



Ministry of
Transportation
and Infrastructure

**BROADWAY SUBWAY PROJECT
REQUEST FOR QUALIFICATIONS**

February 15, 2019

SUMMARY OF KEY INFORMATION

RFQ TITLE	<p>The title of this RFQ is:</p> <p>Broadway Subway Project, RFQ</p> <p>Please use this title on all correspondence.</p>
CONTACT PERSON	<p>The Contact Person for this RFQ can be reached at:</p> <p>Email: BSPContact@gov.bc.ca.</p> <p>No telephone enquiries please.</p> <p>Please direct all enquiries, in writing, to the Contact Person.</p>
RECEIPT CONFIRMATION AND CONFIDENTIALITY FORM	<p>Access to the RFQ Data Website and further information relating to, but not forming part of or amending, this RFQ will be directed only to parties who have completed and returned the Receipt Confirmation and Confidentiality Form.</p>
SUBMISSION TIME	<p>The Submission Time is:</p> <p>11:00 AM (PDT), April 4, 2019</p>
SUBMISSION LOCATION	<p>Broadway Subway Project</p> <p>Suite 1100 – 401 West Georgia Street Vancouver BC V6B 5A1</p> <p>ATTENTION: CONTACT PERSON</p>

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1 INTRODUCTION

1.1 Purpose

This Request for Qualifications (“**RFQ**”) is issued by the Province of British Columbia (“the **Province**”). The purpose of this RFQ is to invite interested parties to indicate their interest in, and their qualifications for, the Broadway Subway Project (“the **Project**”). Through the process described in this RFQ, the Province anticipates identifying up to three Respondents to be invited to participate in the next phase of the Competitive Selection Process: the Request for Proposals (“**RFP**”) phase.

The purpose of the Competitive Selection Process is to identify a qualified entity (“**Project Co**”) with whom the Province may enter into a Project Agreement to lead the design, construction, and partial financing of the Project.

This RFQ is not a tender or an offer or a request for proposals, and there is no intention by the Province to make an offer by issuing this RFQ.

Capitalized terms in this RFQ are defined in Section 6 of this RFQ. If a capitalized term is not defined in Section 6 of this RFQ, it will be defined in the section of this RFQ in which it is first used.

1.2 Administration of this RFQ

Partnerships British Columbia Inc. (“**Partnerships BC**”) is managing this RFQ and the Competitive Selection Process on behalf of the Province.

1.3 Eligibility

Any interested party, or parties, may submit a Qualification Response to this RFQ. Respondents may be individuals, corporations, joint ventures, consortia, partnerships, or any other legal entities. If the Respondent is not a legal entity, the Respondent will act through the legal entity or entities comprising the Respondent.

1.4 Background

The Broadway Corridor (the “**Corridor**”) extends along Broadway in Metro Vancouver approximately from Victoria Drive (East) to the University of British Columbia (“**UBC**”) (West), and 4th Avenue (North) and 16th Avenue (South), and is the second largest jobs centre in British Columbia (“**BC**”) – second only to downtown Vancouver. The Corridor includes western Canada’s largest hospital (Vancouver General Hospital), world-class health care and academic institutions (such as Emily Carr University of Art and Design), and hundreds of businesses, shops, and services.

The Corridor is also the busiest bus route in North America, and the most densely-developed corridor in BC that is not served by rail rapid transit. Additionally, over the next 30 years significant population and

employment growth is expected within the Corridor with a resulting 255% increase in demand for transit services by 2045.

In 2009, the South Coast British Columbia Transportation Authority (“**TransLink**”), the City of Vancouver, the BC Ministry of Transportation and Infrastructure, UBC, and Metro Vancouver screened more than 200 technology and alignment options for Broadway rapid transit as part of the UBC Line Rapid Transit Study. Three potential options were subject to further technical analysis to identify a solution that would address the most critical gap in Metro Vancouver’s rapid transit network, balance transportation priorities across the region, and provide benefits for the Corridor, region, and province.

Based on the strength of these analyses, the Mayors’ Council on Regional Transportation (“**Mayor’s Council**”) included an underground extension of the existing SkyTrain System from the existing VCC-Clark Station to Arbutus Street as a key priority of its Regional Transportation Investments: A Vision for Metro Vancouver.

The SkyTrain System in Vancouver, BC is managed by TransLink. The Expo Line opened in 1986 and the Millennium Line was added in 2002 and both are operated by the British Columbia Rapid Transit Company (“BCRTC”) on behalf of TransLink; the Broadway Subway will also be operated by BCRTC on behalf of TransLink. The Canada Line, which opened in 2009 is also managed by TransLink but is operated by InTransit BC under a 30 year concession agreement.

1.5 Project Summary

The Project includes the design, construction, and partial financing of an approximately 5.7-kilometre extension of the Millennium Line from just west of VCC-Clark Station to a new terminus at Arbutus Street. Major underground works, such as tunneling and construction of underground stations, are required to complete the Project.

The Project will, among other benefits, provide:

- A service with significant benefits to transit riders in the form of increased capacity, travel time savings, greater reliability, and an improved customer experience;
- A solution to a critical gap in the regional transit network, thereby easing congestion at other transfer points;
- A reduction in greenhouse gas emissions by reducing automotive vehicle kilometres traveled (“**VKT**”) and replacing diesel bus B-Line service with electric SkyTrain service; and
- Economic development through construction related (direct and indirect) job creation and tax revenue.

The Project alignment is shown in Figure 1.

Figure 1 – Broadway Subway Project Alignment



1.6 RFQ Data Website and Further Information

A restricted access data website with background data relating to the Project (“**RFQ Data Website**”) is available. To receive access to the RFQ Data Website and any further information in connection with this RFQ, Respondents are required to fully complete, sign, and return the Receipt Confirmation and Confidentiality Form attached as Appendix B of this RFQ to the Contact Person.

Public information relating to the Project is available on the Project Website at: <https://engage.gov.bc.ca/broadwaysubway/>.

1.7 General Scope of Project Co’s Responsibility

The purpose of this Section 1.7 is to outline the anticipated general scope of Project Co’s responsibilities. Project Co will enter into the Project Agreement with the Province and will serve as the single point of contact for the Province for all purposes under the Project Agreement. In addition to having overall responsibility for meeting the requirements of the Project Agreement, it is anticipated that Project Co will be directly responsible for the roles of environmental director, quality director, and communications director, the requirements for which will be detailed in the Project Agreement.

1.7.1 Project Agreement

The Draft Project Agreement will be included with the RFP and will, among other things, detail the technical specifications for the design and construction components of the Project; the scope of the services to be provided by Project Co; and proposed commercial terms.

The Definitive Project Agreement, incorporating revisions and amendments to the Draft Project Agreement, will be the basis upon which Proposals will be prepared in response to the RFP.

1.7.2 Design and Construction

A summary of significant components of the anticipated design and construction scope is set out in Table 1. This should not be considered an exhaustive or complete list.

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 federal and provincial regulatory requirements and legislation as outlined in the Project Agreement. • Site preparation including, where applicable, demolition of existing buildings. • Design and construction of guideway along the approximately 5.7-kilometre long alignment, including an elevated guideway for approximately 700 m and approximately 5 kilometres of underground guideway. • Disposal of excavated material. • Design and construction of six new underground stations and associated facilities. • Design, supply and installation of trackwork and electrical and mechanical systems and subsystems, including the automatic train control system. • Design and construction of civil works, including roadworks required to accommodate the Project. • Protection and relocation of utilities within the alignment. • Integration of the Broadway Subway with the existing SkyTrain System, including the existing automatic train control, other electrical and mechanical systems and the existing vehicle fleet, including engaging TransLink and its subsidiaries on design, construction, and operations. • Integration with the existing Broadway-City Hall Station, including coordination with InTransit BC on design, construction, and operations. • Testing, commissioning and integration of all Broadway Subway components, systems and subsystems including necessary coordination with SkyTrain System and InTransit BC personnel.

SUMMARY DESIGN AND CONSTRUCTION SCOPE

- Traffic management, including prioritizing emergency services in the hospital district (Cambie Street to Oak Street, Broadway to 12th Avenue), bus operations, pedestrians on Broadway, and cyclists crossing Broadway and on adjacent cycling routes during construction.
- Preserving accessible residential and commercial access along the alignment.
- Communicate and engage with the public and other stakeholders with respect to construction activities.
- Develop and manage quality, health, and safety programs and comply with environmental requirements.
- Achieve completion to accommodate Service Commencement by 2025.

Further information relating to the Project scope is available on the RFQ Data Website.

1.7.3 Financing

It is anticipated that Project Co will be responsible for financing \$450 million of construction period costs. The Province does not anticipate accepting corporate financing (i.e. financing not from an independent third party).

1.7.4 Performance Security

It is anticipated that Project Co will be required to provide performance security to a specified minimum amount. Performance security requirements will be set out in the RFP, and may include performance and labour and material payment bonds, parental company guarantees, and irrevocable demand letters of credit or combinations thereof.

1.7.5 Communications and Engagement with Stakeholders and the Public

The responsibilities for communications and engagement relating to the Project are anticipated to be shared between Project Co and the Province. Project Co will be responsible for providing a comprehensive communications program in relation to construction activities, including traffic management. Project Co will also participate in the Province's activities for community and stakeholder engagement, and media and government relations.

1.7.6 Indigenous Groups

It is anticipated that Project Co will be responsible for providing training, employment, and contract opportunities to Indigenous groups.

1.7.7 Community Benefits

The Province of British Columbia has identified the objectives for achieving community benefits in the delivery of public sector infrastructure projects. Community benefits objectives are designed to ensure that provincial infrastructure projects are delivered in a way that provides both the best outcome for the project and provides long-lasting benefits for British Columbians and their communities. This will provide for good wages, increased opportunities for apprenticeship and training, maximizing participation of Indigenous groups and groups traditionally under-represented in the construction sector, and greater access for local residents and businesses.

With regards to the Project, the community benefits objectives will be implemented through a Community Benefits Agreement (“CBA”). The CBA is the labour agreement between BC Infrastructure Benefits Inc. (“BCIB”) and the Allied Infrastructure and Related Construction Council of BC (“AIRCC”).

The CBA sets out the employment terms and conditions for the supply of workers to be utilized by Project Co and its contractors and subcontractors on this Project. It recognizes the inclusion of community benefits for training and apprenticeship opportunities; greater access for local residents, Indigenous groups and traditionally under-represented groups in the skilled workforce. BCIB will administer the CBA and provide the labour workforce for Project Co and its contractors and subcontractors working on the Project, in accordance with the terms of the CBA. Project Co will also be required to enter into a contract with BCIB for these services.

1.8 Commercial Terms

The purpose of this Section 1.8 is to outline the key commercial terms that are anticipated to be included in the Project Agreement.

1.8.1 Term

The term of the Project Agreement will commence at Financial Close and cover the design and construction period through to completion of testing and commissioning, subject to any warranty obligations.

1.8.2 Payments

It is anticipated that Project Co will receive payments during the design and construction period that will include partial payments until Project Co has financed the amount referenced in Section 1.7.3. Once the full amount of Project Co financing has been invested, full construction period payments will commence. The balance of the contract price will be payable upon completion of the Project in accordance with and subject to the terms and conditions of the Project Agreement. In addition, a performance incentive mechanism will be implemented to encourage Project Co to meet agreed performance requirements.

1.8.3 Lands

It is anticipated that the Province or the British Columbia Transportation Financing Authority (“**BCTFA**”) will acquire the land rights necessary to accommodate the Project alignment to the extent that such land rights are not currently owned by or on behalf of the Province or BCTFA.

Project Co will be provided with access to the lands required for the Project for the purpose of performing its obligations under the Project Agreement. The ownership of the lands will not be transferred to Project Co.

1.9 Environmental Socio-Economic Review

The Project is not subject to environmental assessment under provincial (*BC Environmental Assessment Act*) or federal (*Canadian Environmental Assessment Act*) environmental assessment processes.

In lieu of a government-led environmental assessment, the Province has initiated an Environmental Socio-Economic Review (“**ESR**”) of the Project. The ESR process is a clear and transparent process for identifying and protecting environmental and socio-economic values in the Project area and includes opportunities for input from the public, Indigenous groups, stakeholders, and government agencies.

The ESR process supports the development of the ESR report that documents existing environmental and socio-economic values, potential Project-related effects, as well as mitigation measures to avoid or minimize potential effects on environmental and socio-economic values associated with the Project.

The ESR process and report support the development of the Table of Project Environmental Requirements (“**TPER**”). The TPER will be included in the Project Agreement describing the performance requirements to be implemented by Project Co to address potential effects on environmental and socio-economic values associated with the Project. Project Co should anticipate that the TPER will include obligations similar to those required for the issuance of Environmental Assessment Certificates by the BC Environmental Assessment Office.

A summary of the ESR process can be found on the RFQ Data Website.

1.10 Third Party Interface

The Province will clarify the requirements of, and Project Co’s obligations in respect of, certain third parties affected by or having jurisdiction in relation to Project activities during the RFP stage. Such third parties may include systems suppliers, transit operators, utilities, railway companies, and the City of Vancouver.

1.10.1 Automatic Train Control (“**ATC**”) System

The Broadway Subway is intended to be fully interoperable with the existing SkyTrain System, which uses the proprietary Thales Rail Signalling Solutions Inc. (“Thales”) SELTRAC™ automatic train control

system. It is anticipated that Project Co will be responsible for ensuring that this interoperability is achieved.

The Province is in discussions with Thales regarding a possible approach for the supply of the ATC system involving Project Co engaging Thales to supply the ATC system through a supply subcontract. Under this approach, the supply subcontract would be developed through Province negotiations with Thales and Province-facilitated discussions and consultations likely involving Proponents and Thales during the RFP phase of the Broadway Subway Project.

Respondents and prospective Respondents are to ensure that neither they nor any of their respective Respondent Team Members uses, consults, communicates or enters into any arrangements, directly or indirectly, with Thales, save and except and only to the extent expressly provided for in any subsequent phase of the Competitive Selection Process, including the RFP.

1.10.2 Integration at Broadway-City Hall Station

The Broadway Subway will integrate with the Canada Line at the existing Broadway-City Hall Station. To advance technical discussions with InTransit BC ahead of the Competitive Selection Process, a Fairness Advisor (as described in Section 5.12) was engaged and a fairness protocol established to ensure the integrity of the Competitive Selection Process. The fairness protocol was executed by both InTransit BC and the Province and will govern all communications and interfaces between Respondents and InTransit BC.

The Province anticipates that all relevant technical information and the fairness protocol will be provided to Proponents in the RFP Data Website. Project Co will be required to ensure that the station is designed and constructed in a manner that results in an efficient integrated facility upon completion.

The Province and InTransit BC are developing a process for design reviews and site access within the existing Broadway-City Hall Station, for station integration works. It is anticipated that information on this process will be included within the Draft Project Agreement distributed during the RFP phase.

1.10.3 Utilities

The Province has completed the development of utilities base-map drawings to identify the existing utilities within the expected Project footprint and utility conflicts with the reference concept design. The Province has initiated some select utility relocation design work as potential early work.

In addition, the Province is in the process of negotiating agreements with select utility owners to ensure the utility owners' requirements are addressed, and to confirm processes and responsibilities for design, design approvals, and construction.

1.10.4 Site Preparation

The Province anticipates undertaking a range of advance site preparation works which will include supply of power infrastructure for a tunnel boring machine, if applicable. Additional site preparation works are anticipated to include transit trolley overhead wire relocations and select utility relocations.

1.10.5 Vehicles, Ticket Vending Machines, and Faregates

TransLink will provide the vehicles, ticket vending machines and faregates required for the Broadway Subway. Project Co will not be responsible for providing vehicles, but will be responsible for ensuring that all vehicles can run seamlessly on and between the existing SkyTrain System and the Broadway Subway. Project Co will be required to ensure that stations are designed and constructed to accommodate ticket vending machines and faregates in accordance with the specifications contained in the Project Agreement.

1.10.6 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. These 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 Broadway Subway Project. However, at the RFP stage, the Province may require Proponents to demonstrate their capability, capacity and commitment to support and accommodate these expansions and integration of the SkyTrain System in accordance with terms which may be included the draft Project Agreement.

2 COMPETITIVE SELECTION PROCESS

This section describes the Competitive Selection Process that the Province expects to implement in selecting a Preferred Proponent. The anticipated Competitive Selection Process includes an RFQ phase and an RFP phase.

2.1 Request for Qualifications Phase

The RFQ phase is anticipated to result, in the discretion of the Province, in a shortlist of up to three Respondents. The shortlist is intended to include those Respondents who have successfully demonstrated to the satisfaction of the Province, at its discretion, that they are the best qualified Respondents based on the criteria described in this RFQ.

Only Respondents who, on invitation of the Province, have delivered a fully and duly executed Proponent Agreement will be eligible to be shortlisted to proceed to the RFP phase of the Competitive Selection Process.

2.2 Request for Proposals Phase

The Province anticipates implementing an RFP phase during which the Province may seek, at its discretion, to select a Preferred Proponent who may be offered the opportunity to enter into the Project Agreement.

2.2.1 Consultative Processes

The Province anticipates facilitating a series of Proponent consultations in conjunction with or during the RFP phase relating to technical and commercial matters, with the intention of providing Proponents the opportunity to comment on Project-specific issues.

These processes are anticipated to involve each of the Proponents and other relevant parties and to include exchanges of information, discussions, clarification of issues and review of documents and specifications through workshops and topic meetings, and to provide for the submission and consideration of comments on and proposed amendments to the Draft Project Agreement leading to the development of the Definitive Project Agreement. The consultative processes are intended to focus on items that are Project-specific in nature.

2.2.2 Technical Submission

The Province anticipates that the technical submission under the RFP will include the following:

- (a) a preliminary design in sufficient detail to demonstrate that all specifications and requirements set out in the RFP will be met or exceeded; and
- (b) the Proponent's management approach to items such as safety, quality, construction, key risks, traffic, environment, and communications.

2.2.3 Financial Submission

The Province anticipates that the financial submission under the RFP will occur after the technical submission and include the following:

- (a) fully committed financing, including confirmation from the Proponent's funding sources of acceptance of the terms of the Definitive Project Agreement;
- (b) a commitment to enter into the Definitive Project Agreement by the Proponent; and
- (c) committed pricing for the Project, subject to an interest rate benchmarking process that will be described in the RFP.

2.3 Compensation for Participation in Competitive Selection Process

No compensation will be available to Respondents for participating in the RFQ phase of the Competitive Selection Process.

If the Competitive Selection Process is completed, and a Project Agreement is executed and delivered, it is anticipated that a Stipend in the amount of \$2,000,000 will be available to each Proponent, participating in the RFP phase, that is not selected as the Preferred Proponent, on the terms and subject to the conditions, including as to eligibility for payment, described in the Proponent Agreement.

If the Competitive Selection Process continues to the RFP phase and is terminated for reasons described in the Proponent Agreement, it is anticipated that a Termination Fee in an amount equal to the out-of-pocket costs incurred by a Proponent to prepare its Proposal, subject to a maximum amount of up to \$4,000,000 depending on when the termination occurs, will be available to each Proponent on the terms and subject to the conditions, including as to eligibility for payment, described in the Proponent Agreement.

The conditions for payment of the Stipend and Termination Fee include, among other things, transfer of intellectual property rights and execution and delivery of a full and final release of Claims and a waiver of liability.

2.4 Competitive Selection Process Timeline

The current anticipated timeline for Competitive Selection Process milestones is as set out in Table 3:

Table 3 – Anticipated Timeline

ACTIVITY	TIMELINE
RFQ issue	February 15, 2019
Introductory Project Meeting	TBD
RFQ Submission Time	April 4, 2019
Announce Shortlisted Respondents	May 30, 2019
Issue RFP and Draft Project Agreement	May 30, 2019
Technical submission	November 28, 2019
Financial submission	February 20, 2020
Announce Preferred Proponent	April 13, 2020
Execution of Project Agreement	June 15, 2020

All dates and milestones in the above timeline are subject to change at the discretion of the Province.

2.5 Introductory Project Meeting

The Province intends to hold an in-person introductory meeting to introduce the Project shortly after issuance of the RFQ. Respondents wishing to attend should complete and submit a Receipt Confirmation and Confidentiality Form for further details. Participation will not be mandatory, and minutes will not be prepared or circulated; however the Province anticipates sharing presentation materials with Respondents. No information from the meeting may be relied upon unless set out in an Addendum or a response to an enquiry under Section 3.6.

2.6 Indigenous Groups Business to Business Networking Event

The Province intends to coordinate a session with Proponent teams (to be defined in the RFP) and Indigenous groups and their associated businesses to provide an opportunity for:

- (a) those businesses who 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 Indigenous groups and their associated businesses.

2.7 Business to Business Networking Event

During the RFP stage, the Province intends to coordinate a session with Proponent teams and local contractors, suppliers, and businesses to provide an opportunity for:

- Local contractors, suppliers and businesses to meet with the Proponents; and
- Proponents to enhance their knowledge, understanding, and awareness of local materials, equipment and labour, and to build relationships with local contractors, suppliers, and businesses.

3 SUBMISSION INSTRUCTIONS

3.1 Submission Time and Delivery Address

Qualification Responses are to be delivered by hand or courier, addressed to the attention of the Contact Person, and must be received before the Submission Time at the Submission Location.

The designated calendar and clock at the Submission Location, whether accurate or not, will be used for all purposes and proceedings relating to this RFQ to determine whether a Qualification Response or Revision, including any part of a Qualification Response or Revision, has been received before the Submission Time.

Qualification Responses posted by mail or sent by email or facsimile will not be considered. Qualification Responses will not be considered if they are received on or after the Submission Time and will be returned unopened.

3.2 Language of Qualification Responses and Enquiries

Qualification Responses and all enquiries are to be written in English. Any portion of a Qualification Response not in English may not be evaluated, and any enquiry not in English may not be considered.

3.3 Qualification Response Form and Content

Qualification Responses should be in the form and follow the outline described in Appendix A.

The content of the Qualification Response should include information in respect of each of the matters to be considered and addressed, as described in the Qualification Response Content Requirements column of Table 3 of Appendix A that is sufficiently comprehensive and responsive to enable the Province to apply the Evaluation Criteria.

3.4 Complete RFQ

Respondents are solely responsible to ensure they have received and clearly understood the complete RFQ, including all Addenda, and have delivered their Qualification Responses on that basis.

3.5 Receipt Confirmation and Confidentiality

A Receipt Confirmation and Confidentiality Form in the form attached as Appendix B is to be completed, executed, and delivered to the Contact Person by parties who wish to receive access to the RFQ Data Website and further information relating to this RFQ. The RFQ Data Website and further information relating to this RFQ, including any Addenda, will only be directed to Respondents who have completed and returned a Receipt Confirmation and Confidentiality Form.

3.6 Communications and Enquiries

All communications and enquiries, including any Request for Information (“**RFI**”), related to this RFQ, should be made in writing and should be submitted by the Respondent’s Representative to the Contact Person. RFIs must be submitted using the Request for Information (RFI) Form attached as Appendix F, and should be delivered by email to the Contact Person and clearly marked “Broadway Subway Project RFQ Enquiry.” All communications and enquiries to, and responses from, the Contact Person will be recorded.

The Province may at its discretion issue any communication, information or enquiry, including any RFI or any Response to Respondents (“**RTR**”), to all Respondents. If the Province at its discretion considers an RFI or the corresponding RTR to be of a minor or administrative nature and to relate only to the Respondent who submitted the RFI, the Province may issue an RTR only to that Respondent.

A Respondent may, if it considers its enquiry set out in an RFI to relate to commercially sensitive matters, request the RFI to be kept confidential by setting out the request in the RFI and by clearly marking the RFI as “Commercial in Confidence.” The Province may at its discretion respond to the RFI on a confidential basis.

If the Province at its discretion considers, 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, and subject to the Province’s overriding discretion to distribute RFIs, written responses to enquiries and RTRs to all Respondents, as set out below, the Province may notify the Respondent who submitted the RFI marked “Commercial in Confidence” and specify the time period within which the Respondent may withdraw the RFI in writing and, if the Respondent does not withdraw the RFI within the time specified by the Province, then the Province at its discretion may provide the Province’s response to the RFI to all Respondents.

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

The Province may at its discretion respond to any communication, enquiry, or RFI, provided that there is no obligation whatsoever on the Province to respond to any communication, enquiry or RFI, whether or not marked “Commercial in Confidence.” If the Province decides to respond, the response will be in writing and delivered by email.

Information offered or otherwise obtained from any source other than the Contact Person is not official, is not endorsed by the Province, may be inaccurate, and is not to be relied upon or otherwise used in any way by a Respondent or by any Person for any purpose.

3.7 No Communication with Media or the Public

Respondents are not to communicate, including by media releases, interviews or web or social media postings and are to ensure their Respondent Team Members, including their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives and agents, and all other Persons associated with any of the Respondent Team Members, do not communicate, in respect of any part or parts of the Project or the Competitive Selection Process with the media or the public unless the prior written consent of the Province is obtained.

Respondents are to promptly notify the Province of any requests for interviews or other requests from media in connection with the Project received by the Respondent, any of its Respondent Team Members, or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives and agents, or any other Persons associated with any of them.

Respondents are to ensure that all of their respective Respondent Team Members including their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives and agents involved in the Project, and all other Persons associated with any of them in connection with the Project, are informed of and observe the provisions of this RFQ.

3.8 Delivery and Receipt of Communications, Addenda and Other Documents

The Province does not assume any risk, responsibility or liability whatsoever and makes no guarantee, warranty or representation whatsoever including as to:

- (a) the timeliness, completeness, effectiveness or condition upon delivery or receipt of any communication, enquiry, response, information or other documentation, including this RFQ, any and all Addenda, any RFI or RTR and any Qualification Responses or Revisions, from, to or by any Person including any Respondent or the Province, whether delivered by email, hand or courier; and
- (b) the working order, functioning or malfunctioning or capacity of any electronic email or information system or medium, including the RFQ Data Website and Project Website.

All email communications or delivery of documents relating to this RFQ will be considered for all purposes to have been received by the Province on the dates and at the times indicated on the Province's electronic equipment.

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

3.9 Addenda to RFQ

The Province may at its discretion amend any part or parts of this RFQ, including the Submission Time, at any time and from time to time by Addendum issued through the Contact Person and on BC Bid. Addenda are the only means of amending this RFQ, and no other form of communication, whether written or oral, including written responses to enquiries and RTRs, are included in or form part of or in any way amend this RFQ.

3.10 Inconsistency between Paper and Electronic Form

In the event of a conflict or inconsistency between the paper form of a document and the digital, electronic or other computer readable form, the electronic conformed version of the RFQ in the custody and control of the Province will govern and take precedence.

