

***CONFIDENTIAL***

**EVERGREEN LINE RAPID TRANSIT PROJECT**

**PORT MOODY MUNICIPAL AGREEMENT**

**BETWEEN**

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

**AND**

**CITY OF PORT MOODY**

**OCTOBER 13, 2011**

## TABLE OF CONTENTS

<b>1. DEFINED TERMS.....</b>	<b>1</b>
<b>2. PROJECT ALIGNMENT AND GRANT OF RIGHTS OF ACCESS, OCCUPATION AND USE .....</b>	<b>7</b>
2.1 Acknowledgement and Acceptance of Alignment of Port Moody Segment .....	7
2.2 Construction-Required Lands .....	7
2.3 System-Required Lands .....	8
2.4 City Fee Simple Lands .....	8
2.5 Notice of Access and Use .....	8
2.6 Emergencies .....	9
2.7 Additional Lands .....	9
2.8 Non-Derogation of Grant .....	9
2.9 Province - Authority and Ownership of Project Infrastructure.....	10
2.10 City Ownership of Installations forming Part of City Work.....	11
<b>3. PRE-EXISTING RIGHTS, PROTECTION OF PROVINCE'S RIGHTS AND CITY USE OF PROJECT-REQUIRED LANDS.....</b>	<b>10</b>
3.1 Pre-Existing Rights.....	11
3.2 Protection of the Province's Rights.....	12
3.3 City Use of Project-Required Lands following Effective Date.....	12
<b>4. COOPERATION AND WORK PRIORITY.....</b>	<b>13</b>
4.1 Work Cooperation .....	13
4.2 Port Moody Segment Schedule and Work Priority .....	13
4.3 Traffic Management Plans.....	13
4.4 Hours of Project Work .....	14
<b>5. DESIGN AND CONSTRUCTION CRITERIA .....</b>	<b>14</b>
5.1 General .....	14
5.2 City Infrastructure and City Utilities Generally.....	14
5.3 Port Moody Stations .....	15
<b>6. MISCELLANEOUS PROVISIONS RELATING TO PROJECT WORK .....</b>	<b>15</b>
6.1 Plans, Drawings, Surveys and other Information with respect to Project Infrastructure..	15
6.2 Plans, Drawings, Surveys and other Information with respect to City Infrastructure.....	16
6.3 City Infrastructure Work.....	16
6.4 City Utilities .....	18
6.5 City Exclusive Work.....	19
6.6 City Enhancements .....	19
6.7 Repairs to Damaged City Infrastructure and City Utilities .....	19
6.8 Repairs to Damaged Project Infrastructure.....	19
<b>7. ASSIGNMENT AND EXERCISE OF RIGHTS .....</b>	<b>20</b>
7.1 Assignment by Province .....	20
7.2 Rights Exercisable by Province's Contractors, Subcontractors and Agents.....	20
<b>8. INDEMNIFICATION/CONDUCT OF INDEMNIFIED CLAIMS/INSURANCE .....</b>	<b>20</b>
8.1 Indemnity .....	20

## EVERGREEN LINE RAPID TRANSIT PROJECT PORT MOODY MUNICIPAL AGREEMENT

This Agreement is dated for reference the 13th day of October, 2011.

BETWEEN:

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

(the "Province")

AND:

CITY OF PORT MOODY  
100 Newport Drive  
Port Moody, British Columbia V3H 3E1

(the "City")

WHEREAS:

A. The Province has undertaken the planning, design, construction, testing and commissioning of the Evergreen Line, which includes the Port Moody Segment; and

B. The Province and the City are entering into this Agreement in respect of various matters pertaining to the development, design and construction of the Project, including the Port Moody Segment, by the Province and the operation, maintenance and rehabilitation of the Project, including the Port Moody Segment, by the Operator, as more particularly set forth herein;

NOW THEREFORE, in consideration of their mutual promises and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto), the City and the Province hereby agree, each with the other, as follows:

### 1. DEFINED TERMS

In this Agreement, the following definitions apply:

- (a) "Additional Lands" means any City Lands which are added to or substituted for any part of the Project-Required Lands pursuant to Section 2.7;
- (b) "Agreement" means this "Evergreen Line Rapid Transit Project - Port Moody Municipal Agreement", including all of the Schedules referenced and identified in Article 12, all as the same may be amended, modified or restated from time to time by written agreement between the parties hereto;
- (c) "Business Day" means any day which is not a Saturday, Sunday or statutory holiday in the Province of British Columbia;

8.2	Conduct of Claims .....	21
<b>9.</b>	<b>DISPUTE RESOLUTION .....</b>	<b>22</b>
9.1	Dispute Resolution Procedure .....	22
9.2	Progress of Project .....	23
<b>10.</b>	<b>NOTICES .....</b>	<b>23</b>
10.1	Notices .....	23
<b>11.</b>	<b>GENERAL .....</b>	<b>24</b>
11.1	Effective Date and No Right of Termination .....	24
11.2	Further Assurances .....	24
11.3	Sections, Schedules and Interpretation .....	24
11.4	No Deemed Waiver .....	24
11.5	Enurement and Binding Effect .....	25
11.6	Governing Law .....	25
11.7	Severability .....	25
11.8	Reference to Statutes .....	25
<b>12.</b>	<b>SCHEDULES .....</b>	<b>25</b>
12.1	Schedules .....	25
Schedule A	- Port Moody Segment Alignment	
Schedule B	- Construction-Required Lands	
Schedule C	- System-Required Lands	
Schedule D	- City Fee Simple Lands	
Schedule E	- City Street Modifications	
Schedule F	- List of City-Exclusive Work	
Schedule G	- Pre-Existing Rights	

- (d) **"City Enhancement"** means any new works, infrastructure or upgrade of any existing City Infrastructure in connection with or to be carried out as part of the design and construction of any Project Infrastructure comprised in the Port Moody Segment, as expressly requested by the City to the Province;
- (e) **"City-Exclusive Work"** means work relating to the construction, maintenance, modification, removal, replacement, expansion, extension or enlargement of any of the items or components of City Infrastructure and City Utilities relating to the Project as identified in Schedule F. to this Agreement, which will only be permitted to be undertaken by the City or City-contracted work forces;
- (f) **"City Included Parties"** means, with respect to the City, any director, officer, elected official, employee, agent, contractor or licensee or any other party for whom the City is responsible at law;
- (g) **"City Infrastructure"** means the municipal infrastructure and systems, fixtures and facilities within City Lands constructed, maintained and operated by or on behalf of the City, including existing City Streets, pavement, boulevards, trees, landscaping, curbs, gutters, street lighting, traffic signals and signs, and additions or City Enhancement(s) thereto, or widenings, relocations or extensions thereof, but not including City Utilities;
- (h) **"City Infrastructure Work"** means the relocation, widening, extension, removal, replacement, repair, alteration or stopping up of, or connection to, any City Infrastructure, whether temporary or permanent;
- (i) **"City Fee Simple Lands"** means the lands of which the City is the registered owner in the Land Title Office which are listed in Schedule D;
- (j) **"City Lands"** means any City Street and City Fee Simple Lands, which are owned or controlled by the City;
- (k) **"City of Port Moody"** means the lands which are within the municipal boundaries of the area which is subject to the jurisdiction of the City;
- (l) **"City Representative"** means the one or more senior representatives designated by written notice given by the City to the Province from time to time (who may be a senior engineer and/or City Manager of the City of Port Moody) with at least one representative having full authority to represent and bind the City in connection with all matters pertaining to this Agreement;
- (m) **"City Street"** includes streets, roads, highways, bridges, viaducts, lanes and sidewalks and any other ways normally open or reasonably capable of use by the public:
  - (i) including land dedicated or established as "Road" on the records of the Land Title Office;
  - (ii) including land over which the City has statutory rights-of-way for public road or access purposes;

- (iii) excluding any private easement or right of way over private property; and
- (iv) excluding any Provincial highways or any other highways excluded pursuant to Section 35(2) of the *Community Charter* (British Columbia);
- (n) "**City Street Modifications**" means the modifications to City Streets which will be made in connection with the Project, substantially as shown in the drawings set out in Schedule E to this Agreement;
- (o) "**City Utilities**" means storm, sanitary, and water infrastructure works;
- (p) "**Construction-Required Lands**" means City Lands described in Schedule B in respect of which access and Exclusive or Non-Exclusive Occupation and use, as determined by the Province is or may be required to facilitate activities required in connection with the construction of the Project Infrastructure comprised in the Port Moody Segment, and includes any Additional Lands added to or substituted for any part of the Construction-Required Lands pursuant to Section 2.7;
- (q) "**Dispute**" means any dispute between the City and the Province with respect to any Referable Matter or any other matter of disagreement between the City and the Province which they both agree in writing is a "Dispute" to be resolved pursuant to the Dispute Resolution Procedure;
- (r) "**Dispute Resolution Procedure**" means the procedure for resolution of any Dispute set out in Section 9;
- (s) "**Effective Date**" means the date upon which this Agreement has been signed by each of the City and the Province and fully executed copies of this Agreement have been unconditionally delivered to each of the City and the Province, or such other date as the Province and the City agree in writing is the Effective Date;
- (t) "**Exclusive Occupation**" means the physical occupation of Project-Required Lands whereby access and use of such Project Required Lands are restricted to the Province and its Contractors only;
- (u) "**Executive Project Director**" means the person designated by written notice given by the Province to the City from time to time as holding the position of Executive Project Director for the Project and having full authority to represent and bind the Province in connection with all matters pertaining to the Project including this Agreement;
- (v) "**Evergreen Line**" means all of the advanced rapid transit infrastructure to be designed, created, constructed, supplied, tested and commissioned by the or on behalf of the Province between Lougheed Town Centre and the terminus of the Evergreen Line to be constructed in the vicinity of the Douglas College campus in Coquitlam and, for greater certainty, includes the various components of the Evergreen Line as they are designed, created, constructed, supplied, tested and commissioned;
- (w) "**Guideway**" means that part of the Project Infrastructure comprising the support structure on which the passenger transit vehicles operate, including all structural,

aesthetic, functional and non-functional components of the support structure and including all footings, pillars, columns, walls, floors, roof, pilings, foundations, beams, tunnel and tunnel support structures, overpass support structures, underpass support structures, rails, tracks, cables, conduits, wires, machinery, equipment and apparatus for communication systems and equipment for ventilation and fire protection, including vents, shafts, cross-passages and vent grates at street level, train control, safety, security, lighting, heating, electric services, water, sewage and drainage systems and all ancillary improvements, facilities, equipment and structures forming part of any of the foregoing and including all those portions which pass through each of the Stations;

- (x) **"Indemnified Party"** has the meaning set out in Section 8;
- (y) **"Indemnifying Party"** has the meaning set out in Section 8;
- (z) **"loco Station"** means the means the Station to be constructed by the Province at the intersection of loco Road and Barnet Highway as set out in Schedule A;
- (aa) **"Land Title Office"** means the Lower Mainland Land Title Office, or any other office, registry or authority in which or through which title to lands within the City of Port Moody may be registered or transferred;
- (bb) **"Like-for-Like"** means, in relation to any City Infrastructure or City Utilities which is being relocated, replaced or repaired as part of the Project Work, a standard for the relocation, replacement, or repair pursuant to which the functionality, capacity, and service of such infrastructure is equivalent to that which existed prior to the relocation, replacement, or repair, provided that design details, materials and construction specifications for the relocated, replaced or repaired infrastructure shall be consistent with the current City standards;
- (cc) **"Non-Exclusive Occupation"** means the physical occupation of Project-Required Lands where access and use of the Project-Required Lands are shared but may be controlled by the Province and its Contractors to ensure timely delivery of the Project;
- (dd) **"Operator"** means TransLink or any other operator from time to time of the SkyTrain System;
- (ee) **"Other Rights and Uses"** means commercial uses within stations, advertising within Stations and on Vehicles, and third-party communication and utility services.
- (ff) **"Port Moody Central Station"** means the Station to be constructed by the Province at the existing West Coast Express Port Moody Station as set out in Schedule A;
- (gg) **"Port Moody Segment"** means that portion of the Evergreen Line located within the City of Port Moody as generally shown on the plans attached as Schedule A;
- (hh) **"Port Moody Segment Schedule"** means the Province's schedule for the design, construction, testing and commissioning of the portion of the Evergreen

