



Ministry of
Transportation
and Infrastructure

EVERGREEN LINE RAPID TRANSIT PROJECT REQUEST FOR PROPOSALS

Volume 1 – Instructions to Proponents

November 9, 2011



partnerships
British Columbia

Table of Contents

1. INTRODUCTION.....	7
1.1 Background	7
1.2 Project Scope Overview	8
1.3 Short-listed Respondents	10
1.4 Request for Proposals Overview	10
2. OVERVIEW OF PROJECT AGREEMENT, BASE SUPPLY CONTRACT AND WORK.....	14
2.1 Project Agreement Parties	15
2.2 Design & Construction.....	15
2.3 Operations and Maintenance	24
2.4 Environmental	24
2.5 Quality Management	24
2.6 Lands.....	25
2.7 Communication and Consultation	25
2.8 Financing.....	26
2.9 Payments	26
2.10 Performance Mechanism	27
2.11 Completion Target Dates	27
2.12 Liquidated Damages	28
2.13 Warranties	28
3. OVERVIEW OF RFP PROCESS	29
3.1 Price Proposal, Affordability and Risk Scope Levels.....	30
3.2 Consultation Process	30
3.3 Authorizations, Orders and Approvals.....	35
3.4 Proposal Submittal Requirements.....	35
3.5 Evaluation Process.....	40
3.6 Debriefing	45
3.7 Close Process	45
3.8 Timetable.....	48

4. GENERAL INFORMATION AND INSTRUCTIONS	51
4.1 Background Investigations, Surveys and Studies	51
4.2 Investigations, Surveys and Studies by Proponents	51
4.3 Data Room	52
4.4 Communications and Enquiries.....	53
5. GENERAL MATTERS	56
5.1 Amendment of Evergreen Line Selection Process	56
5.2 No Contract	56
5.3 No Obligation to Proceed or Make any Selection.....	57
5.4 Proposal Review and Evaluation.....	59
5.5 Participation in the Evergreen Line Selection Process.....	62
5.6 Conflicts in Documents.....	63
5.7 Confidentiality and Freedom of Information and Protection of Privacy	64
5.8 No Collusion	64
5.9 No Lobbying	65
5.10 Disclosure.....	66
5.11 Changes to Proponents and Proponent Team Members.....	66
5.12 Relationships.....	68
5.13 Delivery and Receipt	75
5.14 Proponent Team Members and Subcontractors	76
5.15 No Reliance.....	76
5.16 No Liability.....	77
5.17 Dispute Resolution	78
5.18 Fairness Reviewer.....	78
6. INTERPRETATION.....	80
7. DEFINITIONS	82

Volume 1 – Appendices

- A** RFP Response Guidelines
- B** Evaluation Criteria and Ranking Process
- C** Tunnel Alignment Modification Proposal Process
- D** Lands
 - Part 1 – Alignment Lands
 - Part 2 – Lands Process
 - Part 3 – Proposed Supplementary Lands Request Form Y
- E** Interim Financial Review Documents

Volume 2 – RFP – Project Agreement**Volume 3 – RFP – Forms**

- Form 1 Technical Submittal Certificate and Declaration
- Form 2 Financial Submittal Certificate and Declaration – Technical Supplement Invited
- Form 3 Financial Submittal Certificate and Declaration – No Technical Supplement Invited
- Form 4 Commitment Letter
- Form 5 Documents Escrow Agreement
- Form 6 Irrevocability Agreement
- Form 7 Limited Notice to Proceed Agreement

Volume 4 – RFP – Evergreen ATC System

- Part 1 Form of Draft Base Supply Contract
- Part 2 Proponent Supply Contract Development Process

Summary of Key Information

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

<p>RFP Title</p>	<p>The title of this RFP is:</p> <p>RFP Evergreen Line Rapid Transit Project Request for Proposals</p> <p>Please use the above title on all correspondence.</p>
<p>Contact Person</p>	<p>Name: Angela Campbell</p> <p>Courier Address: 550 – 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Facsimile: 604-660-8286</p> <p>Email: EvergreenDBF@gov.bc.ca</p> <p><u>No telephone inquiries please.</u></p>

<p>Tunnel Alignment Modification Proposal Deadline</p> <p>See paragraph 1 of Appendix C of Volume 1 of this RFP</p>	<p>Before 2.00 p.m. local Vancouver time on February 27, 2012.</p>
<p>Supplementary Lands Request Deadline</p> <p>See paragraph 2 of Part 2 of Appendix D of Volume 1 of this RFP</p>	<p>Before 2.00 p.m. local Vancouver time on February 27, 2012.</p>
<p>Interim Financial Review Deadline</p> <p>See Section 3.2.3 of Volume 1 of this RFP</p>	<p>To be specified in the invitation described in Section 3.2.3, as the Interim Financial Review Deadline may be amended in accordance with this RFP.</p>
<p>Technical Submittal Deadline</p> <p>See Section 3.4 of Volume 1 of this RFP</p>	<p>Before 2:00 p.m. local Vancouver time on April 23, 2012.</p>
<p>Technical Supplement Submittal Deadline</p> <p>See Section 3.5.3(b) of Volume 1 of this RFP</p>	<p>To be specified in the invitation described in Section 3.5.3(b), as the Technical Submittal Deadline may be amended in accordance with this RFP.</p>

<p>Advance Interest Rate Submittal Deadline</p> <p>See Section 3.5.3(a) of Volume 1 of this RFP</p>	<p>To be specified in the invitation described in Section 3.5.3(a), as the Closing Time may be amended in accordance with this RFP.</p>
<p>Closing Time</p> <p>See Section 3.5.3(a) of Volume 1 of this RFP</p>	<p>To be specified in the invitation described in Section 3.5.3(a), as the Closing Time may be amended in accordance with this RFP.</p>
<p>Closing Location</p> <p>See Section 3.4 of Volume 1 of this RFP</p>	<p>Evergreen Line Rapid Transit Project 550 – 925 West Georgia Street Vancouver, BC, V6C 3L2</p>
<p>Data Room</p> <p>See Section 4.4 of Volume 1 of this RFP</p>	<p>http://www.evergreenline-rfp.tran.gov.bc.ca (Authorized access only)</p>

1. Introduction

1.1 Background

The Project includes:

- (a) the design,
- (b) construction; and
- (c) financing during construction,

of an approximately 11-kilometre-long new, advanced light rapid transit line that will connect with and extend the Existing SkyTrain System to the Northeast sector of Metro Vancouver, servicing the municipalities of Burnaby, Port Moody and Coquitlam, all as described in the Project Agreement.

The Evergreen Line will run from Lougheed Town Centre in Burnaby to Douglas College in Coquitlam. The alignment will require a combination of elevated and at-grade guideway and an approximately two-kilometre-long bored tunnel. It will include an expansion of the existing Lougheed Town Centre Station and five new stations that are currently planned, with provision for three potential future stations, together with associated facilities such as bus and other transit integration facilities and facilities for pedestrian, vehicle and bicycle access.

The Northeast sector is one of the fastest growing areas in Metro Vancouver, adding pressure to the regional transportation network as traffic volumes build and congestion increases. The Evergreen Line will address these and other challenges by increasing transportation choice and supporting growth management and environmental sustainability objectives. The Evergreen Line comprises a provincial public undertaking as defined in the *Transportation Act*, as a rail transportation system as defined in the *South Coast British Columbia Transportation Authority Act*. The Evergreen Line is also an integral part of The Provincial Transit Plan (www.th.gov.bc.ca/Transit_Plan/) and the broader regional planning objectives of Metro Vancouver, which include connecting regional centres with rapid transit to achieve sustainable growth.

Planning for the Evergreen Line has been ongoing for more than 10 years. In the spring of 2008, the Province announced that advanced light rapid transit technology would be used for the Evergreen Line, consistent with the technology used for the Expo and Millennium Line components of the Existing SkyTrain System.

The Project Agreement will provide for the delivery of the Project, including the design, construction and financing of the Project with a completion date that will accommodate Service Commencement by no later than the Service Commencement Target Date.

TransLink will assume responsibility for the ongoing operation and maintenance of the Evergreen Line as a fully interoperable extension of the Existing SkyTrain System following completion of the Work which includes testing and commissioning.

1.2 Project Scope Overview

The Work includes:

- (a) the design and construction of an approximately 11-kilometre extension to the Existing SkyTrain System that will include elevated and at-grade sections and an approximately two-kilometre-long bored tunnel as shown in Figure 1;
- (b) an expansion of the existing Lougheed Town Centre Station;
- (c) five new stations;
- (d) provision for three potential future stations; and
- (e) a Vehicle Storage Facility,

all in accordance with the terms of the Project Agreement.

The Evergreen Line will connect and integrate with the existing Millennium Line at Lougheed Town Centre Station and, through other works, at the Operations and Maintenance Centre. Vehicles travelling from the Evergreen Line eastern terminus station at Douglas College Station will continue through Lougheed Town Centre Station to the western terminus of the Millennium Line at VCC–Clark Station, with peak headways of 3 minutes. Vehicles entering Lougheed Town Centre Station from the

direction of New Westminister will terminate and turn back at Lougheed Town Centre Station and return to Waterfront Station in downtown Vancouver. The anticipated integration of the Evergreen Line into the Metro Vancouver transit network is shown in Figure 2.

The physical scope of the Project is illustrated in Figure 1 below.

Figure 1 – Physical Scope

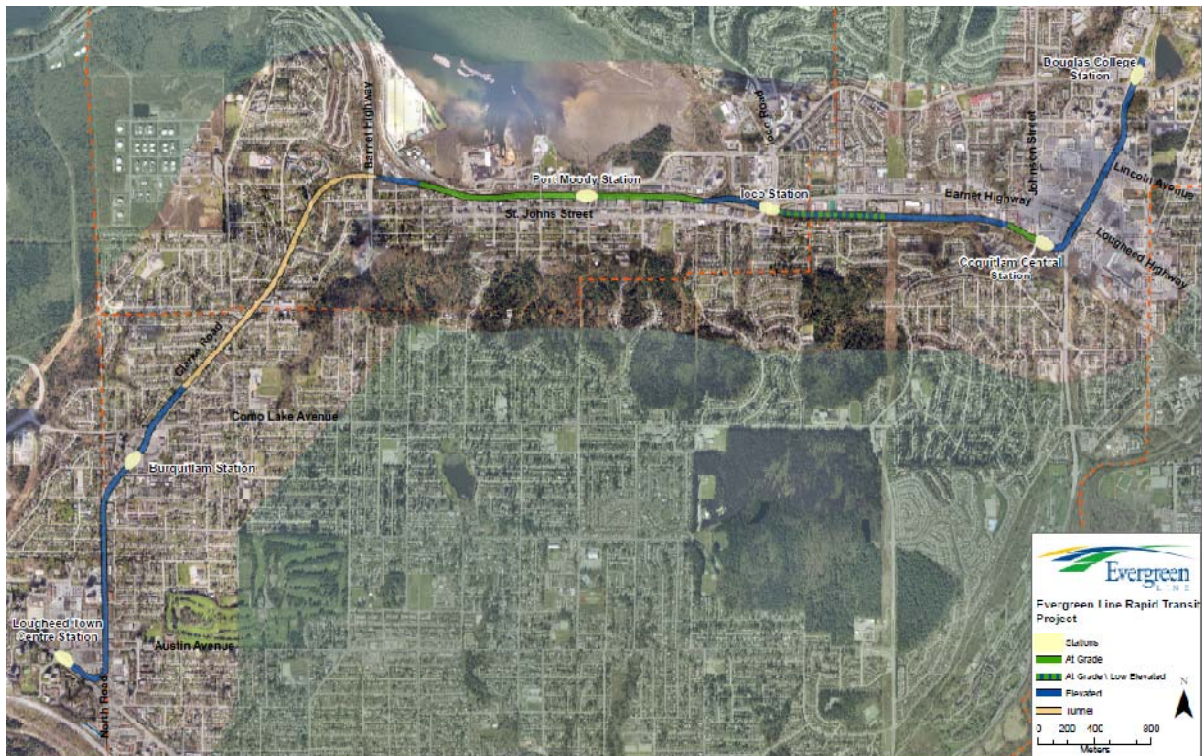
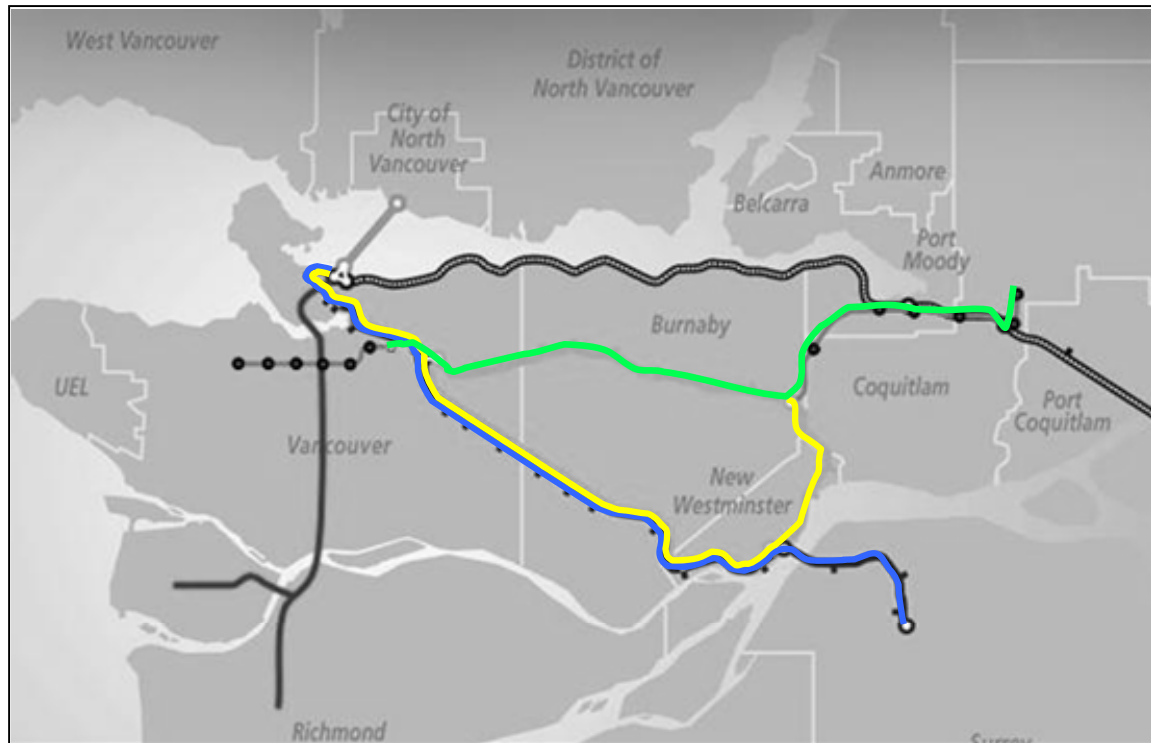


Figure 2 – Evergreen Line Integration

1.3 Short-listed Respondents

Through the RFQ phase of Evergreen Line Selection Process, three Respondents using the following team names were invited to participate further in the Evergreen Line Selection Process:

EL Partners

Kiewit Flatiron Evergreen Line

SNC-Lavalin Inc.