3.11 Revisions to Qualification Responses Prior to the Submission Time

Respondents may make Revisions to their Qualification Responses, including withdrawing their Qualification Responses, in accordance with this RFQ.

Revisions:

- (a) are to be written in English and be enclosed in a sealed envelope or container addressed to the attention of the Contact Person at the Submission Location;
- (b) are to clearly indicate the changes made with every page numbered, or the withdrawal of the Qualification Response, as the case may be;
- (c) are to be delivered by hand or courier; and
- (d) must be received at the Submission Location before the Submission Time.

Revisions are to be clearly marked "Revision to Broadway Subway Project RFQ Qualification Response of [Respondent's name]".

Revisions received on or after the Submission Time will not be considered.

4 EVALUATION

4.1 Evaluation

The evaluation of Qualification Responses will be conducted by the Province with the assistance of other persons as the Province may decide it requires, including employees and representatives of the Province, government agencies and private sector advisors and consultants.

In implementing and administering the processes contemplated by this RFQ or any other aspect of the Competitive Selection Process, which includes reviewing and evaluating any Qualification Responses and carrying out any enquiries, reviews and checks, the Province may at its discretion and in confidence use, be assisted by, consult with and obtain and rely upon input, advice and direction from technical, financial, managerial, legal and other advisors and consultants in any way that the Province considers at its discretion will be of assistance to the Province. Such advisors and consultants may be representatives and employees of the Province, government agencies and private sector firms.

4.2 Evaluation Criteria

The Province will evaluate Qualification Responses by application, at its discretion, of the Evaluation Criteria as outlined in Appendix A.

4.3 Evaluation and Selection Process

The Province at its discretion may:

- (a) conduct reference, credit or other checks with any or all of the references and other sources cited in a Qualification Response;
- (b) in carrying out any Qualification Response evaluations and related activities, enquiries, reviews and checks, in confidence obtain and rely upon technical, financial, legal and other input, advice and direction from government (including TransLink) and private sector advisors and consultants;
- (c) independently verify any information regarding a Respondent or Respondent Team Member, or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, whether or not contained in any Qualification Response;
- (d) conduct any background investigations it considers necessary or desirable in the course of the Competitive Selection Process;
- (e) seek clarification, rectification or more complete, supplementary or additional information or documentation from any Respondent, including in connection with any Qualification Response, any Respondent, any Respondent Team composition or any Respondent Team Member, or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, if the Province considers that a Qualification Response or any part of a Qualification Response requires clarification, rectification or more complete, supplementary or additional information or documentation or contains an alteration, qualification, omission, inaccuracy or misstatement or for any reason is not responsive to any provisions of this RFQ; and
- (f) in evaluating any Qualification Response, rely upon, consider or disregard any irrelevant or relevant information and documentation, including any clarification, rectification or more complete, supplementary or additional information or documentation, as the case may be, contemplated in Sections 4.3(a) to (e) or otherwise obtained from any other source the Province at its discretion considers appropriate. The Province may also include in the evaluation of any Qualification Response consideration of any supplementary or additional documents and information submitted pursuant to this RFQ and advice and input from the Province's internal and external government (including TransLink) and private sector advisors and consultants.

Without limiting any other provision of this RFQ, the Province at its discretion may at any time decline to evaluate or cease evaluation of any Qualification Response for any reason considered appropriate by the Province at its discretion, including if the Province at its discretion:

- (g) considers the Qualification Response to be incomplete;

- (h) after reviewing the information submitted in the Qualification Response relating to the requirements set out in Table 3 of Appendix A, considers that the information submitted is insufficient to demonstrate to the satisfaction of the Province, at its discretion, that the Respondent has the ability to raise the required financing for the Project or that the Respondent and each other Respondent Team Member (other than Key Individuals) is financially viable and has the financial capacity to fulfill its obligations in respect of the Project; or
- (i) considers that the Respondent or Qualification Response, as compared to all the Respondents and Qualification Responses, is not in contention to be shortlisted.

The Province at its discretion may disregard any experience, capacity or other information contained in any Qualification Response that is not verifiable to the satisfaction of the Province, at its discretion, or that otherwise is not responsive in the discretion of the Province to any provision of this RFQ.

After announcement of the Shortlisted Respondents, the Province upon written request may at its discretion conduct a debriefing for any Respondent that may include discussing the strengths and weaknesses, score, and ranking of that Respondent's Qualification Response.

4.4 Interviews / Presentations

The Province at its discretion may request all or any Respondents to have interviews with or present their Qualification Responses to the Province during the evaluation process. Such interviews or presentations are to be conducted in accordance with procedures set by the Province and are to focus on matters specified in the Province's request, and are not to include presentation of any marketing information of the Respondent, Respondent Team or Respondent 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.

5 OTHER PROVISIONS

5.1 No Obligation to Proceed

This RFQ is not a tender, an offer or a request for proposals, and there is no intention by the Province to make an offer of any kind by issuing this RFQ including an offer to enter into any contract with any Person, including any Respondent.

No contract of any kind arises from or is formed under or entered into pursuant to this RFQ including as a result of the submission or evaluation of a Qualification Response, 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 RFQ including the submission or evaluation of a Qualification Response, including any obligation to proceed with or complete the RFQ phase or to proceed with or complete an RFP phase or any other part of the Competitive Selection Process and including any actual or implied duty of good faith or actual or implied duty of fairness. Neither this RFQ nor the submission or evaluation of a Qualification Response is

to be interpreted or construed as constituting or giving rise to any contract or any such legal obligations or duties.

5.2 Freedom of Information and Protection of Privacy Act

Each Respondent is responsible for ensuring that in preparing and submitting its Qualification Response, it has complied with all applicable laws and regulations, including by obtaining from each Person any required consents and authorizations to the collection of information relating to such Person and to the submission of such information to the Province and the use, distribution and disclosure of such information as part of the Qualification Response for the purposes of or in connection with this RFQ and the Competitive Selection Process.

All documents and other records in the custody of or under the control of the Province are subject to the *Freedom of Information and Protection of Privacy Act* (“**FOIPPA**”) and other applicable legislation. Except as expressly stated in this RFQ and subject to FOIPPA and other applicable legislation, all documents and other records submitted in response to this RFQ will be considered confidential.

5.3 Cost of Preparing the Qualification Response

Without limiting any other provision of this RFQ, including Section 5.4, each Respondent is solely responsible for all costs and expenses incurred in preparing its Qualification Response and all information and documentation relating to this RFQ, including any more complete, supplementary or additional information and documentation requested by the Province, attending meetings and conducting due diligence.

5.4 Actions by the Province

Without limiting any other provision of this RFQ, including Sections 4.3 and 5.1, the Province at its discretion may do any one or more of the following:

- (a) modify, replace, substitute, postpone, extend, cancel or suspend, temporarily or otherwise, any or all phases of the Competitive Selection Process, including the RFQ phase and the RFP phase;
- (b) re-issue this RFQ or any request for qualifications, or issue or implement any other selection process for or take any steps or actions to procure the delivery of the same or similar Project or any part or parts of the works comprising the Project, including entering into negotiations with any Person;
- (c) amend any part of this RFQ, including the scope or any other part of the Project, the dates, schedules, timelines, Submission Location, Submission Time, Competitive Selection Process or any other provision or provisions of this RFQ;

- (d) consider, evaluate, accept, not accept, not consider, not evaluate or discontinue evaluation of any Qualification Response;
- (e) notify any Respondent, any Respondent Team, any Respondent Team Member or any prospective Respondent Team Member that it is or has become ineligible to participate in or continue participating in the RFQ phase or any other part of the Competitive Selection Process;
- (f) disregard any defect, deficiency or irregularity, including any alteration, qualification, omission, error, inaccuracy, misstatement, non-compliance or non-conformity including as to form, content, timeliness of submission or other defect, deficiency or irregularity in a Qualification Response, and consider and evaluate, including any more complete, supplementary and additional information or documentation, that Qualification Response; and
- (g) not consider or evaluate any or all Qualification Responses

at any time or from time to time and for any reason or reasons the Province at its discretion considers appropriate and to be solely in the best interests of the Province or the Competitive Selection Process.

Without limiting any other provision of this RFQ, and except to the limited extent expressly provided in the Proponent Agreement, none of the Province, Partnerships BC, BCTFA, BCIB, Transportation Investment Corporation ("TI Corp"), the Fairness Advisor, the Conflict of Interest Adjudicator or any of their respective elected officials, directors, officers, employees, servants, representatives, agents, consultants and advisors have any responsibility, obligation or liability whatsoever, in contract, tort or otherwise, for Claims, reimbursement, costs, expenses, damages or losses, including loss of profits or loss of opportunity, incurred or suffered in any way by any Respondent, Respondent Team, or Respondent Team Member, or by any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with any of them, or by any prospective Respondent, Respondent Team or Respondent Team Member or any other Person in connection with, relating to or arising from any or all Qualification Responses, any use of or reliance on any information provided on the RFQ Data Website or the Project Website, the Restricted Parties list (as described in Section 5.11.2), 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, any RFI, response to enquiries or RTR or failure to provide any response to enquiries or RTR (in a timely manner or at all), this RFQ including any of the matters described in Section 4.3 and this Section 5.4, the Competitive Selection Process or any departure (fundamental or otherwise) from the provisions of this RFQ or the Competitive Selection Process.

5.5 Ownership of Qualification Response

In accordance with the Certificate and Declaration Form, all Qualification Responses submitted to the Province will become the property of the Province and, subject to FOIPPA and the terms of this RFQ, will be held in confidence by the Province.

5.6 Disclosure and Transparency

The Province expects to publicly disclose the following information during the RFQ phase of the Competitive Selection Process: this RFQ, the number of Respondents and the names of Shortlisted Respondents and their Respondent Team Members, as at the date of publication.

The disclosure to the public of any information generated in relation to the Project or the Competitive Selection Process, including through communications with the media and the public, is to be coordinated with and is subject to the prior approval of the Province.

5.7 No Communication or Collusion

Respondents, their Respondent Team Members and any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Persons associated with them, are not to discuss or communicate, directly or indirectly, with other Respondents or their Respondent 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, regarding the preparation, content or submission of their Qualification Responses or any other aspect of the Competitive Selection Process.

Each Respondent is to ensure that its Qualification Response has been prepared and submitted without collusion or fraud and in fair competition with other Respondents and Respondent Teams and prospective Respondents and Respondent Teams.

5.8 No Lobbying

Respondents are to ensure that they and their respective Respondent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives and agents, and any other Persons associated with any of them, do not communicate or attempt to communicate directly or indirectly with the Province, including any elected official, Partnerships BC, TransLink, BCTFA, BCIB, TI Corp, the City of Vancouver, any Restricted Party, or any directors, officers, employees, consultants, advisors, representatives or agents of any of them, in relation to the Project, this RFQ, or the Competitive Selection Process, except as expressly directed or permitted by the Province.

5.9 Changes

5.9.1 Changes to Respondents and Respondent Teams

Changes to a Respondent or its Respondent Team or any of its Respondent Team Members may only be made with the express written consent of the Province. If for any reason such a Change occurs or a Respondent has knowledge that such a Change is likely to occur, the Respondent will promptly deliver a written request to the Province for its consent to the Change.

The Respondent will include in such written request a comprehensive description of the Change, the reason for the Change and sufficient information and documentation, including as to suitability, knowledge, skills, resources, experience, qualifications and abilities of the Persons involved in the Change, to enable the Province to consider at its discretion whether the Change, if consented to by the Province, will result in the Respondent and its Respondent Team, considered separately and as a whole, meeting or exceeding the suitability, knowledge, skills, resources, experience, qualifications and abilities of the Respondent and its Respondent Team, considered separately and as a whole, before the Change. The Respondent will provide such further information and documentation as the Province may request for the purpose of considering any such request for consent to a Change, and any such request for consent to a Change and any additional information and documentation so provided may at the discretion of the Province be considered and taken into account in the evaluation of a Qualification Response and in considering a Respondent's eligibility to be shortlisted, whether before or after delivery by the Respondent of a Proponent Agreement.

The Province at its discretion may, by written notice, consent or decline to consent to any Change. Any consent of the Province may be on and subject to such terms and conditions as the Province at its discretion may consider appropriate.

5.9.2 Changes to Proponents and Proponent Teams

The RFP will include a process consistent with that set out in Section 5.9.1 requiring that Changes to a Proponent or any of the members of its team in connection with the Proposal (which team will be defined in the RFP and will include, without limitation, the Respondent Team Members) may only be made with the express written consent of the Province and that the Province, at its discretion, may consent or decline to consent to any such change, subject to such terms and conditions as the Province at its discretion may consider appropriate.

5.10 Relationship Disclosure and Review Process

Without limiting any other provision of this RFQ, the Province may at its discretion notify any Respondent that it is or has become ineligible to participate in or continue participating in the RFQ phase or any other part of the Competitive Selection Process where the Province, at its discretion, considers that the Respondent or any of its Respondent Team Members has 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 Respondent is to fully disclose all relationships that it or any of its Respondent Team Members may have with the Province, or any agency, authority, board, tribunal, commission or department of the Province, Partnerships BC, TI Corp, any Restricted Party or any other Person providing advice or services to the Province with respect to the Project:

- (a) by submission of a completed and executed Relationship Disclosure Form with the Respondent's Qualification Response; and
- (b) thereafter during the Competitive Selection Process, by written notice addressed to the Contact Person promptly after becoming aware of any such relationship.

In addition, each Respondent is to fully disclose in the Relationship Disclosure Form or thereafter by written notice all relationships of which it or any of its Respondent Team Members is aware between any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives and 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, Partnerships BC, TI Corp, any Restricted Party or any other Person providing advice or services to the Province 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 such disclosure, the Respondent is to include sufficient information and documentation to demonstrate that appropriate measures have been or will be implemented to mitigate, minimize or eliminate the actual, potential or perceived conflict of interest or unfair advantage, as applicable. The Respondent is to provide such additional information and documentation and may be required to implement such additional measures as the Province at its discretion may require in connection with the Province's consideration of the disclosed relationship and proposed measures.

A description of the Project relationship review guidelines is posted on the Project Website <https://engage.gov.bc.ca/broadwaysubway/>.

5.11 Relationships

5.11.1 Use or Inclusion of Restricted Parties

The Province at its discretion may notify any Respondent that it is or has become ineligible to participate in or continue participating in the RFQ phase or any other part of the Competitive Selection Process or impose such conditions on the Respondent'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 Respondent, any of its Respondent 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 (as described in Section 5.11.2) or if the Respondent, any of its Respondent 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 Respondent's participation, including as an investor, in the Competitive Selection Process, including in connection with the preparation of the Respondent's Qualification Response.

Each Respondent is responsible to ensure that, in connection with the Respondent's participation in the Competitive Selection Process, neither it nor any of its Respondent 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.

5.11.2 Restricted Parties

As at the date of issue of this RFQ, the Province has identified the following Persons as Restricted Parties:

- Allen Parker Consulting Inc.
- AMTG Consulting Ltd.
- Anthony Steadman and Associates Inc.
- Belyea Consulting Inc.
- Bindu Chembrakkalathil
- D. A. Aberdeen & Associates Ltd.
- DCT Project Solutions Ltd.
- Debbie B Parhar Communications and Public Relations
- Diamond Land Consultants Inc.
- DM Fourchalk Property Consultants Inc.
- Edward LeFlufy Urban Design & Architecture
- ELC Rail Sdn Bhd
- False Creek Construction Inc.
- Gannett Fleming Canada ULC
- Gateway Land Services Ltd.
- Golder Associates Ltd.

- Great Northern Engineering Consultants Inc.
- Hemmera Envirochem Inc.
- Henriquez Partners Architects
- Infra-Link Consulting Ltd.
- JE Project Solutions Ltd.
- Jensen Hughes Consulting Canada Ltd.
- HDS 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.
- The Province, BCTFA, BCIB, TI Corp, TransLink or Partnerships BC, including their former and current employees who fall within the definition of Restricted Party.
- RML Solutions Ltd.
- Steer Davies Gleave North America Inc.
- Simmons Property Services Ltd.
- Stantec Consulting Ltd.
- TJ Cooper Management

- Thomas Gale Design Consultants Inc.
- Wardley Consulting Group Inc.
- Westco Consulting Inc.
- White Land and Consulting Services Ltd.
- Zenith Appraisal & Land Consulting Ltd.

This is not an exhaustive list of Restricted Parties. A complete list can be found in the RFQ 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.

5.11.3 Shared Use

Shared Use Persons may enter into arrangements with any and all Respondents, but may not enter into exclusive arrangements with any Respondent and a Respondent 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 at its discretion their availability to all Respondents to be desirable in the interests of the Competitive Selection Process.

No Shared Use Persons have been identified, however, the Province may from time to time add Persons to the list of Shared Use Persons.

5.11.4 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. 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 6. The Province will provide Proponents with details for Indigenous Shared Use Persons by Addendum.

The Province may from time to time amend the list of Indigenous Shared Use Persons by adding or removing Persons.

5.11.5 Exclusivity

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

5.11.6 Conflict of Interest Adjudicator

Doug Hopkins has been appointed as Conflict of Interest Adjudicator to make decisions on conflicts of interest and unfair advantage and other relationships, including Connections (as described in Section 5.11.8), 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 advance 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 Respondents, Respondent Teams and Respondent Team Members.

5.11.7 Request for Advance Rulings

A Respondent or a current or prospective Respondent Team Member or a current or prospective advisor or consultant to a Respondent or Respondent 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 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 is to request an advance ruling from the Conflict of Interest Adjudicator.

To request an advance ruling, a Respondent or a current or prospective Respondent Team Member or a current or prospective advisor or consultant to a Respondent or Respondent Team Member should submit to the Contact Person by email, not less than 10 days prior to the Submission Time, all relevant information and documentation, including:

- (a) names and contact information of the Respondent and the Person in respect of which the advance 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 detailed 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 RFQ, including Section 5.2, all requests for advance rulings will be treated in confidence. If any Person, including any Respondent or current or prospective Respondent Team Member or advisor or consultant, becomes a Restricted Party, it may be listed in an Addendum to this RFQ or in subsequent Competitive Selection Process documents as a Restricted Party.

5.11.8 The Province May Request Advance Rulings

The Province may independently seek advance 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 an advance ruling it will endeavor to provide the Conflict of Interest Adjudicator with relevant information in its possession, including relevant information in its possession about the participation of the subject Person in the Project or other circumstances that may render such Person a Restricted Party. The Province will give notice to the Person that is the subject of the request for an advance ruling so that it can make its own submission to the Conflict of Interest Adjudicator.

5.11.9 Connections

A “Connection” for the purposes of this RFQ 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 Respondent or any of its Respondent Team Members or their respective contractors, subcontractors, consultants, advisors, representatives and agents of shares or other equity interests in another Respondent or any of its Respondent 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 Respondent;
 - ii. Respondent Team Members of more than one Respondent; or
 - iii. contractors, subcontractors, consultants, advisors, representatives and agents of more than one Respondent or more than one Respondent Team Member

provided that the ownership or holding of shares or other equity interests which 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 Respondent(s), Respondent 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 Respondent or any of its Respondent Team Members and another Respondent or any of its Respondent Team Members; or

- (c) any other connection or relationship between a Respondent or any of its Respondent Team Members or their respective contractors, subcontractors, consultants, advisors, representatives and agents and another Respondent or any of its Respondent 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 5.7, the Province at its discretion at any time and from time to time may notify either or both of the relevant Respondents 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 Respondent 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 Respondents, or which of the relevant Respondents, 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 Respondent or Respondent Team Member or a prospective Respondent or Respondent Team Member who has any concerns, whether before or after the Submission Time, 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 an advance ruling on the matter from the Conflict of Interest Adjudicator.

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

- (a) names and contact information of the Respondent or Respondent Team Member or prospective Respondent or Respondent Team Member making the disclosure and the other relevant Respondent or Respondent 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.

5.12 Fairness Advisor

The Province has appointed Jane Shackell, Q.C., as the Fairness Advisor to monitor the Competitive Selection Process. The Fairness Advisor will act as an independent observer of the fairness of the implementation of the Competitive Selection Process. The Fairness Advisor will provide a written report at the end of the RFQ phase.

The Fairness Advisor will be:

- (a) provided full access to all documents, meetings and information related to the process under this RFQ which the Fairness Advisor, at its discretion, decides is required; and
- (b) kept fully informed by the Province of all documents and activities associated with this RFQ.

Respondents may contact the Fairness Advisor directly with regard to concerns about the fairness of the Competitive Selection Process.

5.13 No Representation for Accuracy of Information

None of the Province, BCTFA, BCIB, TI Corp, TransLink, Partnerships BC or any of their respective representatives, agents, consultants or advisors makes any representation or warranty, or has any liability or responsibility whatsoever, with respect to the accuracy, reliability, sufficiency, relevance or completeness of any of the information set out in this RFQ or its appendices (as amended from time to time) or on the RFQ Data Website or Project Website, or in any other background or reference information or documents made available to Respondents pursuant to or in connection with this RFQ.

Qualification Responses are to be prepared and submitted solely on the basis of information independently obtained and verified by each Respondent, and on the basis of the Respondent's independent investigations, examinations, knowledge, analysis, interpretation, information and judgment, rather than in reliance on information provided in, pursuant to or in connection with this RFQ or on the Respondent's analysis or interpretation of any such information.

Nothing in this RFQ or otherwise relieves Respondents from responsibility for undertaking their own investigations and examinations and developing their own analysis, interpretations, opinions and conclusions with respect to the matters set out or referred to in this RFQ and the preparation and delivery of their Qualification Responses.

6 DEFINITIONS

In this RFQ the following terms have the meanings set out as corresponding to those terms:

“**Addenda**” means the documents expressly identified as addenda and issued by the Province to Respondents in accordance with this RFQ or to Proponents in accordance with the RFP, and

“**Addendum**” means any one of such documents.

“**Allied Infrastructure and Related Construction Council of BC**” or “**AIRCC**” means the entity which is the bargaining agent signatory to the CBA.

“**Appendix**” means an Appendix to this RFQ.

“**ATC**” means the proprietary SELTRAC automatic train control system supplied by Thales.

“**Authorized Signatory**” or “**Authorized Signatories**” of a Respondent or Respondent Team Member or any other Person means the person(s) or firm(s) having the authority to legally bind the Respondent or Respondent Team Member or other Person.

“**BC Infrastructure Benefits Inc**” or “**BCIB**” means the entity that will provide required Project labour force required and manage labour relations for Project Co.

“**BCRTC**” means the British Columbia Rapid Transit Company which operates the SkyTrain System on behalf of TransLink.

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

“**Broadway Subway**” means the proposed approximately 5.7-kilometre, six-station extension to the Millennium Line from the existing VCC-Clark Station to the proposed Arbutus Station within the Corridor.

“**Broadway Subway Project**” or “**Project**” means the activities, objectives and improvements described in Section 1 of this RFQ.

“**Certificate and Declaration Form**” means the form set out in Appendix C to this RFQ.

“**Change**” includes, in respect of a Person, 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 redesignation, modification, removal, replacement, reorganization, addition, assignment or substitution of or in respect of such Person, and “**Changed**” has a corresponding meaning.

“**Change Process**” means the Change process described in Section 5.9 of this RFQ.

“Claims” includes any claims, actions, proceedings, causes of action, suits, debts, dues, accounts, bonds, warranties, claims over, indemnities, covenants, contracts, losses (including indirect 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.

“Community Benefits Agreement” or **“CBA”** means the labour agreement between BC Infrastructure Benefits Inc and the Allied Infrastructure and Related Construction Council of BC as described in section 1.7.7 of this RFQ.

“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 RFQ, the Proponent Agreement, the RFP, any and all processes relating to this RFQ and the RFP, workshops, topic meetings, any additional meetings and any consultations, meetings and participation relating to or arising from any 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 Advisor or the Conflict of Interest Adjudicator or by the Province or committees of the Province pursuant to any relationship review process or policies referenced in this RFQ or the 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, determinations, opinions, rulings, reports, comments, advice, notices including notices of ineligibility, and decisions, including rejection or acceptance of any responses, submissions, information, documents, Qualification Response, Proposal, or any other proposals, whether conforming or otherwise,

involving the Province, the Conflict of Interest Adjudicator, the Fairness Advisor, any relationship review committee of the Province, any or all Respondents, Respondent Teams or Respondent Team Members, any or all Proponents and their teams (to be defined in the RFP) involved in their Proposals, or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors or agents, or any other Person, in connection with the matters described in paragraphs (a) and (b) of this definition.

“Confidentiality Agreement” means an agreement substantially in the form set out in Appendix E to this RFQ.

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

“**Conflict of Interest Adjudicator**” means the Conflict of Interest Adjudicator described in section 5.11.5 of this RFQ.

“**Connection**” has the meaning given to it in section 5.11.8.

“**Contact Person**” means the Contact Person in the Summary of Key Information, or any substitute or alternate contact from time to time identified by any Addendum to this RFQ.

“**Corridor**” means the Broadway Corridor which is the area within Metro Vancouver extending approximately from Victoria Drive (East) to the University of British Columbia (West), and from 4th Avenue (North) to 16th Avenue (South).

“**Definitive Project Agreement**” means the documentation forming part of the RFP and comprising the Draft Project Agreement as revised and amended by Addenda and delivered to the Proponents in accordance with the RFP.

“**Design Contractor**” means an entity or entities exclusive to one Respondent Team identified by a Respondent in its Qualification Response to have primary responsibility for carrying out the design of the Project.

“**Design Lead**” means the individual proposed by the Respondent to be responsible for leading the design of the Project as identified in the Respondent’s Qualification Response and as may be Changed in accordance with and subject to the Change Process.

“**Design-Build Contractor**” means an entity or entities exclusive to one Respondent Team identified by a Respondent in its Qualification Response to have primary responsibility for carrying out the Design and Construction of the Project.

“**Design-Build Director**” means the individual proposed by the Respondent to be responsible for directing the activities of the Design-Build Contractor during the design and construction of the Project as described in the Respondent’s response and as may be Changed in accordance with and subject to the Change Process.

“**Design-Build Contractor Guarantor**” means an entity providing financial and / or performance support to a Design-Build Contractor by way of a guarantee or a commitment to support the participation by a Design-Build Contractor in the Competitive Selection Process and the Project, as described in the Respondent’s response and as may be changed pursuant to this RFQ.

“**Draft Project Agreement**” means the form of Project Agreement entitled “Draft Broadway Subway Project Agreement” issued as part of the RFP.

“**ESR**” means the Broadway Subway Project Environmental Socio-Economic Review as described in section 1.9 of this RFP.

“**Evaluation Criteria**” means the Evaluation Criteria described in Appendix A of this RFQ.

“**Fairness Advisor**” means the Fairness Advisor described in section 5.12 of this RFQ.