- Line comprising the Port Moody Segment, as the same may be amended by the Province;
- (ii) **"Port Moody Stations"** means the two proposed Stations to be located in Port Moody, namely the Ioco Station and the Port Moody Central Station;
  - (jj) **"Post-Construction Condition Surveys"** means post-construction surveys of the condition of the City Infrastructure and City Utilities conducted by the Province after the completion of any Project Work affecting such City Infrastructure as contemplated in Section 6.1 (b);
  - (kk) **"Pre-Construction Condition Surveys"** means pre-construction surveys of the condition of City Infrastructure and City Utilities conducted by the Province prior to commencement of any Project Work affecting such City Infrastructure as contemplated in Section 6.1(b);
  - (ll) **"Pre-Existing Rights"** means any valid contractual or statutory rights in favour of any person, other than the City, to use all or any part of the Project-Required Lands as at the Effective Date and which may affect all or any portion of such Project-Required Lands following the Effective Date as set out in Schedule G;
  - (mm) **"Pre-Existing Rights Holder"** means the owner, licensee, grantee or other beneficiary or holder of the benefit of any Pre-Existing Rights;
  - (nn) **"Pre-Existing Rights Holder's Works"** means any of the structures, buildings, poles, fixtures, fittings, equipment, machinery, cables, conduits, pipes, wires or other apparatus, improvements or works installed or owned by a Pre-Existing Rights Holder;
  - (oo) **"Project"** means the design, construction, testing, commissioning, operation, maintenance and rehabilitation of the Evergreen Line;
  - (pp) **"Project Completion Date"** means the date on which the construction, testing and commissioning phase of the Project has been completed, which date will be confirmed by delivery of written notice from the Province to the City as soon as reasonably practicable following the Project Completion Date;
  - (qq) **"Project Infrastructure"** means anything required, built, constructed, erected, installed or operated as part of the Project Work, including the Guideways, the Stations, any vehicle storage facility, tunnels, bridges, power substations, utilities and telecommunication equipment and facilities (whether or not required for the operation of the Evergreen Line) and all other improvements, facilities, equipment or structures which form part of and/or are necessary for the Evergreen Line, but does not include City Work or City Utilities;
  - (rr) **"Project-Required Lands"** means, collectively, the Construction-Required Lands and the System-Required Lands;
  - (ss) **"Project Work"** means all work required in the design, construction, testing, commissioning, operation, maintenance and rehabilitation of the Evergreen Line,

including the design, construction, operation, inspection, repair, alteration, modification, maintenance, replacement or removal of Project Infrastructure;

- (tt) **"Province"** means Her Majesty the Queen in Right of the Province of British Columbia;
- (uu) **"Qualified Governmental Entity"** means any of the following:
  - (i) any ministry or department of the Province;
  - (ii) any person having the legal capacity, power and authority to become a party to and to perform the Province's obligations under this Agreement, the duties, obligations and liabilities of which are guaranteed or supported by the Province or any ministry or department of the Province;
  - (iii) the Federal Government of Canada; and
  - (iv) any person having the legal capacity, power and authority to become a party to and to perform the Federal Government of Canada's obligations under this Agreement, the duties, obligations and liabilities of which are guaranteed and supported by the Federal Government of Canada or any ministry or department of the Federal Government of Canada;
- (vv) **"Referable Matter"** means any matter arising under or in connection with this Agreement which could reasonably be expected to materially and adversely affect the ability to:
  - (i) complete the design, construction, testing and commissioning of the Port Moody Segment or any material part thereof in accordance with the Port Moody Segment Schedule;
  - (ii) expeditiously effect repairs, maintenance or, as necessary, modifications to the Evergreen Line;
  - (iii) achieve, maintain or restore compliance with the performance standards to which the Evergreen Line will be designed; or
  - (iv) operate, maintain, repair or rehabilitate the Evergreen Line;
- (ww) **"Senior Project Manager"** means the person designated by written notice given by the Province to the City from time to time as holding the position of Senior Project Manager and having full authority to represent and bind the Province in connection with all dealings with the City under this Agreement;
- (xx) **"SkyTrain System"** means the SkyTrain rapid transit system presently operated by TransLink on its Millennium Line and Expo Line, into which the Evergreen Line, upon completion, will be fully integrated;
- (yy) **"Station"** means a station on the Evergreen Line at which passengers will be permitted to embark and disembark, including all footings, pillars, columns, pilings, foundations, beams, floors, walls, roofs, decks, platforms, shelters and

other building support structures or enclosures provided for the safety, shelter, direction and fare control of passengers during boarding and detraining, including all ancillary fixtures, fittings, equipment, machinery, cables, conduits, pipes, wires and other apparatus for the communication, safety, security, lighting, heating, electrical, water, sewer and drainage systems and all other improvements, facilities, equipment and structures forming part of each Station, but excluding those portions which comprise the Guideway;

- (zz) **"System-Required Lands"** means City Lands described in Schedule C in respect of which access and temporary or permanent, Exclusive or Non-Exclusive Occupation and use, as determined by the Province at any time, is required for purposes of construction, operation, maintenance, inspection, repair, alteration, renovation, modification, rehabilitation, reconstruction or removal of all or any component of the Project Infrastructure comprised in the Port Moody Segment, and including a one (1) meter buffer area around the outside boundaries of the actual spaces of Project Infrastructure and a one (1) meter buffer area around the air space required for the dynamic movement of Vehicles on the Guideway and any Additional Lands added to or substituted for any part of the System-Required Lands pursuant to Section 2.7;
- (aaa) **"Traffic Management Plan"** means a plan for the management of traffic interruptions, rerouting and detours and other traffic impacts which may be required as a result of the Project, as submitted by the Province for comment by the City Representative as contemplated in Section 4.3, as the same may be amended by the Province at any time;
- (bbb) **"TransLink"** means South Coast British Columbia Transportation Authority, as continued under the *South Coast British Columbia Transportation Authority Act* (British Columbia), and includes a subsidiary as defined in the *South Coast British Columbia Transportation Authority Act* (British Columbia) and its successors;
- (ccc) **"Vehicles"** means all rolling stock used to carry passengers on the Evergreen Line and any other part of the SkyTrain System and any other vehicles as may be required for the operation, repair and maintenance of the Evergreen Line or any other part of the SkyTrain system; and
- (ddd) **"Zone of Influence"** means the area containing any City Infrastructure or City Utility that may potentially be damaged or impacted, directly or indirectly by the Project Works, as determined by the Province.

## 2. PROJECT ALIGNMENT AND GRANT OF RIGHTS OF ACCESS, OCCUPATION AND USE

### 2.1 Acknowledgement and Acceptance of Alignment of Port Moody Segment

The City acknowledges and accepts the alignment of the Port Moody Segment, including the locations of the Port Moody Stations comprised therein, as generally shown on the plans attached as Schedule A to this Agreement.

## **2.2 Construction-Required Lands**

From the Effective Date, the City hereby grants to the Province, for and during the period prior to the Project Completion Date and for such period thereafter as may reasonably be required by the Province, and at no cost to the Province, except as provided in Section 2.4, the free and unobstructed right of access to and Exclusive or Non-Exclusive Occupation and use, as required by the Province at any time, of the Construction-Required Lands (including the right to exclude, enforce and maintain an action for the exclusion of any person therefrom) for all purposes relating to the design, construction, maintenance, inspection, repair, modification and reconstruction of the Project, including access and use for staging and work locations on City Streets. The Province agrees that it is responsible for the Construction-Required Lands in accordance with Section 3.3(b).

## **2.3 System-Required Lands**

From the Effective Date, the City hereby grants to the Province, at no cost to the Province, except as provided in Section 2.4, the free and unobstructed right of access to and temporary or permanent Exclusive or Non-Exclusive Occupation and use as required by the Province at any time of the System-Required Lands (including the right to exclude, enforce and maintain an action for the exclusion of any person therefrom) for all purposes relating to the design, construction, operation, maintenance, inspection, repair, alteration, renovation, modification, rehabilitation, reconstruction, removal and operation of all or any component of the Project Infrastructure and for the Other Rights and Uses. If, on the Project Completion Date, any System-Required Lands are registered in the Land Title Office, the City does not require the Province to purchase the same pursuant to Section 2.4, the City will grant to the Province a statutory right of way for the purposes of the Evergreen Line with respect thereto in form satisfactory to the Province, without charge to the Province.

## **2.4 City Fee Simple Lands**

- (a) The Province will acquire the City Fee Simple Lands as identified in Schedule D from the City at fair market value. The fair market value of the City Fee Simple Lands will be determined by an appraiser who is mutually acceptable to the Province and the City. Any disagreement as to the appointment of such appraiser or as to the appraised value of any City Fee Simple Lands will be resolved pursuant to the Dispute Resolution Procedure.
- (b) The City will transfer the City Fee Simple Lands to the Province, free and clear of all financial charges and other encumbrances, other than Pre-Existing Rights.
- (c) As may be determined by the Province and the City, the Province may offset the value of the City Fee Simple Lands identified in Schedule D against the cost of work and materials in respect to City Enhancements.
- (d) The completion of the sale of the City Fee Simple Lands will occur on a Business Day which is designated by the Province on at least thirty (30) days prior written notice to the City.

## **2.5 Notice of Access and Use**

Except in the case of a perceived emergency or other urgent situation, when no prior notice will be required, the Province will give the City Representative not less than 48 hours prior written notice of its intention to enter on any Project-Required Lands for the purpose of exercising its rights under Sections 2.2 and 2.3. Such notice will set out the date on which the Province intends to enter on the Project-Required Lands identified in the notice, the purpose of the entry, whether permanent or temporary access or use is required and, in the case of any temporary access or use, whether the Province requires Exclusive or Non-Exclusive occupation and the expected duration of use. Exclusive or Non-Exclusive Occupation will be terminated by the Province by written notice delivered to the City. Entry onto Project-Required Lands which is undertaken in accordance with a Traffic Management Plan will be given no less than 48 hours notice prior to entry.

## **2.6 Emergencies**

In the case of a perceived emergency or other urgent situation, both the Province and the City will be authorized to take all such action as either of them considers necessary and appropriate, without prior written notice to the other in relation to any Project-Required Lands, and to have access to and occupation and use of such Project-Required Lands and any adjacent City Lands which either of them reasonably considers to be required for the purposes of dealing with the emergency or other urgent situation; provided that in such event the party taking such action will, as soon as reasonably practicable, and in any event no later than two (2) Business Days following the occurrence of such emergency or other urgent situation, deliver notice to the other confirming the nature of the emergency or other urgent situation and the actions taken by it in connection therewith.

## **2.7 Additional Lands**

If any Additional Lands are required for the Port Moody Segment in addition to or in substitution for the System-Required Lands or the Construction-Required Lands, then upon written request of the Province and consultation with the City and at no cost to the Province, except for City Fee Simple Lands which the City will be reimbursed based on fair market value, such areas will be added to the System-Required Lands or the Construction-Required Lands, as the case may be, provided that the Province confirms to the City the particulars of the Additional Lands that it requires and provides the City Representative with a list of plans and legal descriptions for such required areas in form similar to the plans and legal descriptions used to identify the Construction-Required Lands in Schedule B or the System-Required Lands in Schedule C, as the case may be, and a description of the purpose for which such additional Lands are required and the period of time such Additional Lands are expected to be required and whether the Province will require Exclusive or Non-Exclusive Occupation thereof.

## **2.8 Non-Derogation of Grant**

The City will not make any grant in derogation from the grants of rights by the City to the Province under this Agreement or otherwise regulate the Project-Required Lands in a way that interferes with or permits the City's licensees, permittees, contractors, agents or employees to interfere with the Project Infrastructure or the Province's access to or occupation and use of the Project-Required Lands under this Agreement. Without limiting the foregoing, the City will not take or permit any of the City's licensees, permittees, contractors, agents, employees or, to the

extent within the City's control, any other persons to take any actions which prevent or interfere with the exercise by the Province of the Province's rights under this Agreement.

## **2.9 Province - Authority and Ownership of Project Infrastructure**

The City acknowledges and agrees that:

- (a) the Province has and is exercising its jurisdictional authority concerning its use and development of land in connection with the Project and in that regard, without limiting the above mentioned jurisdictional authority, the Evergreen Line will be developed, designed, constructed and operated in accordance with criteria, requirements, codes, processes and policies developed by the Province rather than the by-laws, codes, processes and policies of the City and accordingly;
- (b) the Province is not required to obtain any development, building, trade, occupancy or other permits, preliminary or other plan approvals, and no other types of development, planning, construction or similar permits or approvals from the City will be obtained in connection with the Project, including in respect of the design, construction, operation, maintenance, inspection, repair, alteration, renovation, modification, rehabilitation, reconstruction or removal of all or any component of the Project Infrastructure comprised in the Port Moody Segment;
- (c) the Province is not required to pay any permit fees, development charges or other municipal fees or charges in connection with the Project except for fees associated with City-Exclusive Work in accordance with Section 6.5;
- (d) the City will provide interconnections for City Utilities to Project Infrastructure and also, disconnections for City Utilities for building demolitions related to the Project at the sole cost to the Province in accordance with Section 6.4;
- (e) in advance of any permanent interconnections for City Utilities to Project Infrastructure, the Province will provide the City with documents confirming code compliance to the relevant design and construction codes as related to Project Infrastructure;
- (f) except that which is considered City Infrastructure and City Utilities, the Project Infrastructure situated on, over or under City Lands, is, from the date of construction or installation and will continue thereafter, to be the property of the Province and will be freely alienable by the Province notwithstanding the degree to which the same may be annexed or affixed to land;
- (g) the Province is entitled at any time to remove the Project Infrastructure in whole or in part from Project-Required Lands provided the Province returns such Project-Required Lands to the condition prior to the construction of the Project Infrastructure thereon;
- (h) if and to the extent that any Project Infrastructure on, over or under Project-Required Lands may have vested in the City by operation of law, the City hereby grants, releases, quitclaims, transfers and assigns such Project Infrastructure to the Province; and

- (i) nothing in this Agreement restricts or prohibits the Province from exercising any right, power, privilege or authority or discharging any duty under any applicable law and the Province reserves all of its rights in this regard.