1.4 Request for Proposals Overview

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

1.4.1 RFP Structure

This RFP contains the following four volumes:

(a) Volume 1 – Instructions to Proponents

As part of the instructions to Proponents, Volume 1 includes the following:

- (i) Section 2 – an overview of some of the components of the Project Agreement, the Base Supply Contract and the Work, including arrangements for the payment of the Primary Contractor and the financing to be obtained by the Primary Contractor.
- (ii) Section 3 – an overview of the RFP process including information regarding the consultation process to be facilitated by the Province with Proponents, an explanation of Proposals and the submittals which are anticipated during the Evergreen Line Selection Process, details of the evaluation process and the anticipated timetable for the Evergreen Line Selection Process.
- (iii) Lands – a process and arrangements in connection with lands, including a process to permit Proponents to request Supplementary Lands – Appendix D of Volume 1 of this RFP.
- (iv) Alignment – a process and arrangements to permit Proponents to propose modifications to the Tunnel Alignment – Appendix C of Volume 1 of this RFP.
- (v) Risk Scope Levels – to provide an opportunity for Proponents to submit a Proposal for the delivery of the Project and the Work either with or without the Tunnel geotechnical risk sharing provisions set out in the Project Agreement – Section 3.1.1. of Volume 1 of this RFP

- (vi) Affordability Threshold – which is addressed at Section 3.1.2 of this RFP and through the Ranking Process.
- (vii) RFP Response Guidelines and Submission Requirements – set out in Appendix A of Volume 1 of this RFP.

(b) Volume 2 – Draft Project Agreement

Volume 2 contains the Draft Project Agreement. Details of the process for developing and for finalizing the Draft Project Agreement are set out in Section 3 of Volume 1 of this RFP.

(c) Volume 3 – Forms

Volume 3 contains the forms of various documents which Proponents are to use during the RFP phase of the Evergreen Line Selection Process in accordance with the provisions of Volume 1 of this RFP.

(d) Volume 4 – Part 1 – Form of Draft Base Supply Contract

Part 1 of Volume 4 contains the Draft Base Supply Contract for the provision of the Evergreen ATC System for the Evergreen Line. Details of the process for developing and for finalizing the Draft Base Supply Contract are set out in Section 3 of Volume 1 of this RFP.

(e) Volume 4 – Part 2 – Proponent Supply Contract Development Process

Part 2 of Volume 4 explains the way in which Proponents may develop a Proponent Supply Contract for the provision of the Evergreen ATC System for the Evergreen Line.

1.4.2 Summary Evaluation and Ranking of Proposals

Subject to the provisions detailed in this RFP, the submittals forming part of Proposals and the process for the evaluation and ranking of Proposals are summarized in the following Table 1.

Table 1 – Summary Submission Requirements, Evaluation and Ranking of Proposals

SUMMARY SUBMISSION REQUIREMENTS EVALUATION AND RANKING OF PROPOSALS
<ul style="list-style-type: none">• Proposals are to consist of a Technical Submittal, an Advance Interest Rate Submittal (if applicable), a Financial Submittal and a Technical Supplement, if a Technical Supplement is invited by the Province.• Proposal submittal requirements are set out in Appendix A of Volume 1 of this RFP in respect of the Technical Submittal, the Advance Interest Rate Submittal, the Financial Submittal and the Technical Supplement, if a Technical Supplement is invited by the Province.• Proposals will be evaluated in accordance with the Evaluation Criteria set out in Appendix B of Volume 1 of this RFP and will be ranked in accordance with the Ranking Process described in Appendix B of Volume 1 of this RFP.• The Preferred Proponent will be selected in accordance with the provisions of Sections 3.5.9 and 3.5.10 of Volume 1 of this RFP.

All Volumes of the RFP should be read and reviewed in their entirety for a complete understanding of the Evergreen Line Selection Process.

2. Overview of Project Agreement, Base Supply Contract and Work

The Draft Project Agreement will contain, among other things, the technical requirements and specifications for the Work and commercial terms, including with respect to financing and the allocation of risks as between the Primary Contractor and the Province.

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

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

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

Any description or overview of any of the Draft Project Agreement or the Definitive Project Agreement in Volume 1 of this RFP, or the Draft Base Supply Contract or the Definitive Base Supply Contract in Volume 1 or Volume 4 of this RFP, is provided for convenience only and does not replace, supersede, supplement or alter any of the Draft

Project Agreement, the Definitive Project Agreement, the Draft Base Supply Contract or the Definitive Base Supply Contract as applicable. If there are any inconsistencies between the terms of any of the Draft Project Agreement, the Definitive Project Agreement, the Draft Base Supply Contract or the Definitive Base Supply Contract and the description or overview of those terms set out in Volume 1 of this RFP or Volume 4 of this RFP (as applicable), the terms of the Draft Project Agreement, the Definitive Project Agreement, the Draft Base Supply Contract or the Definitive Base Supply Contract, as applicable, will prevail.

2.1 Project Agreement Parties

The parties to the Project Agreement will be the Province, the BCTFA and the Primary Contractor.

2.2 Design & Construction

The Primary Contractor will be responsible for all aspects of design and construction in accordance with the Project Agreement, including Schedule 4 of the Project Agreement and all other Design-Build Requirements. The Province has completed a Reference Concept Alignment which is available in the Data Room. The Province has also prepared Alignment Lands Drawings based upon the Reference Concept Alignment which are available in the Data Room.

Proposals that differ or vary from the Reference Concept Alignment that comply with the terms of this RFP are encouraged to promote innovation, including innovation in design and construction. Any use by Proponents of any or all aspects of the Reference Concept Alignment in connection with the Evergreen Line Selection Process or the Work shall be entirely at the Proponent's own risk.

The Province has also completed preliminary architectural designs for the Stations taking account of public consultations. The preliminary designs are available in the Data Room. The platform configuration and station type for each Station are defined by preliminary design drawings and are summarized in Table 2 below.

Station locations are identified in Article 3.7.4 of Part 2 of Schedule 4 of the Project Agreement.

Table 2 – Platform Configuration and Station Type

STATION	PLATFORM CONFIGURATION	TYPE
Lougheed Town Centre	Centre / Side	Elevated
Burquitlam	Side	Elevated
Port Moody Central	Centre	At-Grade
loco	Side	Below Grade / Enclosed
Coquitlam Central	Side	Elevated
Douglas College	Centre	Elevated

A summary of the design and construction scope is provided in Table 3 below. This summary is not exhaustive.

Table 3 – Summary Design and Construction Scope

SUMMARY DESIGN AND CONSTRUCTION SCOPE
<ul style="list-style-type: none">• Obtaining necessary permits, approvals and authorizations, including those required pursuant to applicable federal and provincial regulatory requirements and legislation• Site preparation including, where applicable, demolition of existing buildings• Design and Construction of Guideway along the approximately 11-kilometre-long Alignment, including a combination of elevated and at-grade Guideway for approximately nine kilometres and approximately two kilometres through Bored Tunnel• Design and Construction of an expansion of the existing Lougheed Town Centre Station and five new Stations and associated facilities• Design and Construction of a Vehicle Storage Facility• Design, supply, installation and integration of Systems• Road and other civil works required to accommodate the Project• Utility relocations and other Utility Work• Traffic Management, including maintenance of residential and commercial access along the Alignment• Integration of the Evergreen Line with the Existing SkyTrain System including the existing Systems and the Existing SkyTrain System vehicle fleet• Testing, commissioning and integration of all Evergreen Line components including necessary coordination with TransLink personnel

Subject to the terms of the Project Agreement, the items set out in Table 4 below are not included in the scope of the Work.

Table 4 – Summary Exclusions from Design and Construction Scope

SUMMARY OF EXCLUSIONS FROM DESIGN AND CONSTRUCTION SCOPE
<ul style="list-style-type: none">• Advance Work and Concurrent Work referred to in Article 6 of Part 1 of Schedule 4 of the Project Agreement• Permanent off-street station plazas and off-street transit integration facilities referred to in Article 6 of Part 1 and Article 18 of Part 2 of Schedule 4 of the Project Agreement• Permanent off-street bus loop and park and ride at Port Moody Central Station referred to in Article 6 of Part 1 and Article 18 of Part 2 of Schedule 4 of the Project Agreement• Supply, installation, testing and commissioning of fare collection and fare gate equipment as referred to in Article 6 of Part 1 and Article 14 of Part 2 of Schedule 4 of the Project Agreement• Supply of Vehicles referred to in Article 15 of Part 2 of Schedule 4 of the Project Agreement

2.2.1 Geotechnical Reports, Geotechnical Baseline Report and Changes to Tunnel Alignment

(a) Geotechnical Reports – Alignment Excluding Bored Tunnel and Cross Passages

The Province has made a number of reports available in the Data Room, including the following:

- (i) ELRT Project Surface Alignment Factual Geotechnical Report; and
- (ii) ELRT Project Twin Tunnels Geotechnical Data Report.

Without limiting any other provision of this RFP, including the Project Agreement, Proponents should refer to Section 2.15 of the Draft Project Agreement with respect to such reports.

(b) Geotechnical Baseline Report – Bored Tunnel and Cross Passages

The Province has made the Geotechnical Baseline Report, which addresses the Bored Tunnel and Cross Passages, available in the Data Room. Subject to Section 3.1.1 of Volume 1 of this RFP, this document will be attached as Part 1 of Schedule 26 of the Project Agreement and will form part of the arrangements described in Section 2.16 of the Project Agreement for allocating certain geotechnical risks as between the Primary Contractor and the Province.

(c) Changes to Bored Tunnel and Changes to Cross Passages

Proponents may, in accordance with the process set out in Appendix C of Volume 1 of this RFP, notify the Province of any proposed Tunnel Changes or Cross Passage Changes (each as defined in Appendix C) on or before the Tunnel Alignment Modification Proposal Deadline and, without limiting any other provision of this RFP, the Tunnel Alignment Modification Proposal Process set out in Appendix C of Volume 1 of this RFP shall apply.

2.2.2 Tunnel Boring Machine

The design, specification, procurement, configuration, delivery, operation and maintenance of the Tunnel Boring Machine(s) will be the responsibility of the Primary Contractor in accordance with the terms of the Project Agreement.

2.2.3 Evergreen ATC System

The Primary Contractor is responsible for delivering the Evergreen ATC System and is to assume, in all respects, responsibility for the Evergreen ATC System, including the Supply Contract and the provisions and requirements set out in the Supply Contract.

The Evergreen Line is intended to be fully interoperable with the Existing SkyTrain System, which uses the proprietary Thales SELTRAC™ automatic train control system. As a result, the Province has undertaken discussions with Thales regarding the supply of the Evergreen ATC System for the Project and has negotiated the Draft Base Supply Contract, the terms of which will form the basis of an agreement for the supply by Thales of the Evergreen ATC System for the Project to the Primary Contractor. The Draft Base

Supply Contract is attached as Part 1 of Volume 4 of this RFP. The Draft Base Supply Contract may be amended in accordance with the provisions of this RFP, including Section 3.2 of Volume 1 of this RFP.

Subject to the provisions of this RFP, including Part 2 of Volume 4 of this RFP, Proponents may enter into negotiations with Thales in order to settle a Proponent Supply Contract containing amendments to the Variable Terms.

2.2.4 Work by Others

The Work excludes the Advance Work which has been or will be initiated by the Province prior to the Effective Date, in connection with and to facilitate the Work. The Advance Work is described in Article 6 of Part 1 of Schedule 4 to the Project Agreement and includes the following:

- (a) Widening of North Road;
- (b) Installation of manhole and feeder duct banks, cabling and energizing for 25Kv power lines to provide power to the TBM and along North Road and Clarke Road;
- (c) Relocation of overhead 69Kv transmission lines at Como Lake and Clarke intersection and associated civil road works (including temporary relocation, which will be completed after construction of the Guideway as Concurrent Work);
- (d) Installation of fibre optic cable from the OMC to Lougheed Town Centre Station; and
- (e) Relocation of CPR track presently located adjacent to a portion of the Alignment in Port Moody.

The Work also excludes the Concurrent Work described in Article 6 of Part 1 of Schedule 4 to the Project Agreement (which will be carried out by other contractors on behalf of the Province or, as applicable, TransLink after the Effective Date), including the following:

- (a) Concurrent Landscaping Work, including permanent construction of hard and soft landscape at the Stations and south tunnel portal as defined by the Scope Split Drawings;
- (b) Concurrent Transit Interface Facilities Work, including the permanent bus exchange and park & ride facilities at Port Moody Central Station and the permanent bus exchange facilities at Burquitlam Station; and
- (c) Smart Card and Faregates Work.

