsibility	Additional Contractor Obligation
BM.203	When six (6) or more welders are employed, one (1) welder with the qualifications shall be "Welder foreperson" and will receive Foreperson rate. The Welder Foreperson shall work on the tools if required by the Employer.	
BM.204	A Boilermaker General Foreperson may be utilized by the Employer whenever the Employer has established this level of supervision of the work on a job or when this level is appropriate to the size and nature of the job as determined by the Employer.	
BM.414	<u>Handicapped Workers</u> The Employer agrees, subject to prior consultation with the Affiliated Union, to employ any member on work which suits their physical ability and which is acceptable to the member (this shall include but not be limited to tool crib). Those who have suffered injury or disability in the trade should be employed when their capabilities are considered suitable, provided workers have the approval of the Workers' Compensation Board.	The Contractor will support and cooperate with BCIB to encourage the use of Handicapped Workers.
BM.420	<u>Tools</u> When it is deemed necessary to maintain a special tool crib for the Boilermakers, such shall be under the jurisdiction of the Boilermakers' Union. It being understood the necessity of a tool crib and/or an attendant shall be determined by the Employer.	

CBA Article	Function, Obligation or Responsibility	Additional Contractor Obligation
CE.204	<p><u>General Foreperson</u></p> <p>Where more than nineteen (19) Cement Masons or four (4) Forepersons are employed, the Employer shall appoint a General Foreperson at sixteen percent (16%) over the basic Industrial Hourly Rate plus one-half hour at straight time per shift (at Overtime rates on Overtime shifts).</p> <p>General Forepersons shall not be required to work with the tools unless the General Foreperson considers it necessary.</p> <p>Appointment of any Foreperson(s) is subject to the Master Section and Addenda “predominant trade” and “composite crew provisions”, and any Employees under the Foreperson’s supervision shall take instructions from that Foreperson.</p>	
DR.205	All Forepersons and Leadhands shall be selected and assigned at the option of the Employer.	
EL.416	Where requested by the Employer to use explosive activated tools, time spent to obtain certificate shall be during working hours and considered as time worked. (High explosive activated tools shall not be used).	
FL.420	<p><u>Older Workers</u></p> <p>An Employee incapacitated by age or accident may be permitted to be employed at less than the regular scale of wages at a rate of pay mutually agreed upon by the Employee, the Employer, and the Affiliated Union. The conditions of employment shall be amended so as to enable such Employees to continue with their employment.</p>	The Contractor will cooperate with BCIB in determining the reduced scale of wages and conditions of employment.
OPR.412	<p>All Mechanics, Welders, Servicepersons, Drill Doctors, Steel Sharpeners, Vehicle Body Painters, and Mechanics and Welder Apprentices who request coveralls shall have these supplied and cleaned by the Employer. There shall be one change a week available in the Employee's proper size.</p> <p>Employees are expected to take reasonable care of coveralls supplied. In the event that an Employee does not return the coveralls supplied by the Employer, the Employer shall charge the cost of same to the Employee and deduct this cost from any monies owing to the</p>	<p>If such items are not returned, the Contractor will advise BCIB and BCIB will deduct the applicable amount of the next Payroll Invoice.</p> <p>The Contractor will provide input</p>

CBA Article	Function, Obligation or Responsibility	Additional Contractor Obligation
	<p>Employee.</p> <p>When requested, coveralls shall be supplied on a temporary basis to Employees who assist on work as described above, or where the Employer and the Union mutually agree that coveralls are required.</p> <p>Employees entitled to receive coveralls as provided herein may obtain an additional change of coveralls in any one week providing the condition of the coveralls requires a change. The shop Foreperson shall use discretion in authorizing the additional change.</p>	<p>to BCIB to assist in the determination of whether coveralls are required.</p>
OPS.412	<p>Work Scope – Apprentice Crane Operators shall be allowed to operate specific equipment based upon management evaluation of their qualifications, work experience and the requirements of the specific work in question. Notwithstanding this provision, the Employer shall provide the Apprentice Crane Operators so working with appropriate supervision and suitable communication options.</p>	
TER.203	<p>When the Employer works six (6) or more Employees on any one (1) shift on any one job (number shall include owner operated and/or rented equipment) under the jurisdiction of Teamsters Local Union No. 213, a Non-Operating Foreperson should be appointed and shall receive a premium of ten percent (10%) per hour over the hourly rate of the highest Teamster classification supervised</p>	

**SCHEDULE 3
PRIVACY PROTECTION**

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Schedule 3, in addition to the definitions set out in Schedule 1:

“**access**” means disclosure by the provision of access.

1.2 Interpretation

- (a) Any reference to “the Contractor” in this Schedule 3 includes any “associate” as defined in FOIPPA and the Contractor must ensure that all such persons comply with this Schedule 3.
- (b) The obligations of the Contractor in this Schedule 3 will survive the termination of this Agreement.
- (c) If a provision of this Agreement (including any authorization or direction given by BCIB under this Schedule 3) conflicts with a requirement of FOIPPA or an applicable order of the Information and Privacy Commissioner under FOIPPA, the conflicting provision of this Agreement (or authorization or direction) will be inoperative to the extent of the conflict.
- (d) The Contractor will comply with this Schedule 3 notwithstanding any conflicting provisions of this Agreement or the law of any jurisdiction outside Canada.

2 PURPOSE

2.1 Purpose

The purpose of this Schedule 3 is to:

- (a) enable BCIB to comply with its statutory obligations under FOIPPA with respect to Personal Information that is within BCIB’s control and in the Contractor’s custody; and
- (b) assist the Contractor, as a service provider to BCIB, to comply with its statutory obligations under FOIPPA.

3 COLLECTION OF PERSONAL INFORMATION

3.1 Collection

Unless this Agreement otherwise specifies or BCIB otherwise authorizes or directs in writing:

- (a) the Contractor may only collect or create Personal Information that is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under this Agreement;
- (b) the Contractor must collect Personal Information directly from the individual the information is about or from another source other than that individual with the written consent of the individual, or the individual's lawful representative; and
- (c) the Contractor must advise an individual from whom the Contractor collects Personal Information:
 - (i) the purpose for collecting it;
 - (ii) the legal authority for collecting it; and
 - (iii) the title, business address and business telephone number of the person designated by BCIB to answer questions concerning the Contractor's collection of Personal Information.

3.2 Accuracy of Personal Information

The Contractor must make every reasonable effort to ensure the accuracy and completeness of any Personal Information to be used by the Contractor or BCIB to make a decision that directly affects an individual the information is about.

3.3 Requests for Access to Personal Information

If the Contractor receives a request, from a person other than BCIB, for access to Personal Information, the Contractor must promptly advise the person to make the request to BCIB unless this Agreement expressly requires the Contractor to provide such access, and, if BCIB has advised the Contractor of the name or title and contact information of an official of BCIB to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

3.4 Correction of Personal Information

- (a) Within five Business Days of receiving a written direction from BCIB to correct or annotate any Personal Information, the Contractor must correct or annotate the information in accordance with the direction.
- (b) When issuing a written direction under Section 3.4(a) of this Schedule 3 BCIB must advise the Contractor of the date the correction request to which the direction relates was

received by BCIB in order that the Contractor may comply with Section 3.4(c) of this Schedule 3.

- (c) Within five Business Days of correcting or annotating any Personal Information under Section 3.4(a) of this Schedule 3, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to BCIB, the Contractor disclosed the information being corrected or annotated.
- (d) If the Contractor receives a request for correction of Personal Information from a person other than BCIB, the individual whose Personal Information has been requested, or that individual's lawful representative, the Contractor must promptly advise the person to make the request to BCIB and, if BCIB has advised the Contractor of the name or title and contact information of an official of BCIB to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

3.5 Protection of Personal Information

The Contractor must protect Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in this Agreement.

3.6 Storage and Access to Personal Information

Unless BCIB otherwise authorizes or directs in writing, the Contractor must not store Personal Information outside Canada or permit access to Personal Information from outside Canada.

3.7 Retention of Personal Information

Unless this Agreement otherwise specifies, the Contractor must retain Personal Information until authorized or directed by BCIB in writing to dispose of it or deliver it as specified in the authorization or direction.

3.8 Use of Personal Information

Unless BCIB otherwise authorizes or directs in writing, the Contractor may only use Personal Information if that use is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under this Agreement, and for clarity in accordance with Section 3.6 of this Schedule 3.

3.9 Disclosure of Personal Information

The Contractor must not disclose Personal Information inside or outside Canada to any person other than BCIB unless the disclosure is to an entity that can legitimately compel disclosure under the laws of British Columbia or the disclosure is directed or authorized by BCIB or the disclosure is requested or authorized by the individual whose Personal Information is at issue or

that individual's lawful representative. BCIB will not unreasonably withhold its authorization under this Section 3.9.

3.10 Inspection of Personal Information

In addition to any other rights of inspection BCIB may have under this Agreement or under statute, BCIB may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect any Personal Information in the possession of the Contractor or any of the Contractor's information management policies or practices relevant to its management of Personal Information or its compliance with this Schedule 3 and the Contractor must permit, and provide reasonable assistance in respect to, any such inspection.

4 COMPLIANCE WITH FOIPPA AND AUTHORIZATIONS

4.1 Service Provider

- (a) The Contractor understands and acknowledges that it is a service provider of a public body as defined in FOIPPA.
- (b) The Contractor acknowledges that it is familiar with the requirements of FOIPPA governing Personal Information that are applicable to it as a service provider.
- (c) The Contractor must in relation to Personal Information comply with:
 - (i) the requirements of FOIPPA applicable to the Contractor as a service provider, including any applicable order of the Information and Privacy Commissioner under FOIPPA; and
 - (ii) any direction given by BCIB under this Schedule 3.

4.2 Notice of Non-Compliance

If for any reason the Contractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule 3 in any respect, the Contractor must promptly notify BCIB of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

**SCHEDULE 4
FORM OF BCIB-SUBCONTRACTOR AGREEMENT**

(see attached)

36216715.2

*****CONFIDENTIAL DRAFT*****

**BCIB-SUBCONTRACTOR AGREEMENT
BROADWAY SUBWAY PROJECT**

BC INFRASTRUCTURE BENEFITS INC.

AND

[SUBCONTRACTOR]

[INSERT DATE]

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BCIB-SUBCONTRACTOR AGREEMENT

THIS BCIB-SUBCONTRACTOR AGREEMENT is made effective as of the <*> day of <*>, 201<*>

BETWEEN:

BC INFRASTRUCTURE BENEFITS INC., a company incorporated under the laws of British Columbia having its head office at <*> (“**BCIB**”)

AND:

<*> (the “**Subcontractor**”)

WHEREAS:

- A. BCIB has entered into a Community Benefits Agreement dated the 17th day of July, 2018, as may be amended, supplemented or restated from time to time (the “**Community Benefits Agreement**”) with the Allied Infrastructure and Related Construction Council of British Columbia (the “**Council**”) which governs the terms and conditions of employment for Employees in respect of the Project;
- B. BCIB has entered into an agreement with the Owner made and dated for reference as of the <*> day of <*>, 201<*> whereby BCIB has, subject to the Community Benefits Agreement, the sole and exclusive right to provide Employees to contractors who will perform work or provide services at the Site in respect of the Project;
- C. The Owner and the Contractor have entered into the Construction Contract;
- D. BCIB and the Contractor have entered into the BCIB-Contractor Agreement, which, among other things, requires the Contractor to cause the Subcontractor to enter into this Agreement with BCIB;
- E. The Subcontractor requires Employees in order to discharge its obligations under the Subcontract; and
- F. The parties wish to enter into a formal contract for the provision of Employees to the Subcontractor by BCIB.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Hundred Dollars (\$100.00) now paid by each of the Subcontractor and BCIB to the other (the receipt of which sum by the Subcontractor and by BCIB is hereby irrevocably acknowledged) and of the mutual promises and agreements contained in this Agreement, the parties agree as follows:

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms have the meanings set out in Schedule 1.

2.0 REPRESENTATIVES

2.1 Within two Business Days after the Effective Date, and thereafter from time to time as BCIB deems necessary, BCIB will designate one person (“**BCIB’s Representative**”), and an alternate in the event BCIB’s Representative is absent, to be BCIB’s single point of contact for the Subcontractor with respect to this Agreement. BCIB will, upon designating such person, advise the Subcontractor in writing of the name, address, telephone number and email address of BCIB’s Representative.

2.2 Within two Business Days after the Effective Date, and thereafter from time to time as the Subcontractor deems necessary, the Subcontractor will designate one person (the “**Subcontractor’s Representative**”), and an alternate in the event the Subcontractor’s Representative is absent, to be the Subcontractor’s single point of contact for BCIB with respect to this Agreement. The Subcontractor will, upon designating such person, advise BCIB in writing of the name, address, telephone number and email address of the Subcontractor’s Representative. If, at any time, BCIB’s Representative, acting reasonably, objects to the Subcontractor’s Representative, then the Subcontractor will replace the Subcontractor’s Representative with a person acceptable to BCIB’s Representative.

2.3 As soon as practicable after the Effective Date, and thereafter from time to time as may be necessary, BCIB’s Representative will advise the Subcontractor’s Representative of the name, address, telephone number and email address of the Council’s Representative.

2.4 The Subcontractor acknowledges that BCIB will have a presence on the construction Site. The parties will, within ten Business Days after the Effective Date, establish a system for ongoing communication and liaison for the purpose of ensuring the timely exchange of information that the parties agree is required for the effective coordination and implementation of this Agreement.

3.0 OBLIGATION TO OBTAIN EMPLOYEES

3.1 The Subcontractor will obtain from BCIB all Employees required by the Subcontractor to fulfill its obligations under the Subcontract.

3.2 Notwithstanding the powers expressly delegated by this Agreement to the Subcontractor by BCIB, all Employees provided to the Subcontractor by BCIB will be employed by BCIB, and BCIB will retain, with respect to all such Employees, the exclusive rights as employer in all aspects of labour relations and in all aspects of the employment relationship. The Subcontractor will not in any way derogate or attempt to derogate from the rights and authority of BCIB as employer.

4.0 OBTAINING EMPLOYEES

- 4.1 The Subcontractor will participate in any pre-job conference(s) arranged by BCIB, and will present, after collaboration with BCIB and the Council, details of the Subcontract Work, including schedule, work type and anticipated numbers and Job Classifications of Employees.
- 4.2 The Subcontractor will provide the following forecasts and requests:
- (a) *Six Month Forecast.* The Subcontractor will, no later than five Business Days after the Effective Date, provide to BCIB's Representative:
 - (i) the Subcontractor's best estimate of the anticipated Employees that will be required by the Subcontractor and all of the Applicable Sub-subcontractors for the first six months of the Subcontract Work, giving estimates of the numbers and Job Classifications of Employees that will be required on a month-by-month basis; and
 - (ii) the Subcontractor's then current overall Subcontract Work schedule that includes manpower resource loading that the Subcontractor anticipates will be utilized by the Subcontractor and all of the then known Applicable Sub-subcontractors for the performance of the Subcontract Work.
 - (b) *Three Month Forecast.* The Subcontractor will, on the first Business Day of each month starting with the second month after the Effective Date, provide to BCIB's Representative:
 - (i) the Subcontractor's best estimate of the anticipated Employees that will be required by the Subcontractor and all of the Applicable Sub-subcontractors for the then current month and the next following two months of the Subcontract Work, giving details of the numbers and Job Classifications of Employees required on a month-by-month basis; and
 - (ii) the Subcontractor's then current overall Subcontract Work schedule that includes manpower resource loading that the Subcontractor anticipates will be utilized by the Subcontractor and all of the then known Applicable Sub-subcontractors for the performance of the Subcontract Work.
 - (c) *Employee Request.* The Subcontractor will, from time to time during the term of this Agreement, provide to BCIB's Representative a request for Employees (each, an "**Employee Request**") in the form and format required by BCIB, and setting out the following information:
 - (i) the number and Job Classifications of Employees required by the Subcontractor;
 - (ii) the 'name hires' requested by the Subcontractor;

- (iii) the names of prospective Employees the Subcontractor wishes to name request from the information provided pursuant to Section 4.5 or from other information that may be available to the Subcontractor;
 - (iv) the number and type of apprentices requested by the Subcontractor;
 - (v) the date upon which each such Employee will be required to commence working under the direction of the Subcontractor;
 - (vi) the Subcontractor's best estimate of the time period each such Employee will be required by the Subcontractor;
 - (vii) the details of any special experience or technical or other qualifications required in respect of any particular Employee;
 - (viii) the intended work assignments in compliance with Article 6 of the Community Benefits Agreement; and
 - (ix) such other information with respect to potential Employees as BCIB's Representative may request, or that the Subcontractor may consider beneficial, in order to enable BCIB to provide the Employees required by the Subcontractor.
- (d) The parties agree that the forecasts provided pursuant to Section 4.2(a) and Section 4.2(b) are non-binding and are estimates only, but that such forecasts will be used by BCIB to source an appropriate workforce for the Project.
- 4.3 BCIB will, in accordance with the dispatch provisions of the Community Benefits Agreement, including Articles 8.200, 8.600 and 9.100 of the Community Benefits Agreement, and subject to the minimum time period described in Section 4.4, use reasonable efforts to provide the Subcontractor with Employees to perform the Subcontract Work in the numbers and Job Classifications set out in the Employee Request submitted pursuant to Section 4.2(c) to the extent that BCIB is itself able to obtain Employees in such numbers and Job Classifications. Unless those individuals requested by the Subcontractor as 'name hires' have already been provided or committed by BCIB to another contractor or such individuals are unavailable due to circumstances beyond BCIB's control, in each case at the time of the Employee Request, BCIB will provide to the Subcontractor, in accordance with the dispatch provisions of the Community Benefits Agreement, those individuals that are requested by the Subcontractor as 'name hires'.
- 4.4 The Subcontractor acknowledges that BCIB requires a minimum of three Business Days prior written notice of the date upon which the Subcontractor requires an Employee or Employees to commence performance of the Subcontract Work in order to be able to provide the requested Employee(s).

- 4.5 BCIB will promptly provide to the Subcontractor's Representative information that BCIB:
- (a) has in its possession which relates to work task or activity accommodations that are to be made in respect of the Employees provided to the Subcontractor by BCIB; and
 - (b) receives from the Affiliated Unions with respect to prospective Employees that may be available to work on the Project for the purpose of the Subcontractor name requesting prospective Employees from the Affiliated Unions.
- 4.6 The Subcontractor will, if and when requested by BCIB's Representative from time to time:
- (a) if BCIB is unable to fulfill an Employee Request, provide information already in the possession of the Subcontractor with respect to individuals who may be available to become Employees, who are suitable for performing the Subcontract Work and who, if hired by BCIB as Employees, could allow BCIB to fulfill the Employee Request. Unless such identified individuals refuse to become Employees, or have already been provided or committed by BCIB to another contractor, or such individuals are unavailable due to circumstances beyond BCIB's control, in each of the latter two cases at the time the information is provided to BCIB, BCIB will provide such identified individuals to the Subcontractor; and
 - (b) provide one representative of the Subcontractor to assist in the interviewing of individuals who are proposed to be hired by BCIB for subsequent assignment to the Subcontractor.

