

AGREEMENT

THIS AGREEMENT is made as of the 25 day of Feb 2013.

BETWEEN:

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

(the "Province")

AND:

KWIKWETLEM FIRST NATION, an Indian Band within the
meaning of the *Indian Act*

("Kwkwetlem")

(each a "Party" and together the "Parties")

WHEREAS:

- A. The Province is proposing an Advanced Light Rapid Transit System (commonly referred to as the Evergreen Line) in the Lower Mainland area of Vancouver, British Columbia.
- B. Kwkwetlem asserts aboriginal rights and title in their territory which includes the areas encompassed by and surrounding the Project.
- C. Kwkwetlem has identified to the Province issues and concerns relating to the Project, including potential Infringements the Project may have on Kwkwetlem's asserted aboriginal rights and title.
- D. The Province has consulted Kwkwetlem with respect to the Project and wishes to accommodate Kwkwetlem with respect to its asserted aboriginal rights and title, whether or not substantiated in law, on the terms and conditions of this Agreement.
- E. Kwkwetlem wishes to support the Project in a manner that is consistent with this Agreement.
- F. The Parties wish to enter into this Agreement setting out mutual benefits for Kwkwetlem and the Province with respect to the Project.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties covenant and agree as follows:

1. DEFINITIONS

1.1 In this Agreement the following terms and expressions have the following meanings:

"Agreement" means this Agreement and any and all schedules, appendices, amendments or extensions negotiated in furtherance of this Agreement;

"BCICAC" means the British Columbia International Commercial Arbitration Centre;

"Canada" means the Her Majesty the Queen in Right of Canada;

"Certificate" means any environmental assessment certificate issued by the Province with respect to the Project, or any portion thereof, under the Environmental Assessment Process, as may be amended or replaced from time to time;

"Contractor" means the contractor or contractors, as may be selected from time to time by the Province, with whom the Province enters into a contract to construct the Project;

"Council" has the meaning given to the phrase "council of the band" set out in the *Indian Act*;

"Environmental Assessment Process" means the harmonized British Columbia/ Canada environmental assessment process relating to the Projects, or any portion thereof, and includes the Certificate and all other related approvals and certificates under such process;

"Indian Act" means the *Indian Act*, R.S.C. 1985, c. I-5, as amended;

"Infringement" means the infringement of aboriginal rights, including aboriginal title and includes, but is not restricted to, infringements resulting from the following:

- (i) Challenges to the constitutional validity of provincial or federal legislation authorizing the granting or authorization of interests in the Project or Project Lands by the Province or Canada, or regulating the use of the Project or Project Lands;
- (ii) The granting or authorization to any person by the Province or Canada of an interest in the Project or Project Lands;
- (iii) the exercise by any person of rights associated with interests granted or authorized by the Province or Canada with respect to the Project;
- (iv) decisions by the Province or Canada relating to the use and regulation of the Project;

- (v) breach or alleged breach of fiduciary duty relating to the Project; and
- (vi) any other aspect of infringement by the Province that may be defined, from time to time, by the courts;

"Member" means a member, as defined in the *Indian Act*, of Kwikwetlem;

"Kwikwetlem" means the Kwikwetlem Indian Band, and its Members and their respective heirs, executors, administrators, assigns and successors, all of which are intended to refer to the same group of traditional Aboriginal peoples;

"Project" means the proposed Evergreen Line project, the geographic extent of which may for convenience be described as extending north from Lougheed Town Centre Station on an elevated track along North and Clarke Roads before entering a bored tunnel in the vicinity of Como Lake Avenue and emerging near Barnet Highway north of Clarke Road in Port Moody. Through Port Moody, the route will travel predominantly at grade adjacent to the Canadian Pacific Rail (CPR) right-of-way with an elevated crossing required at some point along the corridor. The route will continue adjacent to the CPR line to the West Coast Express Station in Coquitlam and then will run on an elevated guideway along Pinetree Way, terminating near Douglas College in Coquitlam;

"Projects Lands" means all such lands on which the Project is located and which may be reasonably required, from time to time, in order to construct, develop, maintain, access, operate or regulate the Project in accordance with the Certificate; and

"Resolution" means a resolution passed by Kwikwetlem Council at a duly convened meeting of Kwikwetlem Council.