## **2.10 City Ownership of Installations forming Part of City Infrastructure and City Utilities**

In accordance with Section 6.3 and 6.4, all City Infrastructure, City Street Modifications and City Utilities installed by or on behalf of the Province will pass to and be vested in the City and will become the sole property of the City.

## **3. PRE-EXISTING RIGHTS, PROTECTION OF PROVINCE'S RIGHTS AND CITY USE OF PROJECT-REQUIRED LANDS**

### **3.1 Pre-Existing Rights**

With respect to Pre-Existing Rights:

- (a) the City, at the written request of the Province at any time and subject to agreement between the Province and the City, will exercise any contractual rights reserved or available to the City to terminate or modify any such Pre-Existing Rights or to require the removal or relocation of any Pre-Existing Rights Holders' Works as may be required to facilitate the design or construction of the Project Infrastructure or the operation, maintenance or rehabilitation of the Evergreen Line;
- (b) subject to agreement between the Province and the City as to the termination of Pre-Existing Rights, the Province will reimburse the City of all out of pocket costs and expenses incurred as a result of such termination of Pre-Existing Rights;
- (c) the City acknowledges that the Province may seek to enter into negotiations with any Pre-Existing Rights Holders with a view to coordinating the exercise of any such Pre-Existing Rights with the exercise of the rights granted to the Province hereunder or otherwise existing, or with a view to negotiating an agreement with the Pre-Existing Rights Holders dealing with the subordination, modification, assignment, surrender, termination or expropriation of any such Pre-Existing Rights upon terms and conditions as may be agreed between the Province and such Pre-Existing Rights Holders or through any relevant expropriation processes; and
- (d) the Province will deliver to the City copies of any agreements which may be entered into between the Province and any Pre-Existing Rights Holders as contemplated in Section 3.1(b).

### **3.2 Protection of the Province's Rights**

Following the Effective Date:

- (a) the City will not permit any Pre-Existing Rights Holder to modify its Pre-Existing Rights except:

- (i) when the terms of the Pre-Existing Rights require the City to enter into any such modification; or
  - (ii) otherwise with the prior written consent of the Province; and
- (b) the City will not permit any Pre-Existing Rights Holder to register a statutory right-of-way or other interest in land against title to the Project-Required Lands except where the terms of the Pre-Existing Rights require the City to consent to or approve the registration of any such statutory right-of-way or other interest in land against title to the Project-Required Lands.

### **3.3 City Use of Project-Required Lands following Effective Date**

- (a) Following the Effective Date, the City will operate, repair and maintain City Infrastructure and City Utilities in or on any Project-Required Lands (Non-Exclusive Occupation) in the normal course and in accordance with the usual practice of the City in relation to such City Infrastructure and City Utilities in a manner which does not materially interfere with Project Work until such time as the Province notifies the City in accordance with Section 2.5 that it requires Exclusive Occupation of the Project-Required Lands (Exclusive Occupation) where such City Infrastructure and City Utilities are located.
- (b) For so long as the Province has Exclusive Occupation of Project-Required Lands in which City Infrastructure is located, the Province will be responsible for the maintenance and repair of such City Infrastructure during the Province's Exclusive Occupation thereof. Notwithstanding the foregoing, the Province will not be responsible for maintenance and repair of City Utilities, unless such repairs are required as a result of the Project. The City will coordinate access to Project-Required Lands with the Province to complete the repair and maintenance work of City Utilities.
- (c) The City will not undertake construction or installation of any new City Infrastructure or City Utilities on Project-Required Lands nor make any material modification or replacement of existing City Infrastructure or City Utilities on Project-Required Lands except upon prior written notice to and with the consent of the Province.
- (d) If the City requires access to Project-Required Lands for operations, maintenance or repair of City Infrastructure or City Utilities and if such operations, maintenance or repair would interfere with Project Work, except in the case of an emergency, the City will first contact the Province and the Province and the City will coordinate the Project Work and the operations, repairs or maintenance proposed by the City so as to best accommodate the objectives of both the City and the Province.
- (e) In the case of an emergency, the City will undertake any work performed by it or its behalf in such manner as will have the least impact reasonably possible on Project Work.
- (f) In addition to the City's obligations under Section 6.7, the City will indemnify the Province against any third party claims made in respect of damage to property,

injury or death arising from any failure or malfunction of any City Infrastructure or City Utilities which is caused by the acts or omissions of the City or any City Included Parties in connection with or related to the Project.

#### **4. COOPERATION AND WORK PRIORITY**

##### **4.1 Work Cooperation**

- (a) The City and the Province agree to work co-operatively with each other, with the mutual objective of facilitating the expeditious and cost effective completion and operation of the Port Moody Segment in conjunction with the balance of the Evergreen Line.
- (b) In this regard, the City Representative and the Province Representative or delegates, and such of the City's and the Province's contractors, consultants and personnel as, respectively, the City Representative and the Province Representative deem appropriate will meet periodically, as appropriate, to review the development and construction of the Port Moody Segment and other matters of concern in relation thereto, with the expectation that such meetings will be scheduled to occur at least monthly and will occur more frequently when appropriate.

##### **4.2 Port Moody Segment Schedule and Work Priority**

- (a) The Province will provide the City with a copy of the Port Moody Segment Schedule and any amendments thereto.
- (b) The City acknowledges the necessity of the design, construction, testing and commissioning of the portion of the Evergreen Line comprised in the Port Moody Segment being completed within the time-lines provided in the Port Moody Segment Schedule, and the City agrees to work co-operatively with the Province and to perform the City's obligations and commitments hereunder in a timely and expeditious manner so as to facilitate completion of the design, construction, testing and commissioning of the portion of the Evergreen Line comprised in the Port Moody Segment in accordance with the Port Moody Segment Schedule.
- (c) Without limiting the foregoing, the City agrees to treat the design, construction, testing and commissioning of the Port Moody Segment as a high priority work, to respond to requests for discussion of the Province's plans and related matters in a timely and expeditious manner, and to cause all departments of the City to respond to requests for review and discussion of the Province's plans and related matters in a timely and expeditious manner.

##### **4.3 Traffic Management Plans**

- (a) The Province will provide the City Representative with proposed Traffic Management Plans for Project Work in relation to the Port Moody Segment and any proposed amendments thereto for review and comment, and will consult with and consider comments received from the City Representative in the course of finalizing such Traffic Management Plans and amendments.

- (b) In connection with the Traffic Management Plans, the Province may be required to temporarily modify the traffic flow of City Streets including modifications to traffic signal and sign infrastructure.
- (c) In connection with the completion of the Project Work and in accordance with the Traffic Management Plan, the City acknowledges that the Province will be required to amend existing traffic signal timing on City Streets on a temporary basis in consultation with the City as set-out in Section 4.3(a). The Province will administer the timing changes in the field using a contractor deemed qualified by the Province, in consultation with the City, to perform work on traffic signal infrastructure and with traffic control devices. The Province will coordinate with the City to ensure that the City has the opportunity to inspect all work on traffic signal infrastructure and traffic control devices. The City acknowledges that it will not modify traffic signal timing which may impact the Traffic Management Plan without consultation with the Province. Notwithstanding the foregoing, the City agrees that the Province will have final authority with respect to decisions regarding traffic signal timing changes in connection with the Traffic Management Plan.
- (d) Any temporary modifications to traffic flows on City Streets including modifications to traffic signal and sign infrastructure will be subject to Section 5.2 and will be set out in the Traffic Management Plan.
- (e) The Province and its contractors will implement such Traffic Management Plans as appropriate in light of the Project Work and the City agrees to cooperate with and facilitate any traffic management measures undertaken by the Province or its contractors which conforms therewith.
- (f) Subject to Section 5.2, the Province may place, install, affix or post traffic or directional signs and signals, traffic control devices and barriers on City Streets and City Infrastructure as the Province deems appropriate in the public interest to implement the Traffic Management Plan.

#### **4.4 Hours of Project Work**

- (a) The Province will establish the hours of work when the Project Work will be performed in order to achieve completion of the Port Moody Segment within the Port Moody Segment Schedule.
- (b) The Province will notify the City of the hours of work the Province establishes for the Project and any changes it makes to those hours of work. The Province will consider any recommendations or comments which the City may have in relation to the Project's hours of work.

### **5. DESIGN AND CONSTRUCTION CRITERIA**

#### **5.1 General**

The Province will undertake the Project, in conformity with building code and other design and construction standards and criteria developed by the Province for the Project and will meet with the City Representative and City staff periodically, as appropriate, to provide them with

information and consult with them regarding the design and construction standards and criteria developed by the Province for the Project.

## **5.2 City Infrastructure and City Utilities Generally**

- (a) All City Infrastructure and City Utilities, other than the City Street Modifications, that requires rebuilding, relocation, extension, decommissioning, abandonment, or replacement, such City Infrastructure or City Utilities so rebuilt, relocated, extended, decommissioned, abandoned or replaced will be undertaken with systems, fixtures and facilities which are of equal quality and capacity to the City Infrastructure or City Utilities so relocated, extended, decommissioned, abandoned or replaced, on a Like-for-Like basis. The City will accept all City Infrastructure or City Utilities which the Province decommissions, abandons or closes in accordance with this Section 5.2 and may do with it as the City chooses. The City agrees that if the City Infrastructure and City Utilities are designed and constructed, in accordance with the City's design guidelines and any other applicable design and construction standards (in place on the Effective Date), such City Infrastructure and City Utilities will be acceptable to the City.
- (b) City Street Modifications will be undertaken in accordance with the conceptual design and requirements shown in Schedule E. The City confirms that the conceptual design and requirements for City Street Modifications shown in Schedule E have been developed by the Province in consultation with the City and that Schedule E satisfies the requirements of the City in relation to the City Streets shown therein. The City agrees that if the City Street Modifications are constructed in accordance with Schedule E and designed and constructed, in accordance with the City's design guidelines and any other applicable design and construction standards (in place on the Effective Date), such City Street Modifications will be acceptable to the City.
- (c) At the completion of all City Infrastructure Work, City Utilities and City Street Modifications conducted by the Province or its contractor, the City will, subject to Section 6.3 and 6.4, accept and assume responsibility of all such City Infrastructure Work, City Utilities and City Street Modifications.

## **5.3 Port Moody Stations**

- (a) The City acknowledges the Port Moody Station locations as set out in Schedule A. The Province will provide the City with design drawings of the Port Moody Stations during the design phase of the Project for review and comment.
- (b) The Province will design and construct the Guideway alignment in Port Moody Segment to accommodate a future potential station to be located in the vicinity of Queen's Street.
- (c) During detailed design of the Project, the Province commits to explore opportunities with the City of Port Moody and, within reason, incorporate public art into the Project in a cost-effective manner. The Province will work with the City to provide a protected area near entrances for the stations located in Port Moody, for the City's exclusive use for public art display or information signing.