2.2.5 Integration with Transit Facilities

In accordance with the Project Agreement, the Work will be required to interface with existing transit facilities and operations, including the following:

- (a) Lougheed Town Centre Station;
- (b) West Coast Express Stations (Port Moody WCE Station and Coquitlam Central WCE Station);
- (c) Off-Street Bus Exchanges (Lougheed Town Centre Station, Port Moody WCE Station and Coquitlam Central WCE Station);
- (d) park and ride facilities (Port Moody WCE Station and Coquitlam Central WCE Station); and
- (e) the OMC.

The Primary Contractor will be required to work with TransLink including its operating subsidiaries, British Columbia Rapid Transit Company Ltd., West Coast Express and Coast Mountain Bus Company, in accordance with Schedule 4 of the Project Agreement.

The Primary Contractor should refer to the terms of Articles 13 and 18 of Part 2 of Schedule 4 of the Project Agreement with respect to the requirements for the integration of the Work with transit facilities.

2.2.6 Vehicles, Fare Collection and Faregate Equipment

TransLink will provide the Vehicles, fare collection and faregate equipment required for the Evergreen Line.

The Primary Contractor will not be responsible for providing Vehicles, but will be responsible for ensuring that all Vehicles (including new Vehicles to be acquired for the Evergreen Line and the Vehicles using the Existing SkyTrain System) can run seamlessly on and between the Existing SkyTrain System and the Evergreen Line in accordance with the Project Agreement.

The Primary Contractor will be required to ensure that the Stations are designed and constructed to supply power and communication connections and provide space to accommodate fare collection and faregate equipment, in accordance with the Project Agreement including Article 14 of Part 2 of Schedule 4 of the Project Agreement, and the Primary Contractor will make relevant areas within Stations available to TransLink by no later than the Smart Card and Faregates Work Target Date to ensure that the Smart Card and Faregates Work to be carried out as Concurrent Work is capable of being completed prior to Substantial Completion.

2.2.7 Traffic Management

The Primary Contractor will be required to comply with the traffic management provisions set out in the Project Agreement.

The Province has set the following objectives for the traffic management in connection with the Work:

- (a) construction activities should be performed in a manner which minimizes negative impacts to traffic during peak periods and which otherwise ensures that traffic disruptions are minimized;
- (b) safety of the travelling public and construction workers is of paramount importance;
- (c) adequate access, including vehicular, pedestrian and cyclist access, to adjacent premises should be maintained;

- (d) on-street parking disruptions should be minimized;
- (e) disruptions to adjacent businesses should be minimized; and
- (f) ensuring adequate provision for pedestrians, cyclists, and transit.

These objectives were used as the basis for the terms set out in the Project Agreement, including the terms of Part 4 of Schedule 4 of the Project Agreement.

In accordance with the Project Agreement, including Schedule 9 of the Project Agreement, the Primary Contractor will be required to make payments to the Province if the traffic management requirements set out in the Project Agreement are not met.

2.2.8 Utilities

The Province has contacted and received information from a number of Utility Suppliers, including location data for existing Utilities and details of the requirements of Utility Suppliers for Utility Work. This data is available to Proponents in the Data Room and includes one or more Utility Information Sheets, subject to the terms of use applicable to the Data Room.

The Primary Contractor will be responsible for all Utility Work required as part of the Work, including the construction of new Utilities and the protection, relocation and modification of existing Utilities affected by the Work. All Utility Work will be required to be completed in accordance with the terms of the Project Agreement, including the requirements and specifications set out at Article 8 of Part 2 of Schedule 4 of the Project Agreement.

2.2.9 Rail

Approximately five kilometres of the Alignment will impact certain lands owned or controlled by CPR, upon which CPR operates its mainline trans-Canada railway system. The Province anticipates that it will enter into one or more agreements with CPR and others (as applicable) in connection with the interface of the interests of CPR and others and the conduct of the Work, including with respect to the CPR Lands.

The Primary Contractor will be required, pursuant to the terms of the Project Agreement, including Section 2.7 and Article 5 of Part 1 of Schedule 4 of the Project Agreement, to

comply with the CPR Requirements in connection with the CPR Works.

2.2.10 Municipal

The Primary Contractor will be required, pursuant to the terms of the Project Agreement, including Section 2.6 and Article 7 of Part 1 of Schedule 4 of the Project Agreement, to comply with the Municipal Requirements in connection with the Municipal Works.

2.3 Operations and Maintenance

The Province anticipates that TransLink will assume responsibility for the ongoing operation and maintenance of the Evergreen Line, as a fully interoperable extension of the Existing SkyTrain System, following the Substantial Completion Date.

2.4 Environmental

The Project has been excluded by Transport Canada from the requirement to conduct an environmental assessment under the *Canadian Environmental Assessment Act* pursuant to the Exclusion List Regulations, 2007.

An application for Environmental Assessment Certification under the BCEAA was submitted in June, 2010. The Environmental Assessment Certificate was issued on February 3, 2011.

The Primary Contractor will be required to perform the Work in compliance with the Primary Contractor's Environmental Obligations, including the Environmental Assessment Certificate and the commitments, responsibilities and information set out in the Table of Commitments, as described in the Project Agreement, including Schedule 5 of the Project Agreement.

2.5 Quality Management

The Primary Contractor is to develop and implement a Quality Management System in accordance with the Project Agreement, including Schedule 6 of the Project Agreement. The Quality Management System is to comply with the requirements of the Project Agreement, including the ISO 9001:2008 Standard.

All aspects of the Work will be subject to the Quality Management System and the

Primary Contractor is to implement a program to ensure the continuous improvement of the Quality Management System in accordance with the terms of the Project Agreement.

2.6 Lands

The Province will, subject to the provisions of this RFP and the Project Agreement, acquire all land and land interests reasonably required for the Province Infrastructure. The Province has commenced discussions with a number of land owners.

Proponents are to select those lands and lands interests along the Alignment that:

- (a) are comprised within the Alignment Lands;
- (b) conform to the Proponent's design; and
- (c) that are sufficient, together with the Supplementary Lands and Other Lands, to enable the Proponent, should it become the Primary Contractor, to deliver the Project and the Work in accordance with the Project Agreement.

In accordance with the Project Agreement, including Schedule 7 of the Project Agreement, the Primary Contractor is responsible for all risks, including permitting risk, and all costs and expenses of acquiring any land or land interests which are in addition to the Designated Lands (except that, subject to the terms of the Project Agreement, the Province is responsible for the risk of delay to access to the Supplementary Lands).

2.7 Communication and Consultation

A public, community and stakeholder communications and consultation program was initiated in 2009. This program has provided, and will continue to provide, opportunities for stakeholders and members of the public to learn about the Project and provide input.

Details of the results of the pre-design consultations can be found in the pre-design consultation reports that were included in the RFQ Data DVD. In addition to the pre-design and ongoing consultation on Project scope refinements, the Province will continue to take the lead in consulting with the public and stakeholders through the preliminary and detailed design phases of the Project. The Primary Contractor will have a support role in these activities.

The Province also has a proactive community relations program that provides information about the Project and includes a public inquiry and response program to respond to email, phone and written inquiries.

Responsibilities regarding communications in relation to traffic and construction activities, community relations, public consultation and media relations will be allocated between the Province and Primary Contractor in accordance with Schedule 8 of the Project Agreement.

2.8 Financing

The Primary Contractor will be responsible for obtaining the financing required in order to complete the Work in excess of the Progress Payments payable by the Province during Construction as described in Section 2.9 below and as described in the Project Agreement, including Part 12 of the Project Agreement.

2.9 Payments

The Contract Price will be paid subject to and in accordance with the terms of Project Agreement, including Part 12 of the Project Agreement.

During Construction, the Primary Contractor will receive Progress Payments based on Eligible Costs which are incurred by the Primary Contractor with respect to Payment Milestones set out in Part 2 of Schedule 22 of the Project Agreement and described further in Part 3 of Schedule 22 of the Project Agreement.

Proponents are to complete the Financial Model in accordance with the instructions set out at Appendix A of Volume 1 of this RFP. Outputs from the Financial Model completed in accordance with these instructions will be included within the Project Agreement, including Part 12 of the Project Agreement, as indicated in the Project Agreement.

Subject to and in accordance with the terms of the Project Agreement, the Primary Contractor will be entitled to be paid:

- (a) following Substantial Completion, the Substantial Completion Payment Amount;
- (b) following Total Completion, the Total Completion Payment

- Amount;
- (c) following Availability Demonstration Completion, the Availability Demonstration Completion Payment Amount;
 - (d) following TIDS Performance Demonstration Completion, the TIDS Performance Demonstration Completion Payment Amount; and
 - (e) following expiry of the General Work Defect Warranty Period, the Warranty Holdback.

The Province will retain certain holdbacks, including with respect to the *Builders Lien Act* from payments to be made by the Province to the Primary Contractor, in accordance with the terms of the Project Agreement, including Part 12 of the Project Agreement.

2.10 Performance Mechanism

The Project Agreement will include a performance mechanism which may, subject to and in accordance with its terms, trigger payment obligations of the Primary Contractor to the Province and/or the accumulation of NCE Points and/or Default Points as set out in the Project Agreement, including Schedule 9 of the Project Agreement.

2.11 Completion Target Dates

The Primary Contractor will be required to achieve:

- (a) Substantial Completion by the Substantial Completion Target Date;
- (b) Total Completion by the Total Completion Target Date;
- (c) Availability Demonstration Completion by the Availability Demonstration Completion Target Date; and
- (d) TIDS Performance Demonstration Completion by the TIDS Performance Demonstration Completion Target Date;

all in accordance with the terms of the Project Agreement.

2.12 Liquidated Damages

The Primary Contractor will be required to pay Liquidated Damages if the Primary Contractor fails to achieve Substantial Completion by the Substantial Completion Target Date, Availability Demonstration Completion by the Availability Demonstration Completion Target Date or TIDS Performance Demonstration Completion by the TIDS Performance Demonstration Completion Target Date, all in accordance with the provisions of Part 10 and Schedule 24 of the Project Agreement.

2.13 Warranties

The Primary Contractor will be required to provide warranties, including in relation to:

- (a) Work Defects;
- (b) Epidemic Defects; and
- (c) Latent Work Defects,

in accordance with the requirements of the Project Agreement, including Part 6 of the Project Agreement.

3. Overview of RFP Process

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

Eligibility to continue in the Evergreen Line Selection Process and participate in this RFP phase, to the extent expressly provided for in this RFP, is conditional on:

- (a) the Proponent being identified as a Short-Listed Respondent pursuant to the RFQ; and

thereafter:

- (b) the Proponent observing and ensuring that its Proponent Team Members observe the provisions of this RFP, including observing and satisfying and ensuring that its Proponent Team Members observe and satisfy the terms and conditions that may be required or otherwise established by the Province in respect of any waiver or permission to be issued by the Province under this RFP;
- (c) the Proponent observing and complying with and ensuring that its Proponent Team Members observe and comply with the terms of the Proponent Agreement; and
- (d) the Proponent submitting a Proposal that substantially satisfies the provisions of this RFP.

Any failure or failures on the part of the Proponent, or on the part of any Proponent Team Member, to observe, satisfy, or comply with such provisions, terms and conditions may result in the Proponent being:

- (e) ineligible to continue further in the Evergreen Line Selection Process; or
- (f) ineligible to receive any further invitations or information in connection with

the Evergreen Line Selection Process.

3.1 Price Proposal, Affordability and Risk Scope Levels

3.1.1 Price Proposal

The Price Proposal is to be submitted by Proponents as part of Package 4 of the Financial Submittal, in accordance with the provisions of this RFP including Appendix A of Volume 1 of this RFP.

3.1.2 Affordability and Risk Scope Levels

A key objective of the Evergreen Line Selection Process is to deliver the Project within the Project's Affordability Threshold. The Province is currently determining the appropriate amount of the Affordability Threshold and will provide it by addendum to this RFP.

The Province has identified two options to allow Proponents to deliver the Project and ensure that Proponents can submit a Proposal that meets the Affordability Threshold as follows:

- (a) Risk Scope Level 1 – the delivery of the Project and the Work pursuant to the Definitive Project Agreement but excluding the Tunnel Geotechnical Risk Sharing Provisions.
- (b) Risk Scope Level 2 – the delivery of the Project and the Work pursuant to the Definitive Project Agreement including the Tunnel Geotechnical Risk Sharing Provisions. For the purposes of the Ranking Process only, the Province will attribute an additional cost of \$30 million to the Price Proposal of any Proponent that selects Risk Scope Level 2 ("Adjusted Price Proposal") in accordance with Appendix B of Volume 1 of this RFP.

The Price Proposal or the Adjusted Price Proposal as applicable must not exceed the Affordability Threshold.

3.2 Consultation Process

The Province will facilitate a consultation process with the Proponents which will include

exchanges of information, discussions and clarification of issues through Workshops and Topic Meetings and the submission and consideration of comments on and proposed amendments to the Draft Project Agreement and the Draft Base Supply Contract, including after the Technical Submittal Deadline. The terms, procedures, rules and protocols for the Workshops and Topic Meetings are set out in the Proponent Agreement, including in the Workshops and Topic Meetings Schedule to the Proponent Agreement. The Province may in its discretion, from time to time, amend, supplement or replace the Workshops and Topic Meetings Schedule by delivery to the Proponent of written policies and procedures clarifying, supplementing, or otherwise modifying the terms of the Workshops and Topic Meetings Schedule.