“**Financial Close**” means the date on which the Project Agreement is entered into between the Province and Project Co and the financing arrangements contemplated by the Project Agreement are completed and all conditions precedent to the drawdown of funds under such arrangements are satisfied and such funds are available to be drawn down.

“**Financing Nominated Projects**” means those projects, relevant and comparable to the Project, that a Respondent includes in its Qualification Response to demonstrate the strength and relevance of its Respondent Members’ financial experience and capabilities as related to the Evaluation Criteria.

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

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

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

“**Indigenous Joint Venture**” means a limited company, partnership, limited partnership, joint venture or other similar business structure comprised of:

- (a) two or more Indigenous Businesses; or
- (b) one or more Indigenous Businesses and one or more other businesses, provided that:
 - i. at least 51% ownership of the joint venture is held and controlled by the Indigenous Business or Indigenous Business(es); and
 - ii. if the joint venture has six or more full-time employees, at least 33% of the full-time employees are members of one or more Indigenous groups.

“**Indigenous Participation Nominated Projects**” means those projects, relevant and comparable to the Project, that a Respondent includes in its Qualification Response to demonstrate the strength and relevance of its Respondent Team Members’ experience and capabilities with Indigenous involvement in project delivery as related to the Evaluation Criteria.

“Indigenous Shared Use Person” means a Person described in Section 5.11.4 of this RFQ and includes each of the Persons listed in Section 5.11.4 of this RFQ and any other Persons that may, from time to time, be specifically identified as Indigenous Shared Use Persons by the Province.

“InTransit BC” means the Canada Line concessionaire.

“Key Individual” means an individual exclusive to one Respondent Team identified by a Respondent in its Qualification Response to hold a Key Position in the event that the Respondent becomes Project Co. At the time the Project Agreement is entered into, a Key Individual may be an employee, subcontractor or consultant of Project Co, the Design-Build Contractor, Design Contractor, Systems Integration Contractor, or Tunnel Contractor, other than the Key Individual that holds the Key Position referred to in paragraph (a) of the definition thereof, who must be an employee of, or independent contractor directly engaged by, Project Co.

“Key Position” means each of the following positions:

- (a) Project Co’s Representative;
- (b) Design-Build Director;
- (c) Design Lead;
- (d) Systems Lead;

and such other positions as may be specified as being Key Positions in subsequent phases of the Competitive Selection Process, including the RFP phase.

“Mayors’ Council” means the Mayors’ Council on Regional Transportation.

“Metro Vancouver” means the geographic area encompassing 21 municipalities, one Electoral Area and one Treaty First Nation from Langley Township (East) to Bowen Island (West), and from North Vancouver District (North) to Tsawwassen First Nation (South). <http://www.metrovancouver.org/>

“Partnerships BC” means Partnerships British Columbia Inc.

“Person” means an individual, corporation, partnership, joint venture, consortium, association, trust, pension fund or union and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual and the receivers and administrators of a corporation.

“Preferred Proponent” means the Proponent, if any, selected by the Province as part of the Competitive Selection Process in accordance with Section 2 of this RFQ, and as may be Changed from time to time in accordance with and subject to the Change Process.

“Project” means the Broadway Subway Project as described in this RFQ.

“Project Agreement” means the agreement or agreements, if any, entered into by the Province and Project Co for the delivery of the Project.

“Project Co” means the entity or entities that enter into the Project Agreement for the delivery of the Project and have ultimate responsibility for acting as the Prime Contractor and for meeting the obligations of the Project Agreement as well as primary responsibility for the quality, environmental and communications management aspects of the Project.

“Project Co’s Representative” means the individual proposed by the Respondent to be responsible for leading Project Co to enter into the Project Agreement with the Province and through the term of the Project Agreement, as described in the Respondent’s Qualification Response and as may be Changed in accordance with and subject to the Change Process.

“Project Experience Nominated Projects” means those projects, relevant and comparable to the Project, that a Respondent includes in its Qualification Response to demonstrate the strength and relevance of its Respondent Team experience and capabilities as related to the Evaluation Criteria.

“Project Website” means the publicly available website established by the Province for the Project with the URL <https://engage.gov.bc.ca/broadwaysubway/>

“Proponent” means a Shortlisted Respondent, as the Proponent may Change from time to time in accordance with and subject to the Change Process.

“Proponent Agreement” means an agreement substantially in the form set out in Appendix G to this RFQ.

“Proposal” means a proposal, including any of its component parts (technical and financial), that is submitted by a Proponent during the RFP phase of the Competitive Selection Process in accordance with the RFP.

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

“Qualification Response” means the documentation and information, including all clarifications, rectifications and more complete, supplementary and additional information or documentation, submitted by a Respondent in response to and in accordance with this RFQ, including from and after the Submission Time in response to any request of the Province.

“Receipt Confirmation and Confidentiality Form” means a receipt confirmation and confidentiality form in the form set out in Appendix B to this RFQ.

“Relationship Disclosure Form” means the form set out in Appendix D to this RFQ.

“Request for Information” or “RFI” means a request for information as described in Section 3.6 of this RFQ.

“Request for Information Form” means the form set out in Appendix F of this RFQ.

“Request for Proposals” or “RFP” means the request for proposals which may be issued by the Province as a phase of the Competitive Selection Process, including all volumes, appendices and attachments, as amended from time to time by Addenda in accordance with the RFP.

“Request for Qualifications” or “RFQ” means this request for qualifications including all appendices and attachments, as amended from time to time by Addenda in accordance with this RFQ.

“Respondent” means:

- (a) before the Submission Time, any party described in Section 1.3 whose Respondent Team Lead has signed and submitted a Receipt Confirmation Form confirming an intention to submit a Response; and
- (b) any corporation, general partnership (acting through its partners), limited partnership (acting through its general partner), consortium or joint venture (acting through the legal entities comprising the consortium or joint venture) or trust (acting through its trustee) or other Person that submits a Qualification Response and includes each of the Respondent Members; provided that a Respondent may not be or include an individual acting in his or her capacity as such.

“Respondent Member” means the Respondent Team Lead and, in the case of a Respondent that is a partnership (general or limited) or a consortium or joint venture, 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 Change Process.

“Respondent Team” means, in the case of each Respondent, a Respondent Team Lead and any other Respondent Members, and its Design-Build Contractor, Design Contractor, Systems Integration Contractor, Tunnel Contractor, guarantor(s) and Key Individuals, in each case as Changed from time to time in accordance with and subject to the Change Process.

“Respondent Team Lead” means the Respondent Member responsible for leading the Respondent Team throughout:

- the Competitive Selection Process for the Project; and
- entering into the Project Agreement with the Province.

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

“Respondent’s Representative” means the individual identified in the Receipt Confirmation and Confidentiality Form submitted by a Respondent who is fully and duly authorized to represent the Respondent and all Respondent Team Members in any and all matters related to this RFQ and the Respondent’s Qualification Response.

“Responses to Respondents” or “RTRs” means the documents entitled “Response to Respondents” and issued by the Province through the Contact Person to respond to enquiries or RFIs or otherwise to provide any information, communication or clarification to Respondents or any of them, and **“Response to Respondents” or “RTR”** means any one of such documents.

“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;
- (c) any other relationship with the Province, BCTFA, BCIB, TI Corp, TransLink or Partnerships BC;

and as a result has an actual conflict of interest or may provide a material unfair advantage to any of the Respondents or their respective Respondent Team Members or may provide Confidential Information to any of the Respondents or their respective Respondent Team Members that is not, or would not reasonably be expected to be, available to the other Respondents or their respective Respondent 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 5.11.2 of this RFQ and any other Persons that may, from time to time, be specifically identified by the Province as Restricted Parties, and **“Restricted Party”** means any one of such Persons.

“Revisions” means changes made by a Respondent to its Qualification Response, including a withdrawal of its Qualification Response, in accordance with this RFQ, and **“Revision”** means any one of such Revisions.

“RFP Data Website” means the restricted access data website anticipated to be available to Proponents during the RFP phase of the Competitive Selection Process.

“RFQ Data Website” means the restricted access data website described in Section 1.6 of this RFQ.

“Service Commencement” means the placement of the Broadway Subway into revenue service as part of the SkyTrain System.

“**Shared Use Persons**” means the Persons described in and includes the Persons listed in section 5.11.3 of this RFQ and “Shared Use Person” means any one of such Persons.

“**Shortlisted Respondents**” means the Respondents (if any) designated by the Province as Shortlisted Respondents pursuant to this RFQ.

“**SkyTrain System**” means the SkyTrain advanced light rapid transit system presently operated by TransLink on its Millennium Line and Expo Line into which the Project, upon completion, is to be fully integrated.

“**Stipend**” means the sum described as the Stipend in section 2.3 of this RFQ.

“**Submission Location**” means the location identified as the Submission Location in the Summary of Key Information, as such location may be amended from time to time by Addendum to this RFQ.

“**Submission Time**” means the time and date specified as the Submission Time in the Summary of Key Information, as such time and date may be amended from time to time by Addendum to this RFQ.

“**Summary of Key Information**” means the page or pages having the same name and forming a part of this RFQ.

“**Systems Integration Contractor**” means an entity or entities exclusive to one Respondent Team identified by a Respondent in its Qualification Response to have primary responsibility for carrying out the systems design, installation, configuration, integration, testing, and commissioning of the Project.

“**Systems Lead**” means the individual proposed by the Respondent to be responsible for leading the systems design, installation, configuration, integration, testing, and commissioning of the Project as identified in the Respondent’s Qualification Response and as may be Changed in accordance with and subject to the Change Process.

“**Table of Project Environmental Requirements**” or “**TPER**” means the Table of Project Environmental Requirements as described in Section 1.9 of this RFQ.

“**Termination Fee**” means the sum described as the Termination Fee in Section 2.3 of this RFQ.

“**Thales**” means Thales Rail Signalling Solutions Inc.

“**TI Corp**” means Transportation Investment Corporation.

“**TransLink**” means South Coast British Columbia Transportation Authority, continued under the *South Coast British Columbia Transportation Authority Act* (British Columbia), and includes any subsidiary as defined in the *South Coast British Columbia Transportation Authority Act*.

“**Tunnel Contractor**” means an entity or entities exclusive to one Respondent Team identified by a Respondent in its Qualification Response a having primary responsibility for the tunnel construction for the Project.

“**Tunnel Contractor Guarantor**” means an entity providing financial and / or performance support to a Tunnel Contractor by way of a guarantee or a commitment to support the participation by a Tunnel Contractor in the Competitive Selection Process and the Project, as described in the Respondent’s response and as may be changed pursuant to this RFQ.

7 INTERPRETATION

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

References in this RFQ to “may”, “at the discretion”, “in its discretion”, “at its discretion”, “in the opinion”, “in its opinion” and “to the satisfaction of” or similar words or phrases when used in relation to the Province are to be interpreted as meaning the sole, absolute and unfettered, including unfettered by any implied or express duties of good faith or of fairness, discretion, opinion or satisfaction, as the case may be, of the Province.

In this RFQ, wherever the singular or masculine is used it is to be construed as including the plural, the feminine or the neuter, and wherever the plural or the feminine or the neuter is used it is to be construed as including the singular or masculine, as the case may be, as the context may require.

Each Appendix attached to this RFQ is an integral part of this RFQ as if set out at length in the body of this RFQ.

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

A reference in this RFQ to a statute, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes every amendment to it, every regulation made under it and any enactment passed in substitution therefor or in replacement thereof.

In this RFQ, 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.

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

Table of Contents – Appendix A

Part 1. Qualification Response Guidelines

Part 2. Evaluation

Part 3. Response Format

Attached Sample Forms:

Form A-1: Project Experience Nominated Projects Details

Form A-2: Project Experience Nominated Projects Summary

Form A-3: Indigenous Participation Nominated Project Details

Form A-4: Financing Nominated Project Details

Part 1. Qualification Response Guidelines

Qualification Responses should:

- a) be clearly marked with the words “**Response to RFQ – Broadway Subway Project**” and addressed to the Submission Location;
- b) include all of the information requested in this Appendix A. Materials that are not requested in this Appendix A will not be evaluated;
- c) be limited to 100 double-sided sheets (200 pages), including the Key Individuals’ resumes but excluding Packages 1, 8, and 9 (see Table 1); material submitted which exceeds the page limit may not be evaluated, at the discretion of the Province;
- d) be on 8.5” x 11” paper size (charts and tables can be on larger paper size);
- e) have text with 1.5-line spacing and minimum 11-point font size (note that Respondents may be asked to resubmit material if the text is difficult to read);
- f) be enclosed within a sealed container clearly labelled with the following: “Response to RFQ – Broadway Subway Project” and Respondent name and return address; and
- g) be submitted in nine packages in accordance with Table 1:

Table 1: Submission Packages

Package	Contents	Number of Copies
Package 1	<ul style="list-style-type: none"> a) Transmittal Letter; b) Certificate and Declaration Form (see Appendix C of this RFQ) signed by the Respondent Team Lead; c) Relationship Disclosure Form (see Appendix D of this RFQ) signed by the Respondent Team Lead; d) Confidentiality Agreement Form (see Appendix E of this RFQ) signed by all Respondent Team Members; and e) A table listing all of the individuals and companies named in Package 2 of the Qualification Response. 	Two numbered and bound copies and one unbound printed copy marked “Master”
Package 2 Project Co	Project Co information (see Section 1 and Section 2 of Part 3 of this Appendix A) Separated as Sections 1, 2.1 and 2.2	Three numbered and bound copies and one unbound printed copy marked “Master”
Package 3 Design-Build Contractor	Design-Build Contractor information (see Section 3 of Part 3 of this Appendix A) Separated as Sections 3.1, 3.2, 3.3, and 3.4	Three numbered and bound copies and one unbound printed copy marked “Master”

Package 4 Design	Design Contractor information (see Section 4 of Part 3 of this Appendix A) Sections 4.1 and 4.2	Three numbered and bound copies and one unbound printed copy marked "Master"
Package 5 Systems Integration and Configuration	Systems Integration Contractor information (see Section 5 of Part 3 of this Appendix A) Separated as Sections 5.1 and 5.2	Three numbered and bound copies and one unbound printed copy marked "Master"
Package 6 Tunnel Contractor	Tunnel Contractor information (see Section 6 of Part 3 of this Appendix A)	Three numbered and bound copies and one unbound printed copy marked "Master"
Package 7 Indigenous Participation and Apprenticeships, Training and Development	Indigenous Participation and Apprenticeships, Training and Development (see Section 7 of Part 3 of this Appendix A) Separated as Sections 7.1, 7.2, and 7.3	Three numbered and bound copies and one unbound printed copy marked "Master"
Package 8 Financial	Financial information (see Section 8 of Part 3 of this Appendix A). Separated as Sections 8.1, 8.2, and 8.3	Two numbered and bound copies and one unbound printed copy marked "Master"
Package 9 Project Experience Nominated Projects	Project Experience Nominated Projects (see Section 9 of Part 3 of this Appendix A).	Six numbered and bound copies and one unbound printed copy marked "Master"

Electronic Copy:

One electronic copy of the complete Qualification Response in a searchable, bookmarked, PDF format included on a USB flash drive. The electronic copy should be organized and submitted as follows:

- a) A consolidated file containing the entire Qualification Response (note that Respondents may submit a single printed copy and an electronic copy of private company financial statements in a sealed envelope);
- b) An individual file for each of Packages 1, 2, 3, 4, 5, 6, 7, 8, and 9; and
- c) Individual files within Packages 2, 3, 4, 5, 7, and 8 for each major section described in Part 3 of Appendix A.

Part 2. Evaluation

2.2 Evaluation Criteria

The Province will evaluate Qualification Responses by applying the Evaluation Criteria and weighting outlined in Table 2, in accordance with each section of the Qualification Response content requirements outlined in Table 3.

Without limiting in any way the Province’s rights and discretions, including in Section 5.4 of this RFQ, in respect of any of the requirements referenced in Table 3, the Province may in its discretion, after reviewing the contents of the Qualification Response, discontinue the evaluation of any Qualification Response in accordance with the provisions of Section 4.3 of this RFQ.

Table 2: Evaluation Criteria and Weighting

Section	Evaluation Criteria	Weighting
Section 1 Introduction	Each Qualification Response should contain the following information: 1.1 Respondent Team 1.2 Contact Information	- -
Section 2 Project Co	Strength and relevance of demonstrated experience and capability relating to: 2.1 Infrastructure Development and Project Management; and 2.2 The Key Individual “Project Co’s Representative.”	15 points
Section 3 Design-Build Contractor	Strength and relevance of demonstrated experience and capability relating to: 3.1 Design Management; 3.2 Construction and Construction Management; 3.3 Traffic Management; and 3.4 The Key Individual “Design-Build Director.”	20 points
Section 4 Design Contractor	Strength and relevance of demonstrated experience and capability relating to: 4.1 Design; and 4.2 The Key Individual “Design Lead”	15 points
Section 5 Systems Integration and Configuration	Strength and relevance of demonstrated experience and capability relating to: 5.1 Systems Integration and Configuration; and 5.2 the Key Individual “Systems Lead.”	25 points
Section 6 Tunnel Contractor	Strength and relevance of demonstrated experience and capability relating to: 6.1 Tunnelling.	15 points
Section 7	7.1 Indigenous Participation Nominated Projects	10 points

Section	Evaluation Criteria	Weighting
Indigenous Participation and Apprenticeships, Training and Development	Strength and relevance of demonstrated experience and capability relating to: 7.2 Indigenous Participation; and 7.3 Apprenticeships, Training and Development.	
Section 8 Financial	8.1 Financing Nominated Projects Sufficiency and relevance of demonstrated experience and capability relating to: 8.2 Project Financing Experience; and 8.3 Financial Capacity.	See section 4.3 of the RFQ
Section 9 Project Experience Nominated Projects	Project Experience Nominated Projects Detail and completed Project Experience Nominated Projects Summary	-
Total		100 Points

Part 3. Response Format

Qualification Responses should include the section numbers and titles provided in Table 3 and should indicate how the information provided by the Respondent relates to the specified content requirements in Table 3.

Table 3: Qualification Response Content Requirements

Package	Section	Title	Qualification Response Content Requirements
1	1.	Introduction	
	1.1	Respondent Team	a) Provide the legal name of the entity or entities comprising each of the following: <ul style="list-style-type: none"> i) Respondent Members (including Respondent Team Lead); ii) Design-Build Contractor; iii) Design Contractor(s); iv) Systems Integration Contractor(s); v) Tunnel Contractor; vi) Design-Build Contractor Guarantor(s) (as applicable); and vii) Tunnel Contractor Guarantor(s) (as applicable). b) Provide organization chart(s) describing all of the proposed major contractual and partnership relationships among the Respondent Team Members and the entities comprising each; c) Provide project organization chart(s) showing the proposed reporting relationships of the following: <ul style="list-style-type: none"> i) senior project management (including Key Individuals); ii) management committee(s); and iii) Project Co board(s) (or their organizational equivalents). d) Provide a short description of the Respondent and each Respondent Team Member excluding individuals (for publication of the team who become the Shortlisted Respondents); e) For each Respondent Team Member, provide evidence of their ability to obtain bonding in North America for this Project.
	1.2	Contact Information	Provide the name and contact details for the Respondent’s Representative. <ul style="list-style-type: none"> a) Name b) Employer c) Mailing/courier addresses

Package	Section	Title	Qualification Response Content Requirements
			d) Telephone numbers e) Email address Please note: The Respondent’s Representative will be the <u>only</u> Person to receive communication from the Contact Person regarding this RFQ.
2	2.	Project Co	
	2.1	Infrastructure Development and Project Management	For each of the letter items below, select up to three (3) of the Project Experience Nominated Projects and describe, including relevance to the Project, the Respondent’s strength, experience, and capability with developing and managing large, complex projects, with preference for transit projects in urban areas, through all project phases, including the following activities: <ul style="list-style-type: none"> a) developing, managing, and delivering projects similar in scope and size to the Project; in particular: <ul style="list-style-type: none"> i) large, schedule- and cost-sensitive, multi-disciplinary projects, with complex interrelationships among project team members, particularly design-build or public private partnership projects; ii) rail rapid transit projects in dense, urban areas; iii) large projects with complex traffic management situations; and iv) integration and configuration of rail rapid transit project components and systems. b) successfully developing and implementing: <ul style="list-style-type: none"> i) quality management systems on large multidisciplinary infrastructure projects including design, construction, fabrication, and systems scope elements; ii) health and safety programs on long linear urban development projects with multiple active sites; and iii) environmental and archaeological management programs in urban areas. c) working with the owner and stakeholders (including the public, local authorities, municipalities, and regulatory agencies) to develop and implement comprehensive communications programs, including: <ul style="list-style-type: none"> i) communications in relation to construction activities, including traffic management (road, and rail); and ii) support to government , municipalities, or owner’s community and stakeholder engagement programs, including businesses along the corridor.
	2.2	Key Individual - Project Co Representative	Provide the resume, including name, professional qualifications, education, relevant experience and two (2) references for the Key Individual “Project Co’s Representative” as identified in the project organization chart(s).

Package	Section	Title	Qualification Response Content Requirements
			<p>The resume for the Project Co’s Representative should describe the degree and duration of involvement with leading the development, design, and construction of large, complex design-build-finance projects or long-term public-private partnerships with private financing.</p> <p>The experience described for a Key Individual may include projects that are not Project Experience Nominated Projects.</p> <p>The information provided for the references should include contact details including name, title, role, telephone numbers, email addresses, mailing address and preferred language of correspondence. Confirm that each reference contact is a current employee of the reference project owner, is aware their name is being provided, had direct involvement as project lead or had executive approval authority for the referenced project, and is willing to provide a reference to the Province.</p> <p>Confirm the availability of this Key Individual for the Project.</p>
3	3.	Design-Build Contractor	
	3.1	Design Management	<p>For each of the letter items below, select up to three (3) of the Project Experience Nominated Projects and describe, including relevance to the Project, the Design-Build Contractor’s role, experience, and capability with managing the design of the following:</p> <ul style="list-style-type: none"> a) large, multi-disciplinary projects, particularly under design-build or public private partnership project delivery models; b) tunnels and underground structures in dense urban corridors, including rail rapid transit stations; and c) trackwork, traction power, train control systems, communications systems and fire and life safety systems for rail rapid transit systems and in particular, driverless rail rapid transit systems.
	3.2	Construction	<p>For each of the letter items below, select up to three (3) of the Project Experience Nominated Projects and describe, including relevance to the Project, the Design-Build Contractor’s role, experience, and capability with the following:</p> <ul style="list-style-type: none"> a) managing and constructing large, schedule-sensitive, multi-disciplinary projects involving construction of rail rapid transit through urban areas, particularly design-build or public private partnership projects; b) managing and constructing projects with complex traffic management situations c) sequencing, scheduling, and logistics of rail rapid transit construction projects; d) underground station construction including:

Package	Section	Title	Qualification Response Content Requirements
			<ul style="list-style-type: none"> i. deep excavations utilizing top-down construction with traffic decking while maintaining traffic, transit, and pedestrian access in a dense urban environment; ii. relocating, accommodating, and protecting utilities on long, linear alignments through urban areas; <p>e) elevated guideway construction including:</p> <ul style="list-style-type: none"> i. innovative solutions to construction activities through a confined right-of way; ii. projects involving direct fixation trackwork; and <p>f) working collaboratively with owners, operators and regulatory authorities to test, commission, and obtain operating certification for transit systems.</p>
	3.3	Traffic Management	<p>For each of the letter items below, select up to three (3) of the Project Experience Nominated Projects and describe, including relevance to the Project, the Design-Build Contractor’s traffic management experience and capability with:</p> <ul style="list-style-type: none"> a) maintaining traffic and transit operations for projects involving long linear alignments through dense urban areas; and b) mitigating construction impacts such as noise, dust, vibration, and business impact, including innovative approaches to preserve access to and visibility of residences and businesses.
	3.4	Key Individual - Design-Build Director	<p>Provide the resume, including name, professional qualifications, education, relevant experience and two (2) references for the Key Individual “Design-Build Director” as identified in the project organization chart(s):</p> <p>The resume for the Design-Build Director should describe the degree and duration of involvement with managing, day to day, the design and construction of large, complex, tunnelled rail rapid transit design-build projects through dense urban corridors, including systems integration.</p> <p>The experience described for a Key Individual may include projects that are not Project Experience Nominated Projects.</p> <p>The information provided for the references should include contact details including name, title, role, telephone numbers, email addresses, mailing address and preferred language of correspondence. Confirm that each reference contact is a current employee of the reference project owner, is aware their name is being provided, had direct involvement as project lead or had executive approval authority for the referenced project, and is willing to provide a reference to the Province.</p> <p>Confirm the availability of this Key Individual for the Project.</p>
4	4.	Design Contractor	

Package	Section	Title	Qualification Response Content Requirements
	4.1	Design	<p>For each of the letter items below, select up to three (3) of the Project Experience Nominated Projects and describe, including relevance to the Project, the Design Contractor’s experience and capability for each of the following:</p> <ul style="list-style-type: none"> a) design of rapid transit systems, especially driverless rail rapid transit systems; b) design of rail rapid transit underground stations and tunnels; c) design of rail rapid transit elevated and at-grade guideways; and d) urban integration of rail rapid transit projects including any provisions for future development around the stations.
	4.2	Key Individual – Design Lead	<p>Provide the resume, including name, professional qualifications, education, relevant experience and two (2) references for the Key Individual “Design Lead” as identified in the project organization chart(s).</p> <p>The resume for the Design Lead should describe the degree of involvement with managing the design of large, complex, tunnelled rail rapid transit projects, including tunnels, stations and guideway, particularly design-build projects.</p> <p>The experience described for a Key Individual may include projects that are not Project Experience Nominated Projects.</p> <p>The information provided for the references should include contact details including name, title, role, telephone numbers, email addresses, mailing address and preferred language of correspondence. Confirm that each reference contact is a current employee of the reference project owner, is aware their name is being provided, had direct involvement as project lead or had executive approval authority for the referenced project, and is willing to provide a reference to the Province.</p> <p>Confirm the availability of this Key Individual for the Project.</p>
5	5	Systems Integration Contractor	
	5.1	Systems Integration and Configuration	<p>For each of the letter items below, select up to three (3) of the Project Experience Nominated Projects and describe, including relevance to the Project, the Systems Integration Contractor experience and capability for each of the following:</p> <ul style="list-style-type: none"> a) installation, integration, configuration, testing, and commissioning of driverless rail rapid transit systems; b) integration with and expansion of existing rail rapid transit systems in operation;