## **6. MISCELLANEOUS PROVISIONS RELATING TO PROJECT WORK**

### **6.1 Plans, Drawings, Surveys and other Information with respect to Project Infrastructure**

- (a) Subject to Sections 5.3 and 6.3, when the Province provides the City with plans, drawings or other information with respect to Project Work or City Infrastructure Work to be undertaken by the Province, such plans, drawings and information are provided for information only and the provision thereof to the City will not confer upon the City any right to approve same.
- (b) The City acknowledges that the Province intends to conduct Pre-Construction Condition Surveys and Post-Construction Condition Surveys of City Infrastructure and City Utilities within, or in the vicinity of, the Port Moody Segment to establish the location and condition thereof prior to commencement of Project Work within the Zone of Influence of such City Infrastructure and/or City Utilities, and agrees to make access to such City Infrastructure and/or City Utilities available to the Province for that purpose. The Province will provide to the City copies of the Pre-Construction Condition Surveys and Post-Construction Condition Surveys for the City Infrastructure as they become available to the Province.
- (c) The Province will monitor Ioco Bridge for structural impacts during the construction of any Project Works within the Zone of Influence. The Province will provide the City with the monitoring information as it becomes available.
- (d) Within a reasonable time following the Project Completion Date, except where reasonably requested by the City that the Province provide upon completion of the City Infrastructure Work, City Street Modifications and City Utilities, such request not to be unreasonably withheld, the Province will provide the City with:
  - (i) complete set of construction records, including as-built drawings with respect to the Project Infrastructure, City Infrastructure, City Street Modifications, and City Utilities undertaken by the Province constructed in the Port Moody Segment; and
  - (ii) as-built drawings will be provided in both paper and electronic AutoCAD plans.
- (e) Following completion of construction of the Project Infrastructure located in the Port Moody Segment the Province and the City will work co-operatively to address and correct any title discrepancies or incorrect descriptions so as to confirm the as-built and surveyed locations of such Project Infrastructure and the locations, extent and descriptions of the System-Required Lands under this Agreement.

### **6.2 Plans, Drawings, Surveys and other Information with respect to City Infrastructure and City Utilities**

The City agrees to provide to the Province, in a timely manner and without cost to the Province, copies of any plans, drawing, surveys and other materials and information in the possession or control of the City relevant to the identification, description, condition and location of any City

Infrastructure and City Utilities within or in the vicinity of the Port Moody Segment anticipated to be affected by the Project Work or the operation of the Evergreen Line.

### 6.3 City Infrastructure Work

The Province and the City agree that, with respect to City Infrastructure Work required in connection with the construction of Project Infrastructure comprised in the Port Moody Segment:

- (a) following consultation with the City Representative, the Province will confirm to the City:
  - (i) the nature and extent of such City Infrastructure Work, based on a review of alternatives, if any, and based on the principle of Like-for-Like repair or replacement as set out in Section 5.2, or as in the case of the City Street Modifications as set out specifically in Section 5.2(b); and
  - (ii) a timetable for the commencement, performance and completion and tie-in and integration of such City Infrastructure Work (including City-Exclusive Work) so that it can be completed in compliance with the Port Moody Segment Schedule;
- (b) whenever designs or drawings for City Infrastructure are submitted for review and comment to the City by the Province or the Province's contractors, the City will promptly review same for completeness only and notify the Province or the contractor which has submitted same of any apparent errors or omissions, and the City will in any event provide its comments with respect to any such designs or drawings within ten (10) Business Days of receipt (unless otherwise agreed to by the Parties), failing which the City will be deemed to have no objection thereto;
- (c) City Infrastructure Work and City Street Modifications undertaken by the Province will be undertaken by the Province and its contractors at the sole cost of the Province;
- (d) the Province and its contractors will have the right, at any time, on reasonable prior notice, to inspect any City Exclusive Work undertaken by the City or City-contracted work forces, at the expense of the Province;
- (e) the City will have the right to designate an inspector to inspect any City Infrastructure Work undertaken by the Province or its contractors at such time or times coordinated and agreed upon with the Province, at the Province's expense, at such rates as are ordinarily charged by the City for similar inspections as approved by the Province in writing, and the City may inspect City Infrastructure Work at other times on reasonable prior notice, at the expense of the City;
- (f) the City will ensure that its inspection process and procedures are consistent during the period of the Project;
- (g) within five (5) Business Days of notice from the Province, the City will coordinate with the Province to undertake a final post-construction inspection of the City Infrastructure Work and City Street Modifications for compliance with Section 5.2 (a) and (b). Within ten (10) Business Days after the City's inspection, the City will

provide a letter to the Province listing, with specificity, the deficiencies, if any, of the City Infrastructure Work or City Street Modifications for the Province's consideration;

- (h) once the Province has determined that the City Infrastructure Work and City Street Modifications are substantially complete, the Province notify the City in writing that the City Infrastructure Work is substantially complete and ready for use for its intended purpose; and
- (i) any City Infrastructure Work or City Street Modifications completed by the Province will be warrantied by the Province for a period of two (2) years following delivery of notice to the City, as set out in Section 6.3(h), of the specific element(s) of such City Infrastructure Work or City Street Modifications.

#### **6.4 City Utilities**

- (a) The Province and the City agree that, with respect to City Utilities located in the Port Moody Segment area which may be affected by the construction of the Project Work, the Province will, after consulting with the City Representative on alternatives, confirm to the City:
  - (i) the City Utilities likely to be affected by the Project Work;
  - (ii) the nature and extent of the Province's proposed work on such City Utilities; and
  - (iii) the Province's proposed timetable for the commencement, performance and completion and tie-in and integration of such City Utilities so that it can be completed in compliance with the Port Moody Segment Schedule.
- (b) Where required in accordance with this Section of 6.4, the Province will repair and replace City Utilities at its costs based on the principle of Like-for-Like as set out in Section 5.2.
- (c) The City will have review, comment and approval rights on work conducted by the Province on City Utilities. The City will work jointly with the Province to develop a schedule for the design and construction of City Utilities. Whenever designs or drawings for City Utilities are submitted by the Province to the City for approval, the City will promptly review and provide comments with respect to any such designs or drawings within ten (10) Business Days of receipt (unless otherwise agreed to by the Parties).
- (d) The Province will coordinate and seek approval with the City for any temporary use of City Utilities during construction with the understanding that Province will not required to obtain any permits as per Section 2.9 (b).
- (e) The City will have the right to designate an inspector to inspect any work for City Utilities undertaken by the Province at such time or times coordinated and agreed upon with the Province, at the Province's expense, at such rates as are ordinarily charged by the City for similar inspections as approved by the Province in writing.

- (f) The City may inspect City Utilities at other times on reasonable prior notice, at the expense of the City.
- (g) Within five (5) Business Days of notice from the Province, the City will complete a final post-construction inspection coordinated with the Province. Within ten (10) Business days after the City's inspection, the City will provide a letter to the Province either accepting the work and/or listing with specificity any deficiencies of the work relating to City Utilities.
- (h) All City Utilities constructed by the Province will be transferred to the City once the deficiencies of the final post-construction inspection have been addressed by the Province and the City delivers a letter to the Province stating:
  - (i) the City accepts that the specific element(s) of such utility work is substantially complete and ready for use for its intended purpose; and
  - (ii) the City assumes responsibility of the specific element(s) of such utility work.
- (i) City Utilities completed by the Province will be warrantied by the Province for a period of two years following acceptance as set out in Section 6.4 (h), by the City of the specific element(s) of such utility work.

#### **6.5 City-Exclusive Work**

City-Exclusive Work will be performed by the City or its contractors at such rates as are ordinarily charged by the City for similar work, as approved by the Province in writing, and the cost of City-Exclusive Work will be payable by the Province to the City within sixty (60) days of receipt of invoice therefore.

#### **6.6 City Enhancements**

The City acknowledges and agrees that in connection with the repair, permanent relocation or replacement of any City Infrastructure or City Utilities, the Province's sole obligation will be to repair, relocate or replace such City Infrastructure or City Utilities on a Like-for-Like basis without any obligation as to design, installation, construction, quality of or payment for any City Enhancements.

The Province or its contractors will consider requests by the City for the construction by the Province or its contractors of City Enhancements to City Infrastructure and City Utilities in the course of design and construction of the Port Moody Segment, provided that such City Enhancements can be constructed without impacting the Port Moody Segment Schedule and that such City Enhancements, if approved by the Province or its contractors, are designed and constructed at the sole cost and risk of the City.

#### **6.7 Repairs to Damaged City Infrastructure and City Utilities**

If the Post-Construction Condition Survey, by reference to the Pre-Construction Condition Survey, establishes that the Province or the Province's contractors have damaged any City Infrastructure or City Utilities in the carrying out of the Project Work, City Infrastructure Work or work on City Utilities, then the Province will repair such damage using current standards, at the

Province's expense, to the extent necessary to restore the City Infrastructure or City Utilities to a Like-for-Like condition prior to the carrying out of the Project Work, City Infrastructure Work, and work related to the City Utilities as evidenced by the relevant Pre-Construction Condition Survey.

For clarity, the Province will not be obligated to repair damage due to ordinary wear and tear to City Infrastructure due to the use of such City Infrastructure or City Utilities in a lawful manner.

#### **6.8 Repairs to Damaged Project Infrastructure**

If it is established that the City or City Included Parties working within the Project lands, have damaged any Project Infrastructure, then the City will be responsible for reimbursing the Province for the reasonable costs of repairing such damage to the extent necessary to restore the Project Infrastructure to the condition it was in prior to the occurrence of such damage, including any costs incurred as a result of consequential delay in the progress of the Project Work.

### **7. ASSIGNMENT AND EXERCISE OF RIGHTS**

#### **7.1 Assignment by Province**

The Province may at any time transfer or assign all or any of its rights and interests under this Agreement to an Operator or to any Qualified Government Entity, and upon any such transfer or assignment, the Province will be released from its obligations under this Agreement to the extent that they are assumed in writing by the transferee or assignee. The City will be provided with written notice of any such transfer or assignment, including a copy of the relevant executed transfer or assignment and assumption agreement (or any relevant authorizing legislation, as applicable).

Effective as of and from the date of any such transfer or assignment, any such transferee or assignee will be entitled to exercise any rights and to enjoy any benefits of the transferor or assignor under this Agreement which have been so transferred or assigned.

#### **7.2 Rights Exercisable by Province's Contractors, Subcontractors and Agents**

The rights granted to the Province in this Agreement may be exercised by the Province or any of its contractors, subcontractors, agents, lessees or licencees at any time in connection with the design, construction, testing, commissioning, operation, maintenance and rehabilitation of the Evergreen Line. Without limiting the foregoing, the Province may, at any time, by notice to the City designate and authorize any of the Province's contractors, subcontractors, agents, lessees or licencees or any other person to issue notices and other communications to the City or perform other functions of the Province under the terms of this Agreement, provided that no such person will have authority to amend this Agreement.

### **8. INDEMNIFICATION/CONDUCT OF INDEMNIFIED CLAIMS/INSURANCE**

#### **8.1 Indemnity**

- (a) Each of the Province and the City (in this Section 8, the "Indemnifying Party") will indemnify and save harmless the other (in this Section 8, the "Indemnified Party") from and against all liabilities, claims, losses, damages, judgments and

reasonable costs and expenses, incurred or sustained by the Indemnified Party as a result of any breach or non-performance by the Indemnifying Party of any covenant or obligation to be performed or fulfilled by the Indemnifying Party pursuant to this Agreement.

- (b) Without limiting Section 8.1(a) the indemnity by the City will extend to any liabilities, claims, losses, damages, judgments and reasonable costs and expenses which are incurred or suffered by the Province because the Province has undertaken City Infrastructure Work or work related to City Utilities in accordance with design criteria or construction standards approved by the City. The term "Indemnified Party" will, for the purposes of this Section 8.1, include such party's directors, councillors, officers, employees or agents and the obligations of an Indemnifying Party will extend to any breach or non-performance of this Agreement by its officers, employees and agents.

## 8.2 Conduct of Claims

- (a) If any claim is made against an Indemnified Party entitled to indemnification under Section 8.1, the Indemnified Party will notify the Indemnifying Party as soon as possible of the nature of such claim and the Indemnifying Party will be entitled (but not required) to assume the defence of any suit brought to enforce such claim, provided, however, that the defence will be through legal counsel acceptable to the Indemnified Party and that no settlement may be made by the Indemnified Party without the prior written consent of the Indemnifying Party. If the Indemnifying Party does not assume such defence, the Indemnified Party may do so.
- (b) If the Indemnifying Party assumes the defence of any claim pursuant to Section (a):
  - (i) the Indemnified Party will have the right to employ separate counsel in any proceeding described above and to participate in the defence thereof but the fees and expenses of such counsel will be at the expense of such Indemnified Party unless:
    - (A) the employment of such counsel has been authorized by the Indemnifying Party; or
    - (B) the named parties to any such proceeding include the Indemnifying Party and the Indemnified Person and representation of the parties by the same counsel would be inappropriate due to actual or potential differing interests between them, in which event the fees and expenses of such counsel will be paid by the Indemnifying Party, but will be reimbursed to the Indemnifying Party if the Indemnified Person is not entitled to indemnity in respect thereof pursuant to this Section, and
    - (C) no settlement or admission of liability, whether before or after an action, if any is commenced, may be made by the Indemnifying Party without the prior written consent of the Indemnified Party, which consent will not be unreasonably withheld.