3.2.1 Workshops and Topic Meetings

The Province may schedule and conduct Workshops and Topic Meetings at any time and from time to time during this RFP phase, including after the Technical Submittal Deadline. Such Workshops and Topic Meetings are intended to enable communication between the Province and the Proponents as to issues relating to this RFP, the Project, the Draft Project Agreement and the Draft Base Supply Contract, including by providing a forum for Proponents to give information and comments to the Province regarding Proponent submissions, and comments and proposed changes to the Draft Project Agreement and the Draft Base Supply Contract.

Proponents are to satisfy themselves in all respects as to the Project Agreement. Proponents are to review and consider the provisions and requirements of the Draft Base Supply Contract and satisfy themselves in all respects, including with respect to the completeness, accuracy, adequacy and sufficiency of the provisions and requirements of the Draft Base Supply Contract and identify to the Province, through the Proponent Consultation Process described in Section 3 of Volume 1 of this RFP, any considerations connected with or related to the provisions and requirements of the Draft Base Supply Contract which Proponents consider should be addressed.

A Workshop in the form of an all-Proponent information meeting and three further Workshops will be held as indicated in Table 5. Attendance by Proponents at these Workshops is required.

The Workshops are anticipated to include the following:

- (a) Workshop A – One-on-one Draft Project Agreement meetings combined with Draft Supply Base Supply Contract meetings;
- (b) Workshop B – One-on-one revised Draft Project Agreement meetings combined with Draft Supply Base Supply Contract meetings; and
- (c) Additional Workshop – One-on-one Interim Financial Review meetings (at the discretion of the Province).

The Fairness Reviewer is to attend all such Workshops.

The Province may in its discretion, or on request of the Proponent or any of the Proponents, schedule additional Workshops and/or Topic Meetings if the Province considers it desirable or necessary in its discretion.

3.2.2 Development of Project Agreement and Base Supply Contract

The Province will issue the initial and subsequent revised forms of the Draft Project Agreement as Volume 2 of this RFP and initial and subsequent revised forms of the Draft Base Supply Contract as Part 1 of Volume 4 of this RFP. In addition to considering comments and issues discussed in the Workshops and Topic Meetings, the Province will from time to time invite Proponents to review and submit comments in respect of the Draft Project Agreement and the Draft Base Supply Contract.

Following review and consideration of the Proponents' comments, separate Workshops and Topic Meetings are anticipated to be scheduled with each Proponent to allow for separate discussions as to any comments, issues and changes, including to the risk allocation, this RFP, the Project, the Draft Project Agreement and the Draft Base Supply Contract, that the Proponent requests be considered.

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

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

The Province currently anticipates that the sequencing of submission and review of comments, issues and requested amendments and scheduling of Workshops will follow in the order outlined in Table 5 in Section 3.8 of Volume 1 of this RFP. The Province may in its discretion extend, accelerate and modify this sequencing at any time and from time to time. Additional separate Workshops and Topic Meetings may, in the discretion of the Province, be scheduled and carried out.

Proposed amendments to the Draft Project Agreement and to the Draft Base Supply Contract are to be submitted in a table format, identifying (i) the Draft Project Agreement or Draft Base Supply Contract provision that is the subject of the issue, (ii) the wording of the provision that is the subject of the issue, (iii) the requested amendments to such wording (indicating the proposed amendment by blacklining the original wording), (iv) an accompanying explanation summarizing the rationale for the requested amendments and (v) whether the Proponent wishes to discuss the issue at the next Workshop.

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

The Province will issue the Definitive Project Agreement as Volume 2 of this RFP and will issue the Definitive Base Supply Contract as Part 1 of Volume 4 of this RFP.

Without limiting the provisions of this RFP, including Section 5.1 of Volume 1 of this RFP, the Province anticipates that it will, subject to the provisions of this RFP, deliver before Closing Time to each Proponent, an Addendum, on a 'Commercial in Confidence' basis, containing the Appendices to Schedule 7 of the Definitive Project Agreement, individualized to correspond to the Proponent's Proposal.

3.2.3 Interim Financial Review

The Province may, in its discretion, issue an invitation to Proponents to participate in an Interim Financial Review Meeting and to submit the Interim Financial Review Documents to the Closing Location on or before the time specified in the invitation as the Interim Financial Review Deadline.

The purpose of the Interim Financial Review, including the Interim Financial Review Meeting, is to facilitate an early review by the Province with Proponents of:

- (a) Proponents' understanding of the Work;
- (b) the cost assumptions which Proponents have made with respect to the Work; and
- (c) to enable communication between the Province and Proponents in connection with the Affordability Threshold and Proponents' Interim Financial Review Documents.

At the Interim Financial Review Meetings, the Province will review with Proponents their Interim Financial Review Documents, including the initial costs and input assumptions which are to be included by Proponents in the Interim Financial Review Documents.

Proponents should prepare their Interim Financial Review Documents in accordance with the provisions set out in Appendix E of Volume 1 of this RFP.

Without limitation to the provisions of this RFP, the Province may in its discretion consider and use all, part or none of the information provided by Proponents as part of the Interim Financial Review, including the Interim Financial Review Documents, in connection with the Evergreen Line Selection Process and the Draft Project Agreement. Notwithstanding the forgoing, the Interim Financial Review Documents do not form part of a Proponent's Proposal and will not form part of the Evaluation Process referred to in Section 3.5 of Volume 1 of this RFP.

The Interim Financial Review Documents submitted by a Proponent will be confidential to each Proponent.

3.3 Authorizations, Orders and Approvals

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

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

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

3.4 Proposal Submittal Requirements

3.4.1 Technical Submittal and Financial Submittal

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

The Technical Submittal and the Financial Submittal are to be delivered as further described in Appendix A of Volume 1 of this RFP.

Except Unless otherwise expressly required in Appendix A of Volume 1 of this RFP, the Technical Submittal is to include no pricing information.

Subject to the terms of this RFP, including Section 3.5.3(b) of Volume 1 of this RFP, the Province may issue an invitation to Proponents to submit a Technical Supplement.

3.4.2 Advance Interest Rate Submittal

In addition to the Technical Submittal and the Financial Submittal, Proponents may in

their discretion submit an Advance Interest Rate Submittal.

If a Proponent intends to submit an Advance Interest Rate Submittal such Proponent is to submit such Advance Interest Rate Submittal in accordance with the provisions of this RFP, including Appendix A of Volume 1 of this RFP. The Proponent will confirm in its Advance Interest Rate Submittal whether such Advance Interest Rate Submittal is in respect of Base Interest Rates and/or Credit Spread Refresh Facilities.

If a Proponent does not wish to submit an Advance Interest Rate Submittal, it shall, by the Advance Interest Rate Submittal Deadline, submit a confirmation that it is not submitting an Advance Interest Rate Submittal.

3.4.3 Interest Rate Fluctuation Risk

3.4.3(a) Base Interest Rate Fluctuation Risk

If a Proponent submits an Advance Interest Rate Submittal with respect to Base Interest Rates in accordance with this RFP, including Section 3.4.2 of Volume 1 of this RFP, then subject to the terms of this RFP the Province will assume the risk of an increase or decrease in the Base Interest Rates, affecting the designated Adjustment Credit Facilities only, in respect of the period commencing from the date when the Province provides the information contemplated by Sections 4.1.1 and 4.1.2 of Appendix A of Volume 1 of this RFP and ending at Financial Close.

Within 5 Business Days of such Advance Interest Rate Submittal, the Province will advise each Proponent whether, in the Province's discretion, the Proponent's proposed Base Interest Rate(s) contained within such submission is acceptable. If the Province advises a Proponent, with particulars, that its proposed Base Interest Rate(s) is not acceptable, the Proponent shall within 5 Business Days of receiving such advice submit a revised Base Interest Rate(s) that addresses the Province's concerns. The Province will advise the Proponent within a further 3 Business Days whether the revised Base Interest Rate(s) is acceptable. The process will be repeated until an acceptable Base Interest Rate(s) is provided.

Subject to the terms of this RFP:

- (a) at Financial Close the Price Proposal will be increased or decreased to

reflect fluctuations in the Base Interest Rate(s) affecting the Adjustment Credit Facilities;

- (b) if a Proponent's financing plan contains several Adjustment Credit Facilities, each having a different Base Interest Rate, the adjustment of the Price Proposal will take into account fluctuations (positive or negative, as the case may be) in the Base Interest Rate for each such Adjustment Credit Facility.

If a Proponent does not submit an Advance Interest Rate Submittal with respect to Base Interest Rate(s) in accordance with the terms of the RFP, the Province will not adjust the Price Proposal to take account of fluctuations in the Base Interest Rate(s).

3.4.3(b) Credit Spread Refresh Facilities

If a Proponent wishes to designate some or all of its Initial Senior Credit Facilities as Credit Spread Refresh Facilities (any such facilities so designated, collectively, "**Credit Spread Refresh Facilities**"), the Proponent should complete its Advance Interest Rate Submittal with respect to Credit Spread Refresh Facilities in accordance with this RFP.

Within 5 Business Days of such Advance Interest Rate Submittal, the Province will advise each Proponent whether, in the Province's discretion, the Proponent's proposed Credit Spread Benchmark contained within such submission is acceptable. If the Province advises a Proponent, with particulars, that its proposed Credit Spread Benchmark is not acceptable, the Proponent shall within 5 Business Days of receiving such advice submit a revised Credit Spread Benchmark that addresses the Province's concerns. The Province will advise the Proponent within a further 3 Business Days whether the revised Credit Spread Benchmark is acceptable. The process will be repeated until an acceptable Credit Spread Benchmark is provided.

If a Proponent has submitted an Advance Interest Rate Submittal with respect to Credit Spread Refresh Facilities in accordance with this RFP, including Section 3.4.2 of Volume 1 of this RFP, then subject to the terms of this RFP the credit spread on the Credit Spread Refresh Facilities will be reset on the Credit Spread Refresh Lock-in Date to reflect the movement in the Credit Spread Benchmark as defined in this RFP.

The "**Credit Spread Refresh Lock-In Date**" will be the date, not to be later than the

Business Day prior to Financial Close, when the Preferred Proponent will either:

- (a) confirm the credit spread applicable to each Credit Spread Refresh Facility (where there has been no change in the credit spread); or
- (b) change the credit spread applicable to each Credit Spread Refresh Facility (whether such change is upwards or downwards) by submitting to the Province:
 - (i) the revised credit spreads calculated using the Credit Spread Benchmark approved in accordance with this Section 3.4.3(b) (including all information that the Province requires to confirm the movement in the Credit Spread Benchmark and applicable revision to each credit spread);
 - (ii) a fully optimized Financial Model that has been revised only to reflect the revised credit spread on each Credit Spread Refresh Facility; and
 - (iii) Form A-6 (Payments) revised only to reflect the revised credit spread on each Credit Spread Refresh Facility.

As of the Credit Spread Refresh Lock-in Date, but without prejudice to any other rights of the Province under this RFP, the revised credit spreads on the Credit Spread Refresh Facilities and any re-optimization of its Financial Model will apply without any further adjustment to credit spreads.

3.4.3(c) Credit Spread Hold Facilities

Initial Senior Credit Facilities not designated by a Proponent as Credit Spread Refresh Facilities in accordance with Section 3.4.3(b) of Volume 1 of this RFP will be deemed to be designated as Credit Spread Hold Facilities (including where a Proponent has not submitted an Advance Interest Rate Submittal) (any such facilities deemed so designated, collectively, “**Credit Spread Hold Facilities**”).

With respect to Credit Spread Hold Facilities, if the Preferred Proponent or any Affiliate of the Preferred Proponent is able to secure financing for the Project on terms more

favourable than the terms submitted in the Financial Submittal, the resulting gain will accrue 50% to the Preferred Proponent and 50% to the Province.

3.4.3(d) Dry Runs

If the Preferred Proponent submits an Advance Interest Rate Submittal then, prior to Financial Close, the Preferred Proponent will undertake several “dry runs” with the Province so that the parties are familiar with, and agree on, the technical process for determining the final Base Interest Rates (according to the Base Interest Rate Set Protocol) and/or the credit spread (according to the Credit Spread Refresh Protocol), as the case may be, and the Financial Model to be included in Schedule 11 of the Project Agreement.

3.4.4 Closing Location and Closing Time

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

- (a) in the case of the Technical Submittal, before the Technical Submittal Deadline;
- (b) in the case of the Technical Supplement, if an invitation referenced in Section 3.5.3(b) is issued, on or before the time specified in such invitation;
- (c) in the case of the Advance Interest Rate Submittal (where a Proponent intends to submit an Advance Interest Rate Submittal), before the Advance Interest Rate Submittal Deadline; and
- (d) in the case of the Financial Submittal, before the Closing Time specified in the invitation to submit a Financial Submittal.

Faxed, telephone or electronically submitted Proposals may not be considered.

The calendar and clock designated as the official calendar and clock by the Province at the Closing Location, whether accurate or not, will be determinative with respect to:

- (a) whether a Modification Proposal Notice has been received before the Tunnel Alignment Modification Proposal Deadline;

- (b) whether a Supplementary Lands Request has been received before the Supplementary Lands Request Deadline;
- (c) whether a Technical Submittal, including any part of a Technical Submittal, has been received before the Technical Submittal Deadline;
- (d) whether a Financial Submittal, including any part of a Financial Submittal, has been received before the Closing Time;
- (e) whether a Technical Supplement, including any part of a Technical Supplement, has been received before the time specified in the invitation referenced in Section 3.5.3(b); and
- (f) whether an Advance Interest Rate Submittal, including any part of an Advance Interest Rate Submittal, has been received before the Advance Interest Rate Submittal Deadline.

The Province may at any time and from time to time, by Addendum sent to the Proponents (whether or not actually received by the Proponents), amend, including by extending any or all of the time periods or deadlines referred to in (a)–(f) above, including with respect to the Closing Time.