Package	Section	Title	Qualification Response Content Requirements
			<p>c) requirements engineering, including requirement analysis, requirements traceability, and requirements verification using a requirements management tool capable of inputting and outputting ReqIF data;</p> <p>d) configuration management controls; and</p> <p>e) operating safety certification.</p>
	5.2	Key Individual – Systems Lead	<p>Provide the resume, including name, professional qualifications, education, relevant experience and two (2) references for the Key Individual “Systems Lead” as identified in the project organization chart(s).</p> <p>The resume for the Systems Lead should describe the degree of involvement with managing the systems design and integration of large, complex, driverless rail rapid transit projects. The experience described for a Key Individual may include projects that are not Nominated Projects.</p> <p>The information provided for the references should include contact details including name, title, role, telephone numbers, email addresses, mailing address and preferred language of correspondence. Confirm that each reference contact is a current employee of the reference project owner, is aware their name is being provided, had direct involvement as project lead or had executive approval authority for the referenced project, and is willing to provide a reference to the Province.</p> <p>Confirm the availability of this Key Individual for the Project.</p>
6	6	Tunnel Contractor	
	6.1	Tunnelling	<p>For each of the letter items below, select up to three (3) of the Project Experience Nominated Projects and describe, including relevance to the Project, the Tunnel Contractor’s experience and capability for each of the following:</p> <p>a) large-diameter tunnelling through TBM, SEM, or other various methodologies;</p> <p>b) quality, safety, and environmental performance in tunnel construction activities; and</p> <p>c) experience mitigating geotechnical and ground condition risks.</p>
7	7	Indigenous Participation and Apprenticeships, Training and Development	
	7.1	Indigenous Participation Nominated Projects	<p>Submit a maximum of three (3) Indigenous Participation Nominated Projects using Form A-3 of this Appendix A. Indigenous Participation Nominated Projects are Projects in which Respondent Team Members demonstrated experience and capability with Indigenous involvement in project delivery and are demonstrated to be relevant to the Project.</p>
	7.2	Indigenous Participation	<p>Based only on the Indigenous Participation Nominated Projects, describe, including relevance to the Project, the Respondent Team Members’ experience, including the Design-Build Contractor’s and</p>

Package	Section	Title	Qualification Response Content Requirements
			<p>Respondent Members’ experience, and capability with Indigenous involvement in project delivery, including developing and implementing any or all of the following:</p> <ul style="list-style-type: none"> a) working with Indigenous-owned businesses as subcontractors and in partnerships or joint ventures; b) Indigenous employment; and c) Indigenous training, mentorship and/or other development opportunities. <p>Responses should indicate:</p> <ul style="list-style-type: none"> • the nature and extent of any contractual obligations to the owner in relation to employment of each Indigenous group, including contract value and person-hours as well as nature of the work; • accountability and performance related the to the contractual obligations; and • any challenges and mitigation strategies implemented.
	7.3	Apprenticeships, Training and Development	<p>Based on a maximum of three (3) of either the Project Experience Nominated Projects and/or the Indigenous Participation Nominated Projects, describe, including relevance to the Project, the Respondent Team Members’ experience, including the Design-Build Contractor’s and Respondent Members’ experience, and capability developing and implementing mechanisms to integrate, train and develop a diverse workforce, including:</p> <ul style="list-style-type: none"> a) apprenticeships and training programs; and b) development and training of Indigenous peoples, women in non-traditional work, people with disabilities, and/or other traditionally under-represented groups.
8	8	Financial	
	8.1	Financing Nominated Projects	<p>Submit a maximum of three (3) Financing Nominated Projects using Form A-4 of this Appendix A. Financing Nominated Projects are Projects in which Respondent Members secured construction or other similar financing and are demonstrated to be relevant to the Project. References should be limited to Financing Nominated Projects which achieved financial close since January 1, 2010.</p>
	8.2	Project Financing Experience	<p>Based only on the Financing Nominated Projects, describe, including relevance to the Project, the Respondent Members’ experience and capability structuring and raising project financing.</p>

Package	Section	Title	Qualification Response Content Requirements
	8.3	Financial Capacity	<p>Demonstrate the financial capacity of the Design-Build Contractor, Tunnelling Contractor, and their respective guarantors (if any) by providing the items below, assuming an order of magnitude scope value of \$2,000,000,000:</p> <ul style="list-style-type: none"> a) The estimated value (and percentage) of the scope of work for each member of the Design-Build Contractor and the Tunnel Contractor, if the Design-Build Contractor and/or the Tunnel Contractor is a joint venture, and confirmation of whether there are joint and several guarantees. b) For each member of the Design-Build Contractor that is not proposed to be guaranteed by a Design-Build Contractor Guarantor: <ul style="list-style-type: none"> i) 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); ii) If available, copies of the interim financial statements for the last quarter or, if produced semi-annually the last half year, since the last annual audited financial statement provided in a) or, if not available, an explanation as to why; iii) Details of any material off-balance sheet financing arrangements currently in place or, if none, a confirmation as such; iv) Details of any material events that may affect the entity’s financial standing since the last annual or interim financial statements provided or, if none, a confirmation as such; v) Details of any credit rating, including any downgrades of credit rating in the last 36 months, or if none, a confirmation as such; and vi) Details of any bankruptcy, insolvency, company creditor arrangement or other insolvency proceedings in the last 36 months, 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. c) For each member of the Tunnel Contractor that is not proposed to be guaranteed by a Tunnel Contractor Guarantor: <ul style="list-style-type: none"> i) 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); ii) If available, copies of the interim financial statements for the last quarter or, if produced semi-annually the last half year, since the last annual audited financial statement provided in a) or, if not available, an explanation as to why;

Package	Section	Title	Qualification Response Content Requirements
			<ul style="list-style-type: none"> iii) Details of any material off-balance sheet financing arrangements currently in place or, if none, a confirmation as such; iv) Details of any material events that may affect the entity’s financial standing since the last annual or interim financial statements provided or, if none, a confirmation as such; v) Details of any credit rating, including any downgrades of credit rating in the last 36 months, or if none, a confirmation as such; and vi) Details of any bankruptcy, insolvency, company creditor arrangement or other insolvency proceedings in the last 36 months, 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>d) For each member of the Design-Build Contractor whose performance is proposed to be guaranteed by a Design-Build Contractor Guarantor:</p> <ul style="list-style-type: none"> i) Evidence, in the form of a signed letter from a senior officer of the Design-Build Contractor Guarantor, of the Design-Build Contractor Guarantor’s willingness to act as a Design-Build Contractor Guarantor; and a description of such guarantee; and ii) Items b)(i) to b)(vi) above for the Design-Build Contractor Guarantor. <p>e) For each member of the Tunnel Contractor whose performance is proposed to be guaranteed by a Tunnel Contractor Guarantor:</p> <ul style="list-style-type: none"> i) Evidence, in the form of a signed letter from a senior officer of the Tunnel Contractor Guarantor, of the Tunnel Contractor Guarantor’s willingness to act as a Tunnel Contractor Guarantor; and a description of such guarantee; and ii) Items b)(i) to b)(vi) above for the Design-Build Contractor Guarantor. <p>f) With reference to the information provided in relation to a), b), and c) above, briefly describe the context of the entity’s proposed role and project obligations:</p> <ul style="list-style-type: none"> i) the Design-Build Contractor’s and Tunnel Contractor’s capacity to undertake its project obligations (e.g., discuss relevant financial metrics relative to Project scope, financial viability, ability to provide performance security, support and/or guarantees from any other parties, other projects with similar obligations, etc.); and ii) (if any) the Design-Build Contractor Guarantor and Tunnel Contractor Guarantor’s ability to undertake its obligations (e.g., discuss net and total asset size relative to Project scope, financial capacity, financial viability, etc.).
9	9	Project Experience Nominated Projects	

Package	Section	Title	Qualification Response Content Requirements
	9.1	Project Experience Nominated Projects	<p>Submit a maximum of 15 Project Experience Nominated Projects using Form A-1 of this Appendix A. Project Experience Nominated Projects are projects in which Respondent Team Members performed project management, design, construction or other roles and are demonstrated to be relevant to the Project.</p> <p>Submit a completed Form A-2 of this Appendix A.</p>

Form A-1 Project Experience Nominated Projects Details

(Maximum 3 pages in length per project.)

Respondent _____, Project Number _____ (sequentially numbered 1 to 15), and

Respondent Team Member(s)_____.

Item	Notes to Respondents
Name of project	<i>Details including official project name and contract number.</i>
Location of project	<i>Country, province/state, highway/road/facility, site or project extent.</i>
Project Owner	<i>Organization name.</i>
Reference contact details	<i>Key client contacts (individuals), including name, title, role, telephone numbers, email addresses, mailing address and preferred language of correspondence. By providing this information you are authorizing the Province or the Province’s representatives to contact these individuals for all purposes, including gathering information and documentation, in connection with this RFQ.</i>
Contract model	<i>Contract structure i.e., public private partnership, design-build, design-build-finance, design-build-finance-operate, stipulated sum.</i>
Contract period (term)	<i>Contract commencement date, end of construction date, start of operations date and contract end date.</i>
Time period of involvement	<i>Commencement date and duration of the Respondent Team Member’s involvement.</i>
Description of project	<i>Capital value, scope and complexity. Relevant metrics such as total length of elevated, at-grade, or tunnel; number of station elevated, at-grade, or underground, etc.</i>
Current status of project	<i>Describe the current status of the project relative to key milestone events.</i>
Contract model	<i>Contract model e.g., design-build, design-build-finance, design-build-finance-operate, etc.</i>
Traffic and ridership volumes (if applicable)	<i>Total average daily traffic across all lanes (actual or estimated) for primary routes and/or average annual daily ridership (actual or estimated).</i>
Role(s) on project	<i>Specific role, duties and responsibilities of applicable Respondent Team Members, including leadership in the areas of quality, safety and environment. Specify what major activities, especially those used in the Qualification Response to demonstrate relevance, were self-performed by the Respondent Team Member.</i>

Item	Notes to Respondents
	<p><i>If the project involved a joint venture, identify the joint venture partners and discuss the breakdown of roles, responsibilities, and contract value of each partner. Specify roles in relation to specific activities such as systems, guideway, tunnel, and station construction.</i></p>

Form A-2 Project Experience Nominated Projects Summary

Reference Projects	Project Details											RFQ Section
Project Name and Nominated Project #	Project Location	Nature of Project	Key Individuals (where applicable)	Length (km)	Tunnel (if yes, length in km)	No. of Stations	Capital Value (CAD\$)	Contract Model	Labour Agreement (CBA, PLA)	Contract Construction Term (Years)	Construction Complete (Year)	Sections and Letters
Nominated Project e.g. 1	City, Province/State, Country	ALRT		8km	No		\$1,250,000,000	DBFOM	CBA	3	2008	3.1a, 4.1a, 5.1f
Nominated Project e.g. 2	City, Province/State, Country	LRT		12km	Yes 3.2km		\$2,100,000,000	DBFOM	PLA	5	2013	3.1a, 4.1a, 5.1a
Nominated Project 1												
Nominated Project 2												
Nominated Project 3												
Nominated Project 4												
Nominated Project 5												
Nominated Project 6												
Nominated Project 7												

Reference Projects	Project Details											RFQ Section	
Nominated Project 8													
Nominated Project 9													
Nominated Project 10													
Nominated Project 11													
Nominated Project 12													
Nominated Project 13													
Nominated Project 14													
Nominated Project 15													

Form A-3 Indigenous Participation Nominated Project Details

(Maximum 3 pages in length per project)

Respondent _____ Project number _____ (sequentially numbered 1 to 3)

Respondent Team Member(s) _____

Item	Notes to Respondents
Name of project	<i>Details including official project name (as applicable).</i>
Location of project	<i>Country, province/state, site or project extent, urban/rural.</i>
Project owner	<i>Organization name.</i>
Reference contact details	<p><i>Key client contacts and key Indigenous group contact(s) (individual(s)), including name, title, role, telephone numbers, email addresses, mailing address and preferred language of correspondence.</i></p> <p><i>By providing this information you are authorizing the Province or the Province’s representatives to contact these individuals for all purposes, including gathering information and documentation, in connection with this RFQ.</i></p>
Contract period (term)	<i>Contract commencement date, end of construction date, start of operations date and contract end date.</i>
Time period of involvement	<i>Commencement date and duration.</i>
Description of project	<i>Capital value, scope and complexity.</i>
Current status of project	<i>Describe the current status of the project relative to key milestone events.</i>
Contract model	<i>Contract model e.g., design-build, design-build-finance, design-build-finance-operate, etc.</i>
Involved Indigenous group(s)	<i>Name(s) of community / partnership / joint venture / sub-contractor.</i>
Contract obligations (if any)	<i>Contractual obligation in relation to each Indigenous group, including contract value, person-hours, and nature of work.</i>
Impacted Indigenous group(s)	<i>Those identified by an owner, through an environmental assessment or other process, as being impacted.</i>

Item	Notes to Respondents
<p>Role(s) on project</p>	<p><i>Specific role, duties, responsibilities, and contractual obligations of applicable Respondent Team Members, including the Design-Build Contractor and Respondent Member, with respect to Indigenous participation.</i></p> <p><i>A brief summary of approach of Respondent Team Members in meeting obligations, including entering into joint ventures or partnerships with Indigenous groups, using Indigenous-owned businesses as subcontractors, employing Indigenous workers, and providing training, mentorship and / or other development opportunities to Indigenous people.</i></p> <p><i>If the project involved multiple Indigenous groups, please describe the duties and responsibilities with respect to each Indigenous group</i></p>

Form A-4 Financing Nominated Project Details

(Maximum 3 pages in length per project)

Respondent _____ Project number _____(sequentially numbered 1 to 3)

Respondent Team Member(s) _____

Item	Notes to Respondents
Name of project	<i>Details including official project name (as applicable).</i>
Location of project	<i>Country, province/state, site or project extent, urban/rural.</i>
Project owner	<i>Organization name.</i>
Type of project	<i>Examples: bridge, highway, energy facility, hospital, prison, transit line, etc.</i>
Reference contact details	<i>Key client contacts (individuals), including name, title, role, telephone numbers, email addresses, mailing address and preferred language of correspondence. By providing this information you are authorizing the Province or the Province’s representatives to contact these individuals for all purposes, including gathering information and documentation, in connection with this RFQ.</i>
Contract period (term)	<i>Contract commencement date, financial close date (financial close since January 1, 2010), end of construction date, start of operations date and contract end date.</i>
Description of project	<i>Capital value, scope and complexity.</i>
Current status of project	<i>Describe the current status of the project relative to key milestone events.</i>
Contract model	<i>Contract model. Describe the contractor model, e.g. design-build-finance, etc.</i>
Role(s) and responsibilities with respect to financing	<i>Specific role, duties and responsibilities of applicable Respondent Team Members, in relation to arranging/securing financing.</i>
Amount of financing	<i>Value of debt, presented in Canadian Dollars.</i>

Item	Notes to Respondents
Type of financing	<i>Recourse or non-recourse.</i>
Term of financing	<i>Financial close date and duration of financing.</i>
Funding source	<i>Examples: private placement, bank loan.</i>



APPENDIX B – RECEIPT CONFIRMATION AND CONFIDENTIALITY FORM

RECEIPT CONFIRMATION AND CONFIDENTIALITY FORM

**Broadway Subway Project
Request for Qualifications**

To receive access to the RFQ Data Website and any further distributed information about or in connection with this Request for Qualifications, please execute and deliver this Receipt Confirmation and Confidentiality Form to the attention of the Contact Person at:

Email: BSPContact@gov.bc.ca

RESPONDENT CONTACT INFORMATION

NAME OF RESPONDENT (THE “RESPONDENT”): _____

NAME OF RESPONDENT TEAM LEAD (THE “RESPONDENT TEAM LEAD”): _____

STREET ADDRESS: _____

CITY _____ **POSTAL/ZIP CODE:** _____

PROVINCE/STATE: _____ **COUNTRY:** _____

MAILING ADDRESS, IF DIFFERENT: _____

TELEPHONE: (____) _____

RESPONDENT’S REPRESENTATIVE: _____

E-MAIL ADDRESS: _____

BCEID (IF AVAILABLE): _____

Unless it can be sent by e-mail, please send us any further correspondence about this Request for Qualifications by:

COURIER COLLECT COURIER Name and Account No.: _____

MAIL (default if neither box checked)

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged by the Respondent Team Lead on behalf of the Respondent, the Respondent represents, warrants and agrees as follows:

- (a) the individual identified as the Respondent's Representative in this Receipt Confirmation and Confidentiality Form is a duly Authorized Signatory of the Respondent and has full power and authority to represent and act on behalf of the Respondent in any and all matters related to the Request for Qualifications and the Qualification Response, including but not limited to providing clarifications and additional information pursuant to the Request for Qualifications; and
- (b) the Respondent has received a full and complete copy of the RFQ, including, without limitation, all Appendices attached thereto.

The Respondent Team Lead makes these representations and warranties with the knowledge and intention that the Province will rely upon such representations and warranties.

The Respondent Team Lead agrees that, with effect from the date hereof, it is bound by and will comply with, and will cause each of its Respondent Team Members to be bound by and comply with, the terms of the Confidentiality Agreement set out in Appendix E to the Request for Qualifications, which terms are incorporated by reference and form an integral part of this Receipt Confirmation and Confidentiality Form.

Unless otherwise expressly defined, the capitalized terms used in this Receipt Confirmation and Confidentiality Form have the meanings given to them in the Request for Qualifications for the Project.

This Receipt Confirmation and Confidentiality Form is executed the ____ day of _____, 20__.

<NAME OF RESPONDENT TEAM LEAD>

[insert appropriate signature block(s) for Respondent Team Lead]

Execution Instructions

This Receipt Confirmation and Confidentiality Form is to be duly executed by the "Respondent Team Lead" in accordance with the definition of that term in section 6 of the RFQ. It is the responsibility of the Respondent Team Lead to ensure that it has been properly identified by its legal name in this Receipt Confirmation and Confidentiality Form and has duly executed this Receipt Confirmation and Confidentiality Form, and the Province may in its discretion request an opinion from the Respondent Team Lead's legal counsel to that effect.

Upon execution, the yellow highlighting as well as these execution instructions should be removed.

APPENDIX C – CERTIFICATE AND DECLARATION FORM

[Respondent's Letterhead]

CERTIFICATE AND DECLARATION

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

Re: Broadway Project: Request for Qualifications entitled "Broadway Subway Project Request for Qualifications", as amended in accordance with its terms (the "RFQ"), for the Broadway Subway Project <insert Respondent name> Qualification Response

I, <insert name>, in my capacity as <insert title> of <insert name of Respondent Team Lead>, on behalf of the Respondent and each of the Respondent Team Members as listed in Exhibit 1 to this Certificate and Declaration:

1. hereby unconditionally and irrevocably represent, warrant, certify and declare from and after the date of this Certificate and Declaration in connection with the RFQ, the Competitive Selection Process and the Qualification Response (as herein defined), including any consideration and evaluation of the Qualification Response, that:
 - (a) I am duly authorized to deliver this Certificate and Declaration on behalf of the Respondent and each of the Respondent Team Members;
 - (b) all clarifications, rectifications and more complete, supplementary, replacement and additional information and documentation delivered by the Respondent from and after the Submission Time in response to any request of the Province in accordance with the RFQ are incorporated into and form part of the Qualification Response, which Qualification Response, together with such clarifications, rectifications and more complete, supplementary, replacement and additional information and documentation is herein referred to as the "Qualification Response";
 - (c) all statements made in the Qualification Response are and will be deemed to be representations and warranties of the Respondent and each of the Respondent Team Members and this Certificate and Declaration is in addition to and does not limit the representations and warranties made by delivery of the Qualification Response;
 - (d) the Respondent and each of the Respondent Team Members have received, reviewed, read and understood the RFQ and this Certificate and Declaration and authorized and consented to the delivery of the Qualification Response and the execution and delivery of this Certificate and Declaration;
 - (e) in preparing and delivering the Qualification Response the Respondent has complied with all applicable laws and regulations, including by obtaining from each Person any required consents and authorizations to the collection of information relating to such Person and to the submission of such information to the Province as part of the Qualification Response for

- the purposes of the Qualification Response, the RFQ and the Competitive Selection Process, or any of them;
- (f) the Qualification Response has been prepared and delivered without collusion, comparison of information or arrangement with any other respondent or any of its respondent 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, or fraud and in fair competition, including in fair competition with other respondents and respondent teams and prospective respondents and respondent teams;
- (g) the Respondent and each of the Respondent Team Members have 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 RFQ, the Competitive Selection Process and the Qualification Response, and the Qualification Response is based solely and exclusively in reliance on the independent investigations, verifications, assessments, experience, interpretation, knowledge, information, analysis and judgment undertaken, obtained or formed by or on behalf of the Respondent or Respondent Team Members and not in reliance on information provided through or in connection with the RFQ including the RFQ Data Website or the Competitive Selection Process;
- (h) the members of the Respondent Team are the entities listed in Exhibit 1 to this Certificate and Declaration;
- (i) none of the Respondent nor the Respondent Team Members have discussed or communicated, directly or indirectly, with any other respondent or its respondent 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, regarding the preparation, content or presentation of their submissions, or any part thereof, relating to the RFQ or the Competitive Selection Process;
- (j) 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 Respondent or any Respondent Team Member and any other respondent, its respondent 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;
- (k) to the best of the knowledge of the Respondent and each of the Respondent Team Members 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 the preparation and delivery of the Qualification Response;
- (l) none of the Respondent nor any of the Respondent Team Members has had access to or has availed itself directly or indirectly of any confidential information of the Province, other than confidential information disclosed by the Province to all respondents, in connection with the preparation and delivery of the Qualification Response;

- (m) none of the Respondent nor any of the Respondent Team Members is or has hired, retained or utilized the services of any Restricted Party in connection with the Respondent's participation in the Competitive Selection Process, except as previously disclosed in writing to the Province and consented to in writing by the Province, 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;
- (n) except as detailed in writing and attached to this Certificate and Declaration as Exhibit 2, none of the Respondent nor any of the Respondent Team Members has knowledge of any actions, suits or proceedings in excess of \$10 million pending or, to the best of the knowledge of the Respondent or the applicable Respondent Team 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, if adversely determined, could have a material adverse effect on the solvency, liquidity or financial condition of the Respondent or the Respondent Team Member; and
- (o) none of the Respondent nor any of the Respondent Team Members nor, to the knowledge of the applicable Respondent Team Member (after due and reasonable inquiry) any of their respective 'affiliates' (as defined in the *Business Corporations Act* (British Columbia)) is a Restricted Person as that term is defined in Exhibit 3,

2. hereby:

- (a) acknowledge that the Province may or may cause to be undertaken, in connection with the Qualification Response, the RFQ and the Competitive Selection Process, or any of them, any one or more of the reference, credit and other checks, independent verifications and background investigations described in the RFQ, including criminal record investigations, credit enquiries, litigation searches, bankruptcy registrations and taxpayer information investigations, on all or any of the Respondent and the Respondent Team Members (collectively, the "**Investigations**"); and
- (b) irrevocably consent to and authorize the Province and the authorized representatives of the Province to undertake any and all such Investigations; and

3. hereby acknowledge that the Qualification Response, upon submission to the Province, becomes the property of the Province.

The representations, warranties, certifications, acknowledgements and consents set out in this Certification and Declaration are true and are made with the knowledge and intention that the Province will rely on them in accepting and evaluating the Qualification Response and that despite any prior or subsequent investigation the Province will be deemed to have relied upon them.

This Certificate and Declaration may be executed in original, or electronic scanned or PDF file type (Adobe Acrobat Portable Document Format) and may be delivered by hand, or electronic mail, provided that if delivered by electronic mail, then in electronic scanned or PDF file type.

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

THIS CERTIFICATE AND DECLARATION is dated as of the <> day of <>, 20<>.

<NAME OF RESPONDENT TEAM LEAD>

Per: _____
Authorized Signatory

Name:
Title:

Execution Instructions

This Certificate and Declaration is to be duly executed by the “Respondent Team Lead” on its own behalf and on behalf of the “Respondent” and each of the other “Respondent Team Members” in accordance with the definition of those terms in Section 6 of the RFQ. It is the responsibility of the Respondent Team Lead to ensure that it has been properly identified by its legal name in this Certificate and Declaration and has duly executed this Certificate and Declaration, and the Province may in its discretion request an opinion from the Respondent’s legal counsel to that effect.

Upon execution, the yellow highlighting as well as these execution instructions should be removed.

Exhibit 1 to Appendix C: Respondent Team

Respondent Team

Name	Address	Respondent Team Member Role

Note: The Respondent and each Respondent Team Member should be identified by its correct and complete legal name.

Exhibit 2 to Appendix C: Actions, Suits or Proceedings

Actions, Suits or Proceedings

Respondent Team Member or Additional Party	Details of Action, Suit or Proceeding (in accordance with Paragraph 1(n))

Exhibit 3 to Appendix C: Restricted Person

For the purposes of this Appendix C – Certificate and Declaration Form, “Restricted Person” means any person who, or any member of a group of persons acting together, any one of which:

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in the promotion, support or carrying out of terrorism;
- (c) in the case of an individual, he or she (or, in the case of a legal entity, any of the members of its board of directors or its senior executive) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence, other than minor traffic offences, less than five years prior to the date at which the determination of whether the individual falls within this definition is being made;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to a claim of any governmental authority having jurisdiction in any way over or in respect of any aspect of the Project under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made and which (in respect of any such pending claim, if it were to be successful) would, in the view of the Province, in either case, be reasonably likely to materially affect the performance by Project Co of its obligations under the Project Agreement; or
- (f) has been convicted of an offence under the *Competition Act* (Canada), the *Corruption of Foreign Public Officials Act* (Canada), the *Financial Administration Act* (Canada) or the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), or has been convicted of the commission of a money laundering offence or a terrorist activity financing offence or a fraud or similar offence under the *Criminal Code* (Canada).

APPENDIX D – RELATIONSHIP DISCLOSURE FORM

To: HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
(the “Province”)

Re: Broadway Subway Project:
Request for Qualifications entitled “Broadway Subway Project Request for Qualifications”, as amended in accordance with its terms (the “RFQ”), for the Broadway Subway Project <insert Respondent name> Qualification Response (the “Qualification Response”)

The Respondent Team Lead hereby declares, on its own behalf and on behalf of each of its Respondent Team Members, that:

1. the Respondent and each of the Respondent Team Members have undertaken the necessary and due searches and inquiries in connection with and to verify the accuracy of the information set out in this Relationship Disclosure Form;
2. the Respondent and each of the Respondent Team Members have reviewed the list of Restricted Parties set out in the RFQ and as of the date of this Relationship Disclosure Form neither the Respondent nor any of the Respondent Team Members:
 - (a) has any former or current relationship with:
 - (i) any former or current officials, employees, representatives or elected officials of the Province or Partnerships BC; or
 - (ii) any former or current officers, directors, employees or representatives of any individual, corporation, partnership or other entity, or the entity itself, that have been involved in the Competitive Selection Process, or the design, planning or implementation of the Project or that has confidential information about the Project or the Competitive Selection Process, or
 - (iii) any Restricted Party or any current or former employee, shareholder, director or officer of any Restricted Party,(collectively, the “**Project Parties**”); or
 - (b) is aware of any relationship between any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives and agents, or any other Persons associated with any of them, with any of the Project Parties 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,

in each case other than as identified in Form D-1 to this Relationship Disclosure Form.