- (c) If the Indemnified Party assumes the defence of any claim pursuant to this Section 8.2, the Indemnified Party will:
  - (i) provide timely updates on the claim to the Indemnifying Party during the course of the claim; and
  - (ii) not make any settlement of the claim or admission of liability, whether before or after an action, if any is commenced, without the prior written consent of the Indemnifying Party, which consent will not be unreasonably withheld.
- (d) The following provisions will apply to indemnification payments which the Indemnified Party may make to a current or former council member, municipal officer or employee (in this section, a "**Municipal Official**") under Section 287.2 of the *Local Government Act* (British Columbia), which fall within the scope of the indemnity under Section 8.1(a):
  - (i) the Indemnified Party will advise the Indemnifying Party of any claim, action or prosecutions contemplated under Section 287.2 as soon as reasonably practicable, but in any event, no later than 14 days after the Indemnified Party becomes aware of the claim, action or prosecution;
  - (ii) if the Indemnified Party (or the Municipal Official) determines to settle the claim, action or prosecution, the Indemnified Party will advise the Indemnifying Party forthwith and will consult with the Indemnifying Party on the settlement before it is concluded, provided that for the purposes of this Section 8.2(d)(ii), any consultation by the Indemnified Party will be construed so as not to confer upon the Indemnifying Party any right of approval or any standing to participate in negotiations to settle;
  - (iii) the Indemnifying Party will not be entitled to defend the claim, action or prosecution against the Municipal Official; and
  - (iv) if, under Section 287.2, the Indemnified Party indemnifies a Municipal Official in relation to the matter, then, if the subject matter of the claim, action or prosecution falls within the scope of the indemnity under Section 8.1(a), the Indemnifying Party will indemnify the Indemnified Party (without duplication of any indemnity under Section 8.1(a)):
    - (A) if a court has found against the Municipal Official in the claim, action or prosecution and that finding has not been appealed, or if appealed such finding has not been reversed on appeal, or
    - (B) if the claim, action or prosecution has been settled and the Indemnified Party has complied with subsection 8.2(d)(ii) above.

## 9. DISPUTE RESOLUTION

### 9.1 Dispute Resolution Procedure

If any Dispute arises at any time, the party which identifies the dispute will give written notice of the Dispute to the other and the following provisions will apply:

- (a) The parties agree to endeavour to resolve the Dispute as expeditiously as possible, with a view to enabling the design, construction, testing and commissioning of the Port Moody Segment to proceed expeditiously in accordance with the Port Moody Segment Schedule.
- (b) Each of the Province and the City may invite any of its contractors or consultants whose work is the subject of the Dispute to participate in any discussions or proceedings which are the subject of the dispute on terms as to confidentiality and otherwise as the parties may agree.
- (c) The Senior Project Manager and the City Representative will examine any matter in Dispute as soon as possible and attempt to resolve the Dispute within ten (10) Business Days following receipt of the notice of the Dispute.
- (d) If the Senior Project Manager and the City Representative are unable to agree on a resolution of the Dispute within 10 days following receipt of the notice of the Dispute, the Dispute will be referred to the Executive Project Director and the chief administrative officer of the City for resolution.
- (e) If the Executive Project Director and the chief administrative officer of the City are unable to agree on a resolution of the Dispute within 10 Business Days following the date on which the Dispute was referred to them for resolution, then either party may elect to have the Dispute resolved by litigation in the proper judicial forum, unless the Province and the City have agreed in writing as to some alternative means for resolving the Dispute.

## 9.2 Progress of Project

Notwithstanding any Dispute, the Project will continue to the fullest extent possible and each party will continue complying with its obligations under this Agreement until the Dispute has been resolved through the Dispute Resolution Procedure set forth in Section 9.

## 10. NOTICES

### 10.1 Notices

Any notice given pursuant to this Agreement will be in writing and delivered or sent by facsimile transmission addressed to the parties as follows:

To the City:

**CITY OF PORT MOODY**  
Port Moody City Hall  
100 Newport Drive  
Port Moody, British Columbia V3H 3E1

Attention:

Fax: 604 469 4550

To the Province:

**EVERGREEN LINE PROJECT OFFICE**  
2900 Barnet Highway  
Coquitlam, British Columbia V3B 0G1

Attention: Evergreen Line Project

Fax: 604-927-4453

or at such other address or to the attention of such other person as either party may specify by notice in writing given to the other in accordance with the foregoing. The time of giving and receiving any such notice will be deemed to be on the day of delivery, if delivered, or the day of transmittal with confirmation of receipt, if sent by facsimile or the date of transmission, if sent by email unless, in the case of notice sent by facsimile or email, the party sending the facsimile or email is notified by the intended recipient that the facsimile or email has failed or not been received.

## **11. GENERAL**

### **11.1 Effective Date and No Right of Termination**

This Agreement and the rights granted to the Province hereunder are effective as of and from the Effective Date and will remain in full force and effect thereafter unless and until the Province notifies the City that the rights granted by the City under this Agreement are no longer required.

The City acknowledges and agrees that no breach of this Agreement by the Province will give rise to any right to terminate this Agreement or result in the suspension, cancellation or termination of all or any of the rights granted to the Province under this Agreement.

### **11.2 Further Assurances**

The Province and the City agree to do all such things, to sign all such documents and to provide all such further assurances as are reasonably required to carry out the intent and purpose of this Agreement in a timely fashion.

### **11.3 Sections, Schedules and Interpretation**

The division of this Agreement into separate Schedules, Articles and Sections and the insertion of headings are for convenience of reference only and will not affect its interpretation.

### **11.4 No Deemed Waiver**

No failure or delay in the exercise of any right under this Agreement will operate as a waiver, nor will any single or partial exercise of any right under this Agreement preclude any other or future exercise of such right or the exercise of any other right. No waiver of any right under this Agreement will be effective unless it is in writing signed by the party sought to be bound thereby.

### **11.5 Enurement and Binding Effect**

Subject to Article 7, this Agreement will enure to the benefit of and be binding on each party and its respective successors and permitted assigns and every reference to the City and the Province will include the successors and permitted assigns of such party, wherever the context so requires.

### **11.6 Governing Law**

The Agreement will be governed by and construed in accordance with the law of British Columbia. Subject to the provisions of Article 9, the parties irrevocably submit to the jurisdiction of the courts of British Columbia in all matters relating to the interpretation or enforcement of this Agreement.

### **11.7 Severability**

All of the rights and obligations contained in this Agreement are severable so that if any one or more of such rights and obligations is determined to be void or unenforceable, either in whole or in part, the balance of this Agreement will remain in effect and be binding and enforceable to the fullest extent permitted by law.

### **11.8 Reference to Statutes**

A reference to a statute or law includes all regulations made thereunder, all amendments to the statute or law in force from time to time, and every statute or law that supplements or supersedes such statute or law.

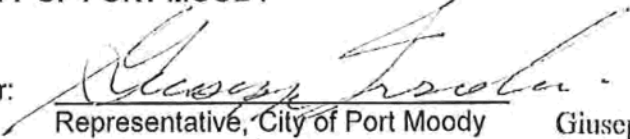
## 12. SCHEDULES


The parties agree that the following Schedules are deemed to be attached to this Agreement and form an integral part of this Agreement

Schedule A	-	Port Moody Segment Alignment
Schedule B	-	Construction-Required Lands
Schedule C	-	System-Required Lands
Schedule D	-	City Fee Simple Lands
Schedule E	-	City Street Modifications
Schedule F	-	List of City-Exclusive Work
Schedule G	-	Pre-Existing Rights

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto.

### CITY OF PORT MOODY

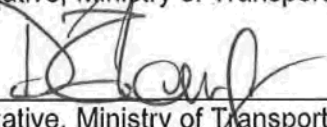
Per:   
Representative, City of Port Moody Giuseppe Trasolini, Mayor