3.5 Evaluation Process

3.5.1 Technical Submittal Package Review

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

3.5.2 Technical Submittal Evaluation

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

3.5.3 Invitations

3.5.3(a) Invitations to Submit Financial Submittal

The Province will, subject to the provisions of this RFP, invite each Proponent that has delivered a Technical Submittal that is considered, in accordance with this RFP, to be eligible to receive such an invitation, to submit:

- (1) on or before the time specified in the invitation as the Advance Interest Rate Submittal Deadline, an Advance Interest Rate Submittal, or, if the Proponent does not wish to submit an Advance Interest Rate Submittal, a confirmation that it is not submitting an Advance Interest Rate Submittal, to the Closing Location; and
- (2) on or before the time specified in the invitation as the Closing Time, a Financial Submittal to the Closing Location.

Proponents are to prepare their Financial Submittal on the basis of the Definitive Project Agreement and the Supply Contract without amendment, and on the basis of their Technical Submittal, including any further information and documentation, including, clarifications, rectifications, and more complete, supplementary, replacement and additional information and documentation delivered in accordance with this RFP.

If Technical Supplements are invited pursuant to Section 3.5.3(b), then Proponents are to also prepare their Financial Submittals on the basis of one of the following, as applicable to each Proponent:

- (a) their confirmation that no amendments to their Technical Submittal are necessary, in accordance with Section 3A of Appendix B of Volume 1 of this RFP;
- (b) their Technical Submittal and any above-noted further information and documentation, as amended by those parts of the Technical Supplement that have not been rejected; or
- (c) if all amendments set out in their Technical Supplement have been rejected, their unamended Technical Submittal.

3.5.3(b) Invitation to Submit Technical Supplement

By not later than ten Business Days after the issuance of the Definitive Project Agreement, the Province may issue an invitation to submit a Technical Supplement to the Closing Location on or before the date and before the time specified in the invitation as the Technical Supplement Submittal Deadline, if:

- (a) any amendment, restructure or supplement made after the Technical Submittal Deadline:
 - (i) is made to any of the schedules of the version of Draft Project Agreement issued as at the Technical Submittal Deadline that are listed in this Section; or
 - (ii) is made to the version of the Draft Base Supply Contract issued as at the Technical Submittal Deadline that is considered by the Province in its discretion to materially impact on the Work; or
 - (iii) is considered by the Province in its discretion to impact on the elements of the Work provided for in or on the requirements of any such listed schedules; or
 - (b) any document is posted to the Data Room after the Technical Submittal Deadline which contains information which is considered by the Province in its discretion to impact on the elements of the Work provided for in or on the requirements of any such listed schedules;
- and
- (c) in the case of (a) or (b) the Province considers, in its discretion, the above-referenced amendment, restructure or supplement, or either of the above-referenced impacts, as applicable, to be so material, having regard to the applicable elements of the Work or the applicable requirements provided for in the schedule or schedules, as the case may be, as to necessitate review by the Proponents of their Technical Submittals.

The schedules of the version of Draft Project Agreement issued as at the Technical

Submittal Deadline that are applicable to the circumstances referenced in this Section are as follows:

- (a) Schedule 4 [Design and Construction];
- (b) Schedule 5 [Environmental Obligations];
- (c) Schedule 6 [Quality Management]; and
- (d) Schedule 7 [Lands].

The Province may in its discretion issue an invitation under this Section on its own initiative or on consideration of a Proponent's request delivered by RFI in accordance with Section 4.4. In considering whether to issue an invitation under this Section, the Province may, as part of the consultation process or otherwise, seek and consider comments, information and documentation from the Proponents. Proponents requesting that an invitation under this Section be issued will include in the RFI sufficient information and documentation as to enable the Province to understand and assess the materiality of the amendment, restructure or supplement or of the impact, as applicable, having regard to the applicable elements of the Work provided for in or to the requirements of the schedule or schedules, as applicable.

3.5.4 Technical Supplement Package Review

This will be a review for substantial completeness of the Technical Supplement in accordance with this RFP, including Appendix A of Volume 1 of this RFP and the Definitive Project Agreement.

3.5.5 Technical Supplement Evaluation

The Technical Supplement evaluation will be conducted in accordance with the evaluation criteria outlined in Appendix B of Volume 1 of this RFP.

3.5.6 Advance Interest Rate Submittal Package Review and Evaluation

There will be a review for substantial completeness of any Advance Interest Rate Submittal in accordance with this RFP, including Appendix A of Volume 1 of this RFP.

The Advance Interest Rate Submittal evaluation will be conducted in accordance with the evaluation criteria outlined in Appendix B of Volume 1 of this RFP.

3.5.7 Financial Submittal Package Review

This will be a review for substantial completeness of the Financial Submittal in accordance with this RFP, including Appendix A of Volume 1 of this RFP and the Definitive Project Agreement.

3.5.8 Financial Submittal Evaluation

The Financial Submittal Evaluation will be conducted in accordance with the evaluation criteria outlined in Appendix B of Volume 1 of this RFP.

3.5.9 Invitation to Deliver Preferred Proponent Security Deposit

The Province will, subject to the provisions of this RFP, invite the Proponent that has delivered a Proposal, including a Financial Submittal, that substantially satisfies the provisions of this RFP and the Definitive Project Agreement and that receives the highest ranking in accordance with the Ranking Process, and that otherwise is considered, in accordance with this RFP, to be eligible to be selected to receive such an invitation, to deliver the Preferred Proponent Security Deposit.

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

3.5.10 Preferred Proponent

The Province will, subject to the provisions of this RFP, select as the Preferred Proponent, the Proponent that:

- (a) has delivered a Proposal that substantially satisfies the provisions of this RFP and the Definitive Project Agreement;
- (b) has either:

- (i) delivered a Proposal that includes a Selected Risk Scope Level at Risk Scope Level 1 and a Price Proposal that is less than or equal to the Affordability Threshold; or
- (ii) delivered a Proposal that includes a Selected Risk Scope Level at Risk Scope Level 2 and a Price Proposal that, as adjusted in accordance with paragraph 1 of the Ranking Process, is less than or equal to the Affordability Threshold;
- (c) receives the highest ranking in accordance with the Ranking Process;
- (d) has delivered the Preferred Proponent Security Deposit; and
- (e) otherwise is considered eligible in accordance with this RFP.

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

3.6 Debriefing

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

3.7 Close Process

3.7.1 Finalize Terms of Project Agreement

It is the intention of the Province that any issues with respect to the Draft Project Agreement are to be finalized prior to the Closing Time so that the Definitive Project Agreement, once issued, will not be further modified and is to be executed by the Preferred Proponent without further negotiation or amendment, except for changes, modifications and additions:

- (a) relating to the determination by the Province regarding which parts, if any,

of the Proposal are to be incorporated by reference or otherwise, including as Proposal Extracts, into the Project Agreement or otherwise pursuant to express provisions of the Project Agreement and changes and additions as a consequence of or in connection with such incorporations;

- (b) to those provisions or parts of the Definitive Project Agreement which are indicated as being subject to completion or finalization or which the Province determines, in its discretion, require completion or finalization, including provisions which require:
 - (i) the modification or the insertion or addition of information relating to the Proponent's corporate and funding structure; and
 - (ii) the modification or the insertion or addition of information in order to reflect accurately the nature of the Proponent's relationships with its Principal Subcontractors and any other Subcontractors;
- (c) required in order to complete, based on the Proposal, any provision of the Definitive Project Agreement, including changes, modifications and additions contemplated in, referred to, or required under the terms of the Definitive Project Agreement;
- (d) that are necessary to create or provide for a duly authorized and legally complete and binding agreement;
- (e) that are necessary, in the discretion of the Province, to satisfy the provisions of Section 3 of Part 2 of Appendix of Volume 1 of this RFP; and
- (f) that are necessary solely to enhance clarity in legal drafting.

3.7.2 Finalize terms of Supply Contract

It is the intention of the Province that any issues with respect to the Draft Base Supply Contract are to be finalized prior to the Closing Time so that the Definitive Base Supply Contract once issued will not be further modified. It is also the intention of the Province

that, if the Preferred Proponent has not negotiated a Proponent Supply Contract in accordance with Part 2 of Volume 4 of this RFP, the Preferred Proponent will execute the Definitive Base Supply Contract without further negotiation or amendment except for changes, modifications, and additions approved by the Province in its discretion:

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

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

Where the Proponent has negotiated a Proponent Supply Contract in accordance with Part 2 of Volume 4 of this RFP, it is the intention of the Province that any issues with respect to the Proponent Supply Contract are to be finalized prior to the Closing Time, so that the Proponent Supply Contract once issued will not be further modified. It is also the intention of the Province that the Preferred Proponent will execute the Proponent Supply Contract without further negotiation or amendment except for changes, modifications, and additions approved by the Province in its discretion:

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

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

3.8 Timetable

The anticipated timetable for the Evergreen Line Selection Process is set out in Table 5.

Table 5 – Anticipated Timetable for the Evergreen Line Selection Process

Activity	Date
RFP Issued	November 9, 2011
Workshop – All Proponents Information Meeting	November 29, 2011
Proponents submit comments on Draft Project Agreement and Draft Base Supply Contract	December 30, 2011
Workshop A – One-on-one Draft Project Agreement meetings combined with one-on-one Draft Base Supply Contract meetings	Week commencing January 9, 2012
Revised Draft Project Agreement and, if applicable, revised Draft Base Supply Contract issued	Week commencing January 30, 2012
Interim Financial Review Deadline (if required)	Week commencing February 13, 2012
Proponents submit comments on revised Draft Project Agreement and, if applicable, revised Draft Base Supply Contract	Week commencing March 5, 2012
Workshop B – One-on-one revised Draft Project Agreement meetings combined with one on one revised Draft Base Supply Contract meetings	Week commencing March 12, 2012
Additional Workshop – One-on-one Interim Financial Review Meetings (if such meetings are held – at the discretion of the Province)	Week commencing March 12, 2012
Definitive Project Agreement and Definitive Base Supply Contract issued	Week commencing April 2, 2012
Technical Submittal Deadline	April 23, 2012
Advance Interest Rate Submittal Deadline	To be specified in the invitation described in Section 3.5.3(a)

Activity	Date
Closing Time	To be specified in the invitation described in Section 3.5.3(a)
Announcement of Preferred Proponent	Summer 2012
Execution of Project Agreement	Late summer 2012

4. General Information and Instructions

4.1 Background Investigations, Surveys and Studies

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

4.2 Investigations, Surveys and Studies by Proponents

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

Proponents are to co-ordinate any field work or any access to any privately owned part or parts of the Site and adjacent areas, or other lands that are not owned or administered by the Province, with the Province. All arrangements in respect of access and field work should be made through the Contact Person and with the written consent of the Province to ensure that inconvenience to land owners, tenants, road users, and other contractors is kept to a minimum and to ensure that environmental, safety and time constraints are taken into account.

Requests for access should be submitted as early as possible and in any event at least five Business Days in advance of the time for any proposed access, and is to include the requested access or field work date(s), time(s), location(s), and proposed field work or activities. The Province will provide no insurance or workers compensation coverage for any matter whatsoever to any Proponents, Proponent Team Members, or any of their respective directors, officers, employees, consultants, advisors or agents. Access to the Site and adjacent areas, or to any other facilities or premises, may be conditioned upon Proponents providing evidence acceptable to the Province that:

- (a) insurance and indemnities, acceptable to the Province, are in place and granted as the case may be;
- (b) the Proponent and relevant Proponent Team Members are

registered with the Workers' Compensation Board of British Columbia in accordance with applicable Laws and have employer's liability insurance in amounts and on terms and conditions acceptable to the Province; and

- (c) that a Representative of the Province will at the discretion of the Province be present during the Proponent's works and activities at the access locations. Without limiting the foregoing, access to all or any part of the lands owned, operated, or administered by CPR may be conditional on satisfaction of any additional requirements of CPR, as the case may be.

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

4.3 Data Room

The Province has established at the secure website having the URL <http://www.evergreenline-rfp.tran.gov.bc.ca> an electronic data room for the Project and the Evergreen Line Selection Process (the "**Data Room**").

The Province may, in its discretion, add, supplement, replace, modify and update information in the Data Room at any time and from time to time. Proponents are solely responsible for checking the Data Room frequently and on an ongoing basis, including for any such supplements, replacements, modifications, and updates. Proponents are solely responsible for ensuring that they have software which allows them access to, and use of, any information in the Data Room.

All information in the Data Room is subject to the Confidentiality Agreement and to the terms of use applicable to the Data Room.

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

If a Proponent has previously provided any document, including any report to the Province with respect to the Project or any part or parts of the Project, which is not already included in the Data Room, the Proponent will immediately notify the Province, and provide a copy of the document to the Province, or in the event that the document is not available to the Proponent, provide sufficient information to the Province as to enable the Province to identify the subject document, for its own purposes and to third parties, including other Proponents, and to consider and understand the content of the subject document and the implications of any failure to post the document.

4.4 Communications and Enquiries

Requests for any information, for clarification or for any other matters including relating to this RFP, any part of the Evergreen Line Selection Process, the Project, the Draft Project Agreement, the Draft Base Supply Contract, the Definitive Project Agreement, the Definitive Base Supply Contract, the Project Agreement, the Base Supply Contract or the preparation of their Proposals are to be made:

- (a) in writing using a Request for Information in accordance with the Requests for Information and Distribution of Information protocol set out in the Proponent Agreement;
- (b) in Workshops and Topic Meetings, and any additional meetings subject to the provisions of this RFP;
- (c) as may be otherwise expressly invited in writing by the Province;
and
- (d) as may be expressly permitted by this RFP, including in accordance with the Proposal submittal requirements set out in Appendix A of Volume 1 of this RFP,

and should be delivered by email, hand or courier delivery or facsimile to the Contact Person and clearly marked “Evergreen Line Rapid Transit Project RFP Enquiry”. All communications and enquiries to and responses from the Contact Person will be recorded.