The Respondent Team Lead makes the declarations set out in this Relationship Disclosure Form with the knowledge and intention that the Province will rely upon and, despite any prior or subsequent investigation by the Province, will be deemed to have relied upon these declarations in connection with the Qualification Response, including any consideration and evaluation of the Qualification Response, pursuant to the RFQ.

This Relationship Disclosure Form may be executed in original, or electronic scanned or PDF file type (Adobe Acrobat Portable Document Format) and may be delivered by hand, or electronic mail, provided that if delivered by electronic mail, then in electronic scanned or PDF file type.

Unless otherwise expressly defined, the capitalized terms used in this Relationship Disclosure Form have the meanings given to them in the RFQ.

THIS DECLARATION is dated as of the <> day of <>, 20<>.

<NAME OF RESPONDENT TEAM LEAD>

[insert appropriate signature block(s) for Respondent Team Lead]

Execution Instructions

This Relationship Disclosure Form is to be duly executed by the “Respondent Team Lead” on its own behalf and on behalf of each of the “Respondent Team Members” in accordance with the definition of those terms in Section 6 of the RFQ. It is the responsibility of the Respondent Team Lead to ensure that it has been properly identified by its legal name in this Relationship Disclosure form and has duly executed this Relationship Disclosure Form, and the Province may in its discretion request an opinion from the Respondent Team Lead’s legal counsel to that effect.

Upon execution, the yellow highlighting as well as these execution instructions should be removed.

APPENDIX E – CONFIDENTIALITY AGREEMENT FORM

BROADWAY SUBWAY PROJECT CONFIDENTIALITY AGREEMENT

IMPORTANT INSTRUCTIONS:

This Agreement is to be duly executed by the “Respondent Members”, the “Design-Build Contractor”, the “Design Contractor”, “Systems Integration Contractor”, “Tunnel Contractor”, each “Key Individual”, “Design-Build Contractor Guarantor”, and “Tunnel Contractor Guarantor” included in the “Respondent Team” in accordance with the definitions of those terms in Section 6 of the RFQ. It is the responsibility of the Respondent to ensure that each such party and, where applicable, each entity included in each such party has been properly identified by its legal name in this Agreement and has duly executed this Agreement, and the Province may in its discretion request an opinion from the relevant party’s legal counsel to that effect.

THIS CONFIDENTIALITY AGREEMENT is made as of the <>day of <>, 20<>

BY:

<> **[insert legal name(s) of Respondent Member]**, having a place of business at <>

[replicate for each Respondent Member. Where the Respondent Member is a general partnership or a consortium or joint venture, include legal name and place of business of each partner in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(the “Respondent Members”)

AND:

<> **[insert legal name of Design-Build Contractor]**, having a place of business at <>

- and -

[replicate for each entity comprising the Design-Build Contractor. Where the Design-Build Contractor is a general partnership or a consortium or joint venture, include legal name and place of business of each partner in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(the “Design-Build Contractor”)

AND:

<> **[insert legal name of Design Contractor]**, having a place of business at <>

- and -

[replicate for each entity comprising the Design Contractor. Where the Design Contractor is a general partnership or a consortium or joint venture, include legal name and place of

business of each partner in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(the "Design Contractor")

AND:

<> [insert legal name of Systems Integration Contractor], having a place of business at <>

- and -

[replicate for each entity comprising the Systems Integration Contractor. Where the Systems Integration Contractor is a general partnership or a consortium or joint venture, include legal name and place of business of each partner in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(the "Systems Integration Contractor")

AND:

<> [insert legal name of Tunnel Contractor], having a place of business at <>

- and -

[replicate for each entity comprising the Tunnel Contractor. Where the Tunnel Contractor is a general partnership or a consortium or joint venture, include legal name and place of business of each partner in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(the "Tunnel Contractor")

AND:

<> [insert legal name of Key Individual], having a place of business at <>

- and -

[replicate for each Key Individual]

(each a "Key Individual" and collectively, the "Key Individuals")

AND:

<> [insert legal name of Design-Build Contractor Guarantor], having a place of business at <>

- and -

[replicate for each Design-Build Contractor Guarantor. Where a Design-Build Contractor Guarantor is a general partnership or a consortium or joint venture, include legal name and place of business of each partner) in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(each a “**Design-Build Contractor Guarantor**” and collectively the “**Design-Build Contractor Guarantors**”)

AND:

<> [*insert legal name of Tunnel Contractor Guarantor*], having a place of business at <>

- and -

[replicate for each Tunnel Contractor Guarantor. Where a Tunnel Contractor Guarantor is a general partnership or a consortium or joint venture, include legal name and place of business of each partner) in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(each a “**Tunnel Contractor Guarantor**” and collectively the “**Tunnel Contractor Guarantors**”)

(the Respondent Members, the Design-Build Contractor, the Design Contractor, the Systems Integration Contractor, the Tunnel Contractor, the Key Individuals, the Design-Build Contractor Guarantors, and the Tunnel Contractor Guarantors being herein collectively referred to as the “**Respondent Team**” and individually referred to as a “**Respondent Team Member**”)

IN FAVOUR OF:

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

WHEREAS:

- A.** The Province has implemented the Competitive Selection Process.
- B.** The Competitive Selection Process is anticipated to include a number of phases including a request for qualifications phase as described in the Request for Qualifications and a request for proposals phase that will likely be described in the Request for Proposals.
- C.** Each of the Respondent Team Members acknowledges that the unauthorized use and disclosure of Confidential Information in connection with the Competitive Selection Process may result in irreparable harm to the Province and/or the Province Parties including by materially adversely impacting the actual and perceived integrity of the Competitive Selection Process and therefore wishes to enter into, execute and deliver this Confidentiality Agreement in favour of the Province.

NOW THEREFORE, in consideration of the opportunity to participate in the Competitive Selection Process and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the undersigned), each of the undersigned hereby covenants and agrees in favour of the Province as follows:

1. Interpretation

In this Agreement, the following terms have the following meanings:

“Agreement” means this agreement.

“Province Parties” means BC Transportation Financing Authority and Partnerships British Columbia Inc.

“Confidential Information” means all documents, knowledge and information provided by the Province, a Province Party, or any of their Representatives or a Third Party or any of its Representatives (in each case, the **“Disclosing Party”**) to, or otherwise prepared or obtained by, a Recipient or any of its Representatives (the **“Receiving Party”**), whether before or after the date of this Agreement and whether orally, in writing or other visual or electronic form, in connection with or relevant to the Project, the RFQ, the RFP or the Competitive Selection Process or any phase thereof including, without limitation, all design, operational and financial information, together with all analyses, compilations, data, studies, photographs, specifications, manuals, memoranda, notes, reports, maps, documents, computer records or other information in hard copy, electronic or other form obtained from the Disclosing Party or prepared by the Receiving Party containing or based upon any such information. Notwithstanding the foregoing, Confidential Information does not include information which:

- (i) is or subsequently becomes available to the public, other than through a breach of this Agreement by the Receiving Party or through a breach of a confidentiality agreement which another person has entered into concerning the Confidential Information;
- (ii) is subsequently communicated to the Receiving Party by an independent third party, other than a Third Party, without breach of this Agreement and which third party did not receive such information directly or indirectly under obligations of confidentiality;
- (iii) was rightfully in the possession of the Receiving Party or was known to the Receiving Party before the date of this Agreement and did not originate, directly or indirectly, from the Disclosing Party (the onus of establishing which shall be on the Receiving Party);
- (iv) was developed independently by the Receiving Party without the use of any Confidential Information (the onus of establishing which shall be on the Receiving Party); or
- (v) is required to be disclosed pursuant to any judicial, regulatory or governmental order validly issued under applicable law.

“Competitive Selection Process” means the selection process implemented by the Province for the Project as described in the RFQ and RFP.

“Permitted Purposes” means evaluating the Project, preparing a Qualification Response or a Proposal and any other use permitted by this Agreement.

“Project” means the Broadway Subway Project as described in the RFQ, as such description may be modified, supplemented, limited and expanded in the RFP and the Project Agreement.

“Proponent Agreement” means the Proponent Agreement attached as Appendix G to the RFQ.

“Proposal” means a Proposal as defined in the Proponent Agreement.

“Qualification Response” means the documentation and information, including all clarifications, rectifications and more complete, supplementary and additional information or documentation, submitted by the Respondent in response to and in accordance with the RFQ, including from and after the Submission Time specified in the RFQ in response to any request of the Province.

“Recipient” means the Respondent and each other Respondent Team Member or other interested party who executes and delivers this Agreement in favour of the Province and the Province Parties.

“Representative” means, as applicable, a director, officer, employee, agent, accountant, lawyer, consultant, financial adviser or subcontractor of a Recipient, the Province, a Province Party, or a Third Party or any other person contributing to or involved with the preparation or evaluation of a Qualification Response or Proposal, as the case may be, or otherwise retained by a Recipient, the Province or a Province Party.

“Request for Proposals” or **“RFP”** means the request for proposals that may be issued by the Province in connection with the Project as contemplated in the RFQ, including all volumes, appendices and attachments thereto, as amended from time to time by the Province.

“Request for Qualifications” or **“RFQ”** means the document entitled “Broadway Subway Project Request for Qualifications” issued by the Province on February 15, 2019 in connection with the Project, including all appendices and attachments thereto, as amended from time to time by the Province.

“Third Party” means a person which is not:

- (a) the Province or any of the Province Parties;
- (b) a Recipient; or
- (c) a Representative of any of the Province, or the Province Parties, or a Recipient,

which has provided Confidential Information to the Province, a Province Party, a Recipient or a Representative of any of the Province, a Province Party, or a Recipient.

“Third Party Agreement” means an agreement between the Province or a Province Party and a Third Party with respect to Third Party Confidential Information.

“Third Party Confidential Information” means Confidential Information owned by a Third Party or in which a Third Party has an interest.

2. Confidentiality

Each Recipient will keep all Confidential Information, including Third Party Confidential Information, strictly confidential and will not without the prior express written consent of an authorized representative of the Province, which may be unreasonably withheld, disclose or allow any of its Representatives to disclose, in any manner whatsoever, in whole or in part, or use or allow any of its Representatives to use, directly or indirectly, the Confidential Information for any purpose other than the Permitted Purposes. Each Recipient will make all reasonable, necessary and appropriate efforts to safeguard the Confidential Information from disclosure to any other person, firm, corporation or other entity except as permitted in this Agreement, and will ensure that each of its Representatives agrees to keep such information confidential and to be bound by the terms contained herein. Without limiting any other requirement of this Agreement, in the case of

Third Party Confidential Information, the Recipient will cause such Third Party Confidential Information to be kept confidential and used in accordance with this Agreement as well as with the terms and conditions of any pertinent Third Party Agreement of which the Recipient has knowledge.

3. Ownership of Confidential Information

The Province or the applicable Province Party owns all right, title and interest in the Confidential Information and, except as may be otherwise agreed between the Province or the applicable Province Party and any Third Party, in any Third Party Confidential Information. Subject to any disclosure requirements under applicable law, and except as permitted by this Agreement, each Recipient will keep all Confidential Information (other than Third Party Confidential Information) that the Recipient receives, has access to or otherwise obtains strictly confidential for a period of three years after the date of this Agreement and will not, without the prior express written consent of an authorized representative of the Province, which may be unreasonably withheld, use, divulge, give, release or permit or suffer to be used, divulged, given or released any portion of the Confidential Information to any other person, firm, corporation or other entity for any purpose whatsoever. Subject to any disclosure requirements under applicable law, and except as permitted by this Agreement and any Third Party Agreement, each Recipient will keep all Third Party Confidential Information that the Recipient receives, has access to or otherwise obtains strictly confidential for a period of three years after the date of this Agreement or such longer period of time as may be required by the pertinent Third Party Agreement and will not, without the prior express written consent of an authorized representative of the Province, which may be unreasonably withheld, and the Third Party as provided in the Third Party Agreement use, divulge, give, release or permit or suffer to be used, divulged, given or released any portion of the Third Party Confidential Information to any other person, firm, corporation or other entity for any purpose whatsoever.

4. Limited Disclosure

A Recipient may disclose Confidential Information only for Permitted Purposes to those of its Representatives who need to know the Confidential Information, and on the condition that all such Confidential Information be retained by each of those Representatives as strictly confidential in accordance with the terms of this Agreement. Each Recipient will notify the Province and, in the case of Third Party Confidential Information, the pertinent Third Party, on request, of the identity of each Representative to whom any Confidential Information has been delivered or disclosed.

5. Destruction on Demand

On written request of the Province or, in the case of Third Party Confidential Information, on written request of the Province and the Third Party, or either of them, each Recipient will promptly in accordance with such request deliver to the Province or the Third Party in accordance with such request or destroy all documents and copies thereof in its possession or control constituting or based on the Confidential Information and certify that delivery or destruction to the Province in writing in form and content satisfactory to the Province; provided, however, that a Recipient may retain one copy of any Confidential Information which it may be required to retain or furnish to a court or regulatory authority pursuant to applicable law, and in such case the terms and conditions of this Agreement will continue to apply in respect of such retained copy.

6. Acknowledgement of Irreparable Harm

Each Recipient acknowledges and agrees that the Confidential Information is proprietary and confidential and that the Province, a Province Party and/or a Third Party may be irreparably harmed if any provision of this Agreement or any pertinent Third Party Agreement were not performed, observed or complied with by the Recipient or any person or party to whom the Recipient provides or discloses Confidential Information, including any of the Recipient's Representatives, and that any such harm could not be compensated reasonably or adequately in damages. Each Recipient further acknowledges and agrees that the Province, the Province Parties and, in the case of Third Party Confidential Information, the Province, the Province Parties and the pertinent Third Party, and each of them, will be entitled to injunctive and other equitable relief to prevent or restrain breaches of any of the provisions of this Agreement or any applicable Third Party Agreement by the Recipient or any of its Representatives or any Person to whom the Recipient or any of its Representatives provides or discloses Confidential Information, or to enforce the terms and provisions hereof, by an action instituted in a court of competent jurisdiction, which remedy or remedies are in addition to any other remedy to which the Province, the Province Parties and such Third Party, or any of them, may be entitled at law or in equity.

7. Waiver

No failure to exercise, and no delay in exercising, any right or remedy under this Agreement by the Province, a Province Party or any Third Party under a Third Party Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement or any Third Party Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

8. Further Assurances

On written request, the Recipient will execute and deliver or cause to be executed and delivered to the Province all such further documents, do or cause to be done all such further acts and things and give all such further assurances as in the opinion of the Province are necessary or advisable to give full effect to the provisions and intent of this Agreement or any Third Party Agreement. In addition, if requested by the Province, the Recipient will provide such written assurances as the Province, a Province Party, or any Third Party may request to confirm and evidence that the Recipient is bound by any Third Party Agreement which is pertinent to any Third Party Confidential Information received by the Recipient or its Representatives.

9. Severability

If any portion of this Agreement is found to be invalid or unenforceable by law by a court of competent jurisdiction then that portion will be severed and the remaining portion will remain in full force and effect.

10. Enurement

This Agreement enures to the benefit of the Province, the Province Parties and their respective assigns and binds each Recipient and its successors.

11. Governing Law

This Agreement will be governed by and interpreted in accordance with the laws of the Province of British Columbia.

IN WITNESS WHEREOF this Agreement has been duly executed by each of the undersigned as of the day and year first above mentioned.

RESPONDENT MEMBERS:

<> [insert legal name(s) and appropriate signature block(s) for each Respondent Member]

DESIGN-BUILD CONTRACTOR:

<> [insert legal name and appropriate signature block for each entity comprising the Design-Build Contractor]

DESIGN CONTRACTOR:

<> [insert legal name and appropriate signature block for each entity comprising the Design Contractor]

SYSTEMS INTEGRATION CONTRACTOR:

<> [insert legal name and appropriate signature block for each entity comprising the Design Contractor]

TUNNEL CONTRACTOR:

<> [insert legal name and appropriate signature block for each entity comprising the Design Contractor]

KEY INDIVIDUALS:

<>

DESIGN-BUILD CONTRACTOR GUARANTORS:

<> [insert legal name and appropriate signature block for each Design-Build Contractor Guarantor]

TUNNEL CONTRACTOR GUARANTORS:

<> [insert legal name and appropriate signature block for each Tunnel Contractor Guarantor]

Execution Instructions

This Confidentiality Agreement is to be duly executed by each “Respondent Team Member” in accordance with the definition of that term in Section 6 of the RFQ. It is the responsibility of each Respondent Team Member to ensure that it and, where applicable, each of its constituent entities has been properly identified by its legal name in this Confidentiality Agreement and has duly executed this Confidentiality Agreement, and the Province may in its discretion request an opinion from legal counsel to the Respondent Team Members to that effect.

Upon execution, the yellow highlighting as well as these execution instructions should be removed.

APPENDIX F – REQUEST FOR INFORMATION FORM

Broadway Subway Project Request for Information / Clarification

Request Number: (Respondent name and sequential number)

Raised By: (contact name)

Date Raised:

Date by Which Response Requested:

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

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

REQUEST / QUERY (One query / request per sheet)

Do you request this query to be “Commercial in Confidence”? YES No

APPENDIX G – PROPONENT AGREEMENT

FORM OF PROPONENT AGREEMENT

Note:

This Proponent Agreement is to be duly executed by the “Respondent Members”, the “Design-Build Contractor”, the “Design Contractor”, the “Systems Integration Contractor”, the “Tunnel Contractor”, each “Key Individual”, “Design-Build Contractor Guarantor”, and “Tunnel Contractor Guarantor” included in the “Respondent Team” in accordance with the definitions of those terms in Schedule 1 to this Proponent Agreement. It is the responsibility of the Respondent to ensure that each such party and, where applicable, each entity included in each such party has been properly identified by its legal name in this Proponent Agreement and has duly executed this Proponent Agreement, and the Province may in its discretion request an opinion from the relevant party’s legal counsel to that effect. Subject to the provisions of the RFQ including sections 4.3 and 5.4, the failure to properly identify parties and to duly execute this Proponent Agreement or to provide any requested opinion may render the Respondent ineligible to participate in the Competitive Selection Process, including to be identified as a Short-listed Respondent or to continue to participate after having been identified as a Short-listed Respondent.

THIS PROPONENT AGREEMENT made as of the _____ day of _____, 20<>.

B E T W E E N :

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Ministry of Transportation and Infrastructure

(the “Province”)

And:

<> **[insert legal name(s) of Respondent Member]**, having a place of business at <>

- and -

[Replicate for each Respondent Member. Where the Respondent Member is a general partnership or a consortium or joint venture, include legal name and place of business of each partner in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(the “Proponent Members”)

And:

<> **[insert legal name of Design-Build Contractor]**, having a place of business at <>

- and -

[replicate for each entity comprising the Design-Build Contractor. Where the Design-Build Contractor is a general partnership or a consortium or joint venture, include legal name and place of business of each partner in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(the “Design-Build Contractor”)

And:

<> [insert legal name of Design Contractor], having a place of business at <>

- and -

[replicate for each entity comprising the Design Contractor. Where the Design Contractor is a general partnership or a consortium or joint venture, include legal name and place of business of each partner in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(the “Design Contractor”)

And:

<> [insert legal name of Systems Integration Contractor], having a place of business at <>

- and -

[replicate for each entity comprising the Systems Integration Contractor. Where the Systems Integration Contractor is a general partnership or a consortium or joint venture, include legal name and place of business of each partner in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(the “Systems Integration Contractor”)

And:

<> [insert legal name of Tunnel Contractor], having a place of business at <>

- and -

[replicate for each entity comprising the Tunnel Contractor. Where the Tunnel Contractor is a general partnership or a consortium or joint venture, include legal name and place of business of each partner in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(the “Tunnel Contractor”)

And:

<> **[insert legal name of Key Individual]**, having a place of business at <>

- and -

[replicate for each Key Individual]

(each a “Key Individual” and collectively, the “Key Individuals”)

And:

<> **[insert legal name of Design-Build Contractor Guarantor]**, having a place of business at <>

- and -

[replicate for each Design-Build Contractor Guarantor. Where a Design-Build Contractor Guarantor is a general partnership or a consortium or joint venture, include legal name and place of business of each partner) in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(each “Design-Build Contractor Guarantor” and collectively the “Design-Build Contractor Guarantors”)

And:

<> **[insert legal name of Tunnel Contractor Guarantor]**, having a place of business at <>

- and -

[replicate for each Tunnel Contractor Guarantor. Where a Tunnel Contractor Guarantor is a general partnership or a consortium or joint venture, include legal name and place of business of each partner) in the partnership or each of the entities comprising the consortium or joint venture, as applicable]

(each “Tunnel Contractor Guarantor” and collectively the “Tunnel Contractor Guarantors”)

WHEREAS:

- A. The Province has implemented the Competitive Selection Process for the Broadway Subway Project.
- B. The Competitive Selection Process includes a request for qualifications stage, as described in the Request for Qualifications, and a request for proposals stage that is intended to, among other things, enable proponent input and consultations and facilitate development of high quality, competitive proponent submissions.
- C. The Province has invited <> **[insert name of Proponent]** (the “Proponent”) to continue in the Competitive Selection Process by proceeding to and participating in the request for proposals stage, subject to and in accordance with the terms of this Proponent Agreement (the “**Agreement**”).
- D. The Proponent wishes to continue in the Competitive Selection Process by proceeding to and participating in the request for proposals stage, subject to and in accordance with the terms of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT the Province, each of the Respondent Team Members, the Design-Build Contractor, the Design Contractor, the Systems Integration Contractor, the Tunnel Contractor, each of the Key Individuals, the Design-Build Contractor Guarantors, and the Tunnel Contractor Guarantors for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, agree as follows,

1.0 DEFINITIONS AND INTERPRETATION

- 1.1 Unless the context otherwise expressly requires, the definitions and their corresponding defined terms set out in Schedule 1 of this Agreement will apply wherever the defined terms appear in this Agreement.
- 1.2 If there are conflicts or inconsistencies between this Agreement and any part of the RFP, the provisions of this Agreement will prevail.

2.0 LEGAL OBLIGATIONS

2.1 Except for:

- (a) this Agreement;
- (b) any agreement(s) to be bound by the terms of this Agreement as contemplated in section 13.11;

- (c) the contract entered into by the Province, the Proponent and each of the Proponent Team Members entitled the “Irrevocability Agreement” and made as of the date on which the Financial Submittal deadline occurs.
- (d) the Confidentiality Agreement; and
- (e) the contracts that are expressly identified as such and referenced in this Agreement (and then if and only to the extent set out in the express terms of this Agreement and of each such other contract),

no legal obligations or duties, whether in contract, tort, statute or common law, including any actual or implied duty of good faith or actual or implied duty of fairness, or contracts of any kind whatsoever are intended to be formed under or to arise from or are formed under or arise from the Competitive Selection Process or any part of the Competitive Selection Process, including the RFQ or the RFP.

2.2 Each of the Proponent Team Members acknowledges and agrees that, notwithstanding any term of this Agreement, the Province is not in any way whatsoever obligated to continue with or complete any phase or stage of the Competitive Selection Process and may in its sole discretion do any one or more of the following:

- (a) at any time, from time to time, for any reason whatsoever, including for reasons that the Province in its sole discretion considers to be in the interests of or advantageous to the Province, or to reflect the terms of applicable trade agreements, modify, including by limiting, expanding, replacing, substituting, extending, suspending, postponing or cancelling, any stage of the Competitive Selection Process or the whole or any part or parts, including the scope, of the Project;
- (b) by delivery of a Termination Notice to the proponents, at any time, for any reason whatsoever, including for reasons that the Province in its sole discretion considers to be in the interests of or advantageous to the Province, terminate the Competitive Selection Process, including if the Province elects in its sole discretion not to continue negotiations with the Preferred Proponent to settle the Project Agreement or elects in its sole discretion not to execute and deliver the settled form of Project Agreement;
- (c) not accept, review or evaluate any one or all of the Proposals;
- (d) not select a Preferred Proponent;
- (e) not offer any of the proponents the opportunity to enter into or award the Project Agreement to any proponent or at all;

- (f) implement or issue any other procurement or other process for, or proceed in any other manner whatsoever, including using the Province's own forces, contractors or authorities, with the whole or any part or parts of the Project; and
- (g) proceed, including in conjunction with any one or more of the activities, processes or works described in section 12.1, with all or any part of the design, construction, financing, operation or other activities in respect of the whole or any part or parts of the lands and infrastructure comprising or anticipated to comprise the Project through any other procurement or other process of any kind whatsoever, including negotiation, or prosecution of works using the Province's own forces, contractors or authorities.

2.3 Each of the Proponent Team Members:

- (a) acknowledges that the Province has appointed the Conflict of Interest Adjudicator to make decisions and rulings and to provide advice and comment to the Province as to actual or perceived conflicts of interest, unfair advantage, restricted parties, exclusive parties and shared use Persons and other relationships involving participants and prospective participants in the Competitive Selection Process, as may be described in the RFQ or the RFP, as the case may be;
- (b) agrees that the decisions and rulings of the Conflict of Interest Adjudicator are final and binding on each of the Proponent Team Members and all Persons;
- (c) acknowledges and agrees that the Fairness Advisor has been engaged with responsibility, as an independent observer, 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 Topic Meetings and other consultative, facilitative or facilitated processes in the Competitive Selection Process, and to report thereon only to the Province, including by providing, on an ongoing basis, an objective opinion as to the fairness of the Competitive Selection Process;
- (d) agrees to accept the reports, commentary and opinions of the Fairness Advisor as a final determination of any issues of fairness with respect to the Competitive Selection Process; and
- (e) acknowledges and agrees that the sole obligations of the Province are as and only to the extent expressly set out in Article 3 of this Agreement.