Per:   
Representative, City of Port Moody COLLEEN ROWE, CITY CLERK

Date Signed: November 16, 2011

### HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE

Per:   
Representative, Ministry of Transportation and Infrastructure

Per:   
Representative, Ministry of Transportation and Infrastructure

Date Signed: November 18, 2011

**SCHEDULE A**  
**Port Moody Segment Alignment**



**SCHEDULE B**  
**Construction-Required Lands**

Page 033 to/à Page 038

Withheld pursuant to/removed as

s.16;s.17

**SCHEDULE C**  
**System-Required Lands**

Page 040 to/à Page 045

Withheld pursuant to/removed as

s.16;s.17

**SCHEDULE D**

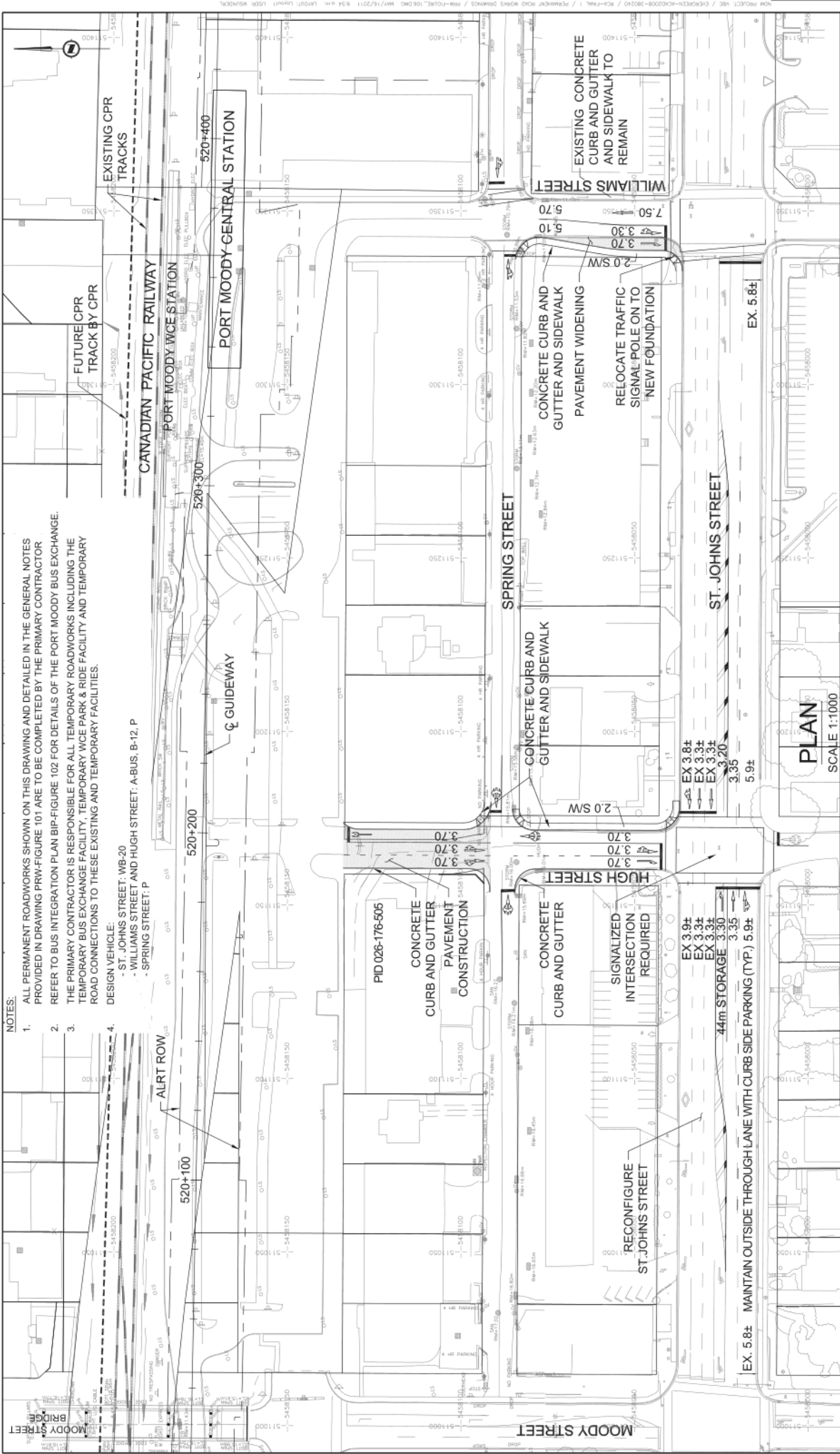
**City Fee Simple Lands**

Page 047 to/à Page 053

Withheld pursuant to/removed as

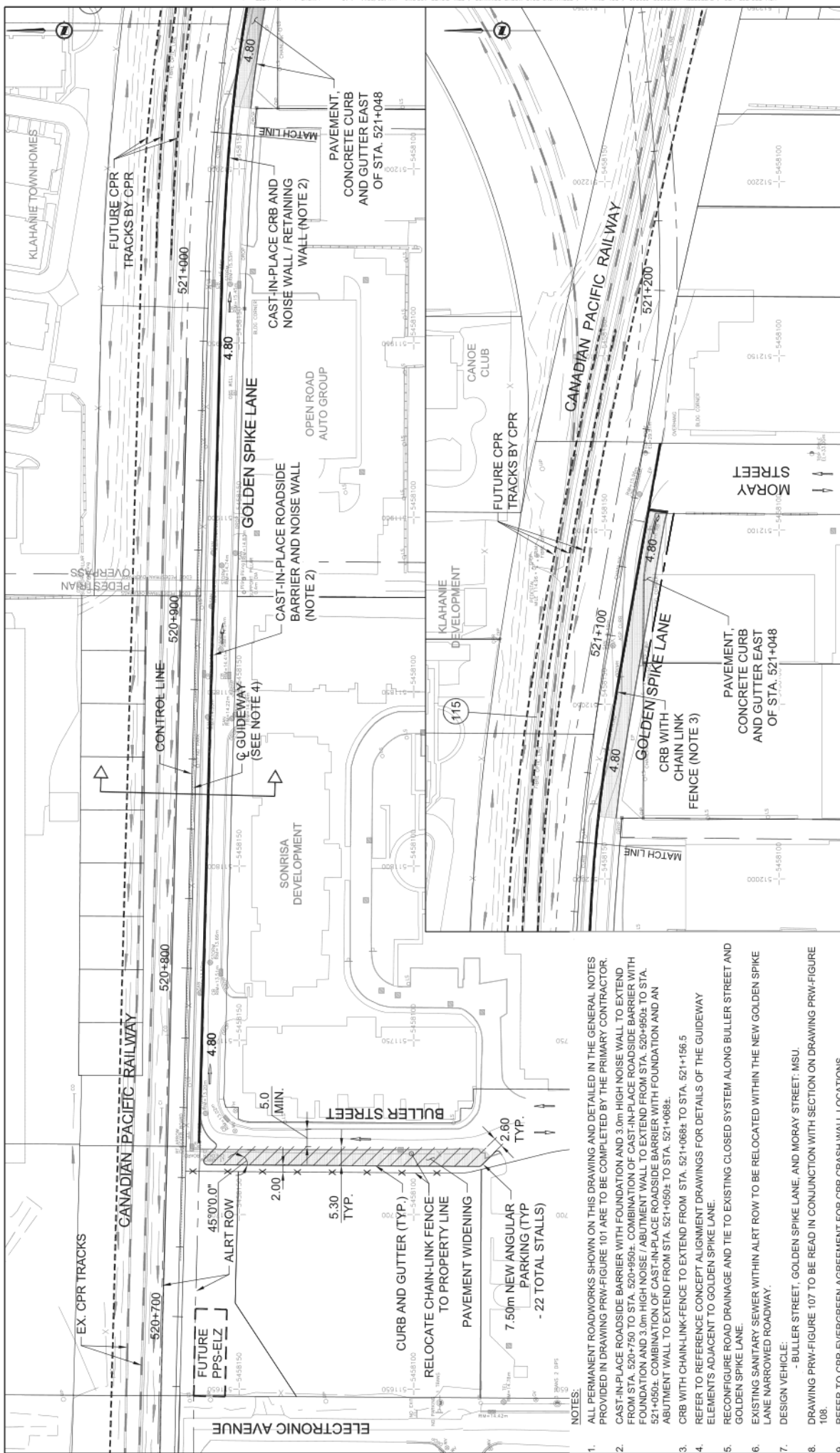
s.16;s.17

**SCHEDULE E**  
**City Street Modifications**



- NOTES:**
1. ALL PERMANENT ROADWORKS SHOWN ON THIS DRAWING AND DETAILED IN THE GENERAL NOTES PROVIDED IN DRAWING PRW-FIGURE 101 ARE TO BE COMPLETED BY THE PRIMARY CONTRACTOR.
  2. REFER TO BUS INTEGRATION PLAN BIP-FIGURE 102 FOR DETAILS OF THE PORT MOODY BUS EXCHANGE.
  3. THE PRIMARY CONTRACTOR IS RESPONSIBLE FOR ALL TEMPORARY ROADWORKS INCLUDING THE TEMPORARY BUS EXCHANGE FACILITY, TEMPORARY WCE PARK & RIDE FACILITY AND TEMPORARY ROAD CONNECTIONS TO THESE EXISTING AND TEMPORARY FACILITIES.
  4. DESIGN VEHICLE:
    - ST. JOHNS STREET, WB-20
    - WILLIAMS STREET AND HUGH STREET, A BUS, B-42, P
    - SPRING STREET, P

<b>REVISIONS</b>		<b>Rev</b>	<b>Date</b>	<b>By</b>	<b>Check</b>
1. A		1	10/10/2011		
2. B		2	10/10/2011		
3. C		3	10/10/2011		
4. D		4	10/10/2011		
5. E		5	10/10/2011		
6. F		6	10/10/2011		
7. G		7	10/10/2011		
8. H		8	10/10/2011		
9. I		9	10/10/2011		
10. J		10	10/10/2011		
11. K		11	10/10/2011		
12. L		12	10/10/2011		
13. M		13	10/10/2011		
14. N		14	10/10/2011		
15. O		15	10/10/2011		
16. P		16	10/10/2011		
17. Q		17	10/10/2011		
18. R		18	10/10/2011		
19. S		19	10/10/2011		
20. T		20	10/10/2011		
21. U		21	10/10/2011		
22. V		22	10/10/2011		
23. W		23	10/10/2011		
24. X		24	10/10/2011		
25. Y		25	10/10/2011		
26. Z		26	10/10/2011		
27. AA		27	10/10/2011		
28. AB		28	10/10/2011		
29. AC		29	10/10/2011		
30. AD		30	10/10/2011		
31. AE		31	10/10/2011		
32. AF		32	10/10/2011		
33. AG		33	10/10/2011		
34. AH		34	10/10/2011		
35. AI		35	10/10/2011		
36. AJ		36	10/10/2011		
37. AK		37	10/10/2011		
38. AL		38	10/10/2011		
39. AM		39	10/10/2011		
40. AN		40	10/10/2011		
41. AO		41	10/10/2011		
42. AP		42	10/10/2011		
43. AQ		43	10/10/2011		
44. AR		44	10/10/2011		
45. AS		45	10/10/2011		
46. AT		46	10/10/2011		
47. AU		47	10/10/2011		
48. AV		48	10/10/2011		
49. AW		49	10/10/2011		
50. AX		50	10/10/2011		
51. AY		51	10/10/2011		
52. AZ		52	10/10/2011		
53. BA		53	10/10/2011		
54. BB		54	10/10/2011		
55. BC		55	10/10/2011		
56. BD		56	10/10/2011		
57. BE		57	10/10/2011		
58. BF		58	10/10/2011		
59. BG		59	10/10/2011		
60. BH		60	10/10/2011		
61. BI		61	10/10/2011		
62. BJ		62	10/10/2011		
63. BK		63	10/10/2011		
64. BL		64	10/10/2011		
65. BM		65	10/10/2011		
66. BN		66	10/10/2011		
67. BO		67	10/10/2011		
68. BP		68	10/10/2011		
69. BQ		69	10/10/2011		
70. BR		70	10/10/2011		
71. BS		71	10/10/2011		
72. BT		72	10/10/2011		
73. BU		73	10/10/2011		
74. BV		74	10/10/2011		
75. BW		75	10/10/2011		
76. BX		76	10/10/2011		
77. BY		77	10/10/2011		
78. BZ		78	10/10/2011		
79. CA		79	10/10/2011		
80. CB		80	10/10/2011		
81. CC		81	10/10/2011		
82. CD		82	10/10/2011		
83. CE		83	10/10/2011		
84. CF		84	10/10/2011		
85. CG		85	10/10/2011		
86. CH		86	10/10/2011		
87. CI		87	10/10/2011		
88. CJ		88	10/10/2011		
89. CK		89	10/10/2011		
90. CL		90	10/10/2011		
91. CM		91	10/10/2011		
92. CN		92	10/10/2011		
93. CO		93	10/10/2011		
94. CP		94	10/10/2011		
95. CQ		95	10/10/2011		
96. CR		96	10/10/2011		
97. CS		97	10/10/2011		
98. CT		98	10/10/2011		
99. CU		99	10/10/2011		
100. CV		100	10/10/2011		
101. CW		101	10/10/2011		
102. CX		102	10/10/2011		
103. CY		103	10/10/2011		
104. CZ		104	10/10/2011		
105. DA		105	10/10/2011		
106. DB		106	10/10/2011		
107. DC		107	10/10/2011		
108. DD		108	10/10/2011		
109. DE		109	10/10/2011		
110. DF		110	10/10/2011		
111. DG		111	10/10/2011		
112. DH		112	10/10/2011		
113. DI		113	10/10/2011		
114. DJ		114	10/10/2011		
115. DK		115	10/10/2011		
116. DL		116	10/10/2011		
117. DM		117	10/10/2011		
118. DN		118	10/10/2011		
119. DO		119	10/10/2011		
120. DP		120	10/10/2011		
121. DQ		121	10/10/2011		
122. DR		122	10/10/2011		
123. DS		123	10/10/2011		
124. DT		124	10/10/2011		
125. DU		125	10/10/2011		
126. DV		126	10/10/2011		
127. DW		127	10/10/2011		
128. DX		128	10/10/2011		
129. DY		129	10/10/2011		
130. DZ		130	10/10/2011		
131. EA		131	10/10/2011		
132. EB		132	10/10/2011		
133. EC		133	10/10/2011		
134. ED		134	10/10/2011		
135. EE		135	10/10/2011		
136. EF		136	10/10/2011		
137. EG		137	10/10/2011		
138. EH		138	10/10/2011		
139. EI		139	10/10/2011		
140. EJ		140	10/10/2011		
141. EK		141	10/10/2011		
142. EL		142	10/10/2011		
143. EM		143	10/10/2011		
144. EN		144	10/10/2011		
145. EO		145	10/10/2011		
146. EP		146	10/10/2011		
147. EQ		147	10/10/2011		
148. ER		148	10/10/2011		
149. ES		149	10/10/2011		
150. ET		150	10/10/2011		
151. EU		151	10/10/2011		
152. EV		152	10/10/2011		
153. EW		153	10/10/2011		
154. EX		154	10/10/2011		
155. EY		155	10/10/2011		
156. EZ		156	10/10/2011		
157. FA		157	10/10/2011		
158. FB		158	10/10/2011		
159. FC		159	10/10/2011		
160. FD		160	10/10/2011		
161. FE		161	10/10/2011		
162. FF		162	10/10/2011		
163. FG		163	10/10/2011		
164. FH		164	10/10/2011		
165. FI		165	10/10/2011		
166. FJ		166	10/10/2011		
167. FK		167	10/10/2011		
168. FL		168	10/10/2011		
169. FM		169	10/10/2011		
170. FN		170	10/10/2011		
171. FO		171	10/10/2011		
172. FP		172	10/10/2011		
173. FQ		173	10/10/2011		
174. FR		174	10/10/2011		
175. FS		175	10/10/2011		
176. FT		176	10/10/2011		
177. FU		177	10/10/2011		
178. FV		178	10/10/2011		
179. FW		179	10/10/2011		
180. FX		180	10/10/2011		
181. FY		181	10/10/2011		
182. FZ		182	10/10/2011		
183. GA		183	10/10/2011		
184. GB		184	10/10/2011		
185. GC		185	10/10/2011		
186. GD		186	10/10/2011		
187. GE		187	10/10/2011		
188. GF		188	10/10/2011		
189. GG		189	10/10/2011		
190. GH		190	10/10/2011		
191. GI		191	10/10/2011		
192. GJ		192	10/10/2011		
193. GK		193	10/10/2011		
194. GL		194	10/10/2011		
195. GM		195	10/10/2011		
196. GN		196	10/10/2011		
197. GO		197	10/10/2011		
198. GP		198	10/10/2011		
199. GQ		199	10/10/2011		
200. GR		200	10/10/2011		
201. GS		201	10/10/2011		
202. GT		202	10/10/2011		
203. GU		203	10/10/2011		
204. GV		204	10/10/2011		
205. GW		205	10/10/2011		
206. GX		206	10/10/2011		
207. GY		207	10/10/2011		
208. GZ		208	10/10/2011		
209. HA		209	10/10/2011		
210. HB		210	10/10/2011		
211. HC		211	10/10/2011		
212. HD		212	10/10/2011		
213. HE		213	10/10/2011		
214. HF		214	10/10/2011		
215. HG		215	10/10/2011		
216. HH		216	10/10/2011		
217. HI		217	10/10/2011		
218. HJ		218	10/10/2011		
219. HK		219	10/10/2011		
220. HL		220	10/10/2011		
221. HM		221	10/10/2011		
222. HN		222	10/10/2011		
223. HO		223	10/10/2011		
224. HP		224	10/10/2011		
225. HQ		225	10/10/2011		
226. HR		226	10/10/2011		
227. HS		227	10/10/2011		
228. HT		228	10/10/2011		
229. HU		229	10/10/2011		
230. HV		230	10/10/2011		
231. HW		231	10/10/2011		
232. HX		232	10/10/2011		
233. HY		233	10/10/2011		
234. HZ		234	10/10/2011		
235. IA		235	10/10/2011		
236. IB		236	10/10/2011		
237. IC		237	10/10/2011		
238. ID		238	10/10/2011		
239. IE		239	10/10/2011		
240. IF		240	10/10/2011		
241. IG		241	10/10/2011		
242. IH		242	10/10/2011		
243. II		243	10/10/2011		
244. IJ		244	10/10/2011		
245. IK		245	10/10/2011		
246. IL		246	10/10/2011		
247. IM		247	10/10/2011		
248. IN		248	10/10/2011		
249. IO		249	10/10/2011		
250. IP		250	10/10/2011		
251. IQ		251	10/10/2011		
252. IR		252	10/10/2011		
253. IS		253	10/10/2011	</	