The Province may in 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, hand or courier delivery or facsimile.

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 on or otherwise used in any way by a Proponent or by any Person or firm for any purpose.

The Province may in its discretion issue any communication, information or enquiry including any RFI or any Response to Proponents to all Proponents.

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

A 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 discretion respond to the RFI on a confidential basis.

If the Province in its discretion considers, including for purposes of fairness in or maintaining the integrity of the Evergreen Line Selection Process, that the Province should not respond to a 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 RTPs to all Proponents, the Province may notify the Proponent who submitted the RFI marked “Commercial in Confidence” 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 discretion may provide the Province's response to the RFI to all Proponents.

Proponents are not to communicate, including by media releases or interviews, and are to ensure that their Proponent Team Members, including their respective directors, officers, employees, consultants, advisors, representatives and agents do not communicate, in respect of any part or parts of the Project or the Evergreen Line Selection Process with the media or the public unless the prior written consent of the Province is obtained. Proponents are to promptly notify the Province of any requests for interviews or other requests from media received by the Proponent or any of its Proponent Team Members.

5. General Matters

5.1 Amendment of Evergreen Line Selection Process

This RFP may be amended only by Addenda issued by the Province. The Province may in its discretion at any time, and from time to time, including after the Technical Submittal Deadline:

- (a) modify, replace, substitute, postpone, extend, cancel or suspend, temporarily or otherwise, any or all phases of the Evergreen Line Selection Process, including this RFP phase;
- (b) re-issue this or any request for proposals, or issue or implement any other selection process for or take any steps or actions to procure the delivery of the same or a similar Project or any part or parts of the Work, including entering into negotiations with any Person;
- (c) amend any part or parts of this RFP, including the Draft Project Agreement, the Definitive Project Agreement, the Draft Base Supply Contract and/or the Definitive Base Supply Contract, the scope or any other part of the Project or the Work, the dates, schedules, timelines, Technical Submittal Deadline, Technical Supplement Submittal Deadline, Advance Interest Rate Submittal Deadline, Closing Location, Closing Time, Evergreen Line Selection Process or any other provision or provisions of this RFP including by adding to, reducing or otherwise modifying the evaluation process, including the Ranking Process, or by suspending, postponing, canceling or re-issuing, all or any part of this RFP.

5.2 No Contract

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

5.3 No Obligation to Proceed or Make any Selection

The Province has no obligation or duty, express or implied, in any way, including any actual or implied duty of good faith or actual or implied duty of fairness express or implied, whether in contract, tort or otherwise, including:

- (a) if the Province receives only one Proposal that substantially satisfies the provisions of this RFP and the Definitive Project Agreement; or
- (b) if only one Proponent submits a Proposal that includes a Price Proposal or, if applicable, a Price Proposal as adjusted in accordance with paragraph 1 of the Ranking Process that, in either case, is less than or equal to the Affordability Threshold; or
- (c) if only one Proponent remains to be considered for selection as the Preferred Proponent; or
- (d) if the Province selects a Preferred Proponent;

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

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

- (a) accept, consider, review or evaluate any one or all Proposals, including any one or all Technical Submittals, Technical Supplements, Advance Interest Rate Submittals or Financial Submittals (including, for certainty, any Proposal that includes a Price Proposal or, if applicable, a Price Proposal as adjusted in accordance with paragraph 1 of the Ranking Process that, in either case, exceeds the Affordability Threshold); or
- (b) to extend any invitations, or to consider any Proponent, for selection as a Preferred Proponent; or
- (c) to select a Preferred Proponent, or to continue with a Preferred

Proponent; or

- (d) to accept the Proposal that receives the highest ranking in accordance with the Ranking Process, or any Proposal.

The Province may in its discretion:

- (a) notify any Proponent or any Proponent Team Member or any prospective Proponent Team Member that it is or has become ineligible to participate in or continue participating in the RFP phase or any other part of the Evergreen Line Selection Process;
- (b) accept or reject any or all Technical Submittals, Technical Supplements, Advance Interest Rate Submittals, Financial Submittals or Proposals, including any that do not satisfy the provisions set out in this RFP or for which necessary orders, authorizations, and approvals, including governmental authorizations, orders and approvals, have not been obtained.

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

- (a) terminate the Evergreen Line Selection Process, including this RFP;
- (b) take any steps that the Province in its discretion considers to be in the interests of, or advantageous to the Province, including implement or issue any other procurement or other process including a negotiation process for, or to proceed in any other manner whatsoever, at any time and from time to time, with any part or parts of the Project or Work, including any part or parts of the design, construction or financing of any part or parts of the lands and infrastructure comprising or anticipated to comprise the Project (including where none of the Proponents submits a Proposal that includes a Price Proposal or, if applicable, a Price Proposal

as adjusted in accordance with paragraph 1 of the Ranking Process that, in either case, is less than or equal to the Affordability Threshold).

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

A negotiation process referenced in this Section 5.3 may:

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

5.4 Proposal Review and Evaluation

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

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

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

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

- (a) disregard or waive 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 Proposal, and consider and evaluate, including any more complete, supplementary and additional information or documentation, that Proposal;
- (b) independently consider, investigate, research, analyze, request or verify any information or documentation whether or not contained in any Proposal including in connection with the verification of any information contained within a Proposal;
- (c) conduct credit, credit reference, reference, criminal record, litigation, bankruptcy, tax payer information and other checks and obtain references from any Persons, including Persons other than those listed by Proponents in any part of their Proposals;
- (d) not proceed to review and evaluate or discontinue the evaluation of any Proposal or part thereof, including any Technical Submittal, Technical

Supplement, Advance Interest Rate Submittal or Financial Submittal and confirm the ineligibility of the Proponent to continue to participate in the Evergreen Line Selection Process;

- (e) reject in whole or in part any Technical Supplement, if any are invited;
- (f) seek clarification, rectification or more complete, supplementary, replacement or additional information or documentation from any Proponent or in connection with any Proposal, including with any Technical Submittal, Technical Supplement, Advance Interest Rate Submittal or Financial Submittal or any part of their component packages;
or
- (g) carry out any other background checks or investigations.

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

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

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

Proponents will not submit any clarifications, rectifications, information or documentation

in respect of the Technical Submittal after the Technical Submittal Deadline, in respect of the Advance Interest Rate Submittal after the Advance Interest Rate Submittal Deadline and in respect of the Financial Submittal after the Closing Time, without the prior approval of the Province or at the invitation or request of the Province.

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

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

The Province's decision on whether or not a Proposal substantially satisfies the provisions of this RFP and the Definitive Project Agreement will be final and the Province need not consult with the Proponent in making its decision.

5.5 Participation in the Evergreen Line Selection Process

If a Proponent fails to observe any provision of this RFP or to comply with any term of the Proponent Agreement, or fails to ensure that its Proponent Team Members observe the provisions of this RFP or of the Proponent Agreement, or the Province becomes aware through investigations or checks, or otherwise, of false statements, criminal affiliations or activities by a Proponent or any Proponent Team Member, as the case may be, the Province may, in its discretion at any time and from time to time, including during the review and evaluation, including ranking, of any Proposal, without prejudice to any other provision of this RFP:

- (a) confirm the Proponent's ineligibility to continue to participate in the Evergreen Line Selection Process;
- (b) decline to or cease to review, evaluate or rank, or reject outright the Proponent's Proposal, including the Technical Submittal, the Technical Supplement, if any, the Advance Interest Rate Submittal, or Financial

Submittal, as the case may be;

- (c) not extend an invitation to the Proponent to submit a Financial Submittal, regardless of whether or not the Proponent has delivered a Technical Submittal that substantially satisfies the provisions of this RFP and the Definitive Project Agreement;
- (d) decline to consider a Proponent for selection as a Preferred Proponent, regardless of whether or not the Proponent receives the highest ranking in accordance with the Ranking Process;
- (e) decline to continue with a Preferred Proponent, if one has been selected and designated; or
- (f) disregard any defect, deficiency or irregularity, including any alteration, qualification, omission, error, inaccuracy, misstatement, non-compliance or non-conformity or other defect, deficiency or irregularity in a Proposal on such terms and conditions as the Province may in its discretion require to satisfy the Province's consideration of the interests of the Province, including the public interest, or of any other matter that in the Province's discretion is appropriate in respect of the Evergreen Line Selection Process.

5.6 Conflicts in Documents

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

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

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

5.7 Confidentiality and Freedom of Information and Protection of Privacy

All documents and other records in the custody of or under the control of either or both of Partnerships BC and the Province are subject to the Freedom of Information and Protection of Privacy Act (“FOIPPA”).

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

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

Each Proponent is responsible for ensuring that in preparing and submitting its Proposal 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 Proposal for the purposes of or in connection with this RFP and the Evergreen Line Selection Process.

5.8 No Collusion

Proponents and Proponent Team Members will not discuss or communicate, directly or indirectly, with any other Proponent or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent, including any Proponent Team Member of such other Proponent regarding the preparation, content or representation of

their Proposals.

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

5.9 No Lobbying

Proponents and Proponent Team Members, and their respective directors, officers, employees, consultants, agents, advisors and representatives, will not in relation to the Project, this RFP, the Draft Project Agreement, the Definitive Project Agreement, the Project Agreement, the Supply Contract, or the Evergreen Line Selection Process, engage in any form of political or other lobbying whatsoever, and will not, except as expressly contemplated by this RFP, attempt to communicate in relation to any of these matters, directly or indirectly, with any representative of Partnerships BC or the Province, including any minister or deputy minister of the Province, any member of the Executive Council, any members of the Legislative Assembly, TransLink, any Restricted Parties, or any director, officer, employee, agent, advisor, staff member, consultant or representative of any of the foregoing, as applicable, for any purpose whatsoever, including for purposes of:

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

- (e) criticizing the Proposals of other Proponents.

5.10 Disclosure

The following information has been publicly disclosed by posting it at <http://www.evergreenline.gov.bc.ca> or at www.partnershipsbc.ca:

- (a) the Request for Qualifications;
- (b) the respondent team names used by the Short-Listed Respondents; and
- (c) the Relationship Review Process Description.

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

- (d) this RFP;
- (e) the name of a Preferred Proponent; and
- (f) the value for money assessment to be published shortly after Financial Close.

The Draft Project Agreement is confidential and is not intended to be made publicly available unless otherwise required by government policy or applicable Laws. The Project Agreement, excluding those portions that may be severed pursuant to the FOIPPA, will be disclosed publicly following Financial Close.

5.11 Changes to Proponents and Proponent Team Members

Subject to the provisions of this RFP, Changes to the Proponent or any Proponent Team Member either before or after delivery of the Proposal, including the Technical Submittal or the Financial Submittal, may only be made with the permission of the Province. The Technical Submittal, the Technical Supplement, if any, and the Financial Submittal must each be submitted on the basis of the Proponent Team Members without Change(s) unless the Province has previously provided its consent to such Change(s) in

accordance with this Section 5.11.

If for any reason such a Change occurs or a Proponent wishes to make or requires that such a Change be made or has knowledge that such a Change is likely to occur, the Proponent will promptly deliver a written request to the Province for its consent to the Change.

The Proponent 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 in its discretion whether the Change, if consented to by the Province, will result in the Proponent and its Proponent Team Members, considered separately and as a whole, meeting or exceeding the suitability, knowledge, skills, resources, experience, qualifications and abilities of the Proponent and its Proponent Team Members, considered separately and as a whole, before the Change. The Proponent 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 additional information and documentation, including the request for a proposed Change, may in the discretion of the Province be included in the evaluation of the Proponent's Proposal.

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

Without prejudice to the Proponent's obligation to request the Province's consent to any Change pursuant to this Section 5.11, the Proponent will immediately notify the Province if, after submission of the Proposal or any of the Technical Submittal, Technical Supplement, if any, Advance Interest Rate Submittal, or Financial Submittal, a material change in circumstances, including a Change, occurs which may:

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

Such a change may not automatically render a Proponent ineligible to continue to participate in the Evergreen Line Selection Process. The Province's assessment, in its discretion, as to whether or not a Proponent is eligible to continue to participate in the Evergreen Line Selection Process as a result of such a change will be final and binding.

5.12 Relationships

5.12.1 Use or Inclusion of Restricted Parties

If the Proponent or any of its Proponent Team Members is a Restricted Party, or if the Proponent or any of its Proponent Team Members uses a Restricted Party:

- (a) to advise or otherwise assist it in connection with the Proponent's participation in the Evergreen Line Selection Process, including in connection with the preparation of the Proponent's Qualification Response or Proposal; or
- (b) as an employee, advisor or consultant,

whether directly or indirectly, the Province in its discretion may:

- (c) notify that Proponent that it is, or has become ineligible to participate in, or to continue participating in the RFP phase or any other phase of the Evergreen Line Selection Process; or
- (d) impose such conditions on that Proponent's participation or continued participation in the Evergreen Line Selection Process as the Province may consider to be in the public interest, or otherwise appropriate,

Each Proponent is responsible for ensuring that neither it nor any of its Proponent Team Members is or includes or uses, consults or seeks advice from any Restricted Party.

5.12.2 Restricted Parties

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

- (a) Allman Safety Consulting Corp.

- (b) AMEC Earth and Environmental Ltd.
- (c) Anthony Steadman and Associates Inc.
- (d) Arbortech Consulting Ltd.
- (e) BKL Consultants Ltd.
- (f) Boughton Law Corporation
- (g) CH2M Hill Canada Limited
- (h) Clark Wilson LLP
- (i) Cornerstone Planning Group
- (j) Delcan Corp.
- (k) ECL Envirowest Consultants Ltd.
- (l) Freshfields Bruckhaus Deringer LLP
- (m) Gannett Fleming Inc.
- (n) Golder Associates Ltd.
- (o) Halcrow Consulting Inc.
- (p) Hatch Ltd.
- (q) Hemmera Envirochem Inc.
- (r) Kirk & Co Consulting Ltd.
- (s) KPMG LLP
- (t) Lea + Elliott, Inc.
- (u) Levelton Consultants Ltd.
- (v) Locke & Locke Inc.