5.0 EMPLOYEE RELATIONS

- 5.1 To the extent necessary to enable the Subcontractor to perform its obligations under this Agreement, BCIB does hereby delegate to the Subcontractor, consistent with the provisions of Article 7.400 of the Community Benefits Agreement, BCIB's right to operate, direct and supervise on a day-to-day basis the Employees provided to the Subcontractor by BCIB. For certainty, but without limiting the foregoing, the Subcontractor, pursuant to the delegation provided by this Section 5.1, has the authority:
- (a) to assign work tasks and activities to such Employees and to reassign such Employees to other work tasks and activities;
 - (b) to issue warnings to Employees as described in Section 8.2; and
 - (c) to require such an Employee to cease performing work or vacate the Site or to report to BCIB's Representative for further action by BCIB, or all of the foregoing.

- 5.2 The Subcontractor will, with respect to the Employees provided to the Subcontractor by BCIB:
- (a) be solely responsible for the operation, direction, supervision and performance of the Subcontract Work by the Employees pursuant to the delegation of such responsibility in accordance with Section 5.1;
 - (b) promptly advise BCIB's Representative in writing of any requested changes in the status of any Employee, including any changes which may be necessitated by changes in work assignment, completion of work, lack of work or absence of the Employee from the Subcontract Work for whatever reason;
 - (c) give full consideration to a request from BCIB to transfer an Employee from the Subcontractor to another entity which has a contract with BCIB, recognizing that, pursuant to Article 7.600 of the Community Benefits Agreement, any such transfer will require the agreement of the appropriate Affiliated Union, the contractors involved, the Employee and BCIB;
 - (d) promptly upon receipt of a written request from BCIB's Representative, provide BCIB's Representative with such information and documents relating to the Employees who are under the direction of the Subcontractor as BCIB may from time to time require;
 - (e) comply with any instruction which may be given by BCIB or BCIB's Representative with respect to the Job Classifications of any Employee to be used with respect to any type of Subcontract Work;
 - (f) not use or seek to use any full-time Employee for anything other than performing the Subcontract Work;
 - (g) not do anything which could cause and will not direct a lockout of Employees;
 - (h) recognize the Council's Representative and any Affiliated Union's representative and, provided reasonable written notice has been provided to the Subcontractor's Representative, provide such representatives access to all parts of the Site as may be necessary for the administration and application of the Community Benefits Agreement. All such representatives will be required to comply with the health and safety protocols for attendance on the Site as required by the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia);
 - (i) to the extent necessary to reflect Subcontract Work-specific and Site-specific matters, provide orientation to Employees that is required by the Community Benefits Agreement and applicable law on the following topics:
 - (i) general matters, including, at a minimum, Site orientation and a discussion of housekeeping, environmental stewardship and cultural awareness; and

- (ii) occupational health and safety matters, including health and safety training and health and safety-related skills training; and
- (j) to the extent necessary and applicable to the Subcontractor or the performance of the Subcontract Work, comply with and give effect to the results of negotiations and any rulings, interpretations, orders and decisions made in labour relations matters of which BCIB notifies the Subcontractor's Representative and that relate to the Employees.

5.3 BCIB will:

- (a) notify the Subcontractor in writing of any change under the Community Benefits Agreement, including changes to:
 - (i) initiation fees or dues, or of assessments by the Affiliated Unions;
 - (ii) steward appointments;
 - (iii) hourly wage rates and trade provisions; and
 - (iv) new or revised Job Classifications and associated wage rates and trade provisions;
- (b) acting in the best interests of the Project and to uphold the spirit and intent of the Community Benefits Agreement, enforce its rights under the Community Benefits Agreement, it being acknowledged that it is in the mutual best interest of BCIB and the Subcontractor to prevent and resolve strikes, lockouts, slowdowns or other interruptions in the orderly performance of the Work, including the Subcontractor Work;
- (c) seek input from the Subcontractor regarding and will act in good faith in all labour relations matters which are relevant to the Subcontractor, including in collective bargaining negotiations and in grievance, arbitration and jurisdictional proceedings, it being acknowledged that it is in the mutual best interest of BCIB and the Subcontractor to prevent strikes, lockouts, slowdowns or other interruptions in the orderly performance of the Work, including the Subcontract Work; and
- (d) keep the Subcontractor's Representative informed of the results of any negotiations and any rulings, interpretations, orders and decisions made in labour relations matters which are relevant to the Subcontractor so that the Subcontractor may, to the extent necessary and applicable to the Subcontractor or the performance of the Subcontract Work, comply with and give effect to any such results and rulings, interpretations, orders and decisions.

6.0 COMMUNITY BENEFITS AGREEMENT

- 6.1 A true copy of the Community Benefits Agreement has been made available to the Subcontractor. The Subcontractor represents and warrants it has full knowledge of and understands the provisions of the Community Benefits Agreement.
- 6.2 The Subcontractor acknowledges that for all purposes of this Agreement any reference to the Community Benefits Agreement will include all amendments to, supplements to or restatements of the Community Benefits Agreement.
- 6.3 Unless otherwise expressly modified by the terms of this Agreement, the Subcontractor, in performing its obligations under this Agreement and to fulfill its obligations under the Subcontract, will give effect to, and will observe, comply with and perform all terms and conditions of the Community Benefits Agreement that are specified to apply to the Subcontractor as a “Contractor” (as that term is used in the Community Benefits Agreement), as well as all consequent functions, obligations and responsibilities that are associated with such terms and conditions.
- 6.4 The Subcontractor, on behalf of BCIB, will give effect to, and will observe, comply with and perform all of BCIB’s functions, obligations and responsibilities described in the provisions of the Community Benefits Agreement set out in Schedule 2, as well as all consequent functions, obligations and responsibilities that are associated with such terms and conditions.
- 6.5 The Subcontractor will not act in any way which may obstruct, interfere with or impede BCIB’s ability to observe, comply with and perform each and every provision of the Community Benefits Agreement.
- 6.6 The Subcontractor will perform such acts and do such things, including attending meetings, whether or not with the Council, as BCIB may from time to time reasonably require in order to permit BCIB to perform its obligations under and to comply with the Community Benefits Agreement.
- 6.7 The Subcontractor acknowledges BCIB’s authority to act on behalf of the Subcontractor in all matters related to the interpretation, application, administration or alleged violation of the Community Benefits Agreement, including BCIB’s sole responsibility for discussing, resolving or arbitrating any grievance that may arise under the Community Benefits Agreement. BCIB will keep the Subcontractor informed of, involve the Subcontractor in and seek input from the Subcontractor regarding such matters, to the extent those matters are relevant to the Subcontractor or the performance of the Subcontract Work.

7.0 PAYROLL

- 7.1 Whenever required by BCIB, the Subcontractor will provide to BCIB payroll administration support by providing information reasonably requested by BCIB in the form and format required by BCIB. Such information will include recruitment

information, hours of work schedules, timesheets, change of status requests and termination information, and any other information deemed necessary by BCIB. If requested by BCIB's Representative, the Subcontractor will review and approve the timesheets prior to submitting them to BCIB.

7.2 BCIB will prepare and deliver an invoice (each, a "**Payroll Invoice**") to the Subcontractor for each pay period. The Payroll Invoice will set out the amount owing by the Subcontractor to BCIB (the "**Payroll Amount**") in respect of:

- (a) all amounts required by the Community Benefits Agreement (to the extent each is applicable to the Project):
 - (i) to be paid to Employees provided to the Subcontractor by BCIB during the applicable pay period; and
 - (ii) to be paid to third parties other than the Employees provided to the Subcontractor by BCIB based on the number of hours worked by the Employees provided to the Subcontractor by BCIB, such as the Funds described in Article 13.200 of the Community Benefits Agreement;
- (b) all applicable payroll taxes and assessments, including Employment Insurance, Canada Pension Plan, and Employer Health Tax; and
- (c) all other applicable taxes.

Promptly upon receipt of a Payroll Invoice, the Subcontractor will review the Payroll Invoice against the Subcontractor's records and advise BCIB's Representative of any necessary changes. If any changes to a Payroll Invoice are necessary, BCIB will endeavour to revise and reissue the Payroll Invoice in sufficient time to allow the Subcontractor to comply with Section 7.3. If there is not sufficient time, BCIB will capture the necessary changes on the next issued Payroll Invoice.

7.3 The Subcontractor will pay to the account specified in the Payroll Invoice the Payroll Amount no later than five Business Days after receipt of each initial Payroll Invoice.

7.4 If BCIB delivers Employee payroll cheques or payslips, or both, to the Subcontractor's Representative, the Subcontractor will promptly distribute such documents to the applicable Employees.

7.5 In the event that an Employee or other person or authority on behalf of such Employee was overpaid by BCIB, BCIB and the Subcontractor will cooperate to obtain repayment of such overpaid amount from such Employee or other person or authority who received such overpayment.

7.6 The Subcontractor will remit to WorkSafeBC the WorkSafeBC assessments calculated by the Subcontractor on each payroll, at the rate or rates which are applicable to the Subcontractor according to the classification and rates determined by WorkSafeBC. The

rate or rates will be applied to the applicable gross amounts earned in accordance with the *Workers Compensation Act* (British Columbia).

8.0 DISCIPLINE, DISMISSAL, REINSTATEMENT AND TERMINATION OF EMPLOYMENT

8.1 The Subcontractor acknowledges the provisions of Article 10 of the Community Benefits Agreement and agrees to give effect to, and to observe, comply with and perform the terms and conditions set out in that Article.

8.2 Notwithstanding anything to the contrary contained in this Agreement, the Subcontractor will be permitted to issue warnings to the Employees provided to the Subcontractor by BCIB. As soon as practicable after issuing a warning, the Subcontractor's Representative will notify BCIB's Representative in writing providing details of the warning.

8.3 Without limiting the Subcontractor's abilities as described in Section 5.1 and Section 8.2, if and whenever:

- (a) BCIB has knowledge of any conduct of an Employee who is under the direction of the Subcontractor which would justify discipline, dismissal or the taking of other corrective or rehabilitative action in respect of such Employee, whether it be for incompetence, insubordination, unreliability or otherwise; or
- (b) the Subcontractor's Representative recommends to BCIB that an Employee be disciplined or dismissed or that other corrective or rehabilitative action be taken in respect of an Employee, whether it be for incompetence, insubordination, unreliability or otherwise,

BCIB will, in its sole and absolute discretion:

- (c) take no action where the circumstances do not support the application of discipline or the taking of other corrective or rehabilitative action; or
- (d) promptly discipline or take such other corrective or rehabilitative action in respect of such Employee as the situation requires; or
- (e)
 - (i) promptly remove such Employee from the direction of the Subcontractor; and
 - (ii) terminate such Employee's employment with BCIB in accordance with the provisions of the Community Benefits Agreement and applicable law.

8.4 In the event that any Employee whose employment has been terminated pursuant to Section 8.3 initiates a grievance under the Community Benefits Agreement, the Subcontractor and BCIB will make every effort to complete Stage I of the grievance procedure under the Community Benefits Agreement before the grieving Employee leaves the Site.

- 8.5 With respect to any Employee that has been removed, whether temporarily or permanently, from the direction of the Subcontractor pursuant to Section 8.3, if the Subcontractor's Representative requests in writing a replacement Employee, BCIB will, in accordance with the dispatch provisions of the Community Benefits Agreement, including Articles 8.200, 8.600 and 9.100 of the Community Benefits Agreement, and within three Business Days of such request, provide a replacement Employee to the Subcontractor, such replacement Employee to be in the same Job Classification as and with comparable qualifications, certifications, if any, and experience to the Employee being replaced.
- 8.6 The Subcontractor will provide such assistance as BCIB may reasonably request with respect to any investigation into Employee conduct which may lead to BCIB taking action pursuant to Section 8.3 and with respect to any grievance procedure.
- 8.7 The Subcontractor will comply with the terms of any grievance award, and any order, judgment, direction or interpretation made under the procedures set forth in the Community Benefits Agreement, or by any arbitrator or court having jurisdiction over the Employees which in any way relates to the Employees provided to the Subcontractor by BCIB, including awards of the Jurisdictional Assignment Plan Umpire of Work Assignment as described in Article 6.103 of the Community Benefits Agreement, and including any reinstatement order, judgement or direction, to the extent that the Subcontractor's compliance is necessary in order to enable BCIB to comply with any such award, order, judgment, direction or interpretation.
- 8.8 The Subcontractor will provide to BCIB, at a location designated by BCIB, any information required by BCIB in a form and format required by BCIB to enable BCIB to complete end of employment documentation in respect of an Employee whose services have been terminated.

9.0 SUBCONTRACTING

- 9.1 The Subcontractor will notify BCIB's Representative in writing of the names of all of the Subcontractor's sub-subcontractors (of any and all tiers) (each, a "**Sub-subcontractor**") engaged to perform Subcontract Work at the Site, whether or not such Sub-subcontractor requires Employees. Except in circumstances where two weeks prior notice is not commercially reasonable, the Subcontractor will provide such notice no less than two weeks prior to the Sub-subcontractor commencing work at the Site.
- 9.2 The Subcontractor will not permit any Sub-subcontractor to perform any work at the Site unless and until that Sub-subcontractor:
- (a) confirms in writing to BCIB that the Sub-subcontractor will not require any Employees to be provided by BCIB, and BCIB agrees with such determination;
 - (b) is granted a permit pursuant to Article 8.400 of the Community Benefits Agreement; or

(c) executes a BCIB-Subcontractor Agreement pursuant to Section 9.3.

9.3 The Subcontractor will cause each Sub-subcontractor (other than a Sub-subcontractor described in Section 9.2(a) or Section 9.2(b)) (each, an “**Applicable Sub-subcontractor**”) to enter into an agreement with BCIB (each, also a “**BCIB-Subcontractor Agreement**”) to obtain from BCIB the Employees that the Applicable Sub-subcontractor will require for the performance of its portion of the Subcontract Work at the Site. Each other BCIB-Subcontractor Agreement will be in the form of this Agreement, subject only to variations in form required by BCIB, in its sole and absolute discretion, to suit the circumstances.

9.4 Without duplication of recovery under Section 12.0, if, under any other BCIB-Subcontractor Agreement, an Applicable Sub-subcontractor becomes indebted to BCIB and delinquent in its payment to BCIB, then, upon written notice to the Subcontractor, the Subcontractor will pay the amount of any such indebtedness to BCIB no later than five Business Days after receipt of such notice.

10.0 PERMITTEES

10.1 The Subcontractor may request that permits be granted to Sub-subcontractors or employees (who would ordinarily be “Employees” for the purposes of the Community Benefits Agreement), or both, as described in Article 8.400 of the Community Benefits Agreement.

10.2 For any permit request, the Subcontractor will be responsible for completing a permit request form (in the form required by the Council), and will submit the completed permit request form along with the required fee made payable to the Council to BCIB’s Representative for review. Provided the permit request form and associated fee comply with the provisions of Article 8.400 of the Community Benefits Agreement, BCIB will promptly sign the permit request form and submit it and the fee to the Council. If BCIB refuses to sign the permit request form, then BCIB’s Representative will promptly return the form and fee to the Subcontractor’s Representative with reasons for BCIB’s refusal to sign the form.

10.3 BCIB will, to the extent necessary, arrange meetings between the Subcontractor and the Council to resolve any issues with respect to the granting of permits, however, the Subcontractor remains fully responsible for satisfying the conditions required for the granting of a permit.

10.4 The Subcontractor acknowledges the provisions of Articles 8.403 and 8.409 of the Community Benefits Agreement and agrees to give effect to, and observe, comply with and perform the terms and conditions set out in those Articles.

11.0 BCIB COSTS

11.1 In addition to paying the Payroll Amount, the Subcontractor will pay to BCIB the following costs and expenses reasonably incurred by BCIB (“**BCIB Costs**”) in respect of

the Employees provided to the Subcontractor by BCIB, without duplication of items included in the Payroll Amount:

- (a) the following costs described in the Community Benefits Agreement, to the extent each is applicable to the Project:
 - (i) Article 14.602 (pay in lieu of meal);
 - (ii) Article 17.200 (for mileage or ferry costs);
 - (iii) Article 17.401 (weekend checkout);
 - (iv) Article 21.100 (transportation to Project on initial hire);
 - (v) Article 21.201 (transportation from Project when an Employee on the job for 30 days or more);
 - (vi) Article 21.700 (compassionate leave transportation); and
 - (vii) Article 22.100 (daily travel reimbursement);
- (b) the fees and disbursements charged to BCIB by those lawyers, accountants, consultants, witnesses or other professionals or experts retained by BCIB at the request of the Subcontractor;
- (c) the amount of any damages, salary, severance pay, expenses, costs, penalties, fines or other monies which BCIB is ordered to pay by any arbitrator, court or other authority having jurisdiction, or which BCIB reasonably agrees to pay after consultation with the Subcontractor, in respect of any Employee;
- (d) the costs incurred by, including third party fees and disbursements charged to, BCIB in investigating complaints made by an Employee against the Subcontractor or against an employee or other representative of the Subcontractor (who is not an Employee) under the Workplace Discrimination and Harassment Policy and Procedures, but only in circumstances where the investigation determines that the Subcontractor or such Subcontractor employee or representative has violated the Workplace Discrimination and Harassment Policy and Procedures;
- (e) notwithstanding Section 12.01 of the Workplace Drug and Alcohol Policy and Procedures, the cost of all Substance Testing (as defined in the Workplace Drug and Alcohol Policy and Procedures) conducted under the Workplace Drug and Alcohol Policy and Procedures;
- (f) the amount paid to or on behalf of any Employee by BCIB in respect of transportation to or from the Site at the time of hire, upon termination of employment, or in order to facilitate such Employee undergoing tests or examinations which may be required in connection with such Employee's employment and compensated by BCIB pursuant to the Community Benefits

Agreement, or in connection with any special training provided for such Employee at the request of or with the approval of the Subcontractor;

- (g) the amount of any medical doctor's charges or other charges paid by BCIB in connection with the provision of food handling certificates, underground certificates, audio certificates or any other certificate relating to the fitness or qualifications of any Employee;
 - (h) advances on salary and any special payments in respect of labour relations matters made by BCIB to or on behalf of any Employee which are required to be made by the Community Benefits Agreement;
 - (i) the costs of any items or services required to be provided to or for any Employee by the provisions of the Community Benefits Agreement which are the responsibility of the Subcontractor to provide pursuant to the provisions of this Agreement, but which were not provided by the Subcontractor, including the costs of providing orientation, training, tools, safety equipment, clothing and transportation;
 - (j) in the event that BCIB requests an amount from the Owner under the provisions of Section 12.0, the sum of \$1,000.00 for each such request as compensation to BCIB for its costs of administering such request to the Owner; and
 - (k) the Subcontractor's *pro rata* share of any WorkSafeBC levies, assessments, reassessments, penalties or other amounts required to be paid by BCIB in respect of the Employees under the *Workers' Compensation Act* (British Columbia) and which are not payroll WorkSafeBC assessments as described in Section 7.6. Such levies, assessments, reassessments, penalties and other amounts will be shared amongst all entities having a contract with BCIB in respect of the Project and be calculated based on the total number of hours worked by the Employees provided to each such entity up to the date of such levy, assessment, reassessment, penalty or other amount.
- 11.2 BCIB will, from time to time but not more frequently than monthly, prepare and deliver an invoice (each, a "**Cost Invoice**") to the Subcontractor setting out the amount of BCIB Costs owing by the Subcontractor to BCIB for the relevant time period. The Subcontractor will pay to the account specified in the Cost Invoice the amount of such BCIB Costs plus all applicable taxes no later than ten Business Days after receipt of the Cost Invoice. The Subcontractor will pay the full amount set out in the Cost Invoice without prejudice to the Subcontractor's rights of dispute under Section 23.0.
- 11.3 The Subcontractor or its authorized agent may, at the Subcontractor's discretion and expense, at any time and from time to time during the time BCIB is required to keep records pursuant to applicable law, during normal business hours and with reasonable notice and without undue disturbance of BCIB's business operations, enter upon BCIB's premises and, subject to solicitor-client privilege, audit the records of BCIB which relate

in any way to BCIB Costs. BCIB will make all such records available for examination and copying by the Subcontractor at BCIB's premises.