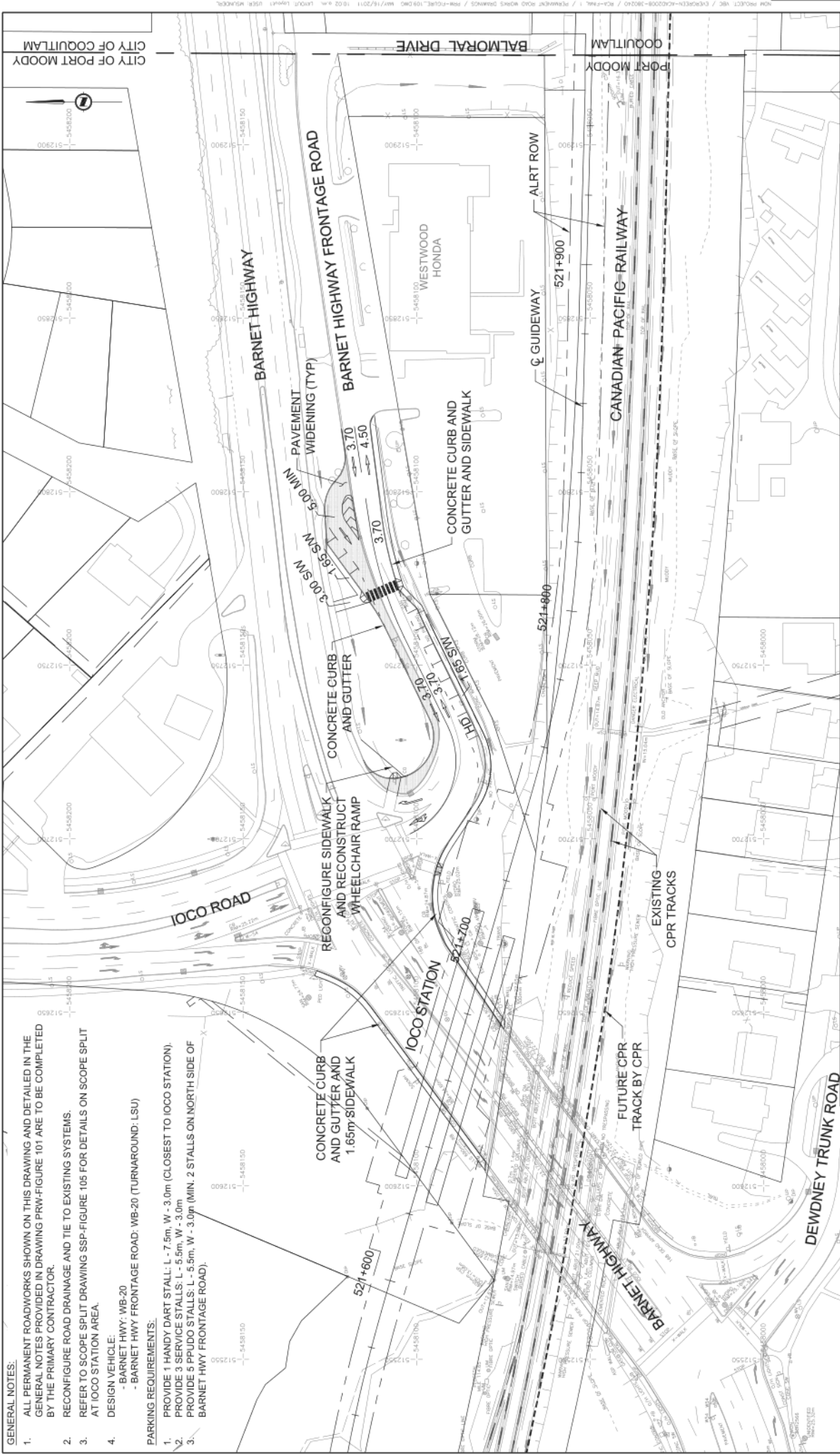


PROJECT: 108 / EVERGREEN LINE DRAWING: 108-00-00		REVISIONS REV. NO. DATE 1 2011/03/20		DESIGNED BY: J. HILL CHECKED BY: J. HILL DATE: 2011/03/20		PROJECT NO. 03901-0000 SHEET NO. 1		PRW-FIGURE 107 (A)	
MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE		CH2M HILL		PROJECT NO. 03901-0000 SHEET NO. 1		PRW-FIGURE 107 (A)		PRW-FIGURE 107 (A)	
PERMANENT ROADWORKS GOLDEN SPIKE LANE PLAN		EVERGREEN LINE RAPID TRANSIT PROJECT		BULLER STREET TO MORAY STREET		PRW-FIGURE 107 (A)		PRW-FIGURE 107 (A)	

- NOTES:
1. ALL PERMANENT ROADWORKS SHOWN ON THIS DRAWING AND DETAILED IN THE GENERAL NOTES PROVIDED IN DRAWING PRW-FIGURE 101 ARE TO BE COMPLETED BY THE PRIMARY CONTRACTOR.
  2. CAST-IN-PLACE ROADSIDE BARRIER WITH FOUNDATION AND 3.0m HIGH NOISE WALL TO EXTEND FROM STA. 520+750 TO STA. 520+950. COMBINATION OF CAST-IN-PLACE ROADSIDE BARRIER WITH FOUNDATION AND 3.0m HIGH NOISE / ABUTMENT WALL TO EXTEND FROM STA. 520+950 TO STA. 521+050. COMBINATION OF CAST-IN-PLACE ROADSIDE BARRIER WITH FOUNDATION AND AN ABUTMENT WALL TO EXTEND FROM STA. 521+050 TO STA. 521+068.
  3. CRB WITH CHAIN-LINK FENCE TO EXTEND FROM STA. 521+068 TO STA. 521+156.5
  4. REFER TO REFERENCE CONCEPT ALIGNMENT DRAWINGS FOR DETAILS OF THE GUIDEWAY ELEMENTS ADJACENT TO GOLDEN SPIKE LANE.
  5. RECONFIGURE ROAD DRAINAGE AND TIE TO EXISTING CLOSED SYSTEM ALONG BULLER STREET AND GOLDEN SPIKE LANE.
  6. EXISTING SANITARY SEWER WITHIN ALRT ROW TO BE RELOCATED WITHIN THE NEW GOLDEN SPIKE LANE NARROWED ROADWAY.
  7. DESIGN VEHICLE:  
- BULLER STREET: GOLDEN SPIKE LANE, AND MORAY STREET: MSU.
  8. DRAWING PRW-FIGURE 107 TO BE READ IN CONJUNCTION WITH SECTION ON DRAWING PRW-FIGURE 108.
  9. REFER TO CPR-EVERGREEN AGREEMENT FOR CPR CRASH WALL LOCATIONS.

1. ALL PERMANENT ROADWORKS SHOWN ON THIS DRAWING AND DETAILED IN THE GENERAL NOTES PROVIDED IN DRAWING PRW-FIGURE 101 ARE TO BE COMPLETED BY THE PRIMARY CONTRACTOR.
2. CAST-IN-PLACE ROADSIDE BARRIER WITH FOUNDATION AND 3.0m HIGH NOISE WALL TO EXTEND FROM STA. 520+750 TO STA. 520+950+0. COMBINATION OF CAST-IN-PLACE ROADSIDE BARRIER WITH FOUNDATION AND 3.0m HIGH NOISE / ABUTMENT WALL TO EXTEND FROM STA. 520+950+0 TO STA. 521+050+0. COMBINATION OF CAST-IN-PLACE ROADSIDE BARRIER WITH FOUNDATION AND AN ABUTMENT WALL TO EXTEND FROM STA. 521+050+0 TO STA. 521+068+0.
3. CRB WITH CHAIN-LINK-FENCE TO EXTEND FROM STA. 521+068+0 TO STA. 521+156+5
4. REFER TO REFERENCE CONCEPT ALIGNMENT DRAWINGS FOR DETAILS OF THE GUIDEWAY ELEMENTS ADJACENT TO GOLDEN SPIKE LANE.
5. REFER TO CPR-EVERGREEN AGREEMENT FOR CPR CRASH WALL LOCATIONS.

[illegible]



- GENERAL NOTES:**
- ALL PERMANENT ROADWORKS SHOWN ON THIS DRAWING AND DETAILED IN THE GENERAL NOTES PROVIDED IN DRAWING PRW-FIGURE 101 ARE TO BE COMPLETED BY THE PRIMARY CONTRACTOR.
  - RECONFIGURE ROAD DRAINAGE AND TIE TO EXISTING SYSTEMS.
  - REFER TO SCOPE SPLIT DRAWING SSP-FIGURE 105 FOR DETAILS ON SCOPE SPLIT AT IOCO STATION AREA.
  - DESIGN VEHICLE:
    - BARNET HWY: WB-20
    - BARNET HWY FRONTAGE ROAD: WB-20 (TURNAROUND: LSU)
- PARKING REQUIREMENTS:**
- PROVIDE 1 HANDY DART STALL: L - 7.5m, W - 3.0m (CLOSEST TO IOCO STATION).
  - PROVIDE 3 SERVICE STALLS: L - 5.5m, W - 3.0m
  - PROVIDE 5 PRUDO STALLS: L - 5.5m, W - 3.0m (MIN. 2 STALLS ON NORTH SIDE OF BARNET HWY FRONTAGE ROAD).

Rev	Date	Revisions	Signature	SR
A	MAY/2011	SSP SUBMISSION		

SCALE 0 25

REVISIONS  
DATE: 2011/05/03  
BY: JLM  
CHECKED: JLM  
DATE: 2011/05/03

PERMANENT ROADWORKS BARNET HWY FRONTAGE ROAD PLAN		PRW-FIGURE 109 (A)	
BARNET HWY TO WESTWOOD HONDA		FILE NO.	LO-00-00
PROJECT NO.		03901-0000	1
DRAWING NO.		PRW-FIGURE 109 (A)	

**SCHEDULE F**  
**List of City-Exclusive Work**

## **Schedule F - City of Port Moody City Exclusive Work**

The below listed works are identified as City Exclusive Work and will only be permitted to be undertaken by the City or City-contracted work forces:

1. In-service Watermain Connections, Disconnections, and Closures
  - a. Definition: all or portion thereof of the closed pipe pressurized water system exclusively allocated to distribution of potable water within City, including but not limited to valves, hydrants, air-valves, blow-offs, Pressure Reducing Valves (PRV), Supervisory Control and Data Acquisition (SCADA) monitoring equipment and pump stations.
2. Watermain Valve Operation
  - a. Definition: a valve located on the water system intended for flow control or isolation of sections of the water system.