3.0 **STIPEND AND TERMINATION FEE**

Stipend Conditions and Invoice

- 3.1** The Proponent will, subject to the terms of this Agreement and subject to the following conditions having been satisfied, be eligible to receive the Stipend in the manner set out in this Agreement:
- (a)** the Proponent has submitted a Conforming Proposal and has not withdrawn from the Competitive Selection Process;
 - (b)** subject to subsection 3.1(c), the Province has not selected the Proponent as the Preferred Proponent;
 - (c)** if the Proponent was selected as Preferred Proponent, the Province has revoked its invitation and terminated negotiations with the Proponent as contemplated in the RFP and not proceeded with the Proponent to finalize and settle the Project Agreement;
 - (d)** the Province has not delivered notice of ineligibility to the Proponent in respect of the Competitive Selection Process in accordance with the RFP or under section 7.1 of this Agreement;
 - (e)** the Proponent Team Members have executed and delivered and caused to be executed and delivered, as the case may be, each of the acknowledgments, transfers, waivers, licences, sub-licences and assignments contemplated in Article 6;
 - (f)** the Proponent has attended and participated in each of the Workshops in accordance with the terms of this Agreement and of the RFP;
 - (g)** the Proponent Team Members have executed and delivered a duly executed release and waiver substantially in the form attached as Schedule 6;
 - (h)** the Proponent Team Members have executed and delivered, for purposes of reliance thereon by the Province, a duly executed certificate bearing the date of the earliest to occur of the event and date specified in section 3.2, and otherwise being in form and content satisfactory to the Province in its sole discretion, certifying that each of the Proponent Team Members has observed and satisfied and, as at the date of the certificate, continues to observe and satisfy all of the terms of the Competitive Selection Process, including the RFQ, this Agreement and the RFP;
 - (i)** each of the Proponent Team Members has observed and satisfied and continues to observe and satisfy all of the terms of the Competitive Selection Process, including the RFQ, this Agreement and the RFP;
 - (j)** the Province has not delivered a Termination Notice; and

- (k) the Proponent has delivered the Stipend Invoice in accordance with section 3.2.
- 3.2** The Proponent will, subject to each of the conditions listed in subsections 3.1(a) to (j) having been satisfied, deliver an invoice (the “Stipend Invoice”) to the Province confirming satisfaction of each of such conditions and requesting payment of the Stipend, by not later than 90 days after the earliest to occur of the following event and date:
- (a) delivery of written notice from the Province to the Proponent of execution and delivery of the Project Agreement by all parties; and
 - (b) the date that is 180 days after the Financial Submittal Deadline if the Province has not announced a Preferred Proponent.
- 3.3** The Province will, subject to the terms of this Agreement and provided that each of the conditions listed in section 3.1 has been satisfied, pay the Stipend to the Proponent not later than 30 days after receipt of the Stipend Invoice.

Termination Fee Conditions and Invoice

- 3.4** If the Province delivers a Termination Notice terminating the Competitive Selection Process for reasons unrelated to the integrity of the Competitive Selection Process, the Proponent will, subject to the terms of this Agreement and subject to the following conditions having been satisfied, be eligible to receive the Termination Fee in the manner set out in this Agreement:
- (a) the Proponent has delivered a Conforming Proposal if the Termination Notice is issued after the Financial Submittal Deadline;
 - (b) the Proponent has not withdrawn from the Competitive Selection Process;
 - (c) the Province has not delivered notice of ineligibility to the Proponent in respect of the Competitive Selection Process in accordance with the RFP or under section 7.1 of this Agreement;
 - (d) the Proponent Team Members have executed and delivered and caused to be executed and delivered, as the case may be, the Proposal and each of the acknowledgments, transfers, waivers, licences, sub-licences and assignments contemplated in Article 6 of this Agreement;
 - (e) the Proponent has attended and participated in each of the Workshops held before issuance of the Termination Notice, in accordance with the terms of this Agreement and the RFP;
 - (f) the Proponent Team Members have executed and delivered a fully and duly executed waiver and agreement substantially in the form attached as Schedule 4,

and a duly executed release and waiver substantially in the form attached as Schedule 6;

- (g) the Proponent has delivered to the Province a full accounting with accompanying supporting documentation in sufficient detail to demonstrate to the satisfaction of the Province the actual and reasonable expenditures incurred by the Proponent to prepare the Conforming Proposal or, in the case of a Termination Notice being issued before the Financial Submittal Deadline, the Proposal up to the date of the Termination Notice;
 - (h) the Proponent Team Members have executed and delivered, for purposes of reliance thereon by the Province, a duly executed certificate effective as of the date of the Termination Notice, and otherwise being in form and content satisfactory to the Province in its sole discretion, certifying that each of the Proponent Team Members has observed and satisfied and, as at the date of the certificate, continues to observe and satisfy all of the terms of the Competitive Selection Process, including the RFQ, this Agreement and the RFP;
 - (i) each of the Proponent Team Members has observed and satisfied and continues to observe and satisfy all of the terms of the Competitive Selection Process, including the RFQ, this Agreement and the RFP; and
 - (j) the Proponent has delivered the Termination Fee Invoice in accordance with section 3.5.
- 3.5** The Proponent will, subject to each of the conditions listed in subsections 3.4(a) to (i) having been satisfied, deliver an invoice (the "Termination Fee Invoice") to the Province setting out in reasonable detail the expenditures referenced in subsection 3.4(g), by not later than 90 days after delivery by the Province to the Proponent of the Termination Notice referred to in section 3.4.
- 3.6** The Province will, subject to the terms of this Agreement and provided that each of the conditions listed in section 3.4 has been satisfied, pay the Termination Fee to the Proponent not later than 30 days after receipt of the Termination Fee Invoice.

4.0 RELEASES AND WAIVERS

4.1 Each of the Proponent Team Members:

- (a) agrees that the Releasees and each of them will not under any circumstances be responsible or liable for or in respect of any Claims by any Person (including any Proponent Team Member, including any Person claiming through any of them, or any of their respective contractors, sub-contractors, directors, officers, employees, consultants, advisors or agents);

- (b) releases, acquits and forever discharges the Releasees and each of them from any and all Claims; and
- (c) agrees that it will not bring and hereby waives any Claims against the Releasees and each of them in excess of an amount equivalent to the actual and reasonable out of pocket costs directly incurred and paid by the Proponent in preparing the Proposal to a maximum of:
 - (i) the amount of the Stipend, if the Competitive Selection Process has not been terminated by delivery of a Termination Notice; or
 - (ii) the applicable amount set out as the Termination Fee that corresponds to such Termination Notice, if a Termination Notice is delivered by the Province;

for any matter whatsoever arising out of, in connection with or relating in any way to the Competitive Selection Process or any one or more parts of the Competitive Selection Process, including matters or issues contemplated or considered in the reports, opinions or commentary of the Fairness Advisor, the decisions and rulings of the Conflict of Interest Adjudicator and the Derivative Activities, or any of them.

4.2 Each of the Proponent Team Members agrees that:

- (a) in no event will the Proponent be eligible to receive or the Province be obligated to pay both the Stipend and the Termination Fee, and that the payment of the Stipend or the applicable Termination Fee, as the case may be, operates to render the obligations of the Province under Article 3 exhausted, spent and extinguished; and
- (b) if the Proponent is eligible in accordance with the terms of this Agreement to receive either the Stipend or the Termination Fee, as the case may be, then payment by the Province to the Proponent of the Stipend or the applicable Termination Fee, as the case may be, will not be cumulative and in addition to, but will be deemed to be in substitution for and as full and final settlement of any Claim of the Proponent or any Proponent Team Member, including any Claim referenced in section 4.1.

4.3 The Proponent Members will, jointly and severally, indemnify and hold harmless the Province and each of the other Releasees from and against any and all Claims brought by or on behalf of:

- (a) any present, former or prospective Proponent Team Member or Proponent Team Members against the Province or any other Releasee or Releasees, or
- (b) any Person as a result of any act or omission of the Proponent or any Proponent Team Member;

arising out of, in connection with or relating in any way to the Competitive Selection Process or any one or more parts of the Competitive Selection Process, including matters or issues contemplated or considered in the reports, opinions or commentary of the Fairness Advisor, the decisions and rulings of the Conflict of Interest Adjudicator and the Derivative Activities, or any of them, including in connection with the performance of the obligations of each of the Proponent Team Members under this Agreement.

4.4 Each of the Proponent Team Members accepts and agrees to be bound by the waivers, disclaimers, limitations of liability and indemnities delivered, or which will be delivered, by each of the Proponent Team Members, as the case may be, in connection with the Competitive Selection Process or any one or more parts of the Competitive Selection Process, including the Workshops and Topic Meetings and other consultative or facilitative or facilitated processes in the Competitive Selection Process, and agrees that:

- (a)** such waivers, disclaimers, limitations of liability and indemnities:
 - (i)** will be in addition to the terms of this Agreement; and
 - (ii)** are not intended to and do not in any way limit or narrow the application, interpretation or operation of the terms of this Agreement; and
- (b)** where any term set out in any such waivers, disclaimers, limitations of liability and indemnities conflicts with any term of this Agreement, the term set out in this Agreement will prevail.

5.0 PREFERRED PROPONENT SECURITY DEPOSIT

5.1 The Proponent Team Members agree that:

- (a)** the Proponent's eligibility to be considered for selection as the Preferred Proponent is conditional upon the Proponent delivering, in response to an unrevoked invitation from the Province, the Preferred Proponent Security Deposit in the amount of \$20,000,000.00 in accordance with the RFP; and
- (b)** if the Proponent does not deliver the Preferred Proponent Security Deposit to the Province in accordance with the RFP:
 - (i)** the Proponent will neither be eligible to be selected as the Preferred Proponent nor be eligible to receive the Stipend or the Termination Fee; and
 - (ii)** the Province may, in its sole discretion, do any one or more of the following:
 - (A)** by written notice to the Proponent, cease all negotiations with the Proponent and refrain from designating the Proponent as Preferred

Proponent for all purposes in connection with the Competitive Selection Process, including this Agreement and the RFP;

- (B) select any other of the proponents as the Preferred Proponent and continue with the Competitive Selection Process;
- (C) commence negotiations with any other proponent or any other Person;
- (D) pursue any of the Derivative Activities, including any of the options available to the Province under the RFP.

5.2 The Province will, subject to the terms of this Agreement, return the Preferred Proponent Security Deposit to the Proponent:

- (a) within 10 days after receipt by the Province of a written demand from the Proponent, if:
 - (i) the Province issues a Termination Notice terminating the Competitive Selection Process for reasons unrelated to the Proponent and the Proponent Team Members; or
 - (ii) the Province fails to execute and deliver an agreement substantially in the form of the Project Agreement contemplated to be finalized and settled in accordance with the process described in the RFP on or before the date which is 120 days (or such longer period as the parties may agree in writing) after receipt by the Proponent of notification of its selection as Preferred Proponent, provided that such failure is not a result of a failure by the Proponent to satisfy any conditions precedent set out in the Project Agreement or a result of the Province and the Proponent having been negotiating a Project Agreement as contemplated in the RFP; or
- (b) within 10 days following the later of:
 - (i) the execution and delivery of the Project Agreement by all parties; and
 - (ii) Financial Close.

5.3 Despite any other term of this Agreement, the Province may in its sole discretion and without notice draw on, retain and apply the proceeds of the Preferred Proponent Security Deposit to its own or other use in its sole discretion, despite delivery by the Proponent of a notice under section 5.4, if

- (a) there is a material breach of this Agreement by any of the Proponent Team Members; or

- (b) after receipt of written notice from the Province:
- (i) the Proponent fails to cause Project Co to execute and deliver an agreement substantially in the form of the Project Agreement contemplated to be finalized and settled in accordance with the process for settling the Project Agreement described in the RFP ; or
 - (ii) Financial Close does not occur,

within 30 days (or such longer period as the parties may agree in writing) of receipt of such written notice, provided that such failure on the part of the Proponent to cause to be executed and delivered an agreement substantially in the form of the Project Agreement contemplated to be finalized and settled in accordance with the process for settling the Project Agreement described in the RFP, or such failure to reach Financial Close, as the case may be, is not solely as a result of a major disabling event (other than a disruption of financial markets) which could not have been reasonably prevented by and is beyond the reasonable control of the Proponent Team Members and which the Proponent can demonstrate to the satisfaction of the Province, acting reasonably, would substantially frustrate or render it impossible for Project Co to perform the obligations of Project Co under the Project Agreement for a continuous period of 180 days.

5.4 If the Proponent notifies the Province in writing in accordance with this Agreement that the Proponent disputes the Province's right to call on and retain the Preferred Proponent Security Deposit, then:

- (a) the Province may, in its sole discretion, nonetheless call on the Preferred Proponent Security Deposit and retain and apply the proceeds of the Preferred Proponent Security Deposit in accordance with section 5.3;
- (b) the retention and application of the proceeds of the Preferred Proponent Security Deposit will be without prejudice to the right of the Proponent to dispute the Province's right to call on and retain the Preferred Proponent Security Deposit; and
- (c) if the dispute is resolved fully and finally in favour of the Proponent, then the Province's liability will be limited to repayment of all or the portion of the amount of the Preferred Proponent Security Deposit called on and retained by the Province, together with interest charges at the rate prescribed under the *Financial Administration Act* and the Interest on Overdue Accounts Payable Regulation (B.C. Reg 215/83) on that amount.

5.5 If the Proponent fails to provide written notice to the Province of the renewal or extension of the Preferred Proponent Security Deposit at least 30 days prior to the expiry date of the Preferred Proponent Security Deposit, or if the Proponent fails to renew or extend the Preferred Proponent Security Deposit, the Province may, in its sole discretion and at any time without notice to the Proponent, call on the Preferred Proponent Security Deposit and

hold the proceeds as the Preferred Proponent Security Deposit in the same manner and for the same purposes as the letter of credit and the terms of section 5.4 do not apply to the Province's call and retention of the proceeds under this section.

6.0 INTELLECTUAL PROPERTY RIGHTS

6.1 At the time the Proponent submits the Proposal, and at any other time reasonably requested by the Province, the Proponent will deliver to the Province (or any Person designated by the Province in writing):

- (a)** the Work Product;
- (b)** a List of Non-Work Product IP specifically identifying, describing and indicating the owner or owners of all Background IP and Third Party IP, categorized as such, provided that, if such specific identification and description of any Third Party IP would cause any Proponent Team Member to violate any confidentiality obligations, the Proponent will disclose only:
 - (i)** a general identification and description of such Third Party IP;
 - (ii)** the identity of the owner or owners of such Third Party IP and the Proponent Team Member's relationship to such owner or owners; and
 - (iii)** the reason that the Third Party IP is not fully disclosed;
- (c)** an acknowledgement and confirmation of the ownership and present and future assignment to the Province of the Intellectual Property Rights, including all copyright, in the Work Product, in the form of the Confirmatory Assignment included in Schedule 7; and
- (d)** executed waivers, in favour of the Province, of all moral rights in the Work Product, as set out in section 6.3, by one or more instruments in writing substantially in the form of the Waiver of Moral Rights included in Schedule 7.

6.2 Except as otherwise agreed in writing with the Province, the Proponent Team Members hereby represent, warrant and agree that it owns or has, or at the time of the submission of its Proposal the Proponent Team Member will own or have, or will as necessary acquire, the rights to the Intellectual Property Rights associated with the Work Product, the Background IP and the Third Party IP provided by or on behalf of such Proponent Team Member as necessary to make the assignments and grant the licenses to the Province as set out in this Agreement and has obtained or will obtain waivers of moral rights from all Persons as necessary to provide the waivers in favour of the Province as set out in this Agreement. Subject to the Proponent Team Members' limited right to grant a license in lieu of an assignment with respect to Work Product as set out in section 6.6 of this Agreement, if for any reason a Proponent Team Member is unable to provide any

assignments, licenses or waivers as required to be provided under this Agreement, the Proponent Team Member will replace the portion of the Work Product, Background IP or Third Party IP for which the assignment, license or waiver, as the case may be, cannot be provided, with an alternative product or technology that meets the Province's requirements at no additional cost to the Province.

6.3 Each of the Proponent Team Members agrees that, at no cost to the Province:

- (a)** it does hereby irrevocably and unconditionally convey, sell, transfer and assign, or agree to cause to be so conveyed, sold, transferred and assigned, to the Province all right, title and interest in and to the Work Product provided by or on behalf of such Proponent Team Member, including all Intellectual Property Rights in, including the copyright works forming a part of, such Work Product; and
- (b)** it does herewith or will provide to the Province, from all Persons who generated or may generate Work Product provided by or on behalf of such Proponent Team Member, waivers in favour of the Province of all moral rights that such Persons may have in such Work Product.

6.4 The Province acknowledges that, except as otherwise provided in this Agreement, any use of the Work Product by or on behalf of the Province will be at the risk of the Province and not the Proponent Team Members, provided that if the Proponent is selected as the Preferred Proponent, the foregoing limitation does not extend to any Claims arising after the execution and delivery of the Project Agreement.

6.5 Effective upon the date of execution of the Project Agreement by Project Co on behalf of the Preferred Proponent, the Province hereby grants to each Proponent Team Member, unless the Proponent is the Preferred Proponent, a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully-paid, sub-licensable, transferable and assignable license to use and disclose the Work Product provided by or on behalf of such Proponent Team Member for any purpose whatsoever, and the Proponent Team Members acknowledge that:

- (a)** such Work Product is provided "as is" without warranty of any kind whether express or implied including, without limitation, implied warranties of accuracy, completeness, merchantability or fitness for a particular purpose;
- (b)** neither the Province nor any other of the Releasees has or will accept any liability whatsoever for any Claims in respect of such Work Product;
- (c)** any use or disclosure of such Work Product will be at the risk of the Proponent Team Member and not the Province; and

- (d) nothing in this license will relieve the Proponent Team Member from any obligation of confidentiality or non-use, however arising, in any way relating to such Work Product;

provided that if Project Co enters into the Project Agreement on behalf of the Proponent, any license that may be granted to the Proponent Team Members with respect to the Work Product will be only as set out in the Project Agreement.

- 6.6** If any assignment of Intellectual Property Rights in any of the Work Product cannot, as a matter of law, be granted by the applicable Proponent Team Member to or in favour of the Province as provided in section 6.3, such Proponent Team Member hereby unconditionally grants to the Province, at no cost to the Province and effective upon delivery of the Proposal, a Complete License to any such Work Product, which license may at any time be rejected in whole or in part by the Province and, in which case, the provisions of section 6.2 with respect to the Proponent Team Member's replacement of such Work Product shall apply.
- 6.7** Effective as of the date that the Proponent submits the Proposal, each Proponent Team Member, at no cost to the Province, hereby unconditionally grants to the Province a Complete License to the Background IP provided by or on behalf of such Proponent Team Member for the Permitted Use.
- 6.8** Despite section 6.7, the Province will have no right to reverse engineer, decompile or otherwise arrive at the source code of any software included in the applicable Background IP, nor will it have the right to extract and sell, lease, license, sub-license or otherwise transfer, convey or alienate any software included in the Background IP (whether for commercial consideration or not) to any Person as a stand-alone product, except as may be necessary or desirable to exploit the Work Product or otherwise in connection with the Permitted Use.
- 6.9** Unless the Province and the applicable Proponent Team Member expressly agree otherwise in writing, the following applies in respect of any Third Party IP:
- (a) effective as of the date that the Proponent submits the Proposal, each of the Proponent Team Members, at no cost to the Province, hereby unconditionally grants to the Province, subject to subsections 6.9(b) and 6.9(c), a Complete License to the Third Party IP provided by or on behalf of such Proponent Team Member for the Permitted Use;
- (b) the Complete License described in subsection 6.9(a) does not extend to include:
- (i) any Third Party IP which consists of non-specialized, commercial off-the-shelf software programs that the Province, in its sole discretion and based on its review of the List of Non-Work Product IP, has determined that it does

- not require a sub-license to be provided by the applicable Proponent Team Member in order to operate, exploit or make use of the Work Product; and
- (ii) any Third Party IP which the Province has been informed of and has agreed in advance in writing is, due to its specialized and proprietary nature, the proper subject matter of a Limited License;
- (c) regarding the Complete License described in subsection 6.9(a) and any Limited License described in subsection 6.9(b)(ii), if the Proponent is not selected as the Preferred Proponent, the Province will have the option from and after the selection of the Preferred Proponent:
- (i) to terminate the Complete License or the Limited License, as the case may be, with no liability to the Province, the Proponent Team Members, the owner of the Third Party IP or any other Person; or
 - (ii) to continue the Complete License or the Limited License, as the case may be, provided that the Province will be obligated to pay all license fees associated with the use of the applicable Third Party IP from the date the Proponent is notified by the Province that it has not been selected as the Preferred Proponent; and
- (d) if the Complete License described in subsection 6.9(a) or any Limited License described in subsection 6.9(b)(ii), as the case may be, cannot be validly granted without the consent of a Third Party, the applicable Proponent Team Member, at the Proponent Team Member's expense, will use its best efforts to obtain such consent and, without limiting any of its other obligations, will indemnify and hold harmless the Province and each of the other Releasees from and against any and all Claims in any way and at any time arising from such Proponent Team Member's failure to obtain such consent.
- 6.10** Without limiting Article 4, each Proponent Team Member will indemnify and hold harmless the Province and each of the other Releasees from and against any and all Claims in any way and at any time arising out of or in connection with:
- (a) the use, disclosure or provision to the Province of the Work Product, the Background IP and the Third Party IP or any of them by or on behalf of such Proponent Team Member; and
 - (b) allegations or findings of infringement of Intellectual Property Rights, breach of confidence or unauthorized use by any of the Releasees of confidential information or Intellectual Property of other Persons, or failure to obtain copyright assignments or licenses or waivers of moral rights;

in respect of the Work Product, the Background IP and the Third Party IP or any of them provided by or on behalf of such Proponent Team Member.

- 6.11** Each Proponent Team Member hereby irrevocably designates and appoints the Province and its duly authorized officers and agents as such Proponent Team Member's agent and attorney-in-fact to act for and on behalf of such Proponent Team Member to execute, deliver and file any and all documents with the same legal force and effect as if executed by such Proponent Team Member, if the Province is unable for any reason to secure the execution by such Proponent Team Member of any document reasonably required to assign, transfer, license, waive or register any Intellectual Property Rights contemplated under this Article 6.

7.0 NOTICE OF INELIGIBILITY

- 7.1** Without limiting any other rights, powers and remedies of the Province, the Province may in its sole discretion on the happening of any one or more of the following events or at any time thereafter give written notice of such event or events to the Proponent and such notice will constitute a notice of ineligibility for purposes of Article 3 of this Agreement:

- (a) an order is made, a resolution is passed or a petition is filed for the liquidation or winding up of any Proponent Team Member;
- (b) any Proponent Team Member becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (c) a bankruptcy petition is filed or presented against, or a proposal under the *Bankruptcy and Insolvency Act* (Canada) or any similar law of any other jurisdiction is made by any Proponent Team Member;
- (d) a compromise or arrangement is proposed under the *Companies' Creditors Arrangement Act* (Canada) or any similar law of any other jurisdiction in respect of any Proponent Team Member;
- (e) a receiver or receiver-manager or other Person with similar powers is appointed of any property of any Proponent Team Member; or
- (f) any Proponent Team Member becomes a Restricted Person

8.0 WORKSHOPS AND TOPIC MEETINGS

- 8.1** The Province may, as part of the Competitive Selection Process, schedule and conduct:
- (a) workshops to enable communication between the Province and the proponents with respect to issues relating to the RFP, the Project, the Draft Project Agreement

and the Draft BCIB-Contractor Agreement in accordance with this Agreement, including the terms of the Workshops and Topic Meetings Schedule, and as may be further detailed in the RFP;

- (b) topic meetings to enable the proponents to provide information and comments to the Province regarding changes proposed by the proponents to the Draft Project Agreement, the Draft BCIB-Contractor Agreement or regarding proponent submissions in response to the RFP and to enable the Province to discuss issues arising in connection with proponent submissions and proposed changes to the Draft Project Agreement and the Draft BCIB-Contractor Agreement in accordance with this Agreement, including the terms of the Workshops and Topic Meetings Schedule, and as may be further detailed in the RFP; and
- (c) any other meetings, consultations or facilitative or facilitated processes in conjunction with or as part of the Competitive Selection Process.

8.2 The Province may in its sole discretion from time to time, by written notice to the Proponent, deliver to the Proponent written policies and procedures clarifying, supplementing or otherwise modifying the terms of the Workshops and Topic Meetings Schedule, and on issuance of such written policies and procedures the Workshops and Topic Meetings Schedule will be amended, supplemented or replaced as applicable.

8.3 The Proponent Team Members will:

- (a) ensure that the Proponent participates in each of the Workshops that are not designated by the Province as optional;
- (b) observe, abide by and comply with the terms of this Agreement in respect of the Workshops and Topic Meetings and any additional terms and procedures as may be more particularly detailed by the Province in the RFP;
- (c) execute and deliver a waiver and agreement in respect of the Workshops and Topic Meetings substantially in the form set out in Schedule 4;
- (d) ensure that each Proponent Team Member and each individual in attendance on behalf of the Proponent or any Proponent Team Member at the Workshops or Topic Meetings:
 - (i) observes, abides by and complies with the terms of this Agreement in respect of Workshops and Topic Meetings and any additional terms and procedures as may be more particularly detailed by the Province in the RFP; and

- (ii) reviews, executes and before the start of each Workshop or Topic Meeting delivers to the Province a waiver and agreement substantially in the form set out in Schedule 4.

8.4 Without limiting Article 4, the Proponent Members will, jointly and severally, indemnify and hold harmless the Province and each of the other Releasees from and against all Claims arising directly or indirectly from the failure by any individual referenced in subsection 8.3(d) to execute and deliver, and to comply with, abide by and observe the terms of the waiver and agreement referenced in subsection 8.3(d)(ii).

9.0 NON-BINDING NATURE OF TOPIC MEETINGS AND WORKSHOPS

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

- (a) information obtained or shared;
- (b) the conduct of the Proponent, the Proponent Team Members, other proponents or their respective proponent team members, the Province, BCTFA, BCIB, Partnerships BC, or their respective representatives, including officers, directors, employees, consultants, agents and advisors; or
- (c) discussions that occur;

at or during any Workshop or Topic Meeting.

9.2 In any Topic Meeting or Workshop the Proponent may seek information or comments from the Province and the Province in its sole discretion may, but in no event will be obligated to, determine whether to provide, and the timing and method for providing, any such information or comments, or any response at all.

9.3 If the Proponent wishes to have any matter confirmed, including any statement made by any of the Releasees at a Workshop or Topic Meeting, the Proponent will submit an RFI describing the matter and requesting that the Province confirm the matter by Response to Proponents and, if the matter relates to a clarification or change to a term of the RFP, the Draft Project Agreement or the Draft BCIB-Contractor Agreement, requesting that the Province confirm the matter by Addendum clarifying or amending, as the case may be, the applicable term of the RFP, the Draft Project Agreement or the Draft BCIB-Contractor Agreement.

9.4 The Province may in its sole discretion, but in no event will be obligated to, on its own initiative or in response to an RFI from the Proponent or any of the other proponents, address any or all questions and matters raised by the Proponent or any of the other proponents or which otherwise come to the attention of the Province during or in connection with a Workshop or a Topic Meeting by Responses to Proponents or by

Addenda amending the RFP, including the Draft Project Agreement, the Definitive Project Agreement, the Draft BCIB-Contractor Agreement or the Definitive BCIB-Contractor Agreement.