12.0 PAYMENT BY OWNER UPON A FAILURE TO PAY

- 12.1 The Subcontractor acknowledges that if at any time the Subcontractor or any Applicable Sub-subcontractor fails to pay any amount required to be paid to BCIB under this Agreement or under another BCIB-Subcontractor Agreement, as the case may be, BCIB may advise the Owner in writing and may request payment by the Owner of such amount.
- 12.2 In the event that the Owner pays BCIB the amount requested by BCIB under the provisions of Section 12.1, and provided that the Subcontractor compensates BCIB for its administration costs as described in Section 11.1(j) in accordance with Section 11.2, then the Subcontractor will not be in default of its obligation to pay such amount under this Agreement. For clarity, the payment by the Owner of an amount requested by BCIB will be deemed to satisfy the Subcontractor's obligation to pay that same amount to BCIB.

13.0 OCCUPATIONAL HEALTH AND SAFETY

- 13.1 The parties acknowledge that each has obligations under applicable law as an "employer" for the health and safety of the Employees provided to the Subcontractor by BCIB. For the purposes of clearly defining and establishing respective responsibilities without duplication of any overlapping responsibilities, and for the purposes of achieving a consistent, proactive and preventative health and safety culture, and implementing effective health and safety programs, the following will apply with respect to occupational health and safety:
- (a) The Subcontractor will comply with all applicable law relating to occupational health and safety, including:
 - (i) the *Workers Compensation Act* (British Columbia); and
 - (ii) the *Mines Act* (British Columbia).
 - (b) The Subcontractor will be responsible for and will fulfill all of its obligations as an "employer" (as that term is used in Part 3 of the *Workers Compensation Act* (British Columbia)) pursuant to Part 3 of the *Workers Compensation Act* (British Columbia), including as such obligations relate to the Employees provided to the Subcontractor by BCIB.
 - (c) The Subcontractor will, as an "employer" (as that term is used in Part 3 of the *Workers Compensation Act* (British Columbia)), ensure that any Employee provided to the Subcontractor by BCIB that is acting in the capacity of "supervisor" (as that term is used in Part 3 of the *Workers Compensation Act* (British Columbia)) has the information, instruction, training and supervision necessary to effectively discharge their responsibilities.

- (d) The Subcontractor acknowledges receipt of the Health and Safety Policy and Program. The Subcontractor will, as part of and not in substitution for any health and safety obligations that the Subcontractor must meet under the Subcontract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Health and Safety Policy and Program in order to achieve or exceed the objectives set out in the Health and Safety Policy and Program.
- (e) Each party acknowledges that the Health and Safety Policy and Program and the Subcontractor's health and safety program, policies and work procedures will in no way fetter the authority and responsibilities of the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia), and each of the parties will recognize the authority of such "prime contractor" and will comply with such "prime contractor's" health and safety program, policies, systems, processes and procedures.
- (f) The parties will, within ten Business Days after the Effective Date, establish a system for ongoing communication and liaison for the purpose of ensuring the timely exchange of information that the parties agree is required for the effective coordination and implementation of the Health and Safety Policy and Program and the Subcontractor's health and safety program, policies and work procedures, and the ongoing health and safety of all Employees provided to the Subcontractor by BCIB.
- (g) The Subcontractor will, in respect of the Employees provided to the Subcontractor by BCIB, fulfill all health and safety-related obligations required by the Community Benefits Agreement, and the Subcontractor will, for certainty:
 - (i) provide to all such Employees such safety equipment and clothing as required by the Community Benefits Agreement, the Health and Safety Policy and Program and applicable law, including the *Workers Compensation Act* (British Columbia) and the *Mines Act* (British Columbia); and
 - (ii) bear transportation costs not covered by WorkSafeBC for sick or injured Employees from the Site to the Point of Hire (as defined in the Community Benefits Agreement) as well as the transportation costs of such Employee's tools to the Point of Hire.

Where the Subcontractor fails to meet the requirements of this Section 13.1(g), the same may be provided by BCIB and the Subcontractor will reimburse BCIB in accordance with Section 11.1(i).

- (h) Where the Subcontractor fails to meet the requirements of Section 5.2(i) within a reasonable time after receipt of written notice from BCIB's Representative to provide such orientation, the same may be provided by BCIB and the Subcontractor will reimburse BCIB in accordance with Section 11.1(i).

- (i) The Subcontractor will, provided reasonable written notice has been provided to the Subcontractor's Representative and to the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia), provide BCIB representatives full access to all parts of the Site and the activities of the Subcontractor on the Site. All BCIB representatives will be required to comply with the health and safety protocols for attendance on the Site as required by the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia).
- (j) The Subcontractor will fully cooperate with BCIB in any activity performed by BCIB to ensure the Subcontractor's fulfilment of the Subcontractor's health and safety obligations under this Agreement, including inspections, investigations, and attending and participating in initiatives such as Joint Health and Safety Committee meetings and tool box talks.
- (k) Prior to commencing performance of the Subcontract Work at the Site, and at any time on BCIB's Representative's request, the Subcontractor will deliver to BCIB's Representative a statement from WorkSafeBC that the Subcontractor is registered and in good standing.
- (l) The Subcontractor will provide to BCIB's Representative:
 - (i) notice of any worker compensation claims that are made against the Subcontractor by the Employees provided to the Subcontractor by BCIB; and
 - (ii) copies of all correspondence and forms, including claim forms, papers and reports, received by or sent to governmental authorities concerning any such claims and any other health and safety matters on the Site.
- (m) The Subcontractor acknowledges and agrees that any claims made by Employees provided to the Subcontractor by BCIB under and pursuant to the *Workers Compensation Act* (British Columbia), although such claims will be reported to WorkSafeBC under BCIB's account with WorkSafeBC, will, by reason of a mechanism agreed to with WorkSafeBC and provided to the Subcontractor, be considered and reflected in and may therefore adversely affect, the experience rating (for purposes of assessments made under the *Workers Compensation Act* (British Columbia)) of the Subcontractor and not of BCIB, and BCIB will not be liable to the Subcontractor, and the Subcontractor will have no claim against BCIB, for any loss, cost, damage, assessments, reassessments, penalties or expense suffered or incurred by the Subcontractor by reason of any claim brought under the *Workers Compensation Act* (British Columbia) by any such Employee, including for any increase in the Subcontractor's experience rating under the *Workers Compensation Act* (British Columbia) arising as a result of any such claim.

- (n) BCIB hereby gives and grants to the Subcontractor authority to act on behalf of BCIB in all matters related to WorkSafeBC claims management and in all adjudications of WorkSafeBC claims, as such relate to the Employees provided to the Subcontractor by BCIB, and the Subcontractor undertakes to provide all such claims management and adjudications of claims. For certainty, in all such matters involving Employees provided to the Subcontractor by BCIB, the Subcontractor will keep BCIB informed of the status and progress of such matters, and will consult and collaborate with BCIB, and take into account BCIB's input, prior to resolving any such matters with WorkSafeBC.

14.0 GENERAL TRAINING AND APPRENTICESHIPS

- 14.1 The Subcontractor will provide, at its sole cost and expense, any and all on-the-job skills development and specialized task-specific training beyond that provided under a general trade curriculum.
- 14.2 The Subcontractor acknowledges receipt of the Apprenticeship and Training Targets. The Subcontractor will, as part of and not in substitution for any apprenticeship and training obligations that the Subcontractor must meet under the Subcontract, implement the Apprenticeship and Training Targets in order to achieve or exceed the objectives set out in the Apprenticeship and Training Targets.

15.0 WORKPLACE DISCRIMINATION AND HARASSMENT POLICY AND PROCEDURES

- 15.1 The Subcontractor acknowledges receipt of the Workplace Discrimination and Harassment Policy and Procedures. The Subcontractor will, as part of and not in substitution for any workplace discrimination and harassment obligations that the Subcontractor must meet under the Subcontract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Workplace Discrimination and Harassment Policy and Procedures in order to achieve or exceed the objectives set out in the Workplace Discrimination and Harassment Policy and Procedures.
- 15.2 Any complaint made by or against an Employee provided to the Subcontractor by BCIB under the Workplace Discrimination and Harassment Policy and Procedures will be processed and investigated pursuant to the Workplace Discrimination and Harassment Policy and Procedures, and the outcome will be binding on the Subcontractor.

16.0 WORKPLACE DRUG AND ALCOHOL POLICY AND PROCEDURES

- 16.1 The Subcontractor acknowledges receipt of the Workplace Drug and Alcohol Policy and Procedures. The Subcontractor will, as part of and not in substitution for any workplace drug and alcohol obligations that the Subcontractor must meet under the Subcontract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Workplace Drug and Alcohol Policy and Procedures in order to achieve or exceed the objectives set out in the Workplace Drug and Alcohol Policy and Procedures.

17.0 INDEMNIFICATION

17.1 The Subcontractor will indemnify and save harmless BCIB, the Owner, their respective officers, directors, servants (including BCIB's Representative), agents and shareholders (collectively, the "**Indemnified Parties**"), from and against any and all losses, liabilities, damages, fines, penalties, costs, expenses and claims of any and every kind whatsoever which at any time or from time to time may be paid, incurred or asserted by or against any of them for, with respect to, or as a result of:

- (a) any act or omission of the Subcontractor, the Subcontractor's Representative, or any other person or entity not subject to or otherwise excluded from coverage of the Community Benefits Agreement but who is engaged by the Subcontractor to perform a portion of the Subcontract Work;
- (b) any act or omission of an Employee which occurs while such Employee is under the direction of the Subcontractor whether or not such losses, liabilities, damages, fines, penalties, costs, expenses or claims arise by reason of the employment relationship existing between BCIB and such Employee;
- (c) any failure by the Subcontractor to perform its obligations under this Agreement, including any failure to give effect to, observe, comply with or perform the terms and conditions of the Community Benefits Agreement, or the functions, obligations or responsibilities of the Community Benefits Agreement, that have been expressly delegated or allocated to the Subcontractor by this Agreement; and
- (d) any failure by the Subcontractor to perform its obligations under applicable law.

For certainty, the obligations of the Subcontractor set forth in this Section 17.1 shall not apply to the extent that the losses, liabilities, damages, fines, penalties, costs, expenses and claims for which indemnity is being sought were caused by the negligence or willful misconduct of any of the Indemnified Parties.

17.2 The obligations of the Subcontractor set forth in Section 17.1 will survive termination of this Agreement and will continue in full force and effect.

18.0 CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

18.1 Subject to Section 18.3, each party will keep confidential all matters respecting the Employees provided to the Subcontractor by BCIB and all commercial, financial and legal issues relating to or arising out of this Agreement and will not disclose such information, except as follows:

- (a) with the prior written consent of BCIB's Representative or the Subcontractor's Representative, as the case may be, which consent may be arbitrarily withheld;
- (b) in strict confidence to the party's professional advisors; or
- (c) as otherwise required by applicable law.

- 18.2 The obligations of confidentiality described in Section 18.1 will not apply to:
- (a) information that is, or subsequently becomes, publicly available other than through a breach of this Agreement or through a breach of a confidentiality agreement which another entity has entered into concerning such confidential information;
 - (b) information which the disclosing party already possessed before commencing to participate in the Project;
 - (c) information which is rightfully received from a third party without breach of any obligation of confidence by such third party; or
 - (d) information which is independently developed without the use of such confidential information.
- 18.3 Notwithstanding anything to the contrary contained in this Agreement, the Subcontractor acknowledges and agrees that BCIB may disclose any and all information created or obtained as a result of this Agreement or in respect of the Subcontractor performing its obligations under this Agreement, or both, including the existence and terms of this Agreement and any BCIB-Subcontractor Agreement, the nature and number of permits requested and issued as described in Section 10.0, the Subcontractor's fulfillment of its obligations pursuant to Sections 13.0, 14.0, 15.0 and 16.0, the Subcontractor's fulfillment and compliance with the functions, obligations and responsibilities set out in Schedule 2 and any other Records, to any provincial ministry, other Governmental Authority and educational institutions which requires or requests the information in relation to the Project or to permit BCIB to comply with applicable law.

19.0 FREEDOM OF INFORMATION AND PRIVACY PROTECTION

- 19.1 The Subcontractor acknowledges that:
- (a) it is aware that FOIPPA applies to this Agreement and to all documents and records relating to this Agreement;
 - (b) BCIB is required to fully comply with FOIPPA; and
 - (c) no action taken or required to be taken by BCIB for the purpose of complying with FOIPPA shall be considered a breach of any obligation under this Agreement.
- 19.2 To the extent the Subcontractor has access to, whether direct, indirect or incidental, or the opportunity to access, any Personal Information, the Subcontractor will inform all of its personnel and Sub-subcontractors having access to any Personal Information in the course of performing the Subcontract Work of the confidential nature of the Personal Information and will ensure that its personnel and Sub-subcontractors maintain the confidentiality of the Personal Information in accordance with the terms of Schedule 3. BCIB and the Subcontractor will have the respective rights and obligations applicable to

each of them as provided in Schedule 3, and Section 18.0 will not apply in respect of such Personal Information.

20.0 SUBCONTRACTOR'S RECORDS

20.1 The Subcontractor will record and maintain within British Columbia during the term of this Agreement, and for so long as required by applicable law, full, true, proper and accurate records relating to the Employees provided to the Subcontractor by BCIB (collectively, the "**Records**"), including:

- (a) records of the time worked by Employees;
- (b) records relating to the Subcontractor's fulfillment of its obligations pursuant to Sections 13.0, 14.0, 15.0 and 16.0; and
- (c) records relating to the Subcontractor's fulfillment and compliance with the functions, obligations and responsibilities set out in Schedule 2,

utilizing such recording system and in such form as BCIB may from time to time require. Promptly upon the reasonable written request of BCIB's Representative, the Subcontractor will deliver such Records to BCIB at BCIB's expense.

20.2 The Subcontractor will advise BCIB's Representative of the location of the Records upon the written request of BCIB.

20.3 Prior to disposing of any Records, the Subcontractor will notify BCIB in writing as to what the Subcontractor intends to do with such Records. BCIB may, within 40 days of receipt of such notice, require the Subcontractor to deliver to BCIB, at BCIB's sole cost and expense, all such Records.

20.4 BCIB or its authorized agent may, at BCIB's discretion and expense, at any time and from time to time during the time the Subcontractor is required to keep the Records under this Agreement, during normal business hours and with reasonable notice and without undue disturbance of the Subcontractor's business operations, enter upon the Subcontractor's premises and audit the Records and any other records of the Subcontractor which relate in any way to the Employees provided to the Subcontractor by BCIB. The Subcontractor will make all such records available for examination and copying by BCIB at the Subcontractor's premises.

21.0 TERMINATION

21.1 This Agreement will continue in effect for so long as the Subcontractor requires Employees to perform the Subcontract Work at the Site.

21.2 The obligations of the Subcontractor to pay any amounts which are payable to BCIB under this Agreement will survive termination of this Agreement and will continue in full force and effect.

22.0 DISCLAIMERS

- 22.1 BCIB does not warrant nor guarantee to the Subcontractor that BCIB will provide to the Subcontractor any particular quality of Employee or that BCIB will provide all or any of the Employees for which the Subcontractor may submit Employee Requests.
- 22.2 BCIB will not be responsible or liable (whether in contract, tort (including negligence), for breach of statutory duty, pursuant to equitable principles or under any other theory of law) to the Subcontractor, and the Subcontractor will have no claim against BCIB, for any loss, cost, damage or expense, including for economic loss, loss of anticipated revenue, overhead or profit, loss of production, business or contracts, loss by reason of shutdowns, slowdowns, non-operation or increased costs of construction, manufacturing or operation, or loss of business reputation or opportunities, and whether or not such losses, costs, damages or expenses were foreseeable even if BCIB was advised of the possibility of them, suffered or incurred by the Subcontractor by reason of or in respect of any act, omission or statement by BCIB or any of BCIB's officers, directors, servants (including BCIB's Representative), agents and shareholders, or by reason of or in respect of the Subcontractor being delayed in performing the Subcontract Work or having to re-perform the Subcontract Work, whether such delay or re-performance is caused by work stoppage, labour shortages, lack of appropriately qualified or skilled labour or otherwise. The Subcontractor acknowledges that its sole remedies, if any, in respect of any such foregoing matters lie against the Owner under the Subcontract.
- 22.3 Nothing done as a result of this Agreement or omitted to be done will be cause for a justifiable delay by the Subcontractor under the Subcontract or a justifiable increase in the Subcontractor's price under the Subcontract, and the Subcontractor will not have any right to or claim for an extension of time under the Subcontract nor any right to or claim for any payment or additional payment from BCIB or the Third Party Beneficiaries, or any one of them, as a result of such matters.
- 22.4 BCIB will not be responsible for the operation, direction or supervision of Employees provided to the Subcontractor by BCIB nor for the performance of the Subcontract Work by such Employees.
- 22.5 BCIB will not be responsible for paying any of the Subcontractor's costs of providing Employees with room or board or commissary facilities or commissary supplies whether or not such costs are recovered or are recoverable by the Subcontractor from Employees.
- 22.6 The Subcontractor will be fully responsible for all costs and expenses incurred by it in performing its obligations under this Agreement and in providing assistance or input to and in cooperating, consulting or collaborating with BCIB as contemplated by this Agreement and in participating in any formal process set out in the Community Benefits Agreement, and including for all costs and expenses incurred by the Subcontractor with respect to grievances initiated by the Subcontractor. The Subcontractor will not be entitled to, nor will BCIB be liable to the Subcontractor for, any compensation or reimbursement of such costs and expenses in respect of the foregoing, such compensation and reimbursement will be deemed to be fully addressed pursuant to the Subcontract.