2. CERTAINTY

2.1 Kwikwetlem acknowledges and agrees that:

- (a) the consultations made by the Province and the accommodation set out in this Agreement are acceptable to Kwikwetlem and constitute full and sufficient consultation and accommodation for all Infringement of the aboriginal rights and title asserted by Kwikwetlem, whether or not substantiated in law, that may result from the construction, development, maintenance, access, operation or regulation of the Project within and on the Project Lands or from the disposal of any lands that are surplus to the needs of the Project;
- (b) it will not challenge or impede, directly or indirectly or otherwise, the Province's unrestricted right to construct, develop, maintain, access, operate or regulate the Project within and on the Project Lands or to dispose of any lands that are surplus to the needs of the Project; and

- (c) any action taken by Kwikwetlem to frustrate, delay, stop or otherwise impede the lawful construction, development, maintenance, access, operation or regulation of the Project within and on the Project Lands or the disposal of any lands that are surplus to the needs of the Project, including, without limitation, any challenge by Kwikwetlem regarding the Certificate, will cause loss and damage to the Province which cannot be adequately compensated for by an award of damages and that an injunction to restrain such action would be the only adequate remedy.
- 2.2 Kwikwetlem acknowledges that it has entered into this Agreement on its own behalf, and on behalf of its Members.
- 2.3 Kwikwetlem, on its own behalf, and on behalf of its Members, hereby releases and forever discharges the Province, its employees, servants, agents, successors and assigns, of and from all actions, causes of action, claims, proceedings, debts, duties, demands, damages, interest, fines and costs, expenses and compensation of whatsoever amount, nature and kind arising from all past, present or future Infringement by the Province of all Kwikwetlem's aboriginal rights or aboriginal title, whether or not substantiated in law, on or within the Project Lands as a result of the construction, development, maintenance, access, operation or regulation of the Project on and within the Project Lands or the disposal of any lands that are surplus to the needs of the Project.
- 2.4 Without restricting the generality of section 2.3, Kwikwetlem, on its own behalf, and on behalf of its Members, covenants not to bring or continue any action or other proceeding, at law or in equity, on its own behalf or on behalf of its Members, against the Province, in regard to:
 - (a) the subject matter of the release in section 2.3; or
 - (b) the approval and the issuance of, or subsequent amendments to, the Certificate or otherwise in relation to the Project under the Environmental Assessment Process.
- 2.5 Kwikwetlem indemnifies the Province for all claims made against the Province, its employees, servants, agents, successors, and assigns respecting:
 - (a) the subject matter of the release in section 2.3;
 - (b) the covenant by Kwikwetlem in section 2.4; and
 - (c) any breach of this Agreement by Kwikwetlem.
- 2.6 For greater certainty, this Agreement, including sections 2.1 to 2.5, is not intended to provide, and does not provide, a release, settlement, agreement or indemnity for any claims or Infringement of aboriginal rights and aboriginal title, arising directly or indirectly, in respect of any matters or lands other than the Project and the Project Lands.

2.7 This Agreement does not:

- (a) constitute a treaty or land claims agreement within the meaning of sections 25 or 35 of the *Constitution Act, 1982* and is separate and apart from the British Columbia treaty process;
- (b) abrogate or derogate from the aboriginal rights and aboriginal title of Kwikwetlem, except as contemplated by this Agreement;
- (c) create, recognize, define, deny, limit or amend any of the rights and responsibilities of the Parties except as contemplated by this Agreement; or
- (d) limit any position either Party may take in present or future negotiations or any legal proceedings, except as contemplated by this Agreement.

2.8 This Agreement is intended to be binding upon the Parties from the time of its signing.

2.9 Kwikwetlem agrees to deliver a Resolution to the Province, on or before the execution date this Agreement, authorizing Kwikwetlem's representatives to sign this Agreement.

s.16,s.17

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Withheld pursuant to/removed as

s.16;s.17

7. ADDITIONAL PROVISIONS

Dispute Resolution

- 7.1 Subject to the Parties' right to apply to a court of competent jurisdiction for injunctive relief, representatives of the Parties with decision-making authority will, in the event of a dispute, controversy or claim arising out of or relating to this Agreement or the interpretation of any of the provisions hereof (a "**Dispute**"), meet in an attempt to negotiate a resolution to the Dispute.

In the event that the Dispute is not resolved through the Parties' negotiation efforts, it will be finally settled by arbitration in accordance with the Arbitration Rules of the BCICAC in effect on the date of such dispute. The Parties agree that:

- (a) the appointing authority will be the BCICAC;
- (b) the case will be administered by the BCICAC in accordance with its "Procedures for Cases under the BCICAC Arbitration Rules";
- (c) the place of arbitration will be Vancouver, British Columbia;

- (d) the number of arbitrators will be one (1);
- (e) the language used in the proceedings will be English; and
- (f) the arbitrator's fees will be paid by the Province on the one hand and Kwikwetlem on the other hand, in equal parts, during the course of the arbitration.

Representations and Warranties

7.2 Kwikwetlem warrants and represents to the Province that:

- (a) it has sought and received independent legal advice with respect to the legal nature and effect of this Agreement and that it has the full legal authority to sign this Agreement;
- (b) it enters into this Agreement for, and on behalf of, all of the Members of Kwikwetlem; and
- (c) it has the legal power, capacity and authority to enter into this Agreement and carry out its obligations in this Agreement.

7.3 The Province represents and warrants to Kwikwetlem that it has the legal power, capacity and authority to enter into this Agreement and carry out the obligations set out in this Agreement.