10.0 COMMUNICATIONS AND INFORMATION

10.1 None of the Proponent Team Members will, in relation to the Competitive Selection Process including in relation to the RFP or the preparation of the Proponent's Proposal, communicate with any representative, including any officer, elected official, director, manager, employee, consultant, advisor, agent or other representative, of any of the Province, BCTFA, BCIB or Partnerships BC, except:

- (a)** in writing by RFI in accordance with this Agreement, including Schedule 3 to this Agreement, and the applicable terms of the RFP;
- (b)** in Workshops and Topic Meetings, and any additional meetings subject to the terms of this Agreement; and
- (c)** as may be otherwise expressly invited in writing by the Province or permitted by the RFQ, the RFP or this Agreement.

10.2 Each Proponent Team Member acknowledges and agrees that:

- (a)** no actions or omissions or communications or responses, including information, statements, opinions, comments, consents, waivers, acceptances or approvals made or raised by any of the Releasees, the Proponent or any of the Proponent Team Members, any of the other proponents or any of their respective proponent team members, any other Person, or any of them, whether positive or negative, including if set out in any document or information provided by the Proponent or any of the Proponent Team Members or any of the other proponents or any of their respective proponent team members;
- (b)** in relation to any matter, including the Competitive Selection Process, the RFP, the Draft Project Agreement, the Definitive Project Agreement, the Project Agreement, the Draft BCIB-Contractor Agreement, the Definitive BCIB-Contractor Agreement, the BCIB-Contractor Agreement, Specifications or the Project;

at any time or times during the Competitive Selection Process, including during or before or after any Workshop or Topic Meeting, will be binding on the Releasees, or any of them, be relied upon in any way by the Proponent or the Proponent Team Members for any purpose whatsoever, be deemed or considered to be an indication of a preference by the Releasees, or any of them, even if adopted by the Proponent or another of the proponents, or will amend or waive any part of the Competitive Selection Process, including any term of the RFP or the Draft Project Agreement, Definitive Project Agreement, Project Agreement, Draft BCIB-Contractor Agreement, Definitive BCIB-Contractor Agreement or

BCIB-Contractor Agreement in any way for any purpose whatsoever, unless and only to the extent expressly incorporated by Addendum to the RFP or expressly set out in a Response to Proponents issued by the Province to the proponents.

10.3 Each of the Proponent Team Members agrees that:

- (a) none of the Proponent Team Members will in any way or for any reason or purpose whatsoever rely upon any action or omission or the scope, timeliness, accuracy, completeness, relevance or suitability of any information, opinion, statement, comment, representation, data or conclusion posted, set out in, provided or made available through or in connection with the Competitive Selection Process or any stage of the Competitive Selection Process, including without limitation in the RFQ or the RFP or during or before or after any Workshop or Topic Meeting; and
- (b) the Proponent's Proposal or Conforming Proposal, as the case may be, will be prepared and submitted to the Province solely on the basis of the independent investigations, examinations, knowledge, analysis, interpretation, information, opinions, conclusions and judgement independently undertaken, formulated, obtained and verified by the Proponent Team Members.

11.0 **NOTICES**

11.1 All notices and any other communications under this Agreement, including RFIs and Responses to Proponents, will be in writing and will be delivered by hand, sent by prepaid registered mail or courier to the following addresses or electronic mail to the following electronic mail addresses. The following telephone numbers are included solely for the purpose of confirming whether a communication was received, and not for the purpose of giving notice:

If to the Proponent and Proponent Team Members, or any of them:

<>

Attention: <>

Phone: <>

If to the Province:

Contact Person

Broadway Subway Project
1100 – 401 West Georgia Street
Vancouver, BC
V6B 5A1
Canada

Attention: Contact Person

E-mail: BSPContact@gov.bc.ca

- 11.2** Either the Province or the Proponent may from time to time notify the other by notice in writing in accordance with section 11.1 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.
- 11.3** 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 courier or transmitted by electronic mail in accordance with this agreement.
- 11.4** 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.
- 11.5** Without limiting Article 4, the Province does not assume any risk, responsibility or liability whatsoever and makes no guarantee, warranty or representation whatsoever as to:
- (a)** the timely, complete or effective delivery or receipt or condition on delivery or receipt of any Response to Proponents, RFI, the RFP or any Addenda, or any communication or submission including the Proposal, to or from any Person including the Proponent or any Proponent Team Member or the Province under or in connection with any stage of the Competitive Selection Process, including the RFP and this Agreement; or
 - (b)** the working order, functioning or malfunctioning or capacity of any electronic email or information system, including the RFQ Data Website or any other data room

established in connection with the Competitive Selection Process, including the RFP.

12.0 CONTRACT DIRECTLY, CONFIDENTIALITY AND RESTRICTIVE COVENANTS

12.1 Each of the Proponent Team Members acknowledges and agrees that if the Province fails to select a Preferred Proponent within 180 days after the Financial Submittal Deadline or terminates the Competitive Selection Process or cancels any part of the Competitive Selection Process, including the RFP, at any time and subsequently proceeds with any one or more of the activities, processes or works described in section 2.2, the Province may in its sole discretion:

- (a)** contract directly with any Person for any or all matters related directly or indirectly to all or any part of the design, construction, operation, financing or fare collection in respect of all or any part or parts of the lands and infrastructure comprising or anticipated to comprise the Project; and
- (b)** contract directly with any one or more of any of the Proponent Team Members or any of the other proponents or any of their respective proponent team members, or with any one or more of the contractors, sub-contractors, consultants, advisors or other Persons engaged by or through any of them, and no Proponent Team Member will take any step or action that might prevent or impede the Province from so doing.

12.2 Each Proponent Team Member acknowledges and agrees that the Confidentiality Agreement remains in full force and effect and extends to the Competitive Selection Process in its entirety, including the RFQ and the RFP, and agrees to abide by, observe and comply with the terms of the Confidentiality Agreement.

12.3 Without limiting any other confidentiality obligations imposed on the Proponent Team Members, including pursuant to the Confidentiality Agreement, each Proponent Team Member will at all times hold all Confidential Information in confidence and will not disclose or permit to be disclosed any Confidential Information to any Person except only to:

- (a)** the Proponent Team Members and such of the directors, officers, managers, employees, professional advisors and agents of the Proponent Team Members, or any of them, who are directly concerned with the Project and whose knowledge is required in connection with the preparation of the Proponent's Proposal and, if awarded to the Proponent, in connection with the performance of the Project Agreement; and
- (b)** any other Person only with the prior written consent of the Province;

provided that, in the case of each of the Persons to whom Confidential Information is disclosed in accordance with subsections 12.3 (a) and (b), such Person has been informed of the confidential nature of the Confidential Information by the Proponent Team Member that disclosed such information and has agreed in writing in favour of the Province to observe and abide by and comply with section 12.2 and this section 12.3 and the terms of the Confidentiality Agreement, and provided further that the Proponent Team Member that disclosed the Confidential Information to such Person will ensure that the Person to whom such disclosure is made provides such agreement in favour of the Province and observes, abides by and complies with the provisions of such agreement and section 12.2 and this section 12.3 and the terms of the Confidentiality Agreement as if that Person was a party to this Agreement and to the Confidentiality Agreement. A failure by any such Person to observe and abide by and comply with the provisions of such agreement in favour of the Province and section 12.2 and this section 12.3 and the terms of the Confidentiality Agreement will be deemed to constitute a breach of this Agreement and the Confidentiality Agreement by such Proponent Team Member.

13.0 **GENERAL**

- 13.1** No Proponent Team Member will transfer or assign the whole or any part of or interest in this Agreement or any right, title, obligation, benefit or interest of such Proponent Team Member herein or hereunder 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.
- 13.2** 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.
- 13.3** This Agreement will enure to the benefit of and be binding upon the Province and its assigns and upon each of the Proponent Team Members and their respective successors and permitted assigns. For greater certainty, this Agreement will continue to be binding on each of the Proponent Team Members notwithstanding that it may subsequently cease to be a Proponent Team Member.
- 13.4** 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.

- 13.5** This Agreement and the Confidentiality Agreement constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and cancel and supersede 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.
- 13.6** This Agreement may only be amended by instrument in writing signed by all of the parties.
- 13.7** 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 the laws of Canada applicable therein and each party to this Agreement irrevocably attorns to the jurisdiction of the courts of British Columbia.
- 13.8** If any Proponent Team Member is a partnership (general or limited) or a consortium or joint venture:
- (a)** each partner (general or limited) in the partnership and each of the entities comprising the consortium or joint venture, as the case may be, shall have executed this Agreement by its duly authorized representatives, both on behalf of the partnership, consortium or joint venture, as the case may be, and in its own behalf, in the same manner as if such partner or entity, as the case may be, was the sole party executing this Agreement; and
 - (b)** if any partner or entity, as the case may be, has not executed this Agreement as required by subsection 13.8(a), this Agreement will be valid and binding on the partners and entities, as the case may be, who have executed this Agreement, each of whom by execution of this Agreement expressly agrees to be jointly and severally liable to the Province for the obligations that would have been assumed hereunder by the partner or entity, as the case may be, that has not executed this Agreement had it executed this Agreement.
- 13.9** Time is of the essence of this Agreement.

- 13.10** By executing this Agreement, each Proponent Member, and each entity comprised in any Proponent Team Member hereby represents, warrants and agrees that:
- (a)** it is jointly and severally liable with the other Proponent Members, or other entities comprised in the Proponent Team Member, as the case may be, to the Province for all covenants, obligations and liabilities of the Proponent Members, or Proponent Team Member, as the case may be, set forth in this Agreement; and
 - (b)** the signatories to this Agreement include all of the entities comprised in each Proponent Team Members, and no such party will assign its interest in any Proponent Team Member without obtaining the prior written consent of the Province, which consent may, in the sole discretion of the Province, be subject to such conditions or requirements as the Province may require, including an agreement by the assignee, in form and content satisfactory to the Province in its sole discretion, to be bound by the terms of this Agreement.
- 13.11** Any additional Person that becomes an entity comprised in any Proponent Team Member, or is an entity comprised in any additional Persons specified by the Province in its discretion under the RFP as being included in the Proponent Team, in each case subsequent to the execution and delivery of this Agreement will, as a condition to becoming an entity comprised in the Proponent Team or Proponent Team Member, as the case may be, execute and deliver to the Province an agreement directly with the Province and in form and substance satisfactory to the Province in its sole discretion agreeing to be bound by the terms of this Agreement in the same manner and with the same effect as if such Person had been an original signatory to this Agreement.
- 13.12** Each of 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 such further assurances, acts, instruments and documents as may be requested for the purpose of giving full force and effect to this Agreement.
- 13.13** 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, under the Competitive Selection Process or any part thereof, at law or in equity or under statute, and the exercise by the Province in its discretion of any right, power or remedy will not preclude the later exercise of that same right, power or remedy or the simultaneous or later exercise by the Province of any other right, power or remedy.
- 13.14** No waiver by any party of a breach or default by any other party in the observance or performance of or compliance with 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.

- 13.15** References in this Agreement to “in its sole discretion”, “in the discretion of the Province”, “in the sole discretion of the Province” 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 of the Province.
- 13.16** 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 and the Confidentiality Agreement;
 - (b) this Agreement has been duly and validly executed and delivered 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.
- 13.17** The Province may in its sole discretion request any party executing this Agreement to provide, and on such request such party will deliver to the Province, proof, in a form and content satisfactory to the Province in its sole discretion, that any signatory to this Agreement on behalf of such party had the requisite authority to execute this Agreement on behalf of and to bind such party and that this Agreement has been duly and validly executed and delivered by or on behalf of such party and constitutes a legal, valid and binding agreement enforceable against such party in accordance with its terms.
- 13.18** This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of 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.

PROVINCE:

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, by a duly authorized representative of THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE

Authorized Signatory

Full Name and Title

RESPONDENT TEAM MEMBERS:

<> *[insert legal name(s) and appropriate signature block(s) for each Respondent Team Member]*

DESIGN-BUILD CONTRACTOR:

<> *[insert legal name and appropriate signature block for Design-Build Contractor]*

DESIGN CONTRACTOR:

<> *[insert legal name and appropriate signature block for Design Contractor]*

SYSTEMS INTEGRATION CONTRACTOR:

<> *[insert legal name and appropriate signature block for Systems Integration Contractor]*

TUNNEL CONTRACTOR:

<> *[insert legal name and appropriate signature block for Tunnel Contractor]*

KEY INDIVIDUALS:

<> *[insert legal name and appropriate signature block for each Key Individual]*

DESIGN-BUILD CONTRACTOR GUARANTORS:

<> *[insert legal name and appropriate signature block for each Design-Build Contractor Guarantor]*

TUNNEL CONTRACTOR GUARANTORS:

<> **[insert legal name and appropriate signature block for each Tunnel Contractor Guarantor]**

SCHEDULE 1 TO PROPONENT AGREEMENT
DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

Unless the context otherwise expressly requires, whenever used in this Agreement or any Schedules to this Agreement the following terms will have the meanings given to them in this Schedule 1.

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

“**Agreement**” means this agreement between the Province and each of the Proponent Team Members, and includes all schedules attached to this agreement and documents specifically incorporated by reference in this agreement.

“**Background IP**” means Intellectual Property that is not owned by a Third Party and is specifically set out in the List of Non-Work Product IP and is embedded in or used in connection with the Work Product, or in the preparation or development of the Work Product or necessary or desirable to implement, operate or exploit the Work Product, but which does not otherwise form part of the Work Product.

“**BCIB**” means BC Infrastructure Benefits Inc. formed under the *Business Corporations Act* (British Columbia).

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

- (a) the Definitive BCIB-Contractor Agreement, as changed, modified or added to in accordance with the RFP; and
- (b) after execution, the agreement or agreements, as the case may be, executed and delivered by BCIB and Project Co for the provision by BCIB of the Project labour force and management of labour relations by BCIB for Project Co.

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

“**Change**” includes, in respect of a Person, 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 redesignation, modification, removal, replacement, reorganization, addition, assignment or substitution of or in respect of any such Person, and “**Changed**” has a corresponding meaning.

“Change Process” means the Change process described in section 5.9 of the RFQ and the corresponding section of the RFP.

“Claims” includes claims, actions, proceedings, causes of action, suits, debts, dues, accounts, bonds, warranties, claims over, indemnities, covenants, contracts, losses (including indirect 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.

“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 RFQ, the Proponent Agreement, the RFP, any and all processes relating to this RFQ and the RFP, workshops, topic meetings, any additional meetings and any consultations, meetings and participation relating to or arising from any workshops, topic meetings or additional meetings, other consultative and facilitative/facilitated processes including relationship review, and reports, determinations, rulings, assessments and opinions issued by the Fairness Advisor or the Conflict of Interest Adjudicator or by the Province or committees of the Province pursuant to any relationship review process or policies referenced in this RFQ or the 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, determinations, opinions, rulings, reports, comments, advice, notices including notices of ineligibility, and decisions, including rejection or acceptance of any responses, submissions, information, documents, Qualification Response, Proposal, Conforming Proposal or any other proposals, whether conforming or otherwise;

involving the Province, the Conflict of Interest Adjudicator, the Fairness Advisor, any relationship review committee of the Province, any or all Respondents, Respondent Teams or Respondent Team Members, the Proponent, the Proponent Team or any or all Proponent Team Members, any or all other proponents, proponent teams or proponent team members, or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors or agents, or any other Person, in connection with the matters described in paragraphs (a) and (b) of this definition.

“Complete License” means, in respect of any Intellectual Property or Intellectual Property Rights to which the Complete License applies (the **“Licensed Property”**), a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully-paid, sub-licensable, transferable and assignable licence or sub-licence (if applicable), by written instrument in form and content satisfactory to the Province in its sole discretion, for the Province and its employees, agents, contractors, consultants, advisors, sub-licensees, successors and assigns to do any one or more of the following:

- (a) reproduce, make Modifications to, create derivative works from, distribute, publicly perform, publicly display, disclose, communicate by telecommunication, translate and otherwise use the Licensed Property in any medium or format, whether now known or hereafter devised;
- (b) use, make, have made, sell, offer to sell, import and otherwise exploit any product or service based on, embodying, incorporating or derived from the Licensed Property; and
- (c) exercise any and all other past, present or future rights in and to the Licensed Property.

“Confidentiality Agreement” means the agreement entitled “Confidentiality Agreement” executed and delivered by the Proponent Team Members in accordance with the RFQ in the form set out in Appendix E to the RFQ.

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

“Conflict of Interest Adjudicator” has the meaning given to it in section 2.3 of this Agreement.

“Conforming Proposal” means a Proposal designated by the Province under the RFP as having substantially satisfied or exceeded the requirements set out in the RFP.

“Contact Person” means the individual designated as the Contact Person in the RFP, as that designation may be changed in accordance with the RFP.

“Day” means a calendar day.

“Definitive BCIB-Contractor Agreement” means the documentation forming part of the RFP and comprising the Draft BCIB-Contractor Agreement as revised and amended by Addenda and delivered to the Proponents in accordance with the RFP.

“Definitive Project Agreement” means the documentation forming part of the RFP and comprising the Draft Project Agreement as revised and amended by Addenda and delivered to the Proponents in accordance with the RFP.

“Deliverables” means the items to be provided or actually provided by the Proponent to the Province under this Agreement, or as part of or in connection with the Competitive Selection Process, including the Proposal.

“Derivative Activities” means any one or more of the activities, processes and works contemplated in section 2.2 or section 12.1 of this Agreement.

“Draft BCIB-Contractor Agreement” means the form of BCIB-Contractor Agreement issued as part of the RFP.

“Draft Project Agreement” means the form of Project Agreement, including the Specifications, issued as part of the RFP.

“Fairness Advisor” has the meaning given to it in section 2.3 of this Agreement.

“Financial Administration Act” means the *Financial Administration Act* (British Columbia).

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

“Financial Submittal” has the meaning given to it in the Financial Submittal Certificate and Declaration.

“Financial Submittal Certificate and Declaration” means the Financial Submittal Certificate and Declaration delivered by the Proponent in accordance with the RFP.

“Financial Submittal Deadline” means the time and date specified as the Financial Submittal Deadline in the RFP.

“Intellectual Property” means, without limitation, all algorithms, application programming interfaces (APIs), apparatus, circuit designs and assemblies, concepts, data, databases and data collections, designs, diagrams, documentation, drawings, equipment designs, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice) and patents and applications therefor and the right to apply for patents thereon, IP cores, know-how, materials, marks (including registered and unregistered trade-marks, official marks, brand names, product names, logos, and slogans), methods, models, net lists, network configurations and architectures, procedures, processes, protocols, schematics, semiconductor devices, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, test vectors, tools, uniform resource identifiers, including uniform resource locators (URLs), user interfaces, web sites, works of authorship, and other forms of technology.

“Intellectual Property Rights” means all past, present and future rights of the following types which may exist or be created under the laws of any jurisdiction in the world in respect of any Intellectual Property in any medium or format, whether now known or hereafter devised:

- (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights and mask work rights;
- (b) trade-mark and trade name rights and similar rights;
- (c) trade secret rights;
- (d) patent and industrial property rights;
- (e) rights to bring actions and other proceedings against third parties for the past, present or future infringement or misuse of any Intellectual Property;
- (f) all other proprietary rights in Intellectual Property of every kind and nature; and
- (g) rights in or relating to registrations, renewals, extensions, combinations, divisions and reissues of, and applications for, any of the rights referred to in subsections (a) through (f) of this definition.

“Limited License” means a license for the Permitted Use in respect of any Third Party IP which, due to the specialized and proprietary nature of that Third Party IP, cannot be provided by way of a Complete License and therefore has more restrictive terms than a Complete License.

“List of Non-Work Product IP” means the list that specifically identifies, categorizes and describes Background IP and Third Party IP, as such list is described in section 6.1(b) of this Agreement.

“Modifications” mean, in respect of any Intellectual Property or other property, all modifications, including any alterations, changes, deletions, amendments, upgrades, updates, enhancements, revisions or improvements.

“Partnerships BC” means Partnerships British Columbia Inc.

“Permitted Use” means in connection with the Project Agreement, the Project or otherwise in connection with any one or more of the current or future development, design, construction, operation, maintenance, repair, modification, alteration, adaptation, rehabilitation, reconstruction, improvement, expansion, extension, financing or regulation (including with respect to the contemplation, procurement or undertaking of any such activities by the Province or any third parties) of all or any part or parts of the Project, including the lands and infrastructure comprising or anticipated to comprise the Project, and also including use in connection with any works, projects or activities implemented as part of any Derivative Activity and/or the carrying out of any statutory, public or other duties or functions in respect of any of the foregoing.

“Person” means an individual, corporation, partnership, joint venture, consortium, association, trust, pension fund or union and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual, and the receivers and administrators of a corporation.

“Preferred Proponent” means the proponent, if any, selected as the Preferred Proponent by the Province as part of the Competitive Selection Process, as the Preferred Proponent may be Changed from time to time in accordance with and subject to the Change Process.

“Preferred Proponent Security Deposit” means the financial security, by way of a letter of credit substantially in the form attached as Schedule 5 and in all respects, including as to content and terms, satisfactory to the Province in its sole discretion.

“Project” or the **“Broadway Subway Project”** means the activities, objectives and improvements described in Section 1 of the RFQ, as subsequently amended, changed, replaced, supplemented and substituted in the RFP.

“Project Agreement” means:

- (a) the Definitive Project Agreement, as changed, modified or added to in accordance with the RFP ; and
- (b) 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 or entities that enter into the Project Agreement for the delivery of the Project.

“Proponent” has the meaning given in Recital C.

“Proponents” means the Respondents, including the Proponent, short-listed by the Province pursuant to the RFQ, in each case as Changed from time to time in accordance with and subject to the Change Process.

“Proponent Team” means each of the Proponent’s Respondent Team Members, as defined in the RFQ, together with any additional Persons as may be specified by the Province in its discretion under the RFP as being included in the Proponent Team, in each case as Changed from time to time in accordance with and subject to the Change Process.

“Proponent team” means, in the case of a proponent other than the Proponent, each of that proponent’s respective Respondent Team Members, as defined in the RFQ, together with any additional Persons as may be specified by the Province in its discretion under the RFP as being included in a Proponent Team, in each case as Changed from time to time in accordance with and subject to the Change Process.

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

“Proponent team member” means, in the case of a proponent other than the Proponent, each member of that proponent’s proponent team and, in the case of the Proponent, each Proponent Team Member, in each case as Changed from time to time in accordance with and subject to the Change Process.

“Proposal” means the material, documentation and information that in the aggregate comprise the submission:

- (a) comprising the Technical Submittal and Financial Submittal delivered by the Proponent in accordance with the RFP, 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 specified in the RFP or the Financial Submittal Deadline, as applicable, in response to any request of the Province; or
- (b) in its most complete and developed condition and delivered by the Proponent, in the event that the Province issues a Termination Notice before the Financial Submittal Deadline, after issuance of the Termination Notice and before expiry of the 90-period referenced in section 3.5 of this Agreement.

“Releasees” means and includes each of the Province, Partnerships BC, the BCTFA, the Conflict of Interest Adjudicator, the Fairness Advisor, and each of their respective directors, officers, representatives, any of their elected officials, including members of the Executive Council, managers, employees, consultants, contractors, advisors and agents and successors and assigns.

“Request for Information” or **“RFI”** means a request for information in the form attached as Appendix A to Schedule 3.

“Request for Proposals” or “RFP” means the request for proposals for the Project issued by the Province to the proponents, including all volumes, appendices and attachments, as amended from time to time by Addenda in accordance with the RFP.

“Request for Qualifications” or “RFQ” means the request for qualifications, including all appendices and attachments, for the Project, as amended from time to time by Addenda in accordance with the RFQ.

“Responses to Proponents” or “RTPs” means the documents entitled “Response to Proponents” and issued by the Province through the Contact Person in accordance with this Agreement or the RFP, as applicable, to respond to enquiries or RFIs or otherwise to provide any information, communication or clarification to proponents or any of them.

“Restricted Person” means any person who, or any member of a group of persons acting together, any one of which:

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in the promotion, support or carrying out of terrorism;
- (c) in the case of an individual, he or she (or, in the case of a legal entity, any of the members of its board of directors or its senior executive) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence, other than minor traffic offences, less than five years prior to the date at which the determination of whether the individual falls within this definition is being made;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to a claim of any governmental authority having jurisdiction in any way over or in respect of any aspect of the Project under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made and which (in respect of any such pending claim, if it were to be successful) would, in the view of the Province, in either case, be reasonably likely to materially affect the performance by Project Co of its obligations under the Project Agreement; or

- (f) has been convicted of an offence under the *Competition Act* (Canada), the *Corruption of Foreign Public Officials Act* (Canada), the *Financial Administration Act* (Canada) or the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), or has been convicted of the commission of a money laundering offence or a terrorist activity financing offence or a fraud or similar offence under the *Criminal Code* (Canada).

“**Specifications**” means the technical requirements and specifications set out in or referenced in the RFP, as amended from time to time by Addenda in accordance with the RFP.

“**Stipend**” means the sum of CDN\$2,000,000.00, inclusive of GST, PST and any and all other applicable taxes.

“**Stipend Invoice**” means the invoice referenced in section 3.2 of this Agreement.

“**Technical Submittal**” has the meaning given to it in the Financial Submittal Certificate and Declaration.”

“**Termination Fee**” means:

- (a) in respect of a Termination Notice that is delivered at any time after completion of the first Workshop but before the second Workshop, an amount not to exceed \$1,300,000
- (b) in respect of a Termination Notice that is delivered at any time after completion of the second Workshop but before the last Workshop, an amount not to exceed \$2,600,000
- (c) in respect of a Termination Notice that is delivered after completion of all Workshops or after the Financial Submittal Deadline, an amount not to exceed \$4,000,000];

in each case inclusive of GST, PST and any and all other applicable taxes, in respect of the actual and reasonable expenditures incurred by the Proponent up to the date of the Termination Notice to prepare its Conforming Proposal or Proposal, as applicable, as fully demonstrated in sufficient detail to the satisfaction of the Province with supporting documentation.

“**Termination Fee Invoice**” means the invoice referenced in section 3.5 of this Agreement.

“**Termination Notice**” means a written notice designated as a “Termination Notice” and issued by the Province to the proponents for the purpose of giving the proponents notice of termination by the Province of the Competitive Selection Process.

“Third Party” means a Person that is not related to, or an affiliate (as that term is defined in the *Business Corporations Act* (British Columbia)) of, any Proponent Team Member or any other firm, individual or entity involved in the Project.

“Third Party IP” means Intellectual Property that is owned by a Third Party and is specifically set out in the List of Non-Work Product IP and is embedded in or used in connection with the Work Product or in the preparation or development of the Work Product, or necessary or desirable to implement, operate or exploit the Work Product, but which does not otherwise form part of the Work Product.