23.0 DISPUTE RESOLUTION

- 23.1 The parties agree that, both during and after the term of this Agreement, each of them will make *bona fide* efforts to resolve any disputes arising between them by amicable negotiations.
- 23.2 Either party may require the dispute be mediated by a skilled commercial mediator chosen jointly by the parties. If a mediator is appointed pursuant to this Section 23.2, the mediated negotiations will be terminated ten Business Days after the appointment unless the parties agree otherwise.
- 23.3 Any unresolved dispute arising out of or in connection with this Agreement or in respect of any defined legal relationship associated with it or derived from it, will be referred to and finally resolved by arbitration under the rules of the British Columbia International Commercial Arbitration Centre. Any arbitration will be conducted in Vancouver, British Columbia and heard by a single arbitrator chosen jointly by the parties, or in the absence of mutual agreement appointed by a court of competent jurisdiction.
- 23.4 If the parties agree, any unresolved disputes referred to arbitration under this Agreement may be:
- (a) held in abeyance until completion of the Subcontract Work; and
 - (b) consolidated into a single arbitration.
- 23.5 Notwithstanding any dispute, the parties will continue to fulfill their obligations pursuant to this Agreement, without prejudice to either party's rights relating to the dispute.

24.0 NOTICES

- 24.1 Unless otherwise expressly required to be given to BCIB's Representative or the Subcontractor's Representative pursuant to this Agreement, any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given when delivered by hand or by email to the address or email address of the applicable party set out below:

- (a) if to BCIB:

[insert address]

Attn: [insert appropriate addressee, i.e. President]

Email: [insert appropriate email address];

(b) if to the Subcontractor:

[insert address]

Attn: [insert appropriate addressee, i.e. President]

Email: [insert appropriate email address]; or

(c) to such other address or email address as either party may, from time to time, designate in the manner set out above.

24.2 Any such notice or communication will be considered to have been received:

(a) if delivered by hand or by a courier service during business hours on a Business Day, when delivered, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and

(b) if sent by email during business hours on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day, provided that:

(i) the receiving party has, by email or by hand delivery, acknowledged to the notifying party in writing that it has received such notice; or

(ii) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

25.0 ASSIGNMENT RESTRICTED

25.1 This Agreement and the rights, duties and obligations of the Subcontractor under this Agreement will not be assigned, transferred, encumbered or otherwise alienated in whole or in part by the Subcontractor without the prior written consent of BCIB, which consent may be arbitrarily withheld, and any attempt by the Subcontractor to assign, transfer, encumber or otherwise alienate its rights, duties or obligations under this Agreement without such consent will be of no effect. Notwithstanding the above, BCIB will provide its consent to any assignment, transfer, encumbrance or other alienation of this Agreement to the extent necessary to give effect to any permitted assignment, transfer, encumbrance or other alienation of the Construction Contract.

26.0 MISCELLANEOUS

26.1 Schedules. The following Schedules are incorporated into this Agreement by reference and are deemed to be fully included as part of this Agreement and to be an integral part of this Agreement:

(a) Schedule 1 – Definitions and Interpretation;

(b) Schedule 2 – Functions, Obligations and Responsibilities; and

(c) Schedule 3 – Privacy Protection.

- 26.2 No Agency. The Subcontractor acknowledges and agrees that BCIB is entering into this Agreement for itself and on its own behalf as principal and that BCIB is not an agent of the Owner, the Government of British Columbia or any other entity for purposes of this Agreement or for purposes of the Subcontract or otherwise.
- 26.3 Third Party Beneficiary. The provisions of Section 22.3 are intended for the benefit of the Third Party Beneficiaries and will be enforceable by the Third Party Beneficiaries, or any one of them, and are in addition to, and not in substitution for, any other rights that the Third Party Beneficiaries may have by contract or otherwise. For clarity, BCIB will also be able to enforce the provisions of Section 22.3.
- 26.4 Independent Contractor. The Subcontractor is an independent contractor in the performance of the Subcontract Work and nothing in this Agreement will constitute the Subcontractor as an agent, partner, joint venture or employee of BCIB for any purpose.
- 26.5 Currency. All payments to be made pursuant to this Agreement will be made in lawful money of Canada.
- 26.6 Public Announcements. The Subcontractor will not make any public releases, announcements, other disclosure or issue advertising pertaining to this Agreement or the Community Benefits Agreement without the prior written approval of BCIB, approval of which may be arbitrarily withheld. The Subcontractor will refer any media enquiries to BCIB's Representative, but will not otherwise respond to media enquiries.
- 26.7 Further Assurances. Each of the parties hereby covenants and agrees to execute any further and other documents and instruments and to do any further and other things that may be reasonably necessary to implement and carry out the intent of this Agreement.
- 26.8 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia which will be deemed to be the proper law of this Agreement.
- 26.9 Survival. All rights, obligations and remedies of the parties which accrued prior to the termination of this Agreement, or which are by their nature continuing, or which by their express terms survive, and all other provisions necessary for the interpretation or enforcement of such rights, obligations and remedies, will survive termination of this Agreement.
- 26.10 Modification and Waiver. No amendment or waiver of this Agreement or any provision of this Agreement will be binding unless executed in writing by both the parties. No waiver of any provision of this Agreement will be deemed or will constitute a waiver of any other provision nor will any such waiver constitute a continuing waiver unless otherwise expressly provided in writing signed by each of the parties.
- 26.11 Enurement. This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, personal representatives, successors and permitted assigns.

26.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, expressing superseding all prior communications, understandings and agreements (both oral and written) between the parties with respect to all matters contained in this Agreement. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

26.13 Counterparts. This Agreement may be executed by counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery by email in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the Effective Date.

BC INFRASTRUCTURE BENEFITS INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

[INSERT LEGAL NAME OF SUBCONTRACTOR]

Per: _____
Name:
Title:

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

1. Definitions. In this Agreement, except as otherwise expressly provided or unless the context otherwise requires:
- (a) “**Affiliated Unions**” has the meaning set out in the Community Benefits Agreement;
 - (b) “**Agreement**” means this BCIB-Subcontractor Agreement as it may be amended, restated or supplemented from time to time;
 - (c) “**Applicable Sub-subcontractor**” has the meaning set out in Section 9.3;
 - (d) “**Apprenticeship and Training Targets**” means the apprenticeship and training targets established by BCIB dated [insert date of plan];
 - (e) “**BCIB**” has the meaning set out on the first page of this Agreement;
 - (f) “**BCIB Costs**” has the meaning set out in Section 11.1;
 - (g) “**BCIB-Contractor Agreement**” means the agreement between BCIB and the Contractor pursuant to which the Contractor will obtain Employees from BCIB;
 - (h) “**BCIB-Subcontractor Agreement**” has the meaning set out in Section 9.3;
 - (i) “**BCIB’s Representative**” has the meaning set out in Section 2.1;
 - (j) “**Business Day**” means a day other than a Saturday, Sunday or Recognized Holiday (as described in Article 16.100 of the Community Benefits Agreement) on the days observed in British Columbia;
 - (k) “**Community Benefits Agreement**” has the meaning set out in Recital A;
 - (l) “**Contractor**” means [insert legal name of the contractor who entered into the Construction Contract with the Owner];
 - (m) “**Construction Contract**” means the agreement between the Owner and the Contractor pursuant to which the Contractor will undertake the Work;
 - (n) “**Cost Invoice**” has the meaning set out in Section 11.2;
 - (o) “**Council**” has the meaning set out in Recital A;
 - (p) “**Council’s Representative**” means the person designated from time to time by the Council who will represent the Council in the administration and application of the Community Benefits Agreement;

- (q) “**Effective Date**” means the effective date of this Agreement as set out on the first page of this Agreement;
- (r) “**Employees**” has the meaning set out in the Community Benefits Agreement, but for clarity, does not include employees of Sub-subcontractors described in Section 9.2(a) or Section 9.2(b) or employees granted a permit pursuant to Article 8.400 of the Community Benefits Agreement;
- (s) “**Employee Request**” has the meaning set out in Section 4.2(c);
- (t) “**FOIPPA**” means the *Freedom of Information and Protection of Privacy Act* (British Columbia);
- (u) “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local authority, quasi-governmental authority, court, government, or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of the Construction Contract, the Subcontract, this Agreement or the Project;
- (v) “**Health and Safety Policy and Program**” means the health and safety policy and program established by BCIB dated [insert date of policy and program];
- (w) “**Indemnified Parties**” has the meaning set out in Section 17.1;
- (x) “**Job Classifications**” means those job classifications set out in the applicable “Trade Sections” of the Community Benefits Agreement;
- (y) “**Owner**” means, collectively, Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure, and BC Transportation Financing Authority;
- (z) “**Payroll Amount**” has the meaning set out in Section 7.2;
- (aa) “**Payroll Invoice**” has the meaning set out in Section 7.2;
- (bb) “**Personal Information**” means recorded information about an identifiable individual, other than contact information (as defined in FOIPPA), collected, created or otherwise acquired by the Subcontractor as a result of this Agreement or any previous agreement between BCIB and the Subcontractor dealing with the same subject matter as this Agreement;
- (cc) “**Project**” means the Broadway Subway Project;
- (dd) “**Records**” has the meaning set out in Section 20.1;

- (ee) “**Site**” means “Project Site” as defined in the Construction Contract, and will be deemed to include the sites of all facilities purpose built for the Project;
- (ff) “**Subcontract**” means the agreement entered into by the Subcontractor pursuant to which the Subcontractor will undertake the Subcontract Work;
- (gg) “**Subcontractor**” has the meaning set out on the first page of this Agreement;
- (hh) “**Subcontractor’s Representative**” has the meaning set out in Section 2.2;
- (ii) “**Subcontract Work**” means the portion of the Work to be performed by the Subcontractor;
- (jj) “**Sub-subcontractor**” has the meaning set out in Section 9.1;
- (kk) “**Third Party Beneficiaries**” means the Owner, the Contractor and the Subcontractor’s counterparty in respect of the Subcontract;
- (ll) “**Work**” means “Project Work” as defined in the Construction Contract;
- (mm) “**Workplace Discrimination and Harassment Policy and Procedures**” means the workplace discrimination and harassment policy and procedures established by BCIB dated [insert date of policy and procedures]; and
- (nn) “**Workplace Drug and Alcohol Policy and Procedures**” means the workplace drug and alcohol policy and procedures established by BCIB dated [insert date of policy and procedures].

Any words or phrases defined elsewhere in this Agreement will have the particular meaning assigned to such words or phrases.

2. Interpretation. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:
- (a) the provision of headings and the division of this Agreement into Sections, paragraphs and other subdivisions are for convenience only and will not define or limit the scope, extent or intent of this Agreement or affect the interpretation of this Agreement or any provision of this Agreement;
 - (b) any reference to a statute will include such statute and its corresponding regulations, together with all amendments made to such statute and regulations and in force from time to time, and any statute or regulation that may be passed which has the effect of amending, supplementing or superseding the statute referred to or such statute’s corresponding regulations;
 - (c) any reference to the *Mines Act* (British Columbia) will include the Health, Safety and Reclamation Code for Mines in British Columbia, together with all amendments made to such code and in force from time to time, and any

instrument established pursuant to the *Mines Act* (British Columbia) which has the effect of amending, supplementing or superseding the Health, Safety and Reclamation Code for Mines in British Columbia;

- (d) any reference to an entity will include and will be deemed to be a reference to any entity that is a successor to such entity;
- (e) words in the singular include the plural, and vice-versa, wherever the context requires;
- (f) references in this Agreement to a Recital, a Section, a paragraph, a Schedule or other subdivision are to the corresponding Recital, Section, paragraph, Schedule or other subdivision of this Agreement, unless otherwise indicated;
- (g) where a reference is made to a “day”, “week”, “month” or “year”, the reference is to the calendar period;
- (h) the word “including” is deemed to be followed by “without limitation”;
- (i) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (j) in the calculation of time, the first day will be excluded and the last day included; and
- (k) the parties confirm that they each have obtained independent legal advice, or elected not to obtain such advice, and accordingly agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of this Agreement.

**SCHEDULE 2
FUNCTIONS, OBLIGATIONS AND RESPONSIBILITIES**

The following are the functions, obligations and responsibilities referred to in Section 6.4 of this Agreement:

1. General:

The Subcontractor will provide to Employees:

- (a) all food and beverages; and
- (b) all room and board and living out allowances, as applicable,

as required by the Community Benefits Agreement.

2. Master Section:

CBA Article	Function, Obligation or Responsibility
14.501	The Employer may establish a flex work week schedule which allows for a work week starting on a day other than Monday (for example: Tuesday to Saturday).
17.402 (if applicable to the Project)	Where the accommodation is a hotel/motel the Employee may be required to vacate the room and remove all belongings out of the room. If an Employee wishes to store belongings, a lockup shall be provided.
19.100	A suitable heated lockup must be provided by the Employer for workers using their own tools.
19.201	In case of fire or burglary the Employer shall protect the value of an Employee's work clothes up to a total of three hundred and fifty dollars (\$350.00), required tools up to the total value of the tools, (tool for tool, make for make).
23.100	On commercial and institutional projects, heated lunchroom and women's and men's change rooms shall be provided for Employees for drying clothes, and changing clothes. The lunch and change rooms shall have tables, and benches, and provision for drying clothes. Such lunch and change rooms shall have windows and venting with adequate lighting and provision for continuous heat twenty-four (24) hours a day. The lunch and change rooms will be cleaned on each working shift and kept cleared of working materials and other construction paraphernalia. Lunchrooms shall provide enough room for all the workers to be seated at a table for lunch.
23.301	The Contractor/Employer shall be responsible for the provision, maintenance and cleanliness of sanitary facilities on the Site and for keeping all areas free of hazards and debris.

CBA Article	Function, Obligation or Responsibility
23.302	Chemical or flush toilets shall be provided for both women and men from the commencement of work on all jobs. Toilet paper shall be provided and facilities shall be cleaned on each working shift.
23.304	Where clean-up facilities are not provided and in mechanical and trade shops, hand cleanser and paper towels shall be provided at no cost to the Employee.
23.401	When working in a Fabrication Shop, proper ventilation shall be provided. In the event of a dispute, WorkSafeBC Regulations shall prevail.
23.402	When working in confined spaces with fibreglass or toxic fumes or smoke, proper ventilation and/or proper respiratory equipment shall be provided.
23.700	Telephone service shall be made available to all Employees at all times for incoming or outgoing emergency purposes and incoming emergency messages shall be relayed immediately.

3. Interior Road Building Addendum, if applicable to the Project:

CBA Article	Function, Obligation or Responsibility
14.201(e)	During inclement weather, where practical, the Employer shall provide a warm, dry area, such as an assembly room, equipment cab, or crew vehicle in which Employees may take their meal breaks.
14.202(d)	During inclement weather, where practical, the Employer shall provide a warm, dry area, such as an assembly room, equipment cab, or crew vehicle in which Employees may take their rest breaks.
General re Trade Sections – 1(b)	Where the Employer requires a specific Employee to upgrade or renew a certification or license, or perform a private procedure skills test on Site, unless the applicable Trade Sections indicates another party will pay, the Employer will pay the applicable costs and provide the time necessary.

4. Lower Mainland Road Building Addendum, if applicable to the Project:

CBA Article	Function, Obligation or Responsibility
14.201(e)	During inclement weather, where practical, the Employer shall provide a warm, dry area, such as an assembly room, equipment cab, or crew vehicle in which Employees may take their meal breaks.
14.202(d)	During inclement weather, where practical, the Employer shall provide a warm, dry area, such as an assembly room, equipment cab, or crew vehicle in which Employees may take their rest breaks.
General re Trade Sections –	Where the Employer requires a specific Employee to upgrade or renew a certification or license, or perform a private procedure skills test on Site, unless the applicable Trade Sections indicates another party will pay, the

CBA Article	Function, Obligation or Responsibility
1(b)	Employer will pay the applicable costs and provide the time necessary.

5. Appendices:

If applicable to the Project, all references to a BCIB function, obligation and responsibility in the Camp Standards Appendix will be read as a function, obligation and responsibility of the Subcontractor.

6. Trade Sections:

CBA Article	Function, Obligation or Responsibility	Additional Subcontractor Obligation
BM.203	When six (6) or more welders are employed, one (1) welder with the qualifications shall be "Welder foreperson" and will receive Foreperson rate. The Welder Foreperson shall work on the tools if required by the Employer.	
BM.204	A Boilermaker General Foreperson may be utilized by the Employer whenever the Employer has established this level of supervision of the work on a job or when this level is appropriate to the size and nature of the job as determined by the Employer.	
BM.414	<u>Handicapped Workers</u> The Employer agrees, subject to prior consultation with the Affiliated Union, to employ any member on work which suits their physical ability and which is acceptable to the member (this shall include but not be limited to tool crib). Those who have suffered injury or disability in the trade should be employed when their capabilities are considered suitable, provided workers have the approval of the Workers' Compensation Board.	The Subcontractor will support and cooperate with BCIB to encourage the use of Handicapped Workers.
BM.420	<u>Tools</u> When it is deemed necessary to maintain a special tool crib for the Boilermakers, such shall be under the jurisdiction of the Boilermakers' Union. It being understood the necessity of a tool crib and/or an attendant shall be determined by the Employer.	

CBA Article	Function, Obligation or Responsibility	Additional Subcontractor Obligation
CE.204	<p><u>General Foreperson</u> Where more than nineteen (19) Cement Masons or four (4) Forepersons are employed, the Employer shall appoint a General Foreperson at sixteen percent (16%) over the basic Industrial Hourly Rate plus one-half hour at straight time per shift (at Overtime rates on Overtime shifts).</p> <p>General Forepersons shall not be required to work with the tools unless the General Foreperson considers it necessary.</p> <p>Appointment of any Foreperson(s) is subject to the Master Section and Addenda “predominant trade” and “composite crew provisions”, and any Employees under the Foreperson’s supervision shall take instructions from that Foreperson.</p>	
DR.205	All Forepersons and Leadhands shall be selected and assigned at the option of the Employer.	
EL.416	Where requested by the Employer to use explosive activated tools, time spent to obtain certificate shall be during working hours and considered as time worked. (High explosive activated tools shall not be used).	
FL.420	<p><u>Older Workers</u> An Employee incapacitated by age or accident may be permitted to be employed at less than the regular scale of wages at a rate of pay mutually agreed upon by the Employee, the Employer, and the Affiliated Union. The conditions of employment shall be amended so as to enable such Employees to continue with their employment.</p>	The Subcontractor will cooperate with BCIB in determining the reduced scale of wages and conditions of employment.
OPR.412	<p>All Mechanics, Welders, Servicepersons, Drill Doctors, Steel Sharpeners, Vehicle Body Painters, and Mechanics and Welder Apprentices who request coveralls shall have these supplied and cleaned by the Employer. There shall be one change a week available in the Employee's proper size.</p> <p>Employees are expected to take reasonable care of coveralls supplied. In the event that an Employee does not return the coveralls supplied by the Employer, the Employer shall charge the cost of same to the Employee and deduct this cost from any monies owing to the</p>	If such items are not returned, the Subcontractor will advise BCIB and BCIB will deduct the applicable amount of the next Payroll Invoice.