- (w) Meyers Norris Penny LLP
- (x) Miller Thomson LLP
- (y) Partnerships British Columbia Inc.
- (z) Pierce Lefebvre Consulting
- (aa) PricewaterhouseCoopers LLP
- (bb) RWDI Air Inc.
- (cc) Sereca Fire Consulting Ltd.
- (dd) VIA Architecture Inc.
- (ee) Westco Consulting Inc.

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

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

5.12.3 Shared Use

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

5.12.4 Exclusivity

Key Firms, Key Individuals, Financial Sponsors and Equity Members may participate as members of and are to be exclusive to only one Proponent Team.

5.12.5 Conflict of Interest Adjudicator

The Province has appointed a Conflict of Interest Adjudicator to make decisions on conflicts of interest and unfair advantage and other relationships, including Connections (as defined in Section 5.12.8 of Volume 1 of this RFP), involving participants and prospective participants in the Evergreen Line 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 Evergreen Line Selection Process, is final and binding on the Person requesting the ruling and on all other Persons, including all Proponents, Proponent Teams and Proponent Team Members.

5.12.6 Request for Advance Rulings

A Proponent or a current or prospective Proponent Team Member or a current or prospective advisor or consultant to a Proponent or Proponent Team Member who has any concerns regarding whether it or any of its current or prospective employees, advisors or consultants 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 Proponent or a current or prospective Proponent Team Member or a current or prospective advisor or consultant to a Proponent or Proponent Team Member should submit to the Contact Person by email, hand or courier delivery or facsimile, not less than ten (10) days prior to the Closing Time, all relevant information and documentation, including the following information:

- (a) names and contact information of the Proponent 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 provisions of this RFP, including Section 5.7 of Volume 1 of this RFP, all requests for advance rulings will be treated in confidence. If any Person, including any Proponent or current or prospective Proponent Team Member or advisor or consultant, becomes a Restricted Party, it may be listed in an Addendum to this RFP or in subsequent Evergreen Line Selection Process documents as a Restricted Party.

5.12.7 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 endeavour to provide the Conflict of Interest Adjudicator with relevant information in its possession, including relevant information in its possession about the participation of the 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.

5.12.8 Relationships

Without limiting Section 5.8 of Volume 1 of this RFP, the Province in its discretion at any time and from time to time may notify either or both of the relevant Proponents that they are ineligible to participate or continue participating in the Evergreen Line Selection Process if a Connection is identified between them or any of their respective Proponent Team Members, unless the Province is satisfied in its discretion that the parties between whom the Connection has been identified are not sharing or able to share information nor coordinating or able to coordinate their activities in connection with the Evergreen Line Selection Process in a manner that may have the effect of materially adversely

affecting the competitiveness or integrity of the Evergreen Line Selection Process. In the event that the Province is not so satisfied, the determination as to whether either or both of the relevant Proponents, or which of the relevant Proponents, are ineligible to participate or continue participating in the Evergreen Line Selection Process may be made by the Province on any basis that the Province in its discretion considers appropriate and to be solely in the best interest of the Province or the Evergreen Line Selection Process.

A Proponent or Proponent Team Member or a prospective Proponent or Proponent Team Member who has any concerns, whether before or after the Closing 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 in 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 Proponent or Proponent Team Member or a prospective Proponent or Proponent Team Member is to submit to the Contact Person by email, hand or courier delivery or facsimile all relevant information and documentation, including the following information and documentation:

- (a) names and contact information of the Proponent or Proponent Team Member or prospective Proponent or Proponent Team Member making the disclosure and the other relevant Proponent or Proponent Team Member;
- (b) a detailed description of the relationship or other circumstances that may constitute a Connection;
- (c) a detailed description of the steps taken to date and future steps proposed to be taken to eliminate or mitigate any material adverse or potential material adverse effect of the Connection on the competitiveness or integrity of the Evergreen Line 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 in its discretion that no such Connection exists or, if it does, that measures satisfactory to the Province in its discretion have been or will be implemented to eliminate or mitigate any risk to the competitiveness or integrity of the Evergreen Line Selection Process.

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

- (e) any connection arising directly or indirectly through the ownership or holding of shares or other equity interests, including the ownership or holding by a Proponent or any of its Proponent Team Members of shares or other equity interests in another Proponent or any of its Proponent Team Members and including the ownership or holding by any Person, whether direct or indirect, of shares or other equity interests in more than one Proponent or Proponent Team Members of more than one Proponent; 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 Proponent(s) or Proponent Team Member(s) in connection with the Evergreen Line Selection Process will not be considered to fall within this paragraph (a);
- (f) any comparison, transfer or exchange of knowledge or information in relation to the Project or the Evergreen Line Selection Process or potential for the comparison, transfer or exchange of such knowledge or information, whether direct or indirect including by way of common directors, officers, employees, consultants, advisors, agents or representatives or any other arrangement, between a Proponent or any of its Proponent Team Members and another Proponent or any of its Proponent Team Members; or
- (g) any other connection or relationship between a Proponent or any of its Proponent Team Members and another Proponent or any of its Proponent Team Members which the Province in its discretion considers has or may have the effect of materially adversely affecting the competitiveness or integrity of the Evergreen Line Selection Process.

5.13 Delivery and Receipt

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

None of the Province, nor its employees, servants, agents, officials or representatives will be in any way responsible or liable or makes any guarantee, warranty or representation whatsoever as to:

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

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

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

5.14 Proponent Team Members and Subcontractors

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

5.15 No Reliance

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

Without limiting the foregoing, any Geotechnical Data, including borehole logs, test pit logs and monitoring data provided by or on behalf of the Province, including the information described in Section 2.2.1 of Volume 1 of this RFP, reflect only the observations which were made at the specific locations described and at the specific times recorded, and may not be representative or indicative of anticipated or actual conditions encountered either at specific locations or immediately adjacent thereto or, with respect to groundwater and other anticipated or actual conditions, at any other times.

No actions or omissions, communications or responses, including Information, statements, opinions, comments, consents, waivers, acceptance or approvals made or raised by or on behalf of the Province or any of the Representatives, the Proponent, the Proponent Team Members, any of the Proponents or their Proponent Team Members, or any Person, whether positive or negative, including if set out in any document or information provided by the Proponent or its Proponent Team Members, any of the Proponents or any their Proponent Team Members, in relation to any matter, including the Evergreen Line Selection Process, this RFP, the Draft Project Agreement, the Definitive Project Agreement, the Project Agreement, the Draft Base Supply Contract, the Definitive Base Supply Contract, the Supply Contract or the Project, at any time or times during the Evergreen Line Selection Process, including during this RFP phase or during or before any Workshop or Topic Meeting, will be binding on the Province or be

relied upon in any way by the Proponent, or the Proponent Team Members for any purpose whatsoever, be deemed or considered to be an indication of a preference by the Province or any Representative, even if adopted by the Proponent or another of the Proponents, or will amend or waive any provision of this RFP in any way for any purpose whatsoever, unless and only to the extent expressly incorporated by Addendum, or expressly set out in a Response to Proponents issued by the Province to the Proponents.

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

Nothing in this RFP or otherwise relieves Proponents from undertaking their own investigations and examinations, including as they consider necessary, desirable, beneficial, or appropriate, and developing their own analysis, interpretations, opinions and conclusions, including in respect of any information described in Section 2.2.1 of Volume 1 of this RFP, bore hole logs, test pit logs and monitoring data provided by or on behalf of the Province, with respect to the preparation and delivery of their Proposals, and with respect to this RFP, the Draft Project Agreement, the Definitive Project Agreement, the Project Agreement, the Draft Base Supply Contract, the Definitive Base Supply Contract, the Supply Contract, the Design-Build Requirements and the Project.

Any and all use of or reliance upon, in any way whatsoever, any Information, including as described in this Section 5.15 of Volume 1 of this RFP or any statements, representations, assurances, commitments or agreements which Proponents believe they may have received or reached with any stakeholders, interested parties, or other Persons will be at their sole risk and without recourse of any kind whatsoever against the Province or any of the Representatives.

5.16 No Liability

Without limiting any other provision of this RFP and except to the limited extent

expressly provided in the Proponent Agreement, neither the Province nor the Representatives will have any responsibility, obligation or liability whatsoever, in contract, tort or otherwise, for or in respect of any Claims, reimbursement, costs, expenses, damages or losses, including loss of profits or loss of opportunity, incurred or suffered in any way by any Person, including any Proponent, Proponent Team Member, prospective Proponent Team Member or any of their respective contractors, sub-contractors, directors, officers, employees, consultants, advisors or agents, for any matter whatsoever arising out of, in connection with or relating in any way to the Evergreen Line Selection Process, or any part of the Evergreen Line Selection Process, including this RFP, the Supply Contract or its terms, or the development, completeness, accuracy, adequacy and sufficiency of the terms of the Supply Contract, matters or issues contemplated or considered in the opinion of the Fairness Reviewer, the Derivative Activities, or one or more Derivative Activity, or any of them, any Proponent or Proponents, the Proposal, the Technical Submittal, the Technical Supplement, if any, the Advance Interest Rate Submittal or Financial Submittal, or any Proposal, any Shared Use Person or arrangements involving a Shared use Person, any use of or reliance on the Restricted Parties list, any identification of or failure to identify, in a timely manner or at all, any Person as a Restricted Party, any ruling or advice of or failure to provide a ruling or advice, in a timely manner or at all, of the Conflict of Interest Adjudicator.

5.17 Dispute Resolution

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

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

5.18 Fairness Reviewer

A Fairness Reviewer has been appointed by the Province with responsibility to review

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

6. Interpretation

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

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

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

All monetary amounts herein refer to lawful currency of Canada.

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

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

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

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

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

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

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

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

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

7. Definitions

In this RFP, unless the context otherwise expressly requires,

- (a) the following definitions apply to the following terms, and
- (b) any other capitalized term has the meaning given to that term in the Definitive Project Agreement, including Schedule 1 and Article 1 of Part 1 of Schedule 4.

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

“**Adjustment Credit Facilities**” means Senior Credit Facilities and any reinvestment product associated with the unused portion of a Senior Credit Facility proposed to be adopted by a Proponent but excludes Junior Credit Facilities, Partner Capital, Share Capital, short term cash on deposit or any other investment product.

“**Advance Interest Rate Submittal Deadline**” means the date and time specified as such in the invitation to submit Financial Submittals described in Section 3.5.3(a) of Volume 1 of this RFP, as such date and time may be amended from time to time by the Province in accordance with this RFP.

“**Affordability Threshold**” means the amount referred to in Section 3.1.2 of Volume 1 of this RFP.

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

“**Alignment Lands**” means the lands and land interests along the Alignment as listed in Part 1 of Appendix D of Volume 1 of this RFP and shown on the Alignment Lands Drawings.

“**Alignment Lands Drawings**” means the drawings located in section 0620 – Alignment Lands Drawings of the Data Room.

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

“Base Interest Rate” means the underlying Government of Canada bond yield or other reference rate proposed by a Proponent and accepted by the Province (excluding all margins and spreads) in accordance with the provisions of this RFP.

“Base Interest Rate Set Protocol” has the meaning given in Section 4.2.4 of Table A-7 (Package 4 Content and Requirements) of Appendix A of Volume 1 of this RFP.

“Benchmark Securities” has the meaning given in Section 4.1 b) of Appendix A of Volume 1 of this RFP.

“BCEAO” means Environmental Assessment Office continued as an office of the government under the *Environmental Assessment Act* (British Columbia).

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

“Canadian Environmental Assessment Act” or **“CEAA”** means the *Canadian Environmental Assessment Act*, R.S.C. 1992, c. 37.

“Change” includes, in respect of a Proponent or Proponent Team or Proponent Team Member, a change in ownership (including by way of shareholdings, ownership of interests or units in a general or limited partnership or otherwise) or control or a redesignation, modification, removal, replacement, reorganization, addition, assignment or substitution of or in respect of any of them, including such a change affecting, relating to or connected with any guarantor of a Proponent or Proponent Team Member and **“Changed”** and **“Changes”** has a corresponding meaning.

“Claims” includes claims, actions, proceedings, causes of action, suits, debts, dues, accounts, bonds, warranties, claims over, indemnities, covenants, contracts, losses (including consequential losses), damages, remuneration, compensation, costs, expenses, grievances, executions, judgments, obligations, liabilities (including those relating to or arising out of loss of opportunity or loss of anticipated profit), rights and demands whatsoever, whether actual, pending, contingent or potential, whether express or implied, whether present or future and whether known or unknown, and all related

costs and expenses, including legal fees on a full indemnity basis, howsoever arising, including pursuant to law, equity, contract, tort, statutory or common law duty, or to any actual or implied duty of good faith or actual or implied duty of fairness, or otherwise.

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

“Closing Time” means the date and time specified as such in the invitation to submit Financial Submittals described in Section 3.5.3(a) of Volume 1 of this RFP, as such date and time may be amended from time to time by the Province in accordance with this RFP.

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

“Commitment Letter” means the letter or letters, as applicable, in the form of and containing the terms set out in the form of letter contained in Form 4 of Volume 3 of this RFP.

“Confidentiality Agreement” means the form of Confidentiality Agreement set out in Appendix E to the RFQ, executed and delivered by the Proponent in connection with the RFQ, as supplemented by the terms of the Proponent Agreement including section 12 of the Proponent Agreement.