“Topic Meetings” means the meetings described in Article 8 and the Workshops and Topic Meetings Schedule of this Agreement.

“Work Product” means:

- (a) all Deliverables;
- (b) all Intellectual Property, in any stage of development, that is not Background IP or Third Party IP and that is or was conceived, created, authored, developed, reduced to practice, acquired or otherwise obtained or provided on behalf of the Proponent pursuant to this Agreement or otherwise in connection with the Proposal, the Project, the Deliverables or as part of the Competitive Selection Process; and
- (c) the electronic files for, and all tangible embodiments of, all Intellectual Property referred to in the above subsection (other than Background IP and Third Party IP), including computer-aided design and drafting and other electronic development, design, documentation and modelling files, drawings, renderings, models, presentations, prototypes, reports, samples and summaries.

“Workshops” means the workshops described in Article 8 and the Workshops and Topic Meetings Schedule of this Agreement.

“Workshops and Topic Meetings Schedule” means Schedule 2 of this Agreement, describing procedures applicable to the Workshops and Topic Meetings, as that Schedule may be amended and replaced from time to time by the Province in its sole discretion and delivered to the Proponent pursuant to this Agreement.

2. INTERPRETATION

In this Agreement, the following will apply:

2.1 Headings or captions in this Agreement are inserted for convenience of reference only and in no way define, limit, alter or enlarge or otherwise affect the scope or meaning or interpretation of this Agreement.

- 2.2** As used herein, gender is used as a reference term only and applies with the same effect whether the parties are masculine, feminine, corporate or other form, and unless the context indicates to the contrary the singular includes the plural and the plural includes the singular.
- 2.3** Reference to a section, article or paragraph is a reference to the whole of the section, article or paragraph, and reference to a section, article, paragraph or other part by number is a reference to the section, article, paragraph or other part, as applicable.
- 2.4** “includes”, “including” and other terms of like import will not be deemed limited by any specific enumeration of items but will be deemed to be without limitation and will be interpreted as if the term used was “including without limitation” and as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.
- 2.5** All monetary amounts herein refer to lawful currency of Canada.
- 2.6** References to “herein”, “hereunder”, “hereof” and similar terms, unless otherwise expressly provided, refer to this Agreement as a whole and not to any article, section, subsection or other subdivision of this Agreement.
- 2.7** References to any statute or statutory provision or regulation include any statute or statutory provision or regulation which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and include any orders, regulations, by-laws, ordinances, codes of practice, instruments or other subordinate legislation made under the relevant statute or regulation.
- 2.8** Each Schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 2.9** References in this Agreement to the Province executing and delivering a settled form of Project Agreement or to the Province proceeding in any manner whatsoever, including as contemplated in subsections 2.2(f) and (g), subsection 5.1(b)(ii)(D) and subsections 12.1 (a) and (b) of this Agreement, will be interpreted to include any one or more of the Province alone, the Province and BCTFA, or BCTFA executing and delivering a settled form of Project Agreement or proceeding in any manner whatsoever, including as contemplated in subsections 2.2(f) and (g), subsection 5.1(b)(ii)(D) and subsections 12.1 (a) and (b) of this Agreement.

SCHEDULE 2 TO PROPONENT AGREEMENT **WORKSHOPS AND TOPIC MEETINGS**

1.0 Workshops

- 1.1** The Province may in its sole discretion and on prior written notice to the proponents schedule Workshops at the dates, times and locations and for the duration the Province considers appropriate, and such Workshops may be held separately with each proponent or together with all the proponents.
- 1.2** Unless the Province notifies the Proponent that an additional Workshop is optional, the Proponent will attend each Workshop and may, subject to any restrictions established by the Province on prior written notice to the Proponent, determine the appropriate representative or representatives, including the number of representatives, who will attend each Workshop on behalf of the Proponent.
- 1.3** The Proponent will attend all Workshops that are designated by the Province as optional, unless the Proponent provides written notice to the Province at least 5 business days before the scheduled applicable Workshop date that the Proponent has declined the invitation to attend, provided that the Province may proceed with the applicable Workshop or Workshops with the other or others of the proponents that have not declined attendance at any such additional optional Workshop.
- 1.4** The Province may, on request of the Proponent or any of the other proponents, schedule additional Workshops if the Province considers it desirable or necessary in its sole discretion.

2.0 Workshop Agendas and Summaries

- 2.1** Prior to each scheduled Workshop and not later than the date specified by the Province in its written notice to the proponents, the Proponent will deliver to the Contact Person a list of requested agenda items, if any.
- 2.2** Following receipt of the proponents' requested agenda items, the Province will develop a separate agenda for each of the proponents and will distribute each agenda to the applicable proponent before the specified Workshop, provided that the Workshop agendas may be varied by the Province, with prior written notice to the applicable proponent.
- 2.3** The Province may prepare and distribute to the applicable proponent a written summary in respect of each Workshop held with the proponent, which written summary will be deemed and considered to be the definitive summary of the Workshop.

3.0 Topic Meetings

- 3.1 The Province may in its sole discretion and on prior written notice to the proponents schedule Topic Meetings at the dates, times and locations and for the duration the Province considers appropriate, and such Topic Meetings may be held separately with the Proponent or any other proponent which elects to attend or together with all of the proponents that elect to attend.
- 3.2 Attendance at Topic Meetings is not mandatory and the Proponent or any of the other proponents may decline to take part in any one or more Topic Meetings, provided that the Province may proceed with a Topic Meeting or Topic Meetings with the other or others of the proponents that have not declined attendance at any particular Topic Meeting.
- 3.3 The Proponent may, subject to any restrictions established by the Province on prior written notice to the Proponent, determine the appropriate representative or representatives, including the number of representatives, who will attend each Topic Meeting on behalf of the Proponent.
- 3.4 The Province may, on request of the Proponent or any of the other proponents, schedule Topic Meetings on topics identified in the request if the Province considers it desirable or necessary in its sole discretion.
- 3.5 The Province may prepare and distribute to the applicable proponent a written summary in respect of each Topic Meeting held with the proponent, which written summary will be deemed and considered to be the definitive summary of the Topic Meeting.

SCHEDULE 3 TO PROPONENT AGREEMENT
REQUESTS FOR INFORMATION AND DISTRIBUTION OF INFORMATION

1.0 REQUESTS FOR INFORMATION

- 1.1** The Province may, in its sole discretion, by written notice to the Proponent, amend this Schedule 3 by issuing written policies and procedures clarifying, expanding, simplifying or otherwise amending the provisions of this Schedule 3, and on issuance such written policies and procedures will be incorporated by reference and form part of this Agreement and of this Schedule 3.
- 1.2** RFIs are to be as set out in the form of RFI attached as Appendix A to this Schedule, and delivered by the Authorized Representative of the Proponent to the Contact Person.
- 1.3** Each RFI is to be numbered sequentially and should clearly set out the Proponent's name, the question, inquiry, request for information or other purpose of the communication, and the date by which a response is requested by the Proponent.
- 1.4** The Proponent may submit a series of separate RFIs categorized by subject matter of the questions set out in the RFIs to facilitate responses and the tracking of responses to RFIs.
- 1.5** The Province may in its sole discretion issue any communication, information or enquiry including any RFI or any Response to Proponents to all proponents. If the Province in its sole discretion considers a RFI or the corresponding RTP to be of a minor or administrative nature and to relate only to the proponent who submitted the RFI, the Province may issue a RTP only to that proponent.
- 1.6** The Proponent may, if it considers its enquiry set out in a RFI to relate to commercially sensitive matters, request the RFI to be kept confidential by setting out the request in the RFI and by clearly marking the RFI as "Commercial in Confidence". The Province may in its sole discretion respond to the RFI on a confidential basis.
- 1.7** If the Province in its sole discretion considers, including for purposes of fairness in or maintaining the integrity of the Competitive Selection Process, that the Province should not respond to a RFI submitted by the Proponent that is marked "Commercial in Confidence" on a confidential basis, and subject to the Province's overriding discretion to distribute RFIs, written responses to enquiries and RTPs to all proponents, the Province may notify the Proponent and specify the time period within which the Proponent may withdraw the RFI in writing and, if the Proponent does not withdraw the

RFI within the time specified by the Province, then the Province in its sole discretion may provide the Province's response to the RFI to all proponents.

- 1.8** Despite any other term of the Proponent Agreement or the RFP, and despite any RFI or other communication being identified as "Commercial in Confidence", if the Province in its sole discretion considers the matter to be a matter of substance or a matter that should be brought to the attention of all proponents for purposes of fairness in or maintaining the integrity of the Competitive Selection Process, the Province may issue an Addendum to the RFP, the RFI, a RTP or a written response relating to the matter to all proponents.
- 1.9** The Province may in its sole discretion respond to any communication, enquiry or RFI, provided that there is no obligation whatsoever on the Province to respond to any communication, enquiry or RFI, whether or not marked "Commercial in Confidence". If the Province decides to respond, the response will be in writing and delivered by email, hand or courier delivery or facsimile or by a general posting of the response in any data room established in connection with the RFP.

APPENDIX A TO SCHEDULE 3 TO PROPONENT AGREEMENT
REQUEST FOR INFORMATION

Request For Information

BROADWAY SUBWAY PROJECT
Request For Information / Clarification / Meeting

Request Number: (Proponent name and sequential number)

Raised By: (contact name)

Date Raised:

Date by Which Response Required:

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

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

Meeting:

Date:

Other:

REQUEST / QUERY (One query / request per sheet)

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

SCHEDULE 4 TO PROPONENT AGREEMENT
FORM OF WAIVER AND AGREEMENT

(see attached)

WAIVER AND AGREEMENT

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

TO:

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

PARTNERSHIPS BRITISH COLUMBIA INC.
("Partnerships BC")

BC Transportation Financing Authority
("BCTFA")

BC Infrastructure Benefits Inc.
("BCIB")

RE: BROADWAY SUBWAY PROJECT: WORKSHOPS AND TOPIC MEETINGS

WHEREAS:

- A.** The Province has implemented and <> **[insert name of Proponent]** (the "Proponent") has agreed to participate in the Competitive Selection Process for the Broadway Subway Project.
- B.** As part of the Competitive Selection Process the Province and each of <> and <> **[insert names of the Parties to the Proponent Agreement as at the date that the Waiver and Agreement is to be delivered]** have entered into the Proponent Agreement made as of the <> day of <>, 20<> (the "Proponent Agreement").
- C.** As a further part of the Competitive Selection Process the Province has made arrangements to meet in Workshops and Topic Meetings with each of the proponents, together with those individual representatives of each of the proponents and their respective proponent team members selected by the proponents, both as a group and on a one on one basis.
- D.** The Province's arrangements involve the dedication of extensive resources, including financial and labour by and on behalf of the Province, and have as their objective Workshops and Topic Meetings that will enable the candid communication of information, comments and views from the proponents to the Province.

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

1. Each of the undersigned:
 - (a) has been selected by the Proponent to attend the Workshops and Topic Meetings as a representative of and on behalf of the Proponent in connection with the Project;
 - (b) is of the age of majority and of full mental capacity, and has been provided with a copy of and has reviewed and is familiar with the terms of the Proponent Agreement including the Workshops and Topic Meetings Schedule;
 - (c) will observe, abide by and comply with the terms of the Proponent Agreement in respect of the Workshops and Topic Meetings and any additional terms and procedures as may be more particularly detailed by the Province in the RFP;
 - (d) covenants and agrees with the Province on the same terms as set out in Section 4 of the Proponent Agreement as if the same were repeated herein expressly;
 - (e) understands that the undersigned will not be permitted to participate in the Workshops or Topic Meetings unless they have signed this Waiver and Agreement;
 - (f) understands that any concerns with respect to fairness in connection with the Workshops or Topic Meetings should be brought to the attention of the Fairness Advisor; and
 - (g) waives any and all rights to contest and/or protest the Competitive Selection Process or any part of the Competitive Selection Process based on the fact that the Workshops and Topic Meetings and any additional meetings or workshops occurred or on the basis that information or documentation may have been received by a competing proponent, Proponent Team or proponent team member that was not received by the applicable undersigned.

2. The Workshops are for the purpose of enabling communication between the Province and the proponents as to issues relating to the RFP, the Project, the Draft Project Agreement and the Draft BCIB-Contractor Agreement, and the Topic Meetings are for the purpose of enabling the proponents to provide information and comments to the Province regarding changes proposed by the proponents to the Draft Project Agreement or the Draft BCIB-Contractor Agreement or regarding proponent submissions, as the case may be, in

response to the RFP and of facilitating the discussion between the Province and the proponents of issues arising in connection with the proponent submissions and proposed changes to the Draft Project Agreement or the Draft BCIB-Contractor Agreement, all in accordance with the Proponent Agreement, and as may be detailed in the RFP.

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

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

at or during any Workshop or Topic Meeting.

4. Each of the undersigned acknowledges and agrees that:

- (a) no actions or omissions or communications or responses, including information, statements, opinions, comments, consents, waivers, acceptances or approvals made or raised by any of the Releasees, the Proponent or any of the Proponent Team Members, any of the other proponents or any of their respective proponent team members, any of the undersigned, any Person, or any of them, whether positive or negative, including if set out in any document or information provided by the Proponent or any of the Proponent Team Members or any of the other proponents or any of their respective proponent team members;
- (b) in relation to any matter, including the Competitive Selection Process, the RFP, the Draft Project Agreement, the Definitive Project Agreement, the Project Agreement, the Draft BCIB-Contractor Agreement, the Definitive BCIB-Contractor Agreement, the BCIB-Contractor Agreement, Specifications or the Project;

at any time or times during the Competitive Selection Process, including during or before or after any Workshop or Topic Meeting, will be binding on the Releasees, or any of them, be relied upon in any way by the Proponent or the Proponent Team Members for any purpose whatsoever, be deemed or considered to be an indication of a preference by the Releasees, or any of them, even if adopted by the Proponent or another of the proponents, or will amend or waive any part of the Competitive Selection Process, including any term of the RFP or the Draft Project Agreement, Definitive Project Agreement, Project Agreement, Draft BCIB-Contractor Agreement, Definitive BCIB-Contractor Agreement or BCIB-Contractor Agreement in any way for any purpose whatsoever, unless and only to

the extent expressly incorporated by Addendum to the RFP or expressly set out in a Response to Proponents issued by the Province to the proponents.

5. Each of the undersigned agrees to not:
 - (a) seek to obtain commitments from any of the Releasees or otherwise seek to obtain an unfair competitive advantage over any other proponent during the Workshops and Topic Meetings, including during any related communications; and
 - (b) use any aspect of the Workshops and Topic Meetings to provide the Proponent or any Proponent Team Member with access to information that is not equally available to the other proponents and their proponent team members.
6. Any information provided by any of the undersigned at any meeting or otherwise during any of the Workshops or Topic Meetings, including questions raised by any of the undersigned during such Workshops and Topic Meetings and any responses in writing by the Province to such questions, may be subject to disclosure to the other proponents in the sole discretion of the Province as contemplated in the Proponent Agreement.
7. The Province may in its sole discretion, on its own initiative or in response to an RFI from the Proponent or any other proponent, address any or all questions and matters raised by the Proponent or any of the other proponents or which otherwise come to the attention of the Province during or in connection with a Workshop or Topic Meeting by Responses to Proponents or by Addenda amending the RFP, including the Draft Project Agreement and the Draft BCIB-Contractor Agreement.
8. Unless the context otherwise expressly requires, the definitions and their corresponding defined terms set out in Schedule 1 of the Proponent Agreement will apply wherever such defined terms appear in this Waiver and Agreement, and Schedule 1 of the Proponent Agreement is hereby expressly incorporated by reference and forms a part of this Waiver and Agreement as if set out at length herein.
9. This Waiver and Agreement is in addition to the Proponent Agreement and nothing in this Waiver and Agreement is intended to or does in any way limit or narrow the application, interpretation or operation of the terms of the Proponent Agreement.

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

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

Proponent:

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

Proponent Representatives:

Name

Name

Name

Signature

Signature

Signature

Name

Name

Name

Signature

Signature

Signature

and by each of the other Proponent Team Members and their respective individual representatives in attendance.

SCHEDULE 5 TO PROPONENT AGREEMENT
FORM OF LETTER OF CREDIT

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

TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

(the "**Beneficiary**")

RE: PREFERRED PROPONENT SECURITY DEPOSIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO:

Dear Sirs:

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

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

Partial drawings are permitted.

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

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

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

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

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

All banking charges are for the account of the Customer.

This Letter of Credit shall remain in full force and effect and, unless renewed, will expire at the close of business on **[Note: Insert date which is 180 days from the date of issuance of the Letter of Credit – such date should be a date no earlier than the date of the Province’s letter delivered pursuant to Section <> of the RFP]**. Notice of non-renewal will be provided to the Beneficiary in writing by registered mail by not later than 30 days before the expiry date.

Authorized Signatory

Authorized Signatory

SCHEDULE 6 TO PROPONENT AGREEMENT
FORM OF RELEASE AND WAIVER

(see attached)

RELEASE AND WAIVER

Note:

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

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

[REPLACE PARTIES BELOW WITH DESCRIPTION FROM PROPONENT AGREEMENT, AS UPDATED.]

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

(the “Proponent”) and: <> [insert legal name of Design-Build Contractor], having a place of business at <>

[replicate for each entity comprising the Design-Build Contractor]

and: <> [insert legal name of Design Contractor], having a place of business at <>

[replicate for each entity comprising the Design Contractor]

and: <> [insert legal name of Systems Integration Contractor], having a place of business at <>

[replicate for each entity comprising the Systems Integration Contractor]

and: <> [insert legal name of Tunnel Contractor], having a place of business at <>

[replicate for each entity comprising the Tunnel Contractor]

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

[replicate for each Key Individual]

and: <> [insert legal name of Design-Build Contractor Guarantor], having a place of business at <>

[replicate for each Design-Build Contractor Guarantor]

and: <> [insert legal name of Tunnel Contractor Guarantor], having a place of business at <>

[replicate for each Tunnel Contractor Guarantor]

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

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

PARTNERSHIPS BRITISH COLUMBIA INC.
(“Partnerships BC”)

BC TRANSPORTATION FINANCING AUTHORITY
(“BCTFA”)

RE: BROADWAY SUBWAY PROJECT

WHEREAS:

- A. The Province implemented and <> [insert name of Proponent] (the “Proponent”) and each of the Proponent Team Members participated in the Competitive Selection Process for the Broadway Subway Project.
- B. As part of the Competitive Selection Process the Province and each of the Proponent Team Members entered into the Proponent Agreement made as of the <> day of <>, 20<> (the “Proponent Agreement”), as amended, whereby each of the Proponent Team Members agreed, among other things, to grant this Release and Waiver.

NOW THEREFORE

- 1.1 each of the Proponent Team Members, **IN CONSIDERATION** of the premises and **FOR OTHER GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of

which are hereby acknowledged by each of the Proponent Team Members (collectively, the “**Releasors**”):

- (a) on their own behalf and on behalf of their respective contractors, subcontractors, employees, officers, directors, managers, consultants, advisors, representatives, successors and permitted assignees, and, in accordance with section 1.1 (b), any person who is or may be entitled to assert any moral rights or other rights with respect to any of the Proposal, the Work Product, the Background IP, the Intellectual Property and the Intellectual Property Rights, hereby irrevocably and unconditionally waives, releases and forever discharges the Releasees and each of them of and from any and all Claims for or by reason of or in any way arising out of any cause, matter or thing whatsoever existing up to the present time, known or unknown, contingent or otherwise, for or by reason of or arising out of, in connection with or in any way related to the Proponent Agreement, any other process-related agreements, the Irrevocability Agreement, the Competitive Selection Process and any other consultative and facilitative or facilitated processes, including matters or issues contemplated or considered in any decision or ruling of the Conflict of Interest Adjudicator or in any opinion, commentary or report of the Fairness Advisor, the Derivative Activities, and the use by or on behalf of the Province and/or any of its sub-licensees, successor or assigns of any of the material with respect to the Proposal, the Work Product, the Intellectual Property, the Third-Party IP, the Background IP, the Permitted Use and the Intellectual Property Rights, or any of them; provided that if the Proponent is selected as the Preferred Proponent and causes Project Co to enter into the Project Agreement, the foregoing releases and waivers are, subject to the terms of the Project Agreement, not intended to extend to any claims arising under the Project Agreement after the execution and delivery of the Project Agreement and solely in connection with the breach by the Province of any of its obligations under the Project Agreement;
- (b) hereby represents and warrants that all necessary waivers of moral rights have been obtained by the Releasors from the individuals set out in section 1.1 (a), with the ability to extend such waivers in favour of the Releasees, as may be required in relation to the matters described in section 1.1(a);
- (c) covenants and agrees not to directly or indirectly join, assist, aid or act in concert with any other Person, including any Proponent Team Member, in the making of any Claim in any manner whatsoever against any or all of the Releasees arising out of or in relation to the matters described in section 1.1(a);
- (d) covenants and agrees not to make or bring in any way whatsoever any Claim against any Person, including any Proponent Team Member, who might claim contribution or indemnity or other relief from any or all of the Releasees; and

- (e) hereby represents, warrants and covenants that it has not assigned and will not assign to any other Person, including any Proponent Team Member, any of the Claims arising out of or in relation to the matters described in this Release and Waiver.
- 1.2 This Release and Waiver will be governed by, construed and interpreted in accordance with the laws of the Province of British Columbia, without regard to its conflicts of law rules and the laws of Canada applicable therein, and the courts of competent jurisdiction within the Province of British Columbia will have exclusive jurisdiction with respect to any actions to enforce the provisions of this Release and Waiver.
- 1.3 The provisions of this Release and Waiver will enure to the benefit of each of the Releasees and their respective successors and assigns and shall be binding upon each of the Releasers and their respective successors and assigns.
- 1.4 The Releasers, and each of them, acknowledge and confirm that the Releasers, and each of them, have received independent legal advice with respect to the execution of this Release and Waiver and confirm that the Releasers, and each of them, know and understand the contents of this Release and Waiver and grant and deliver this Release and Waiver of their own free will.
- 1.5 Each term of this Release and Waiver will be valid and enforceable to the fullest extent permitted by law. If any term or the application of any term to any Person or circumstance is held to be invalid or unenforceable, then such term may be severed and the remainder of this Release and Waiver will not be affected or impaired thereby and will be construed and enforced as if such invalid or unenforceable term had never been contained herein, and such invalidity or unenforceability will not affect or impair the application of such term to any other Person or circumstance but such term will be valid and enforceable to the fullest extent permitted by law.
- 1.6 The Proponent Team Members hereby acknowledge and agree that they are not eligible for any further payment or compensation other than payment of the **[Stipend] <> [the Termination Fee]** to the Proponent in accordance with the Proponent Agreement and that delivery of the **[Stipend] <> [the Termination Fee]** to or as directed by the Proponent shall be full and final settlement of any and all Claims arising out of or in relation to the matters described in this Release and Waiver.
- 1.7 Unless the context otherwise expressly requires, the definitions and their corresponding defined terms set out in Schedule 1 of the Proponent Agreement will apply wherever such defined terms appear in this Release and Waiver, a copy of the said Schedule 1 of the Proponent Agreement being attached as Schedule 1 to this Release and Waiver and incorporated by reference and forming a part of this Release and Waiver as if set out at length in the body hereof.

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

PROPONENT TEAM MEMBERS:

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

SCHEDULE 1 TO RELEASE AND WAIVER

[INTD: CONFORMED VERSION OF THE DEFINITIONS TO THE PROPONENT AGREEMENT AS AT THE RFP FINANCIAL SUBMITTAL DEADLINE OR AT THE TIME OF DELIVERY OF THIS INSTRUMENT TO BE INSERTED AND ISSUED IN THE EXECUTION VERSION OF THIS DOCUMENT THAT WILL BE POSTED TO PROPONENTS]

SCHEDULE 7 TO PROPONENT AGREEMENT
FORMS OF ASSIGNMENTS AND WAIVERS

(see attached)

**CONFIRMATORY ASSIGNMENT
OF INTELLECTUAL PROPERTY RIGHTS**

For good and valuable consideration provided pursuant to the Proponent Agreement made as of the <> day of <>, 20<> (the “**Proponent Agreement**”) among **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** (the “**Province**”) and each of **[INSERT NAMES OF PROPONENT TEAM MEMBERS AS DEFINED IN THE PROPONENT AGREEMENT]**, each of the undersigned hereby acknowledges, confirms and perfects the assignment to the Province, as set out in the Proponent Agreement, of:

- (a) the entire right, title and interest in and to all Intellectual Property and Intellectual Property Rights in the Work Product and all other rights and interests of a proprietary nature, whether registered or unregistered, in and associated with the Work Product throughout the world, including, without limitation, all copyright and patent rights therein;
- (b) the entire right, title and interest throughout the world in and to the embodiments of all Intellectual Property and Intellectual Property Rights forming any part of the Work Product; and
- (c) the right to bring actions and other proceedings against third parties for the past, present or future infringement or misuse of the Intellectual Property and Intellectual Property Rights in the Work Product;

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

All capitalized terms used but not defined in this Confirmatory Assignment shall have the meaning given to such terms in the Proponent Agreement.

IN WITNESS WHEREOF the undersigned hereby execute this Confirmatory Assignment as of the dates set out below.

[INSERT LEGAL NAME(S) AND APPROPRIATE SIGNATURE BLOCK(S) FOR EACH PROPONENT TEAM MEMBER PROVIDING WORK PRODUCT]

DATE _____

**CONFIRMATORY ASSIGNMENT
OF INTELLECTUAL PROPERTY RIGHTS
SCHEDULE A**

The following works form part of the Work Product:

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

WAIVER OF MORAL RIGHTS

For good and valuable consideration, (the receipt and sufficiency of which is hereby acknowledged) I, **[insert name of individual (employee, contractor etc.)]** hereby waive in favour of **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** (the “Province”), its servants, agents and employees, any and all of my moral rights established under the *Copyright Act* (Canada), as amended from time to time, in any of the Work Product (as defined in the Proponent Agreement made as of the <> day of <>, 20<> among the Province and each of **[insert names of Proponent Team Members as defined in the Proponent Agreement]**) including but not limited to the right to prevent distortion, mutilation or modification of the Work Product, the right to prevent the Work Product from being used in association with a product, service, cause or institution, and the right to have my name associated with the Work Product, and I will not make any claim against the Province, its servants, agents or employees with respect to these moral rights. I further acknowledge and agree that the Province may license or assign the Work Product to third parties and agree that the preceding sentence will extend to all such parties, and their assignees and licensees.

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

SIGNED AND DELIVERED BY

[insert name of individual (employee, contractor etc.)]

in the presence of:

(Witness)

[insert name of individual]