CBA Article	Function, Obligation or Responsibility	Additional Subcontractor Obligation
	<p>Employee.</p> <p>When requested, coveralls shall be supplied on a temporary basis to Employees who assist on work as described above, or where the Employer and the Union mutually agree that coveralls are required.</p> <p>Employees entitled to receive coveralls as provided herein may obtain an additional change of coveralls in any one week providing the condition of the coveralls requires a change. The shop Foreperson shall use discretion in authorizing the additional change.</p>	<p>The Subcontractor will provide input to BCIB to assist in the determination of whether coveralls are required.</p>
OPS.412	<p>Work Scope – Apprentice Crane Operators shall be allowed to operate specific equipment based upon management evaluation of their qualifications, work experience and the requirements of the specific work in question. Notwithstanding this provision, the Employer shall provide the Apprentice Crane Operators so working with appropriate supervision and suitable communication options.</p>	
TER.203	<p>When the Employer works six (6) or more Employees on any one (1) shift on any one job (number shall include owner operated and/or rented equipment) under the jurisdiction of Teamsters Local Union No. 213, a Non-Operating Foreperson should be appointed and shall receive a premium of ten percent (10%) per hour over the hourly rate of the highest Teamster classification supervised</p>	

**SCHEDULE 3
PRIVACY PROTECTION**

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Schedule 3, in addition to the definitions set out in Schedule 1:

“**access**” means disclosure by the provision of access.

1.2 Interpretation

- (a) Any reference to “the Subcontractor” in this Schedule 3 includes any “associate” as defined in FOIPPA and the Subcontractor must ensure that all such persons comply with this Schedule 3.
- (b) The obligations of the Subcontractor in this Schedule 3 will survive the termination of this Agreement.
- (c) If a provision of this Agreement (including any authorization or direction given by BCIB under this Schedule 3) conflicts with a requirement of FOIPPA or an applicable order of the Information and Privacy Commissioner under FOIPPA, the conflicting provision of this Agreement (or authorization or direction) will be inoperative to the extent of the conflict.
- (d) The Subcontractor will comply with this Schedule 3 notwithstanding any conflicting provisions of this Agreement or the law of any jurisdiction outside Canada.

2 PURPOSE

2.1 Purpose

The purpose of this Schedule 3 is to:

- (a) enable BCIB to comply with its statutory obligations under FOIPPA with respect to Personal Information that is within BCIB’s control and in the Subcontractor’s custody; and
- (b) assist the Subcontractor, as a service provider to BCIB, to comply with its statutory obligations under FOIPPA.

3 COLLECTION OF PERSONAL INFORMATION

3.1 Collection

Unless this Agreement otherwise specifies or BCIB otherwise authorizes or directs in writing:

- (a) the Subcontractor may only collect or create Personal Information that is necessary for the performance of the Subcontractor's obligations, or the exercise of the Subcontractor's rights, under this Agreement;
- (b) the Subcontractor must collect Personal Information directly from the individual the information is about or from another source other than that individual with the written consent of the individual, or the individual's lawful representative; and
- (c) the Subcontractor must advise an individual from whom the Subcontractor collects Personal Information:
 - (i) the purpose for collecting it;
 - (ii) the legal authority for collecting it; and
 - (iii) the title, business address and business telephone number of the person designated by BCIB to answer questions concerning the Subcontractor's collection of Personal Information.

3.2 Accuracy of Personal Information

The Subcontractor must make every reasonable effort to ensure the accuracy and completeness of any Personal Information to be used by the Subcontractor or BCIB to make a decision that directly affects an individual the information is about.

3.3 Requests for Access to Personal Information

If the Subcontractor receives a request, from a person other than BCIB, for access to Personal Information, the Subcontractor must promptly advise the person to make the request to BCIB unless this Agreement expressly requires the Subcontractor to provide such access, and, if BCIB has advised the Subcontractor of the name or title and contact information of an official of BCIB to whom such requests are to be made, the Subcontractor must also promptly provide that official's name or title and contact information to the person making the request.

3.4 Correction of Personal Information

- (a) Within five Business Days of receiving a written direction from BCIB to correct or annotate any Personal Information, the Subcontractor must correct or annotate the information in accordance with the direction.
- (b) When issuing a written direction under Section 3.4(a) of this Schedule 3 BCIB must advise the Subcontractor of the date the correction request to which the direction relates

was received by BCIB in order that the Subcontractor may comply with Section 3.4(c) of this Schedule 3.

- (c) Within five Business Days of correcting or annotating any Personal Information under Section 3.4(a) of this Schedule 3, the Subcontractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to BCIB, the Subcontractor disclosed the information being corrected or annotated.
- (d) If the Subcontractor receives a request for correction of Personal Information from a person other than BCIB, the individual whose Personal Information has been requested, or that individual's lawful representative, the Subcontractor must promptly advise the person to make the request to BCIB and, if BCIB has advised the Subcontractor of the name or title and contact information of an official of BCIB to whom such requests are to be made, the Subcontractor must also promptly provide that official's name or title and contact information to the person making the request.

3.5 Protection of Personal Information

The Subcontractor must protect Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in this Agreement.

3.6 Storage and Access to Personal Information

Unless BCIB otherwise authorizes or directs in writing, the Subcontractor must not store Personal Information outside Canada or permit access to Personal Information from outside Canada.

3.7 Retention of Personal Information

Unless this Agreement otherwise specifies, the Subcontractor must retain Personal Information until authorized or directed by BCIB in writing to dispose of it or deliver it as specified in the authorization or direction.

3.8 Use of Personal Information

Unless BCIB otherwise authorizes or directs in writing, the Subcontractor may only use Personal Information if that use is for the performance of the Subcontractor's obligations, or the exercise of the Subcontractor's rights, under this Agreement, and for clarity in accordance with Section 3.6 of this Schedule 3.

3.9 Disclosure of Personal Information

The Subcontractor must not disclose Personal Information inside or outside Canada to any person other than BCIB unless the disclosure is to an entity that can legitimately compel disclosure under the laws of British Columbia or the disclosure is directed or authorized by BCIB or the disclosure is requested or authorized by the individual whose Personal Information

is at issue or that individual's lawful representative. BCIB will not unreasonably withhold its authorization under this Section 3.9.

3.10 Inspection of Personal Information

In addition to any other rights of inspection BCIB may have under this Agreement or under statute, BCIB may, at any reasonable time and on reasonable notice to the Subcontractor, enter on the Subcontractor's premises to inspect any Personal Information in the possession of the Subcontractor or any of the Subcontractor's information management policies or practices relevant to its management of Personal Information or its compliance with this Schedule 3 and the Subcontractor must permit, and provide reasonable assistance in respect to, any such inspection.

4 COMPLIANCE WITH FOIPPA AND AUTHORIZATIONS

4.1 Service Provider

- (a) The Subcontractor understands and acknowledges that it is a service provider of a public body as defined in FOIPPA.
- (b) The Subcontractor acknowledges that it is familiar with the requirements of FOIPPA governing Personal Information that are applicable to it as a service provider.
- (c) The Subcontractor must in relation to Personal Information comply with:
 - (i) the requirements of FOIPPA applicable to the Subcontractor as a service provider, including any applicable order of the Information and Privacy Commissioner under FOIPPA; and
 - (ii) any direction given by BCIB under this Schedule 3.

4.2 Notice of Non-Compliance

If for any reason the Subcontractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule 3 in any respect, the Subcontractor must promptly notify BCIB of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

36216754.2



Ministry of
Transportation
and Infrastructure

BROADWAY SUBWAY PROJECT

REQUEST FOR PROPOSALS

Volume 4 – Broadway Subway ATC System

June 25, 2019

**[Note to Proponents: To be issued by
Addendum]**

partnerships
British Columbia



Ministry of
Transportation
and Infrastructure

BROADWAY SUBWAY PROJECT

REQUEST FOR PROPOSALS

Volume 5 – Forms

June 25, 2019

partnerships
British Columbia

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Form 1

[PROPONENT TO INSERT PROPONENT LETTERHEAD]

TECHNICAL SUBMITTAL CERTIFICATE AND DECLARATION

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

RE: BROADWAY SUBWAY PROJECT (the “Project”) as defined in the Request for Proposals entitled “Broadway Subway Project Request for Proposals” dated June 25, 2019, as amended in accordance with its terms, (the “RFP”)

[Insert Proponent Name] (the “Proponent”)

Technical Submittal dated the **<Insert Detail>** day of **<Insert>**, 2019 (the “Technical Submittal”)

Each of the undersigned Proponent Members, on behalf of itself and on behalf of the Proponent and each Key Individual,

AND

Each of the undersigned Proponent Team Members, other than the Key Individuals and Proponent Members (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) each of the Proponent Members 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 each of the Proponent Members 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, there is no Connection between the Proponent or any Proponent Team Member and any other proponent, its proponent team members or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, agents or representatives or any other Persons associated with any of them;
- (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 PA, the Definitive BCA, the Definitive Base Supply Contract and the Competitive Selection Process, and not in reliance on information provided through or in connection with the RFP including the RFP Data Website or the Competitive Selection Process;
- (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 Proponent Member 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 7.1(a) to (f) of the Proponent Agreement;
- (n) except as detailed in writing in Appendix C to this Certificate and Declaration neither the Proponent nor any Proponent Member 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 Proponent Member and 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, any Proponent Member, or any Member;
- (o) except as detailed in writing in Appendix D to this Certificate and Declaration, neither the Proponent nor any Proponent Member 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) none of the Proponent or any of the Proponent Team Members nor, to the knowledge of the applicable Proponent Team Member (after due and reasonable enquiry), any of their respective “affiliates” (as defined in the *Business Corporations Act* (British Columbia) is a Restricted Person as that term is defined in the Definitive PA; and
 - (s) 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; and
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>**, 2019.

Important Notes for Signature by Proponent Members and Members

This Certificate is to be duly executed by each “Proponent Member” 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

Form 2

[PROPONENT TO INSERT PROPONENT LETTERHEAD]

FINANCIAL SUBMITTAL CERTIFICATE AND DECLARATION

TECHNICAL SUPPLEMENT INVITED

To: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (the “Province”)

RE: BROADWAY SUBWAY PROJECT (the “Project”) as defined in the Request for Proposals entitled “Broadway Subway Project – Request for Proposals” dated June 25, 2019, as amended in accordance with its terms, (the “RFP”)

[Insert Proponent Name] (the “Proponent”)

Technical Submittal submission dated the **<insert details>** day of **<insert>**, 2019 (the “Technical Submittal Submission”)

Financial Submittal dated the **<insert details>** day of **<insert>**, 2019 (the “Financial Submittal”)

Each of the undersigned Proponent Members, on behalf of itself and on behalf of the Proponent and each Key Individual,

AND

Each of the undersigned Proponent Team Members, other than the Key Individuals and Proponent Members (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) each of the Proponent Members 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 each of the Proponent Members 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;

[ALTERNATIVE 1 - if Technical Supplement contained only the confirmation in form and content described in the Technical Supplement Table set out in Section 3A of the RFP Appendix A, then the following paragraph (b) should be included and the alternative form 2, form 3 and form 4 of paragraph (b) should be deleted]

- (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 Submission, which Technical Submittal Submission 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”, and that such Technical Submittal is further ratified, confirmed and delivered, unamended, on the basis that the Proponent and each applicable Proponent Team Member has reviewed and considered the amendments, restructuring, supplements and impacts described or referenced in the Province’s invitation to submit a Technical Supplement and the Proponent and each such Proponent Team Member considers and has conclusively determined that no amendments to the Technical Submittal are necessary;

[ALTERNATIVE 2 - if Technical Supplement contained amendments and all amendments have been rejected then the following form of paragraph (b) should be included and the alternative form 1, form 3 and form 4 of paragraph (b) should all be deleted]

- (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 Submission,

which Technical Submittal Submission 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”, and that the Proponent and each applicable Proponent Team Member acknowledges that all amendments set out in the Proponent’s Technical Supplement have been rejected and therefore such Technical Submittal is further ratified and confirmed as unamended in any way whatsoever by anything set out in the Technical Supplement;

[ALTERNATIVE 3 - if Technical Supplement contained amendments and only some of the amendments have been rejected then the following form of paragraph (b) should be included and the alternative form 1, form 2 and form 4 of paragraph (b) should all be deleted]

- (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 Submission, which Technical Submittal Submission 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”, and that the Proponent and each applicable Proponent Team Member acknowledges those amendments set out in the Proponent’s Technical Supplement that have been rejected and therefore such Technical Submittal as amended only by the amendments set out in the Technical Supplement that were not rejected and only to the extent expressly set out in the Technical Supplement amendments that were not rejected, is further ratified and confirmed;

[ALTERNATIVE 4 - if Technical Supplement contained amendments and none of the amendments have been rejected then the following form of paragraph (b) should be included and the alternative form 1, form 2, and form 3 of paragraph (b) should be deleted]

- (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 Submission, which Technical Submittal Submission 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”, and such Technical Submittal, as amended by the amendments set out in the Technical Supplement and only to the extent expressly set out in the Technical Supplement amendments, is further ratified and confirmed;

- (c) the Proponent and each Proponent Team Member has received, reviewed, read and understood the RFP and this Certificate and Declaration;
- (d) the Technical Submittal and the Financial Submittal collectively constitute the Proposal and is herein referred to as the “Proposal”;
- (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 proposals;
- (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,

there is no Connection between the Proponent or any Proponent Team Member and any other proponent, its proponent team members or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, agents or representatives or any other Persons associated with any of them;

- (i) the Proposal 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;
- (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 submission 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 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 Proposal, the Project, the Definitive PA, the Definitive BCA, the Definitive Base Supply Contract and the Competitive Selection Process, and not in reliance on information provided through or in connection with the RFP including the RFP Data Website or the Competitive Selection Process;

- (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 Proponent Member 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 7.1(a) to (f) of the Proponent Agreement;
- (q) except as detailed in writing in Appendix C to this Certificate and Declaration neither the Proponent nor any Proponent Member 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 Proponent Member and 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, any Proponent Member, or any Member;
- (r) except as detailed in writing in Appendix D to this Certificate and Declaration neither the Proponent nor any Proponent Member 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) none of the Proponent or any of the Proponent Team Members nor, to the knowledge of the applicable Proponent Team Member (after due and reasonable enquiry), any of their respective “affiliates” (as defined in the *Business Corporations Act* (British Columbia) is a Restricted Person as that term is defined in the Definitive PA; and
 - (v) 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; and
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>**, 2019.

Important Notes for Signature by Proponent Members and Members

This Certificate is to be duly executed by each “Proponent Member” 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]

Form 3

[PROPONENT TO INSERT PROPONENT LETTERHEAD]

FINANCIAL SUBMITTAL CERTIFICATE AND DECLARATION

NO TECHNICAL SUPPLEMENT INVITED

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

RE: BROADWAY SUBWAY PROJECT (the “Project”) as defined in the Request for Proposals entitled “Broadway Subway Project – Request for Proposals” dated June 25, 2019 as amended in accordance with its terms, (the “RFP”)

[Insert Proponent Name] (the “Proponent”)

Technical Submittal submission dated the **<Insert Details>** day of **<Insert>**, 2019 (the “Technical Submittal Submission”)

Financial Submittal dated the **<Insert Details>** day of **<Insert>**, 2019 (the “Financial Submittal”)

Each of the undersigned Proponent Members, on behalf of itself and on behalf of the Proponent and each Key Individual,

AND

Each of the undersigned Proponent Team Members, other than the Key Individuals and Proponent Members (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) each of the Proponent Members 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 each of the Proponent Members 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 Submission, which Technical Submittal Submission 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;
- (f) 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 any component of their proposals;

- (g) 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, there is no Connection between the Proponent or any Proponent Team Member and any other proponent, its proponent team members or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, agents or representatives or any other Persons associated with any of them;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) 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;

- (l) 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 PA, the Definitive BCA, the Definitive Base Supply Contract and the Competitive Selection Process, and not in reliance on information provided through or in connection with the RFP including the RFP Data Website or the Competitive Selection Process;
- (m) 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(l) hereof,;
- (n) 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;
- (o) neither the Proponent nor any Proponent Member 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 7.1(a) to (f) of the Proponent Agreement;

- (p) except as detailed in writing in Appendix C to this Certificate and Declaration neither the Proponent nor any Proponent Member 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 Proponent Member and 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, any Proponent Member, or any Member;
- (q) except as detailed in writing in Appendix D to this Certificate and Declaration neither the Proponent nor any Proponent Member nor any Member is aware of any ground on which any action, suit or proceeding described in paragraph 1(p) hereof might be commenced;
- (r) the Proposal satisfies the requirements of the RFP, including without limitation, the Project Requirements;
- (s) the Proponent and each Proponent Team Member has read, reviewed and understood the Proposal and authorized and consented to the submission of the Proposal;
- (t) none of the Proponent or any of the Proponent Team Members nor, to the knowledge of the applicable Proponent Team Member (after due and reasonable enquiry), any of their respective “affiliates” (as defined in the *Business Corporations Act* (British Columbia) is a Restricted Person as that term is defined in the Definitive PA; and
- (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.

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>**, 2019.

Important Notes for Signature by Proponent Members and Members

This Certificate is to be duly executed by each “Proponent Member” 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(k)

[Left Empty if Nothing to Disclose]

FINANCIAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX B

Paragraph 1(o) Disclosure

[Left Empty if Nothing to Disclose]

FINANCIAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX C

Paragraph 1(p) Disclosure

[Left Empty if Nothing to Disclose]

FINANCIAL SUBMITTAL CERTIFICATE AND DECLARATION

APPENDIX D

Paragraph 1(q) Disclosure

[Left Empty if Nothing to Disclose]

Form 4A

IMPORTANT INSTRUCTIONS TO PROPONENTS – THIS FORM OF COMMITMENT LETTER IS FOR USE BY PROPONENTS WHO SUBMIT A PROPOSAL WHICH MEETS THE AFFORDABILITY REQUIREMENT.

<Proponent to ensure Applicable Letter Head(s) inserted and delete this note>

Commitment Letter to be provided by all Senior Lenders (as defined in the Project Agreement) supporting the Proposal, either individually or (provided that all of them sign the letter) as a group. Separate letters from separate groups of Senior Lenders (eg senior, mezzanine, capital markets, financial guarantors) will be permitted.

TO: Her Majesty the Queen in Right of the Province of British Columbia

AND

BC Transportation Financing Authority

**RE: BROADWAY SUBWAY PROJECT (THE “PROJECT”)
Request for Proposals entitled “Broadway Subway Project Request for Proposals” as amended (“RFP”)**

[Individual letter -Bank or other financial institution name] [Group letter] – The signatories of this letter] provide[s] this letter in support of the Proposal submitted by **[insert Proponent's name]** (the “Proponent”) in response to the RFP issued by the Province on June 25, 2019, as amended, in relation to the Project and in consideration of the Province inviting the Proponent to submit such Proposal. Capitalized terms used in this letter have the same meanings given to them in the RFP.