7.4 This Agreement may be signed in counterpart.

Interpretation and Extended Meanings

7.5 In this Agreement, words importing gender will include all genders, words importing the singular include the plural and vice versa, words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and government authorities, and unless otherwise clear from the context, "including" means "including but not limited to" and "includes" means, "but is not limited to", and any reference to a section or any schedule will mean the respective section or schedule of this Agreement, unless otherwise stated.

7.6 The several articles of this Agreement and any schedules will be read together and interpreted as one Agreement.

7.7 The captions and headings contained in this Agreement are for convenience only and do not define or limit the scope or intent of this Agreement.

7.8 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to any subsequent enactment of the Province of British Columbia or Canada, as the case may be, of like effect.

- 7.9 If any section of this Agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.

Time of the essence

- 7.10 Time is of the essence of this Agreement.

Further Acts

- 7.11 The Parties will perform such further acts and execute and deliver such further documents and instruments as may be reasonably be required to give effect to this Agreement.

Applicable Laws

- 7.12 This Agreement is legally binding and will be governed by and interpreted in accordance with the laws of the Province of British Columbia and Canada applicable therein.

Notices

- 7.13 Any notices or communications required or permitted to be given pursuant to this Agreement will be in writing and will be delivered to, or sent by prepaid courier or confirmed facsimile, addressed as follows:

in the case of communication to the Province:

Executive Project Director
Evergreen Line Rapid Transit Project
2900 Barnet Highway
Coquitlam, BC V3B 0G1

Telephone: 604.927.4452
Facsimile: 604.660.4453

in the case of communication to Kwikwetlem :

Chief and Council
Kwikwetlem First Nation
2 – 65 Colony Farm Road
Coquitlam, BC
V3C 5X9

Tel: 604-540-0680
Fax: 604-525-0772

or to such other address as either Party may notify the other in accordance with this section, and if so delivered will be deemed to have been given when delivered, or at the time of confirmation of electronic transmission if sent by facsimile if such day is a business day, otherwise the next business day following, and if mailed will be deemed to have been given on the seventh business day after the date of mailing.

Amendment

- 7.14 This Agreement may be amended from time to time by the Parties by an instrument in writing. No term set out in this Agreement may be changed or waived except by written instrument.

Term

- 7.15 Upon Execution by both Parties, this Agreement will come into effect as of the date shown on page one of this Agreement.

Enurement

- 7.16 This Agreement and the promises and the obligations herein set out will enure to the benefit of and be binding upon the Province, Kwikwetlem and its Members, and their respective descendants, heirs, executors, administrators, successors and assigns.

Waiver

- 7.17 No term, condition, covenant or other provision of this Agreement will be considered to have been waived by a party unless the party expresses such waiver in writing. The waiver by a party of any breach by the other party of any term, condition, covenant or other provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other term, condition, covenant or other provision and the consent or approval of a party to any act by the other party requiring the consent or approval of the party will not be considered to waive or render unnecessary such consents or approvals to any subsequent same or similar act by the other party.

Conditions of Funding

- 7.18 Notwithstanding any other provision of this Agreement, the amount of any funding provided by the Province under the terms of this Agreement is subject to:
- (i) the appropriation of funds by the Legislative Assembly of British Columbia;
 - (ii) Treasury Board, as defined in the *Financial Administration Act*, R.S.B.C. 1996, c. 138, as amended, not having controlled or limited expenditure under any appropriation referred to in subparagraph (i) above; and

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- (iii) an appropriation being available for this Agreement in the fiscal year when the payment falls due, as per subsection 28(1) of the *Financial Administration Act*, R.S.B.C. 1996, c. 138, as amended.

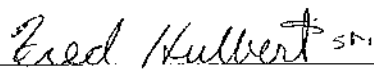
IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives.

Signed at Vancouver, British Columbia, on the date shown on page one of this Agreement.

KWIKWETLEM FIRST NATION:

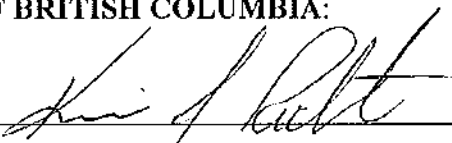
Witnessed By:

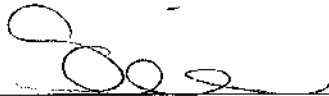
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**HER MAJESTY THE QUEEN IN RIGHT
OF BRITISH COLUMBIA:**

Witnessed by:

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Ministry of Transportation and Infrastructure



BY COURIER

March 20, 2013

File: 039LA0169

Chief Ron Giesbrecht
Kwikwetlem First Nation
2 – 65 Colony Farm Road
Coquitlam, BC V3C 5X9

Dear Chief Ron Giesbrecht:

Re: Kwikwetlem Contribution Agreement

Enclosed, please find an original executed Agreement dated Feb 25, 2013 for your records.

Thank you for your cooperation in this matter.

Yours truly,

Julie Martin
Corporate Services Manager
Evergreen Line Rapid Transit Project

Enclosure