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

Infrastructure, or any part of any of them, or the requirements of any Governmental Authority, or any requirement of any of them, and any other information which by written notice from the Province or any of the Representatives at the time of disclosure to the recipient was required to be kept confidential, and further any other information whether in hard copy, digital, electronic, verbal or other form containing or based on any such information.

“Conflict of Interest Adjudicator” means the Conflict of Interest Adjudicator described in Section 5.12.5 of Volume 1 of this RFP.

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

“Core Terms” means all the terms of the Draft Base Supply Contract which are not identified as Variable Terms.

“CPR” means the Canadian Pacific Railway.

“Credit Spread Benchmark” has the meaning given in Section 4.3 b) of Appendix A of Volume 1 of this RFP.

“Credit Spread Hold Facilities” has the meaning given in Section 3.4.3(c) of Volume 1 of this RFP.

“Credit Spread Refresh Facilities” has the meaning given in Section 3.4.3(b) of Volume 1 of this RFP.

“Credit Spread Refresh Lock-in Date” has the meaning given in Section 3.4.3(b) of Volume 1 of this RFP.

“Credit Spread Refresh Protocol” has the meaning given in Section 4.3 f) of Appendix A of Volume 1 of this RFP.

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

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

accordance with this RFP.

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

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

“Designated Lands” means the lands or land interests forming part of the Alignment Lands that are selected by a Proponent in accordance with the provisions of Appendix A of Volume 1 of this RFP.

“Documents Escrow Agreement” means the form of escrow agreement set out in Form 5 of Volume 3 of this RFP.

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

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

“Environmental Assessment Act” means the *Environmental Assessment Act*, S.B.C. 2002, c. 43.

“Equity” means Junior Debt and/or Partner Capital and/or Share Capital.

“Equity Member” means individuals, corporations, other entities or the underlying legal entities that make up joint ventures or partnerships, in any such case, identified in a Proponent’s Proposal as providing Equity *directly* to the Primary Contractor.

“Evergreen Line” means the entire advanced light rapid transit system to be designed, constructed, supplied, tested and commissioned in accordance with the Project Agreement.

“Evergreen Line Selection Process” means:

- (a) the procurement process for the Project and any part or phase or phases of the procurement process, and includes this RFP and the RFQ, any and all processes relating to the RFQ and this RFP, the Workshops, Topic Meetings, any additional meetings and any consultations, meetings and participation relating to or arising from any of the Workshops, Topic Meetings or additional meetings, other consultative and facilitative/facilitated process including processes relating to procurement of the Evergreen ATC System, relationship review processes, including processes conducted and reports, determinations, rulings, assessments and opinions issued by the Fairness Reviewer, Conflict of Interest Adjudicator, or by the Province or committees of the Province pursuant to any relationship review process or policies referenced in the RFQ or this RFP, 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, exclusion, disqualification, determinations, opinions, rulings, reports, comments, advice, decisions, including rejection or acceptance of any responses, submissions, information, documents, Qualification Responses, Proposals, or any other proposals, whether they, or any of them, substantially satisfy the provisions of this RFP or otherwise,

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

“Fairness Reviewer” means the Person, appointed by the Province as the Fairness Reviewer, and described as such in Section 5.18 of Volume 1 of this RFP.

“Financial Close” means the date on which the Project Agreement is entered into between the Province and the Primary Contractor 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.

“Financial Model” means a financial model as described in Section 4.5 of the Package 4 Table set out in Appendix A of Volume 1 of this RFP.

“Financial Sponsor” means an equity owner or other related entity providing financial support to a Proponent or Key Firm by way of guarantee or commitment to provide equity or dedicated credit facilities to support the participation by the Proponent or Key Firm in the Evergreen Line Selection Process and the Project as described in the Proponent’s Proposal.

“Financial Submittal” means the documentation and information comprising Packages 1 and 5 as described in this RFP, including in Appendix A of Volume 1 of this RFP, and submitted in accordance with this RFP, together with all clarifications, rectifications, and more complete, supplementary, replacement and additional information and documentation submitted by the Proponent from and after the Closing Time in response to any request of the Province.

“Form Y” means Form Y set out at Part 3 of Appendix D of Volume 1 of this RFP.

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

“Geotechnical Baseline Report” means the report dated October 20, 2011 entitled ‘Geotechnical Baseline Report for Bored Tunnels’ located in the Data Room.

“Information” means any and all information including facts, records, plans, designs, calculations, figures, models, documents, drawings, descriptions of soils, site, geotechnical, geological or subsurface conditions, dewatering, opinions or interpretations based on existing or assumed information, previous studies or optimization, layouts, the Reference Concept Alignment, preliminary design drawings, projections, traffic information, volume counts, classification counts, data, including origin, destination and vehicle jurisdiction data, speed and travel time information, statements or estimates of quantities of any works, assumptions or descriptions as to means or methods, availability and quality of materials, photographs, maps,

specifications, reports, studies, correspondence, working papers, drafts, notes, requirements of stakeholders or interested parties, investigations, statements, representations, opinions, interpretations, analyses, and conclusions in electronic, digital, hard copy or any other form whatsoever, which is given or made available, directly or indirectly, to Proponents and to Proponent Team Members, or any of them, including on the RFQ Data DVD, by posting in the Data Room, or during or before any Workshop or Topic Meeting, whether before or after issuance of this RFP, by or on behalf of the Province or any of the Representatives and related in any way to the Project, the Evergreen Line Selection Process, including this RFP, the Draft Project Agreement, the Draft Base Supply Contract, the Definitive Project Agreement, the Definitive Base Supply Contract, the Project Agreement, the Supply Contract, a Proposal, the Work, the Site, the Project Infrastructure, or any part of any of them, or the requirements of any Governmental Authority, or any requirement of any of any of them.

“Interim Financial Review” means the process of review described at Section 3.2.3 of Volume 1 of this RFP.

“Interim Financial Review Deadline” means the date and time specified as such in the invitation to participate in an Interim Financial Review Meeting described in Section 3.2.3 of Volume 1 of this RFP, as such date and time may be amended from time to time by the Province in accordance with this RFP.

“Interim Financial Review Documents” means the documents to be completed by Proponents referred to at Section 3.2.3 of Volume 1 of this RFP, the forms of which are attached at Appendix E of Volume 1 of this RFP.

“Interim Financial Review Meetings” means the meeting or meetings with Proponents referred to at Sections 3.2.1 and 3.2.3 of Volume 1 of this RFP.

“Irrevocability Agreement” means the form of irrevocability agreement set out in Form 6 of Volume 3 of this RFP.

“Key Firm” means a Person exclusive to one Proponent identified by a Proponent in its Proposal to have primary responsibility for the performance of one or more of the Key Project Activities in the event that the Proponent becomes the Primary Contractor. A Key Firm may be a Proponent, an entity comprised in a Proponent or a subcontractor or

consultant to a Proponent.

“Key Individual” means a Person exclusive to one Proponent identified by a Proponent in its Proposal to hold a Key Position in the event that the Proponent becomes the Primary Contractor. A Key Individual may be an employee of, subcontractor or consultant to a Proponent or a Key Firm (other than the Key Individuals that hold the Key Positions referred to in paragraphs (a) and (c) of the definition thereof, who must be employees of, or independent contractors directly engaged by, the Primary Contractor). The same Person is not to be nominated to more than one Key Position.

“Key Position” means each of the following positions:

- (a) Design-Build Director;
- (b) Design Manager;
- (c) Construction Manager;
- (d) Systems Manager; and
- (e) Project Architect,

and such other positions as may be specified as being Key Positions by the Province as part of the Evergreen Line Selection Process.

“Key Project Activities” means the following key activities involved in carrying out the Project:

- (a) project management;
- (b) civil works design;
- (c) civil works construction;
- (d) Systems design;
- (e) Systems construction/installation;
- (f) integration and configuration of Project components including systems

and subsystems; and

- (g) testing and commissioning,

and such other activities as may be specified as being Key Project Activities as part of the Evergreen Line Selection Process.

“Limited Notice to Proceed Agreement” means the form of agreement set out in Form 7 of Volume 3 of this RFP.

“Modification Proposal Notice” has the meaning given to such term in paragraph 1 of Appendix C of Volume 1 of this RFP.

“Other Lands” means the lands or land interests that are in addition to the Designated Lands and the Supplementary Lands and which are determined to be important to the continuous and uninterrupted delivery of the Work in accordance with paragraph 3 of Part 2 of Appendix D of Volume 1 of this RFP.

“Partnerships BC” means Partnerships British Columbia Inc.

“Person” means “person” as defined in the Draft Project Agreement.

“Preferred Proponent” means the Proponent described in Sections 3.5.9 and 3.5.10 of Volume 1 of this RFP.

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

“Price Proposal” means the price proposal of a Proponent, set out in Package 4 of the Financial Submittal of Proponents referred to at Section 3.1.1 of Volume 1 of this RFP.

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

“Project Agreement” means:

- (a) the Definitive Project Agreement, as may be changed, modified or added to in accordance with Section 3.7.1 of Volume 1 of this RFP; and
- (b) after execution, the agreement or agreements, as the case may be, executed and delivered by the Province and the Primary Contractor for the delivery of the Project.

“Proponent” means a Short-listed Respondent, as that entity and its Proponent Team Members, or any of them, may be changed or undergo a Change subject to and in accordance with this RFP, including subject to and in accordance with the permission of the Province.

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

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

“Proponent Supply Contract Development Process” means the process for the development of the Variable Terms for the Proponent Supply Contract as described in paragraph 2 of Part 2 of Volume 4 of this RFP.

“Proponent Team Member” includes the Proponent, any Key Firm, any Key Individual, any Financial Sponsor and any Equity Member in each case as Changed from time to time in accordance with and subject to the provisions of Volume 1 of this RFP.

“Proposal” means:

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

Supplement Submittal and any Advance Interest Rate Submittal as applicable.

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

“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 the RFQ, including from and after the Closing Time (as defined in the RFQ) in response to any request of the Province.

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

“Reference Concept Alignment” means the reference concept alignment developed by the Province for the Project which includes alignment design concepts and the configuration and location of Guideways that have been used to obtain certain approvals, station locations and other matters as described in the Reference Concept Alignment Drawings.

“Reference Concept Alignment Drawings” means the reference concept alignment drawings which describe the Reference Concept Alignment located in section 0905 – Reference Concept of the Data Room.

“Relationship Review Process Description” means the Relationship Review Process Description posted by the Province at www.evergreenline.gov.bc.ca.

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

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

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

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

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

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

and as a result has an actual conflict of interest or may provide a material unfair advantage to any Proponent or Proponent Team Member or may provide Confidential Information to any Proponent or Proponent Team Member that is not, or would not reasonably be expected to be, available to other Proponents or their Proponent Team Members and includes, if the Person is a corporate entity 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 5.12.2 of Volume 1 of this RFP, and any other Person that may, from time to time, be specifically identified by the Province as Restricted Parties, as **“Restricted Party”** means any one of such Persons.

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

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

“RFP Title” means **“Evergreen Line Rapid Transit Project Request for Proposals”** as specified on the Summary of Key Information as it may be amended from time to time by the Province in accordance with this RFP.

“RFQ” or **“Request for Qualifications”** means the Request for Qualifications issued by the Province on and dated July 5, 2010 entitled Evergreen Line Rapid Transit Project Request for Qualifications including all “Addenda” thereto as defined in the RFQ.

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

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

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

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

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

“Shared Use Person” means a Person described in Section 5.12.3 of Volume 1 of this RFP and includes each of the Persons listed in Section 5.12.3 of Volume 1 of this RFP and any other Persons that may, from time to time, be specifically identified as Shared-Use Persons by the Province.

“Short-Listed Respondents” means the Respondents listed in Section 1.3 of Volume 1 of this RFP.

“Specified Key Firm” has the meaning given to it in Section 4.3.1 d) of Table A-7 (Package 4 Content and Requirements) of Appendix A of this RFP.

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

“Supplementary Lands Request” means a completed Form Y submitted by a Proponent to the Province in accordance with the provisions of paragraph 2 of Part 2 of Appendix D of Volume 1 of this RFP.

“Supplementary Lands Request Deadline” means the date and time specified as such on the Summary of Key Information, as it may be amended from time to time by the Province in accordance with this RFP.

“Supply Contract” means the Definitive Base Supply Contract or the Proponent Supply Contract, as applicable, as may be changed, modified or added to in accordance with Section 3.7.2 of Volume 1 of this RFP.

“Technical Submittal” means the documentation and information comprising Packages 1, 2, 3 and 4 as described in this RFP, including in Appendix A of Volume 1 of this RFP, and submitted in accordance with this RFP, together with all clarifications, rectifications, and more complete, supplementary, replacement and additional information and

documentation submitted by the Proponent from and after the Technical Submittal Deadline or the Closing Time in response to any request of the Province.

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

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

“Technical Supplement Submittal Deadline” means the date and time specified as such in the invitation to submit Technical Supplements described in Section 3.5.3(b) of Volume 1 of this RFP, as such date and time may be amended from time to time by the Province in accordance with this RFP.

“Thales” means Thales Rail Signalling Solutions Inc., and includes any of its subsidiaries or affiliates who may be involved with the design or delivery of the Evergreen ATC System.

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

“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 Alignment” means the horizontal and vertical alignment of the Bored Tunnel as shown in the Reference Concept Alignment including the Cross Passages.

“Tunnel Alignment Modification Proposal Deadline” means the date and time specified as such on the Summary of Key Information, as it may be amended from time

to time by the Province in accordance with this RFP.

“Tunnel Geotechnical Risk Sharing Provisions” includes Section 2.16 of the Project Agreement, those definitions within Schedule 1 of the Project Agreement which relate to Differing Site Conditions, those parts of Schedule 15 of the Project Agreement which relate to the resolution of disputes relating to Differing Site Conditions and Schedule 26 of the Project Agreement.

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

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

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