1. We confirm that we have undertaken the due diligence that we consider necessary on the Project to enable us to offer committed financing to the Proponent in an amount of not less than **\$450,000,000** in support of the Proponent's Proposal, which the Proponent has confirmed to us complies with the requirements of the RFP. The provision of such financing will be subject only to the following:
 - (a) the completion of a satisfactory audit of the financial close Financial Model;
 - (b) negotiation and finalization of funding documentation based on the attached debt term sheet (accepting there will be no changes to the Project Agreement in the form issued on **[insert date of final RFP]**, other than as contemplated by Section 3.10.1 of Volume 1 of the RFP); and

- (c) negotiation and finalization of Principal Contracts based on the heads of terms included in the Proposal (accepting there will be no changes to the Project Agreement in the form issued on **[insert date of final RFP]**, other than as contemplated by Section 3.10.1 of Volume 1 of the RFP.
2. We have carried out and relied upon the due diligence referred to in paragraph 1 above with support from and in cooperation with **[name]** (our legal advisors), **[name]** (our technical advisors), **[name]** (our insurance advisors) and **[name]** (our model auditors). In particular:
- (a) due diligence on the Technical Submittal forming part of the Proposal for the Project by the Proponent has been undertaken on our behalf and we are satisfied with the Technical Submittal;
- (b) due diligence on the insurance proposals contained in the Proposal and the Province's requirements in relation to insurances for the Project has been undertaken on our behalf and we can confirm that we are satisfied with the adequacy of the proposed insurance arrangements contained within the Proposal (assuming that such insurance arrangements are commercially available at the time of financial close);
- (c) due diligence has been undertaken on the Financial Model included in the Proposal and we confirm that the results of the Financial Model (including the sensitivities) are satisfactory and capable of supporting the proposed financing described in the attached debt term sheet (subject to a satisfactory audit of the financial close Financial Model); and
- (d) we confirm that we accept the terms and risk allocation of and have no further comments on the Project Agreement in the form issued on **[insert date of final RFP]** and that the Project Agreement is acceptable without modification (save as contemplated by Section 3.10.1 of Volume 1 of the RFP) for purposes of financing the Project as contemplated in this letter.
3. We are satisfied that the attached debt term sheet sets out all significant commercial terms and conditions relating to the financing referred to in paragraph 1 above and the debt funding structure and, if any, all required terms relating to any material adverse change conditions to which the commitment referred to in paragraph 1 above is subject.

4. *[If individual letters submitted]* We confirm that we have received credit committee approval and if any other required internal approvals for the underwriting of up to *[insert detail]* % of the *[describe relevant facilities referred to in debt term sheet]* on the terms contemplated by this letter and the attached debt term sheet.

[If group letters submitted] We confirm that we have received credit committee approval and, if any, other required internal approvals for the underwriting of the facilities referred to in the attached debt term sheet in the following percentages and on the terms contemplated by this letter and the attached debt term sheet:

[List banks/financial institutions individually and the percentage participations of each of them in each facility]

[If individual or group letters submitted] We confirm that [our commitment] [the commitment of each signatory of this letter] described in this letter in the amount represented by the percentage[s] detailed above will not be affected by any subsequent withdrawal by, or removal of, any other Senior Lender from the Proponent's financing plan.

5. We confirm that we will be able to meet the Province's timetable to achieve Financial Close (i.e. execution and delivery of all funding agreements and satisfaction of all conditions precedent to initial drawdown) by 11 weeks after the announcement of the Proponent as the Preferred Proponent.

The provisions of this letter and attached debt term sheet have been approved for a period expiring not less than 120 days from the Financial Submittal Deadline.

For the avoidance of any doubt, this letter does not constitute an offer of finance or a legally binding commitment of any kind to provide finance. This letter is intended for your exclusive use and may not be relied upon or used by any other person. This letter is provided on the condition that the contents will be treated as strictly private and confidential and shall not be disclosed or quoted in whole or in part to any person other than the Province, the Province Parties and their advisors.

[INTENTIONALLY BLANK]

[Insert Appropriate Authorized Signature Provisions]

Form 4B

IMPORTANT INSTRUCTIONS TO PROPONENTS – THIS FORM OF COMMITMENT LETTER IS FOR USE BY PROPONENTS WHO SUBMIT A PROPOSAL WHICH DOES NOT MEET THE AFFORDABILITY REQUIREMENT.

<Proponent to ensure Applicable Letter Head(s) inserted and delete this note>

Commitment Letter to be provided by all Senior Lenders (as defined in the Project Agreement) supporting the Proposal, either individually or (provided that all of them sign the letter) as a group. Separate letters from separate groups of Senior Lenders (eg senior, mezzanine, capital markets, financial guarantors) will be permitted.

TO: Her Majesty the Queen in Right of the Province of British Columbia (the “Province”)

**RE: BROADWAY SUBWAY PROJECT (THE “PROJECT”)
Request for Proposals entitled “Broadway Subway Project RFP” as amended (“RFP”)**

[Individual letter - Bank or other financial institution name] **[Group letter]** – The signatories of this letter] provide(s) this letter in support of the Proposal submitted by **[insert Proponent's name]** (the “Proponent”) in response to the RFP issued by the Province on **June 25, 2019**, as amended, in relation to the Project and in consideration of the Province inviting the Proponent to submit such Proposal. Capitalized terms used in this letter have the same meanings given to them in the RFP.

1. We confirm that we have undertaken the due diligence that we consider necessary on the Project to enable us to offer financing to the Proponent in an amount of not less than \$450,000,000 in support of the Proponent’s Proposal, which the Proponent has confirmed to us complies with the requirements of the RFP. The provision of such financing will be subject only to the following:
 - (a) if the Province and the Proponent enter into the negotiations provided for in Section 3.10.4 of Volume 1 of the RFP, our satisfaction with the terms of any negotiated agreement and the determination of the financing required to support such agreement, if any such agreement is settled;
 - (b) the completion of a satisfactory audit of the financial close Financial Model, which audit, if the Province and the Proponent enter into the negotiation process referenced in paragraph 1a) above, extends to the Financial Model, as revised to reflect the changes negotiated as part of that process;

- (c) negotiation and finalization of funding documentation based on the attached debt term sheet accepting there will be no changes to the Project Agreement in the form issued on **[insert date of final RFP]**, unless any such changes are required as a result of negotiations between the Province and the Proponent provided for in Section 3.10.1 or Section 3.10.4 of Volume 1 of the RFP); and
 - (d) negotiation and finalization of Principal Contracts based on the heads of terms included in the Proposal accepting there will be no changes to the Project Agreement in the form issued on **[insert date of final RFP]** unless any such changes are required as a result of negotiations between the Province and the Proponent provided for in Section 3.10.1 or Section 3.10.4 of Volume 1 of the RFP).
2. We have carried out and relied upon the due diligence referred to in paragraph 1 above with support from and in cooperation with **[name]** (our legal advisors), **[name]** (our technical advisors), **[name]** (our insurance advisors) and **[name]** (our model auditors). In particular:
- (a) due diligence on the Technical Submittal forming part of the Proposal for the Project has been undertaken on our behalf and we are satisfied with the Technical Submittal;
 - (b) due diligence on the insurance proposals contained in the Proposal and the Province's requirements in relation to insurances for the Project has been undertaken on our behalf and we can confirm that we are satisfied with the adequacy of the proposed insurance arrangements contained within the Proposal (assuming that such insurance arrangements are commercially available at the time of financial close);
 - (c) due diligence has been undertaken on the Financial Model included in the Proposal and we confirm that the results of the Financial Model (including sensitivities) are satisfactory and capable of supporting the proposed financing described in the attached debt term sheet (subject to a satisfactory audit of the Financial Model); and
 - (d) we confirm that we accept the terms and risk allocation of and have no further comments on the Project Agreement in the form issued on **[insert date of final RFP]** and that the Project Agreement is acceptable without modification

(save as contemplated therein) for purposes of financing the Project as contemplated in this letter.

3. We are satisfied that the attached debt term sheet sets out all significant commercial terms and conditions relating to the financing referred to in paragraph 1 above and the debt funding structure and, if any, all required terms relating to any material adverse change conditions to which the commitment referred to in paragraph 1 above is subject (unless any changes are required in respect of the financing as contemplated by paragraph 1a) above).

4. **[If individual letters submitted]** We confirm that we have received credit committee approval and, if any, other required internal approvals for the underwriting of up to **[insert detail]** % of the **[describe relevant facilities referred to in the attached debt term sheet]** on the terms contemplated by this letter and the attached debt term sheet (unless and changes are required in respect of the financing as contemplated by paragraph 1a) above)..

[If group letters submitted] We confirm that we have received credit committee approval and, if any, other required internal approvals for the underwriting of the facilities referred to in the attached debt term sheet in the following percentages and on the terms contemplated by this letter and the attached debt term sheet (unless and changes are required in respect of the financing referred to in paragraph 1a) above):

[List banks/financial institutions individually and the percentage participations of each of them in each facility]

[If individual or group letters submitted] We confirm that [our commitment] [the commitment of each signatory of this letter] described in this letter in the amount represented by the percentage[s] detailed above will not be affected by any subsequent withdrawal by, or removal of, any other Senior Lender from the Proponent's financing plan.]

5. We confirm that we will be able to meet the Province's timetable to achieve Financial Close, (i.e. execution and delivery of all funding agreements and satisfaction of all conditions precedent to initial drawdown) by 11 weeks after the announcement of the Proponent as Preferred Proponent, subject to any negotiations referred to in paragraph 1a) above being completed and documented within 3 weeks of announcement of the Proponent as Preferred Proponent.

The provisions of this letter and attached debt term sheet have been approved for a period expiring not less than 120 days from the Financial Submittal Deadline.

For the avoidance of any doubt, this letter does not constitute an offer of finance or a legally binding commitment of any kind to provide finance. This letter is intended for your exclusive use and may not be relied upon or used by any other person. This letter is provided on the condition that the contents will be treated as strictly private and confidential and shall not be disclosed or quoted in whole or in part to any person other than the Province, the Province Parties and their advisors.

[Insert Appropriate Authorized Signature Provisions]

Form 5

DOCUMENTS ESCROW AGREEMENT

THIS AGREEMENT (the “Agreement”) is made as of the **[NTD – PROPONENTS TO: (1) INSERT FINANCIAL SUBMITTAL DEADLINE AS SET OUT AND DEFINED IN THE RFP AND (2) HAVING DONE SO DELETE THIS NOTE TO DRAFT]** __ day of _____, 2019.

B E T W E E N :

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (the “Province”)

AND

[NTD – PROPONENTS TO: (1) REVIEW INSTRUCTIONS AT THE END OF THIS DOCUMENT AND (2) COMPLETE DETAILS OF THE PROPONENT MEMBERS AND (3) HAVING DONE SO DELETE THIS NOTE TO DRAFT]

<> (the “Proponent”)

AND

**Miller Thomson LLP (the “Escrow Agent”)
400-725 Granville Street
Vancouver, BC
V7Y 1G5**

WHEREAS:

- A.** The Proponent has submitted certain documents comprising the Financial Submittal portion of its Proposal in connection with the RFP, as defined in this Agreement.
- B.** Pursuant to Section 4 of Appendix A to the RFP, the Proponent is to place into an escrow account with the Escrow Agent the Documents, as defined in this Agreement.

- C. The Province, the Escrow Agent and the Proponent acknowledge that entering into this Agreement will not constitute using, consulting, including or seeking the advice of the Escrow Agent as a Restricted Party within the contemplation of Section 5.13 of the RFP.

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:

1.0 DEFINITIONS

1.1 In this Agreement, unless the context otherwise expressly requires:

- (a) **“Change Event”** means any one of the following:
- (i) a Value Engineering Proposal,
 - (ii) a Province Change (other than a Minor Works), or
 - (iii) a Supervening Event in respect of which a financial claim has been made by an Applicant pursuant to Part 8 of the Project Agreement.
- (b) **“Competitive Selection Process”** has the meaning given to it in the RFP;
- (c) **“Designated Office”** has the meaning given to it in Section 8.1;
- (d) **“Documents”** means, in hard copy and electronic format,
- (i) all original files and materials in respect of pricing associated with the Proponent’s Proposal including, without limitation, files and materials containing information regarding the Proponent’s assumptions, including with respect to taxes, made in determining the scope of work and price calculations used to prepare the Financial Submittal; and
 - (ii) the supplementary materials, information, documents and data, that may from time to time be added to the files and materials referenced in this clause (i) of this Subsection 1.1(e) in accordance with this Agreement; and

excludes the Work Product or any Intellectual Property Rights conveyed or licensed to the Province pursuant to the Proponent Agreement;

- (e) “**Escrow Expenses**” means the fees, out-of-pocket costs, charges and expenses incurred by the Escrow Agent in connection with the provision of services in accordance with this Agreement;
- (f) “**Financial Submittal**” has the meaning given to it in the RFP;
- (g) “**Notice**” has the meaning given to it in Section 10.1;
- (h) “**Broadway Subway Project**” has the meaning given to it in the RFP;
- (i) “**Price**” has the meaning given to it in Section 2.1(a);
- (j) “**Project Agreement**” has the meaning given to it in the RFP;
- (k) “**Proponent Agreement**” means the agreement entitled “Proponent Agreement” and made as of the **• day of •, 2019**, between the Proponent, the Proponent Team Members (as defined therein) and the Province;
- (l) “**Proposal**” has the meaning given to it in the RFP;
- (m) “**RFP**” means the request for proposals in respect of the Broadway Subway Project issued by the Province on June 25, 2019, including all Addenda;
- (n) “**Working Day**” means any day, other than Saturday, Sunday or statutory holiday in the Province of British Columbia; and

any other capitalized term has the meaning given to that term in the Project Agreement.

2.0 PROPONENT REPRESENTATIONS AND WARRANTIES REGARDING DOCUMENTS

2.1 The Proponent represents and warrants to the Province on execution of this Agreement and at all times thereafter, with the knowledge and intent that the Province will rely upon such representations and warranties notwithstanding any subsequent inquiry or review by the Province, that the Documents:

- (a) are complete, accurate and current and clearly detail how each price included in the Proposal has been determined and shows prices and price elements in sufficient detail as is adequate to enable the Province to understand the Proponent’s price calculations (“**Price**”) referenced in the Financial Submittal;

- (b) provided in connection with the quotations or proposed Change Events will, *inter alia*, meet all applicable documentary requirements of the Project Agreement;
- (c) itemize the estimated costs of performing the required work separated into usual and customary items and cost categories and sub-items and cost categories to present a detailed estimate of costs, such as direct labour, repair labour, equipment ownership and operation, expendable materials, permanent materials, subcontract costs, plant and equipment, indirect costs, contingencies, mark-up, overhead and profit;
- (d) itemize the estimated annual costs of insurance premiums for each coverage required to be provided under Part 6 of the Project Agreement;
- (e) were personally examined by an authorized officer of the Proponent prior to delivery to ensure that the Documents satisfy the requirements of the RFP and this Agreement;
- (f) include all assumptions, detailed quantity takeoffs, price reductions and discounts, rates of production and progress calculations, and quotes from Principal Contractors and Subcontractors used by the Proponent to arrive at the Price or the price provided in respect of a Change Event;
- (g) provided in connection with any Change Event will be personally examined by an authorized officer of the Proponent prior to delivery, and that they will meet all applicable requirements of the Project Agreement and this Agreement;

- (h) include all information, data and documents used by each applicable Principal Contractor, Subcontractor in determining the relevant price under the applicable Principal Contract or Subcontract, as the case may be and a certificate of representation and warranty from each such applicable Principal Contractor or Subcontractor for the benefit of the Proponent and the Province certifying that all information, data and documents used in establishing such price is included in the Documents and that such information, data and documents are complete, accurate and current; and
- (i) are, except as otherwise required in the RFP, in such format as is used by the Proponent in connection with its Proposal.

3.0 DEPOSIT OF DOCUMENTS

- 3.1 The Proponent hereby deposits one copy of the files and materials comprising the Documents referenced in Section 1.1(d)(i), in original hard copy format and as electronic files (where available), where any such electronic files are provided as full active files (not read-only or password protected), in a format listed in Table A-1 “Electronic File Formats” in Section 2 of Appendix A to the RFP.
- 3.2 The Documents will be held by the Escrow Agent and released by the Escrow Agent solely in accordance with the terms of this Agreement.
- 3.3 The Escrow Agent acknowledges deposit of the Documents and agrees to hold and release the Documents in accordance with the terms and conditions of this Agreement.

4. LOCATION, ACCESS AND RELEASE OF DOCUMENTS

- 4.1 The Escrow Agent will hold the Documents, on a confidential basis, in escrow, in a secure designated area on the premises of the Escrow Agent located at Miller Thomson LLP, 400-725 Granville Street, Vancouver, BC.
- 4.2 The Escrow Agent will ensure that the designated area is locked at all times and that no unauthorized persons, including employees of the Escrow Agent, will be allowed access to any of the Documents except in accordance with this Agreement.

- 4.3** The Escrow Agent will release and deliver the Documents to the following parties as set out below and upon such delivery in accordance with the terms of this Agreement the Escrow Agent will be relieved and discharged from all further duties under this Agreement:
- (a)** to the Proponent, at the Proponent's sole expense, upon receipt by the Escrow Agent of notice from the Province that the Province has cancelled or terminated the RFP or the Competitive Selection Process;
 - (b)** to the Proponent, at the Proponent's sole expense, upon receipt by the Escrow Agent of notice from the Province that the Province has entered into the Project Agreement with a specified proponent other than the Proponent; and
 - (c)** to the Province, on behalf of the Province and the Proponent, at the location described in Section 4.1, at the shared expense of the Province and the Proponent equally, upon receipt by the Escrow Agent of notice from the Province that the Province has entered into the Project Agreement with the Proponent.

5. ESCROW AGENT DUTIES AND ESCROW EXPENSES

- 5.1** The Escrow Agent is entitled to rely and act upon any judgment, order, demand, instrument, certificate or paper in good faith believed by the Escrow Agent to be genuine and signed by the proper person or persons, and the Escrow Agent will be under no duty to make investigations or inquiry as to any statements contained in any such writing but may accept the same as conclusive evidence of the truth and accuracy of such statements.
- 5.2** The Escrow Agent may employ such counsel and advisors as it may reasonably require for the purpose of discharging its duties under this Agreement and the Escrow Agent may act and will be protected in acting in good faith on the opinion or advice or other information obtained from any such counsel or advisor in relation to any matter arising under this Agreement.

