

CONFIDENTIAL - COMMERCIAL BRIEFING NOTE FOR DECISION

DATE: March 9, 2016

PREPARED FOR: Decision

ISSUE: Evergreen Line Project: Proposed Settlement of Disputed Supervening Events and Other Items with EGRT Construction

SUMMARY:

- Representatives of EGRT and the Province have been engaged in discussions relating to a number of disputed Supervening Events, as well as a request by EGRT for [s.13,s.17](#)
- The parties have now concluded these discussions and arrived at an overall resolution that each representative will recommend to senior management for approval (the "Settlement").
- The proposed terms are as follows:

[s.13,s.17](#)

[s.13,s.17](#)

BACKGROUND:

The Province signed a contract with EGRT Construction in December 2012 for the Design, Build, Finance, Testing and Commissioning of the Evergreen Rapid Transit Line.



Under the RFP, the ^{s.17}
bid was \$889.7 million. ^{s.17}
^{s.17}

EGRT's

The RFP competition was focused on the risk associated with the construction of the 2-km bored tunnel. Proponents were offered the option to either accept all risk (other than factual error associated with borehole and test pit log data) or share the risk of differing site conditions (in which case a premium would be applied to their bid price for evaluation purposes). Both proponents noted above explicitly elected to assume all risk associated with the bored tunnel.

^{s.13,s.17}

EGRT commenced major construction in Spring 2013, with tunnel work beginning early in 2014. EGRT experienced significant challenges during the maintenance of the Tunnel Boring Machine (TBM), and as a result the Project was delayed. The current forecast Substantial Completion date is January 30, 2017. However, since the breakthrough of the TBM in November 2015, progress has been excellent. The Project is more than 80% complete ^{s.13}
^{s.13}

^{s.13,s.17}

^{s.13,s.17}

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^{s.13,s.17}

CURRENT POSITION:

Supervening Events

The Project Agreement includes provisions for the Primary Contractor (EGRT) to claim additional compensation for certain “Supervening Events”.

There are four Supervening Event claims which have not been settled:

s.13,s.17

The Project Agreement requires that the parties attempt to negotiate a resolution to disputes and if no settlement can be reached then either party may take the dispute to a Dispute Resolution Panel for resolution. s.13,s.17

s.13,s.17

s.13,s.17

s.13,s.17

Tunnel Factual Error Claim

As noted above, at the Proposal stage of the Project, proponents were offered the alternative of accepting a shared risk arrangement for tunnel construction or an arrangement whereby the Primary Contractor would assume all ground condition risk. The only risk that was retained by the Province was that of factual errors in the geotechnical data. EGRT chose to accept all other ground condition risks.

The Province has rejected the claim that a factual error has been established by the Primary Contractor. s.13,s.17

s.13,s.17

Other Supervening Event Claims

s.13,s.17

Supervening Event Claim – Amount of Claims

s.13,s.17

s.13,s.17

The Project Team has considered the documentation submitted by the Primary Contractor with respect to each claim. s.13,s.17

s.13,s.17

s.13,s.17

An analysis of the potential risks associated with EGRT's claims is attached in a Table at Appendix A.

s.13,s.17

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Withheld pursuant to/removed as

s.13;s.17

s.13,s.17

Other Matters

In addition to the matters outlined above, there a number of other unresolved change orders, and third party claims. The value of these items is s.17

s.17

Specifically, the items are as follows:

- Installation of a new 130 mm Culvert and raising of Aberdeen Ave (Prov Change #44).
- Stage 3 Watering Restrictions (EGRT Master Change #274).
- Hoy Creek Habitat Compensation (EGRT Master Change #231).
- Disputed Third Party Claims s.17,s.22

There is an opportunity to “wrap up” these outstanding items as part of an overall settlement, and seek an agreement between the parties that all items up to the date of the settlement are confirmed to be resolved at EGRT’s risk and expense.

PROPOSAL

s.13,s.17

Following numerous meetings the parties have now concluded these discussions and arrived at an overall resolution that each representative will recommend to senior management for approval (the “Settlement”). The recommended resolution is as follows:

s.13,s.17

s.13,s.17

PROJECT BUDGET AND APPROVALS

Project Budget and Contingency

s.13,s.17

Project Approvals

The Project Agreement was signed by Grant Main (in his capacity as Deputy Minister, Ministry of Transportation and Infrastructure and CEO of the BC Transportation Financing Authority).

s.14

s.17

RECOMMENDATION

It is recommended that the Province settle these disputes and ancillary items as follows:

s.13,s.17



Appendix A

Evergreen Line Supervening Events – Option Assessment

s.13,s.17