- 5.3** The Escrow Agent will not be required to give the Documents any greater degree of care than it gives its own similar property.
- 5.4** The Escrow Agent will have no duties or responsibilities except for those expressly set out in this Agreement.
- 5.5** If the Escrow Agent is uncertain as to any of its duties or rights under this Agreement or receives instructions from the Province or the Proponent or from any third party which, in the opinion of the Escrow Agent, are contradictory or in conflict with any provisions of this Agreement, the Escrow Agent will be entitled to refrain from taking any action, other than to retain the Documents, until the Escrow Agent is directed otherwise in writing by the parties to this Agreement or by a final order or judgment of a court of competent jurisdiction, the delays for appeal of any such order or judgment having expired without any appeal having been filed.
- 5.6** The Escrow Agent will not be required to institute, defend or intervene in any action until it has been given appropriate assurances by the Province and the Proponent to protect the Escrow Agent to its satisfaction against all expenses and liabilities incurred and to be incurred by it in so doing.
- 5.7** Nothing contained in this Agreement will impair or affect the ability and full right of the Escrow Agent to represent or provide counsel or advice to any party to this Agreement in connection with any matter (including without limitation any action arising from or in connection with this Agreement) whether or not related to the subject matter of the Project Agreement, nor will the agreement to act as Escrow Agent under this Agreement create any impropriety in connection with the Escrow Agent's representation of or provision of counsel or advice to any party to this Agreement.
- 5.8** The Province and the Proponent will reimburse the Escrow Agent for the Escrow Expenses incurred by the Escrow Agent in accordance with this Agreement and payment of such Escrow Expenses may be treated by the Escrow Agent as a condition precedent to the release of the Documents.
- 5.9** The Escrow Agent will deliver a monthly invoice, detailing the amounts set out in the invoice, to each of the Province and the Proponent for 50% of the Escrow Expenses incurred to the date of the invoice and each of the Province and the Proponent will

deliver payment of the invoiced amount on or before the date that is 30 days after receipt of the invoice.

- 5.10** The obligation of the Province and the Proponent to pay 50% of the Escrow Expenses is a several obligation and not subject to joint or joint and several liability. Without limiting the forgoing, if either party fails or refuses to pay any of its portion of the Escrow Expenses, the other party may, but will not be obligated to, pay any such unpaid portion in which event the party that failed or refused to pay will be indebted to the paying party for an amount equal to that paid, which indebtedness will be immediately due and payable.

6.0 REPLACEMENT OR RESIGNATION OF ESCROW AGENT

- 6.1** The Escrow Agent may by delivery of prior written notice to the Province and to the Proponent, resign and be relieved and discharged from all further duties under this Agreement and such resignation, relief and discharge will be effective, subject to compliance by the Escrow Agent with Sections 6.3 and 6.5 of this Agreement, on the date that is 30 days after delivery of such written notice of resignation.
- 6.2** The Province and the Proponent may by delivery to the Escrow Agent of prior written notice signed jointly by each of the Province and the Proponent remove the Escrow Agent and appoint a replacement escrow agent and such removal will be effective on the date that is 30 days after delivery of such written notice of removal and replacement.
- 6.3** The Escrow Agent will, as soon as practicable after delivery of the Escrow Agent's notice of resignation or after receipt of the joint notice of removal and replacement, transfer the Documents to the replacement escrow agent or, if no such replacement escrow agent has been appointed, to the Designated Office and upon such delivery, the Escrow Agent will be relieved and discharged from all further duties under this Agreement.
- 6.4** The Province and the Proponent will, as soon as practicable after receipt of the Escrow Agent's notice of resignation or after delivery of the joint notice of removal and replacement, appoint a replacement escrow agent on the same terms as set out in this Agreement and deliver joint notice to the Escrow Agent of the identity of such replacement escrow agent and address for delivery of the Documents.

6.5 Despite Section 6.3, if during the 30-day period after delivery of any notice of resignation or notice of removal and replacement the Province delivers a written notice pursuant to Section 4.3, the Escrow Agent will deal with the Documents in its possession in accordance with the terms of Section 4.3.

7.0 INDEMNITY

7.1 The Province and the Proponent will jointly and severally indemnify the Escrow Agent against all losses, claims and damages arising out of this Agreement, other than losses, claims or damages arising from the gross negligence, wilful misconduct or breach of this Agreement by the Escrow Agent.

7.2 In no event will the Province, the Proponent or the Escrow Agent be responsible or liable for any incidental, indirect, speculative, consequential, special, punitive or exemplary damages of any kind whatsoever arising from this Agreement.

7.3 Neither the Province nor the Escrow Agent will be liable to the Proponent for any inadvertent or accidental disclosure of the Documents or any information contained therein.

8.0 DELIVERY, AVAILABILITY AND RELEASE OF DOCUMENTS

8.1 Documents released under Section 4.3(c) will be delivered directly from the Escrow Agent to the premises of the Province located at Suite 1100 – 401 West Georgia Street, Vancouver, BC or at such other location as agreed in writing by the Province and the Proponent (the “**Designated Office**”).

8.2 The Proponent will, prior to delivery of the Province’s notice referenced in Section 4.3(c) and as soon as practicable after receipt of any Escrow Agent notice of resignation, supply locked fireproof cabinet(s) to the Province suitable for the purpose of holding the Documents in secure and safe keeping at the Designated Office. The Documents will be held in such locked fireproof cabinet(s) and located in the Designated Office. The Proponent will hold the key to such fireproof cabinets but will neither do nor omit to do or suffer anything to be done or to be omitted to be done that would derogate from or negate the exercise by the Province of its rights under this Agreement.

8.3 The Documents will be available during business hours on a Working Day, including at any time before release of the Documents under Section 4.3,

- (a)** for joint review from time to time by the Province and the Proponent, including to determine completeness;
- (b)** for review by authorized persons acting to resolve a dispute as contemplated by Section 5.18 of the RFP, or pursuant to the Dispute Resolution Procedure under the Project Agreement;
- (c)** for review in connection with the approval or consideration of a proposed Change Event or proposed change to the Project Schedule;
- (d)** for the unilateral review, from time to time, by the Province to confirm or assess details and other information, including errors or omissions, as the Province may in its discretion consider necessary in connection with the execution of the Project Agreement; and
- (e)** for the unilateral review, from time to time, by the Province to determine completeness pursuant to Section 9.4.

8.4 The Documents will not be released to the Proponent until the last to occur of,

- (a)** the date upon which all outstanding disputes have been settled pursuant to Section 18.1 of the Project Agreement;
- (b)** the date upon which all amounts required to be paid to the Province by the Proponent pursuant to the Project Agreement have been paid in full; and
- (c)** 180 days after the Termination Date of the Project Agreement.

9.0 REVIEW ORGANIZATION AND USE OF AND SUPPLEMENTS TO DOCUMENTS

9.1 Forthwith upon delivery of the Documents to the Designated Office under Section 8.1, the Province and the Proponent will conduct the initial joint review of the Documents.

9.2 The Province and the Proponent will

- (a) organize the Documents, labelling each page so that it is obvious that the page is part of the Documents and so as to enable a person reviewing the page out of context to determine where it can be found within the Documents,
 - (b) prepare a table of contents listing each document included in the Documents and its corresponding page number(s) and an index describing the document, and
 - (c) each retain a copy of the table of contents and index prepared under Subsection 9.2(b).
- 9.3** If at the initial joint review of the Documents or any time thereafter the Province determines that the Documents are incomplete, the Province may require and the Proponent will deliver such sufficient information, documents and data to complete the Documents.
- 9.4** The Province may at any time, in its discretion, conduct a review of the Documents to determine whether they are complete and the Proponent will forthwith upon receipt of the Province’s request unlock the cabinets for purposes of this review.
- 9.5** If the Province determines that any information, document or data is missing from an Escrowed Document, the Proponent will provide such information, document or data within three Working Days after delivery of the Province’s request in a condition together with such date stamps and labels to identify the information, document or data as supplementary to the already-existing Documents.
- 9.6** Concurrently with the final determination of all matters regarding each Change Event (other than a final determination by the Province not to proceed with a Province Change or to reject a Project Co Proposal, or a final determination that no financial compensation is payable to the Applicant in respect of a Supervening Event), one copy of all materials required to be provided to the Province pursuant to the Project Agreement will be delivered to the Designated Office, will be reviewed, organized and indexed in accordance with Section 9.2, and be retained as supplements forming part of the Documents, and such materials will include all information, documents and data used by the relevant Principal Contractors and Subcontractors in determining its price or prices applicable to the work comprising such Change Event.

- 9.7** The Proponent will ensure that each of the Principal Contracts includes a representation and warranty from the applicable Principal Contractor, for the benefit of the Proponent and the Province, stating that all information, documents and data used by such Principal Contractor in establishing its price are included in the Documents and a covenant from such Principal Contractor to provide a sworn certification in favour of the Proponent and the Province together with such additional information, documents and data to be included as supplements to the Documents in connection with each Change Event in accordance with this Agreement, that such information, documents and data are complete, accurate and current. The Proponent will ensure that any Subcontract either includes similar representations, warranties and covenants from the applicable Subcontractor or, if not, that the Subcontract includes a provision requiring the applicable Subcontractor to preserve all documentary information used in establishing its relevant price under the Subcontract and to provide such documentation to the Proponent and the Province in connection with any claim made by such Subcontractor.
- 9.8** Except as otherwise set out in this Agreement, the Proponent will have no right to add to or supplement the Documents.
- 9.9** Save and except for the obligation of the Province and the Proponent to conduct the initial joint review of the Documents pursuant to Section 9.1, nothing in this Agreement obliges the Province or the Proponent to review, consider, take into account or adduce as evidence the Documents in connection with any dispute under the Project Agreement, or discharge of their respective rights and obligations under the Project Agreement.
- 9.10** Each of the Province and the Proponent acknowledges and agrees that no person appointed to consider any matter or resolve any dispute pursuant to the Project Agreement or the Dispute Resolution Procedure will be obligated to treat any Documents which may be adduced as evidence or otherwise admitted in any proceeding under the Dispute Resolution Procedure or otherwise as determinative of any matter in respect of which any of the Documents are admitted.
- 9.11** The Documents do not form part of, nor do they change, modify, amend or affect, the Project Agreement or any other Province Project Document and neither the Documents nor any information contained or referenced in the Documents will change, modify,

amend or affect the payments payable in accordance with Schedule 10 of the Project Agreement.

9.12 The Documents are, and will always remain, the property of the Proponent and will be considered to be in the Proponent’s possession, subject to the Province’s right to receive, review and give notices in respect of the Documents under this Agreement and the Province acknowledges that the Proponent may consider that the Documents constitute trade secrets or proprietary information.

10.0 NOTICE

10.1 Any notice or other communication or writing required or permitted to be given under this Agreement or for the purposes of this Agreement (a “Notice”) will be sufficiently given if delivered personally or transmitted by electronic transmission to:

(a) if to the Province, to:

Ministry of Transportation and Infrastructure
Suite 5B – 940 Blanshard Street
Victoria, BC
V8W 3E6

Attention: Deputy Minister, Ministry of Transportation and Infrastructure

Email: <>

(b) if to the Proponent, to:

[NTD – Proponent to Insert Attention details, Address (must be in British Columbia) and email address and then delete this note to draft]

Attention: <>

Email.: <>

- (c) if to the Escrow Agent, to:
Miller Thomson LLP
400 – 725 Granville Street
Vancouver, BC
V7Y 1G5

Attention: Charles Bois

Email: cbois@millerthomson.com

or to such other address in British Columbia or email address as the party to whom such notice is to be given will from time to time designate to the other parties to this Agreement in accordance with this Section.

10.2 Any notice so delivered will be deemed to have been delivered and received

- (a) if delivered personally then upon receipt at the address for delivery of the applicable party; or
- (b) if transmitted by electronic transmission during business hours on a Working Day then upon receipt and, if not transmitted during business hours on a Working Day, then upon the commencement of business hours of the next following Working Day, provided that:
- (i) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
- (ii) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

11.0 TERMINATION

11.1 Subject to Section 11.2, this Agreement will terminate:

- (a) on release of the Documents by the Escrow Agent to the Proponent pursuant to Section 4.3(a) or pursuant to Section 4.3(b); or

- (b) if the Documents have been released by the Escrow Agent pursuant to Section 4.3(c) of this Agreement, then this Agreement will terminate on delivery of the Documents by the Province to the Proponent in accordance with Section 8.4.

11.2 Despite any other term of this Agreement, Article 5, Article 7 of this Agreement will survive the termination of this Agreement.

12.0 GENERAL

12.1 This Agreement may not be assigned by any party without the prior written consent of the other parties, such consent not to be unreasonably withheld, save and except that the Province may in its sole discretion, on prior written notice to the Proponent and the Escrow Agent, transfer or assign this Agreement to a permitted assignee of the Province's rights under the Project Agreement.

12.2 This Agreement will enure to the benefit of and be binding upon the Province and its assigns and the Proponent and the Escrow Agent and their successors and permitted assigns.

12.3 The parties acknowledge that pursuant to Section 28(2) of the *Financial Administration Act* (British Columbia), it is a term of any 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 that agreement.

12.4 In the case of any conflict, ambiguity or inconsistency between or among any of the provisions of the Project Agreement and the provisions of this Agreement,

- (a) in relation to the deposit, retention and release of the Documents under this Agreement, the provisions of this Agreement will prevail;
- (b) in all matters other than as set out in (a) above, the provisions of the Project Agreement will prevail.

12.5 This Agreement will be construed, interpreted and enforced in accordance with, and the rights of the parties will be governed by the laws of the Province of British Columbia and

the courts of competent jurisdiction, within the Province of British Columbia, will have exclusive jurisdiction with respect to any legal actions commenced to enforce the provisions of this Agreement.

- 12.6** In this Agreement, a period of days will be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. (Vancouver time) on the last day of the period. If any period of time is to expire hereunder on any day that is not a Working Day, the period will be deemed to expire at 5:00 p.m. (Vancouver time) on the next succeeding Working Day. If any act (including the giving of notice) is otherwise required by the terms hereof to be performed on a day which is not a Working Day, such act will be valid if performed on the next succeeding Working Day.
- 12.7** Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party to exercise, and no delay in exercising, any right under this Agreement will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.
- 12.8** Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.
- 12.9** In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.
- 12.10** The division of this Agreement into Articles, Sections and Subsections and other subdivisions and the inclusion of headings and captions are for convenience of reference only and will not affect the construction or interpretation of this Agreement. The headings and captions in this Agreement are inserted for convenience only and do

not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.

12.11 The Agreement constitutes the entire agreement between the parties in respect of the subject matter of this Agreement and no understandings, representations, contracts, or agreements, oral or otherwise, exist between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement.

12.12 Time will be of the essence of this Agreement.

12.13 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

12.14 This Agreement may only be amended by a further written agreement executed by the parties.

12.15 In this Agreement

- (a)** unless the context otherwise requires, any reference to "this Agreement" means this instrument and any reference in this Agreement to any article, section, subsection or paragraph by number is a reference to the appropriate article, section, subsection or paragraph in this Agreement;
- (b)** "person" includes a corporation, firm, association and any other legal entity and wherever the singular or masculine is used it will be construed as if the plural, the feminine or the neuter, and wherever the plural or the feminine or the neuter is used it will be construed as the singular or masculine, as the case may be, had been used where the context or the parties so require;
- (c)** the words "including" and "includes", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement; and

- (d) all expressed dollar amounts refer to lawful currency of Canada.

12.16 The Proponent hereby represents and warrants 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.

12.17 The Province may in its sole discretion request from 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.

12.18 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.

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 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 Proponent

This Agreement is to be duly executed by each “Proponent Member” 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 12.16 of this Agreement

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

[ESCROW AGENT]

By:

Authorized Signatory

Full Name and Title

Form 6

IRREVOCABILITY AGREEMENT

THIS DEED OF AGREEMENT is made as of the **[NTD – PROPONENTS TO: (1) INSERT FINANCIAL SUBMITTAL DEADLINE AS SET OUT AND DEFINED IN THE RFP AND (2) HAVING DONE SO DELETE THIS NOTE TO DRAFT]** day of **<>**, 2019 (the “Commencement Date”)

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (the “Province”)

And:

[NTD – PROPONENTS TO: (1) REVIEW INSTRUCTIONS AT THE END OF THIS DOCUMENT AND (2) COMPLETE DETAILS OF THE PROPONENT MEMBERS AND (3) HAVING DONE SO DELETE THIS NOTE TO DRAFT]

<>(the “Proponent”)

And:

[NTD – PROPONENTS TO: (1) REVIEW INSTRUCTIONS AT THE END OF THIS DOCUMENT AND (2) COMPLETE DETAILS OF THE PROPONENT TEAM MEMBERS (OTHER THAN THE PROPONENT MEMBERS) AND (3) HAVING DONE SO DELETE THIS NOTE TO DRAFT]

<>

And:

<>

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

(collectively, the Province, the Proponent, and the Proponent Team Members are herein referred to as the “Parties”)

WHEREAS

- A. The Province issued the Request for Proposals as part of the Competitive Selection Process for the Broadway Project.
- B. The Proponent wishes to continue in the Competitive Selection Process and has submitted the Proposal (herein defined) in accordance with the Request for Proposals.

NOW THEREFORE the Parties have agreed to enter into this Deed of Agreement as follows.

1.0 DEFINITIONS AND INTERPRETATION

1.1 Unless otherwise expressly provided for in this Agreement, the following definitions apply to the following terms:

- (a) **“Commencement Date”** means the date first above written;
- (b) **“Day”** means a calendar day;
- (c) **“Financial Submittal Certificate and Declaration”** means the Financial Submittal Certificate and Declaration delivered by the Proponent in accordance with the Request for Proposals;
- (d) **“Liquidated Damages”** means the amount deemed to have been agreed upon by the Proponent and the Province
 - (a) to be not a penalty,
 - (b) to represent a genuine pre-estimate of the damages that the Province will suffer as a result of the happening of any of the events specified in Section 4.1 of this Agreement, which damages include lessening of the competition for the Project Agreement, jeopardizing the Province’s opportunity to develop and proceed with the 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 any of the specified events, and

- (c) to be paid by the Proponent to the Province in accordance with the terms of this Agreement;
- (e) **“Proponent Agreement”** means the agreement entitled the “Proponent Agreement” and made as of the • day of •, 2019 among the Province, the Proponent and each of the Proponent Team Members, as amended;
- (f) **“Proponent Certificates”** means the Financial Submittal Certificate and Declaration and the Technical Submittal Certificate and Declaration;
- (g) **“Proposal”** means the Technical Submittal, Technical Supplement (if applicable) and Financial Submittal delivered by the Proponent in accordance with the Request for Proposals, together with all clarifications, rectifications, and more complete, supplementary, replacement and additional information and documentation delivered by the Proponent from and after the Technical Submittal Deadline or the Financial Submittal Deadline in response to any request of the Province;
- (h) **“Request for Proposals”** means the request for proposals in respect of the Broadway Project issued by the Province on June 25, 2019, including all Addenda;
- (i) **“Technical Submittal”** has the meaning given to this expression in the Financial Submittal Certificate and Declaration;
- (j) **“Technical Submittal Certificate and Declaration”** means the Technical Submittal Certificate and Declaration delivered by the Proponent in accordance with the Request for Proposals; and

any other capitalized term has the meaning given to that term in the Request for Proposals.

- 1.2 If there are conflicts or inconsistencies between this Agreement and any part of the Request for Proposals, the provisions of this Agreement will prevail.

2.0 PROPOSAL

2.1 The Proposal constitutes a firm offer to the Province and is irrevocable and binding on the Proponent and each Proponent Team Member.

2.2 Unless such date is extended by written agreement of the Province and the Proponent, the Proponent will not do the following before the date that is 180 days after the Financial Submittal Deadline:

- (a) revoke or withdraw the Proposal, or
- (b) alter or modify the Proposal, save and except and only to the extent expressly set out in Section 2.3 and Section 2.4.

2.3 Subject to Section 2.4, that part of the Proposal comprising:

[Alternative 1 – If the Proponent submitted Advance Interest Rate Submissions in accordance with Appendix D of the RFP then the following language should be included in Section 2.3 and the alternative form 2 of the language should be deleted]

- (a) prices, input costs and all underlying assumptions used to calculate such prices and input costs (except for any adjustment expressly contemplated by Section 3.7.2 of the Request for Proposals), are to remain firm and valid for a period of not less than 120 days from the Financial Submittal Deadline.

[Alternative 2 – If the Proponent did not submit Advance Interest Rate Submissions in accordance with Appendix D of the RFP then the following language should be included in Section 2.3 and the alternative form 1 of the language should be deleted]

- (a) prices, input costs and all underlying assumptions used to calculate such prices and input costs, are to remain firm and valid for a period of not less than 120 days from the Financial Submittal Deadline.

2.4 Prices, input costs and all underlying assumptions used to calculate such prices and input costs may not be adjusted after the expiry of the 120-day period referenced in Section 2.3(a) unless the Proponent provides written notice to the Province of the adjustment to the prices and input costs or to the debt financing terms, as applicable, and demonstrates to the satisfaction of the Province, in the Province's discretion, acting

reasonably, that the Proponent has used its best efforts to continue to maintain the prices and input costs or the debt financing terms, as applicable, firm and valid, but that despite such best efforts, the specified adjustments to the prices and input costs or to the debt financing terms, as applicable, are required solely as a direct result of one or more events that:

- (a) are external to the Proponent and the Proponent Team Members;
- (b) could not have been prevented by and are beyond the control of the Proponent and any of its Proponent Team Members; and
- (c) constitute a material adverse change to the conditions underlying the prices and input costs or the debt financing terms, as applicable, that are subject to the adjustment, and

provided always that on receipt of the Proponent’s written notice referenced in this Section 2.4, the Province may in its discretion and without limiting any other term of the Request for Proposals, including Section 5.3 of the Request for Proposals, or of the Proponent Agreement, including Section 2.2 or Section 13.1 of the Proponent Agreement, discontinue the process with the Proponent as the Preferred Proponent.

2.5 The Proponent and each Proponent Team Member is irrevocably and unconditionally bound by the statements, certifications, representations and warranties set out in the Proponent Certificates and in the Proposal and made by or on behalf of the Proponent or such Proponent Team Member, as applicable, and by such statements, certifications, representations and warranties made by submission of the Proposal in accordance with the Request for Proposals.

3.0 PREFERRED PROPONENT

SETTLE – FINALIZE TERMS

3.1 Subject to Article 3A of this Agreement, if the Proponent is selected as the Preferred Proponent, the Proponent will act in good faith and use its best efforts to finalize, settle, and execute the Definitive PA, the Definitive BCA and the Definitive Base Supply Contract without further negotiation or amendment, except for changes, modifications and additions:

- (a) relating to the determination by the Province in its discretion regarding which parts, if any, of the Proposal are to be incorporated by reference or otherwise, into the Project Agreement or otherwise pursuant to express provisions of the Project Agreement, and changes and additions as a consequence of or in connection with such incorporations;
- (b) to those provisions or parts of the Definitive PA, the Definitive BCA and the Definitive Base Supply Contract which are indicated as being subject to completion or finalization or which the Province, in its discretion, considers require completion or finalization, including provisions which require:
 - (i) the modification or the insertion or addition of information relating to the Proponent’s formation (corporate, partnership or other) and funding structure; and
 - (ii) the modification or the insertion or addition of information in order to reflect accurately the nature of the Proponent’s relationships with its principal subcontractors (including each of the Principal Contractors) and lenders;
- (c) required by the Province in its discretion in order to complete, based on the Proposal, any provision of the Definitive PA, the Definitive BCA or the Definitive Base Supply Contract, including changes, modifications and additions contemplated in or required under the terms of the Definitive PA, the Definitive BCA and the Definitive Base Supply Contract;
- (d) that the Province, in its discretion, considers are necessary to create or provide for a duly authorized and legally complete, enforceable and binding agreement; and
- (e) that the Province, in its discretion, considers are necessary solely to enhance clarity in legal drafting.

3.2 Neither the Proponent nor any of the Proponent Team Members has any right or entitlement to request or require any changes, additions or modifications to the Definitive PA, the Definitive BCA or the Definitive Base Supply Contract and if the Proponent is selected as the Preferred Proponent, neither the Proponent nor any of the Proponent

Team Members will request or require any changes, additions or modifications to the Definitive PA, the Definitive BCA or the Definitive Base Supply Contract except as contemplated in Subsections 3.1(a) to and including (e) of this Agreement and, if the negotiations process contemplated in Article 3A of this Agreement has been implemented, then subject to and as contemplated in Article 3A of this Agreement.

CLOSING

- 3.3** Notwithstanding any other term of this Agreement, the obligation of the Province to execute and deliver the Project Agreement is conditional on and subject to
- (a)** any and all required authorizations, orders and approvals, including without limitation any approvals required under the *Financial Administration Act* (British Columbia), and the *Transportation Act* (British Columbia) being obtained;
 - (b)** satisfaction of the Province with the results of the investigations referenced in Section 3.4 of this Agreement.
- 3.4** For the Province to proceed to execution and delivery of the Project Agreement, the Province may in its discretion conduct ongoing due diligence investigations, checks and verifications pertaining to the Project Documents, the Proponent and any Proponent Team Member or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them, including without limitation investigations as to their affiliations, conditions and activities.
- 3.5** The Proponent and each Proponent Team Member, as applicable, will provide access to and will promptly make available to the Province and its advisors, agents and representatives such documentation, and information, in connection with the Competitive Selection Process, including without limitation, the draft and final draft versions of all Project Documents, and personal, financial, technical and such other information and documentation, as may be requested from time to time by or on behalf of the Province, including in connection with the due diligence investigations, checks and verifications referenced in Section 3.4 of this Agreement.

3A NEGOTIATIONS

- 3A.1** If the Proponent is selected as the Preferred Proponent and its Proposal does not meet the Affordability Requirement, the Province may in its discretion and entirely without restriction or limitation howsoever of any other right, discretion or interest to which the Province may be entitled by delivery of written notice invite the Preferred Proponent to enter into negotiations with a view to obtaining a Project Agreement which the Province considers in its discretion to be in the interests of or advantageous to the Province or otherwise acceptable to the Province.
- 3A.2** The negotiations contemplated under Section 3A.1 of this Agreement may, in the Province's discretion, extend to any matter whatsoever, including changes and additions to, and removals of, any one or more aspects or parts, including design, technical, scope, timing, commercial, risk, financing, pricing aspects or parts, of the Definitive PA, the Definitive BCA, the Definitive Base Supply Contract, the Proposal and the Project Work.
- 3A.3** Neither the Province nor the Proponent will be under any obligation or duty, whether in contract, tort, statute or common law, to negotiate any matter, to continue negotiations or to obtain a Project Agreement through the process contemplated in this Article 3A.
- 3A.4** The Province may at any time and for any reason that the Province, in its discretion, considers to be in the interests of the Province, including if the Proponent declines to accept the Province's invitation referenced in Section 3A.1, revoke that invitation and, if applicable, terminate negotiations with the Proponent and proceed to take any one or more steps that the Province, in its discretion considers, to be in its interests or to its advantage including:
- (a)** proceed with the Proponent as Preferred Proponent to finalize and settle the Definitive PA, Definitive BCA and Definitive Base Supply Contract or Proponent Supply Contract (as case may be) as contemplated in Article 3 of this Agreement in which case the terms of Article 3 will apply and the Proponent will proceed in accordance with and subject to the terms of Article 3 to finalize, settle and execute the Definitive PA, Definitive BCA and Definitive Base Supply Contract or Proponent Supply Contract (as case may be);

- (b) discontinue the process with the Proponent, select another Proponent as the Preferred Proponent and invite that Proponent to enter into the negotiations contemplated in this Article 3A;
- (c) discontinue the process with the Proponent, select another Proponent as Preferred Proponent and proceed to finalize and settle the Definitive PA, Definitive BCA and Definitive Base Supply Contract and Proponent Supply Contract (as case may be) as contemplated in Article 3 of this Agreement; or
- (d) any of the activities, processes and works contemplated in Section 5.3 of Volume 1 of the Request for Proposals.

4.0 BREACH

4.1 On the happening of any one or more of the following events or circumstances:

- (a) the Proponent or any Proponent Team Member fails to observe, perform or comply with any provision of this Agreement;
- (b) any representation or warranty made by the Proponent or any Proponent Team Member in the Proponent Certificates, or in either of them, is untrue or incorrect,

or at any time thereafter, the Proponent will for all purposes be deemed and considered to be ineligible to continue in the Competitive Selection Process and to have withdrawn from the Competitive Selection Process, unless any such event or circumstance is waived by the Province, and the Province may in its sole discretion elect to do any one or more of the following:

- (c) if a Security Deposit has been delivered, without notice draw on, retain and apply the proceeds of the Security Deposit to its own or other use in its sole discretion, as Liquidated Damages;
- (d) pursue any remedy available to it at law or in equity;
- (e) waive, with or without conditions, the failure or the materially untrue or incorrect representation or warranty.

- 4.2** The draw on and the retention and application of the proceeds of the Security Deposit pursuant to Section 4.1 will represent and be construed as Liquidated Damages and not as a penalty.
- 4.3** The rights, powers and remedies conferred on the Province under this Agreement are not intended to be exclusive and each will be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Province under this Agreement, any other agreement, at law or in equity and the exercise by the Province of any right, power or remedy will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.
- 4.4** No failure or delay on the part of the Province to complain of an act or failure of the Proponent or of a Proponent Team Member or of a materially untrue or incorrect representation or warranty made by the Proponent or any Proponent Team Member, or to declare the Proponent or a Proponent Team Member to be in breach of this Agreement, irrespective of how long such act or failure to act or such untrue or incorrect representation or warranty, continues will constitute a waiver by the Province of its rights hereunder at law or equity or otherwise.
- 4.5** Notwithstanding any other provision of this Agreement, on the happening of any one or more of the events or circumstances specified in Section 4.1(a) and 4.1(b), the Province agrees that it will not bring and hereby waives any claim or claims against the Proponent and any Proponent Team Member as a result of such events or circumstances in excess of the sum of \$20 million provided that it is hereby agreed that nothing in this section shall interfere with or otherwise limit or restrict the rights of the Province with respect to the Security Deposit pursuant to the terms of this Agreement or otherwise.

5.0 NOTICES

- 5.1** All notices and any other communications, under this Agreement will be in writing and will be delivered by hand, sent by prepaid registered mail to the following addresses, or transmitted by electronic mail to the following electronic mail addresses, provided that in the case of electronic mail, confirmation of transmission is printed.
- (a)** if to the Proponent and the Proponent Team Members, or any of them:

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

<>

Attention: <>

Email: <>

(b) if to the Province:

Her Majesty the Queen in right of the Province of British Columbia
 Broadway Project
 1100 – 401 West Georgia Street
 Vancouver, BC V6B 5A1

Attention: Contact Person

E-mail: BSPContact@gov.bc.ca

5.2 Either of the Province or the Proponent may, from time to time, notify the other by notice in writing in accordance with section 5.1, of any amendment to the addresses, emails or phone numbers referenced in that section and, from and after the giving of such notice, the amended address or amended number specified will, for purposes of this Agreement, be deemed to be the address or number of the applicable party.

5.3 In the event of an actual or imminent postal strike, slowdown or other postal disruption, neither notices nor any other communications will be mailed but will either be delivered by hand or transmitted by electronic mail, in accordance with this Agreement.

5.4 Notices and any other communications delivered in accordance with this Agreement will be deemed to have been given and received if transmitted by electronic mail, when capable of being retrieved by the intended recipient.

6.0 ASSIGNMENT

6.1 Neither the Proponent nor any Proponent Team Member will transfer or assign the whole or any part of this Agreement or any right, title, obligation, benefit, and interest of the Proponent or any Proponent Team Member without the prior written consent of the

Province, which consent may be arbitrarily withheld or may be subject to such terms and conditions as the Province in its sole discretion may impose.

- 6.2** The Province may in its sole discretion, on prior written notice to the Proponent and the Proponent Team Members, transfer or assign this Agreement to a permitted assignee of the Province's rights under the Project Agreement.

7.0 GENERAL

- 7.1** All prices and price elements included in the Proposal are expressed in Canadian currency and are all-inclusive, including all taxes other than GST.
- 7.2** This Agreement will enure to the benefit of and be binding upon the Province and its assigns and upon each of the Proponent and the Proponent Team Members and their respective successors and permitted assigns.
- 7.3** Each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be unenforceable or invalid in respect of any Person or circumstance, then such provision may be severed and such unenforceability or invalidity will not affect any other provision of this Agreement, and this Agreement will be construed and enforced as if such invalid or unenforceable provision had never been contained herein and such unenforceability or invalidity will not affect or impair the application of such provision to any other Person or circumstance but such provision will be valid and enforceable to the extent permitted by law.
- 7.4** 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.
- 7.5** 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.

- 7.6** This Agreement may only be amended by instrument in writing signed by the Parties.
- 7.7** 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.
- 7.8** If the Proponent is a joint venture or consortium, or a combination thereof, or a special purpose entity created solely for the Project, each of the Equity Members of such joint venture, consortium or special purpose entity, 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 Equity Member was the sole party executing this Agreement.
- 7.9** If any member, shareholder or partner (as the case may be) of the Proponent or any Proponent Team Member 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 on behalf of such entity, 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.
- 7.10** Each provision of this Agreement is several. If any provision of this Agreement is, becomes, or is declared or adjudged by an arbitrator or court to be, illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability, as the case may be, shall not in any way affect the legality, validity or enforceability of any of the remaining provisions of this Agreement, all of which shall remain in full force and effect.
- 7.11** Time is of the essence of this Agreement.
- 7.12** Not Used

- 7.13** Any additional Person that becomes a Proponent Team Member subsequent to the execution and delivery of this Agreement by the other parties thereto will execute an agreement to be bound by the terms of this Agreement.
- 7.14** The Proponent and the Proponent Team Members will from time to time and upon the reasonable request of the Province make, do, execute, and deliver, or cause to be made, done, executed and delivered all further assurances, acts, instruments, and documents for the purpose of giving full force and effect to this Agreement.
- 7.15** No waiver by any party of a breach or default by any other party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of any party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such party of any of its rights against any other party.
- 7.16** References in this Agreement to “in its discretion”, “in its sole discretion”, “in the discretion of the Province”, “in the sole discretion of the Province”, “the exercise by the Province of any right, power or remedy” when used in respect of the Province will be interpreted to mean the sole, absolute and unfettered, including unfettered by any implied or express duties of good faith or of fairness, discretion or opinion, as the case may be, of the Province.
- 7.17** The Proponent and each Proponent Team Member hereby represents and warrants, on its own behalf, 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.

- 7.18** The Province may in its sole discretion request from each party executing this Agreement, in the manner provided herein, 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.
- 7.19** 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.
- 7.20** In this Agreement the words "including" and "includes", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.
- 7.21** The Province, the Proponent and each of the Proponent Team Members hereby declare and agree that it is their express intention that this Agreement is created and entered into as a deed and is executed as such.
- 7.22** 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, instruments or other subordinate legislation made under the relevant statute or regulation.
- 7.23** 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, faxed, or electronic scanned or PDF file type (Adobe Acrobat Portable Document Format) form. This Agreement may be delivered by hand, facsimile or electronic mail, provided that if delivered by electronic mail, then in electronic scanned or PDF file type.

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

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

_____ (seal)

Authorized Signatory

Full Name and title

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

Important Notes for Execution by Proponent and Proponent Team Members

This Agreement is to be duly executed AS A DEED by each “Proponent Team Member” 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 to ensure that this agreement is duly and validly executed AS A DEED, including by the affixation of a seal, or otherwise as appropriate.

Use more than one counterpart signature page where applicable.

The Province will rely upon the representation and warranty provided at Section 7.17 of this Agreement.

Form 7

LIMITED NOTICE TO PROCEED AGREEMENT

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

B E T W E E N :

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

AND

[NTD – INSERT DETAIL OF PROPONENT MEMBERS 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 June 25, 2019 for the Broadway Subway Project (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 Project 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) **“Dispute Resolution Procedure”** means the dispute resolution procedure described and defined as the “Dispute Resolution Procedure” in the Project Agreement;
 - (h) **“Irrevocability Agreement”** means the irrevocability agreement made as of the **[NTD – Date to be Inserted]** entered into among the Province, the Proponent and the Proponent Team Members (all as defined therein);
 - (i) **“Project Agreement”** means the Definitive PA, as defined in the RFP, including all schedules and attachments thereto as such Definitive PA may be finalized and settled within the contemplation of the Irrevocability Agreement and the RFP;
 - (j) **“Proponent Agreement”** means the proponent agreement including all schedules and attachments thereto made as of the • day of •, 2019 and made among the Province, the Proponent and each of the Proponent Team Members (all as defined therein);
 - (k) **“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
 - (l) **“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 Project Agreement including but without limitation to the generality of the foregoing, Part 4 of Schedule 4 and Part 4 of Schedule 9 of the Project 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, the Proponent Agreement or the Irrevocability 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 Project 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, the Proponent Agreement or the Irrevocability 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, the Proponent Agreement or the Irrevocability 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 Project Agreement is executed and delivered and the transaction contemplated by and comprising the grant of the Project 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 Project 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 Project 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 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 and the Irrevocability 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 Project Agreement by the Province and Project Co 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, faxed, or electronic scanned or PDF file type (Adobe Acrobat Portable Document Format) form. This Agreement may be delivered by hand, facsimile 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:
Her Majesty the Queen in right of the Province of British Columbia
Broadway Subway Project

1100 – 401 West Georgia Street
Vancouver, BC V6B 5A1

Attention: Contact Person

Email: BSPContact@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]**

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 responsible 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 or sent by facsimile transmission.

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 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.

**HER MAJESTY THE QUEEN 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 Proponent

This Agreement is to be duly executed by the “Proponent Members” 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 the ordering of a TBM and any additional activities listed on 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 Project Agreement, as defined in the Project Agreement

(Appendix A to Schedule 3 of the PA)]