**SCHEDULE G**  
**Pre-Existing Rights**

Page 062

Withheld pursuant to/removed as

s.16;s.17

**CONFIDENTIAL**

**CONTRIBUTION AGREEMENT**

THIS AGREEMENT dated for reference the 16th day of November, 2011,

AMONG:

**PENSIONFUND REALTY LIMITED**  
("PRL")

AND:

**THE CITY OF COQUITLAM**

(the "City")

AND:

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

(the "Province")

WITNESSES THAT WHEREAS:

**RECITALS**

A. The Province is actively advancing its planning for the construction of a new ALRT line extension of the Millennium Line from Lougheed Station through Burnaby, Port Moody and Coquitlam, known as the Evergreen Line;

B. In its planning for the Project, the Province has identified the need for the acquisition of statutory rights of way over the City Lands and over the PRL Lands and for a licence to construct over the City Lands;

C. The City and PRL have requested the Province to include the Station in the Project; and

D. The Parties wish to enter into this Agreement to set out their agreement with respect to the design, construction, testing and commissioning of the Station, the contributions to be made by the City and PRL in consideration of the Province undertaking the Station and the rights to be acquired by the Province in relation to certain lands which are owned by the City and PRL.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the Parties hereto hereby acknowledge, PRL, the City and the Province hereby covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions – In this Agreement, including the Recitals hereto, the following terms shall have the following meanings unless the context otherwise requires:

- (a) "Agreement" means this Contribution Agreement and all Schedules hereto, as amended from time to time;
- (b) "ALRT" means advanced light rapid transit;
- (c) "BCTFA" means the British Columbia Transportation Financing Authority;
- (d) "Bonus Density Credit" means a credit equal to the amount of s.16,s.17
- (e) "Bonus Density Payments" means charges payable to the City by owners of lands in the City's City Centre area district for additional density in relation to the development of land, as may be approved by City Council;
- (f) "Business Day" means Monday to Friday inclusive of each week, excluding days which are statutory holidays in the Province of British Columbia and days when the Land Title Office is closed for business;
- (g) "Cash Contributions" means, collectively, the City Cash Contribution and the PRL Cash Contribution;
- (h) "Centre Owner" means PRL or any subsequent owner or owners of the PRL Lands from time to time;
- (i) "City/Burnaby Land Rights" means such Rights of Way or other interests in land granted by or acquired from the City and the City of Burnaby in favour of the Province for the widening of North Road over a portion of the City/Burnaby Lands, substantially as shown on Schedules C1 and C2;
- (j) "City/Burnaby Lands" means the properties on North Road which are jointly owned by the City and the City of Burnaby, as described in Part 3 of Schedule A;
- (k) "City Cash Contribution" means the difference, if any, between the City Contribution and the total of the actual amounts or values of the contributions made by the City from the sources identified in Sections 4.1(a), (b) and (c), when those amounts or values have been determined as provided in this Agreement;
- (l) "City Contributed Land Rights" means the City Rights of Way, the City Temporary Licence and the City/Burnaby Land Rights, to the extent of the City's contribution thereof;

- (m) **"City Contribution"** has the meaning set forth in Section 2.3(b);
- (n) **"City Guideway Right of Way"** means a Right of Way and any other rights to be granted by the City in favour of the Province, substantially in the form of Schedule M1, for the construction, operation, maintenance, repair and replacement of the Guideway over the portion of the City Lands substantially as shown outlined in yellow on Schedules B1, B2, B3, B4 and B5;
- (o) **"City Lands"** means the lands owned by the City legally described in Part 1 of Schedule A and identified in columns 1 and 2 of the Table of Values;
- (p) **"City Property Contribution Values"** means the combined value of:
  - (i) the contribution value of the City Rights of Way and the City Temporary Licence, being estimated to be s.16.s.17 in aggregate, being the sums of the amounts shown in columns 3 and 6 of the Table of Values, as adjusted pursuant to Section 5.2; and
  - (ii) the contribution value of the City's interest in the City/Burnaby Land Rights, being s.16.s.17 subject to adjustment pursuant to Section 5.2(n);
- (q) **"City Resource Contribution"** means the provision of a dedicated, full-time field resource staff person to work on the Project, at between 80% to 90% of such person's regular working hours, including attending project meetings and facilitating the resolution of any issues for the City that are related to the Project;
- (r) **"City Rights of Way"** means the City Guideway Right of Way and the City Station Right of Way, collectively, and **"City Right of Way"** means either one of them, as the context requires;
- (s) **"City Station Right of Way"** means a Right of Way and any other rights to be granted by the City in favour of the Province, substantially in the form of Schedule M2, for the construction, operation, maintenance, repair and replacement of the Guideway, vehicular access and the transit station which will be part of the Project on the City Lands on which the Evergreen Cultural Centre site is located, generally as shown as shown hatched in pink on Schedule N, subject to amendment to reflect that the actual area will be substantially as outlined in yellow on Schedule B6, plus such additional area as the Province may require from the area crosshatched in blue on Schedule B6;
- (t) **"City Subordinate Charges"** means the following charges registered against title to any City Lands, over which any City Right of Way will be registered in priority, to the extent only that the area of the City Lands that is subject to any such charges is within the areas of the City Rights of Way and the rights afforded under such charges would conflict with the rights granted to the Province pursuant to the City Rights of Way:

- (i) s.16,s.17 in favour of the City and Board of Education of School District 34 (Coquitlam); and
- (ii) s.16,s.17 in favour of Douglas College and Board of Education of School District 34 (Coquitlam); and
- (iii) any charge which may be registered against title to any City Lands or the City/Burnaby Lands after October 21, 2011;
- (u) **"City Temporary Licences"** means the City Temporary Licence – Adjacent to Guideway and the City Temporary Licence – Adjacent to Station;
- (v) **"City Temporary Licence – Adjacent to Guideway"** means a licence to be granted by the City in favour of the Province, substantially in the form of Schedule M3, for the term set forth therein (subject to extension as provided therein) for a temporary construction, storage and staging area as required for the construction of the Guideway to be constructed by the Province as part of the Project over the portion of the City Lands substantially as shown hatched in black or blue on Schedules B1, B2, B3, B4 and B5;
- (w) **"City Temporary Licence – Adjacent to Station"** means a licence to be granted by the City in favour of the Province, substantially in the form of Schedule M4, for the term set forth therein (subject to extension as provided therein) for temporary purposes as required for the construction of the transit station which will be part of the Project on the Evergreen Cultural Centre site, generally as shown outlined in blue on Schedule N, subject to any amendment to reflect that the actual area may be reduced if the Province requires all or part of the crosshatched area shown on Schedule B6 as City Station Right of Way;
- (x) **"Commencement Date"** means the date of the execution of the Project Agreement by all of the Province, BCTFA and the Primary Contractor;
- (y) **"Coquitlam Centre"** means the shopping centre located on the PRL Lands;
- (z) **"Down Escalator Requirement"** means any design requirement for all stations of the Evergreen Line to accommodate downward-travelling escalators in addition to upward-travelling escalators, elevators and stairs, as contemplated in Section 2.1;
- (aa) **"Down Escalator Termination Right"** means the right of PRL and/or the City to terminate this Agreement as contemplated in Section 9.2;
- (bb) **"Evergreen Line"** means the new ALRT line extension of the Millennium Line from Lougheed Station through Burnaby, Port Moody and Coquitlam to be designed, constructed, tested and commissioned by the Primary Contractor pursuant to the Project Agreement, and intended to be subsequently operated by TransLink;

- (cc) **"Execution Date"** means the date that this Agreement has been executed and delivered by each of the Parties to the others without condition, except as expressly set out herein;
- (dd) **"Fractional Payments"** has the meaning set forth in Section 5.1(b);
- (ee) **"Guideway"** means the guideway for the Evergreen Line and includes both the superstructure and substructure elements on which the ALRT vehicles operate, including all beams, slabs, columns, foundations, tracks and associated plant and equipment;
- (ff) **"Initial Payments"** means the payments by the City and PRL to the Province of the sum of s.16.s.17 each as part of, respectively, the City Cash Contribution and the PRL Cash Contribution;
- (gg) **"Letter of Credit"** means an unconditional and irrevocable stand by letter of credit, issued by a Canadian chartered bank in favour of the Province, in form and content acceptable to the Province, acting reasonably, payable upon presentation, in the amount of the PRL Fractional Payments, that may, at the election of PRL, be granted as collateral security for the obligation of PRL to make its Fractional Payments, as contemplated by Section 5.3;
- (hh) **"Mutual Condition"** means the mutual condition precedent set forth in Section 8.1;
- (ii) **"P3 Funding Contribution"** means the sum of \$7,000,000.00, being the anticipated amount of funding to be provided to the City by PPP Canada for the design, construction, testing and commissioning of the Station recognizing that \$7,000,000.00 may not be the actual amount of funding paid to the City from PPP Canada
- (jj) **"P3 Funding Termination Right"** means the City's right to terminate this Agreement as set forth in Section 10.1;
- (kk) **"Parties"** means PRL, the City and the Province;
- (ll) **"Primary Contractor"** means the contractor engaged by the Province pursuant to the Project Agreement to carry out the design, construction, financing, testing and commissioning of the Project;
- (mm) **"PRL Cash Contribution"** means the sum of s.16.s.17 if the Station is not subject to the Down Escalator Requirement and s.16.s.17 if the Station is subject to the Down Escalator Requirement;
- (nn) **"PRL Contribution"** has the meaning set forth in Section 2.3(a);
- (oo) **"PRL Guideway Right of Way"** means a Right of Way and any other rights to be granted by PRL in favour of the Province, substantially in the form of

Schedule L1, for the construction, operation, maintenance, repair and replacement of the Guideway, over those portions of the PRL Lands substantially as shown outlined in yellow on Schedule D;

- (pp) **"PRL Guideway Temporary Right of Way"** means a Right of Way and any other rights to be granted by PRL in favour of the Province, substantially in the form of Schedule L2, for a term of 12 months (subject to extension on a month-to-month basis at the rate of s.16,s.17 per month and otherwise on the basis provided therein) for a temporary construction, storage and staging area for the construction of the Guideway, over a portion of the PRL Lands substantially as shown hatched in blue on Schedule D;
- (qq) **"PRL Indemnity"** means the indemnity granted by PRL to the Province and the City pursuant to Section 6.1;
- (rr) **"PRL Lands"** means the lands owned by PRL, legally described in Part 2 of Schedule A;
- (ss) **"PRL Property Contribution Values"** means the combined contribution value of:
  - (i) the Station Right of Way, being s.16,s.17
  - (ii) the Station Temporary Right of Way, being s.16,s.17
  - (iii) the PRL Guideway Right of Way, being s.16,s.17 (whether or not the Down Escalator Requirement applies); and
  - (iv) the PRL Guideway Temporary Right of Way, being s.16,s.17
- (tt) **"PRL Rights of Way"** means the PRL Guideway Right of Way, the PRL Guideway Temporary Right of Way, the Station Right of Way and the Station Temporary Right of Way, collectively and **"PRL Right of Way"** means any one of them, as the context requires;
- (uu) **"PRL Security"** means a mortgage and assignment of rents in respect of the PRL Lands in favour of the Province in the form attached as Schedule I, that may, at the election of PRL, be granted as collateral security for the obligation of PRL to make its Fractional Payments, as contemplated by Section 5.3;
- (vv) **"PRL Subordinate Charges"** means the following charges registered against title to the PRL Lands, over which the PRL Rights of Way will be registered in priority, to the extent only that the area of the PRL Lands that is subject to any such charges is within the areas of the PRL Rights of Way; or that the rights afforded under such charges would conflict with the rights granted to the Province pursuant to the PRL Rights of Way:
  - (i) s.16,s.17 in favour of BC Telephone Company/TELUS;

- (ii) s.16,s.17 in favour of Morguard Trust Company, as modified and extended;
- (iii) s.16,s.17 in favour of Hudson's Bay Company and all registered appurtenant or related rights;
- (iv) s.16,s.17 s.16,s.17, in favour of the City, to the extent that such charges affect title to the lands which are within the areas of the PRL Rights of Way;
- (v) s.16,s.17 and s.16,s.17 in favour of registered owner;
- (vi) s.16,s.17 and assignment of rents s.16,s.17 in favour of CIBC Mellon Trust Company;
- (vii) s.16,s.17 in favour of Best Buy;
- (viii) s.16,s.17 in favour of registered owner; and
- (ix) any charge which may be registered against title to the PRL Lands after October 21, 2011;
- (ww) "Project" means design, construction, testing and commissioning of the Evergreen Line, including the Guideway and its associated stations and other appurtenances;
- (xx) "Project Agreement" means the design/build/finance contract among the Province, BCTFA and the Primary Contractor pursuant to which the Primary Contractor will undertake the design, construction, testing and commissioning of the Project on behalf of the Project;
- (yy) "Right of Way" means a statutory right of way granted pursuant to Section 218 of the *Land Title Act*;
- (zz) "Station" means the ALRT station and all associated infrastructure to be designed and constructed on the portion of the PRL Lands which is subject to the Station Right of Way, in substantial conformity with the requirements of Schedules F and H (with all necessary changes being made if the Down Escalator Requirement applies) and which:
  - (i) if the Station is not subject to the Down Escalator Requirement, will be configured substantially as shown on Schedule E1; and
  - (ii) if the Station is subject to the Down Escalator Requirement, will be configured substantially as shown on Schedule E2;

- (aaa) "Station Plans" means the plans for the Station as of the date of this Agreement attached hereto as Schedule F, as the same may be amended to reflect the Down Escalator Requirement, if implemented, or as the same may be amended by the Primary Contractor pursuant to the Project Agreement;
- (bbb) "Station Right of Way" means a Right of Way and any other rights to be granted by PRL in favour of the Province, substantially in the form of Schedule L3, for the construction and operation of the Station over those portions of the PRL Lands, substantially as shown outlined in red on Schedule E1, if the Down Escalator Requirement does not apply, or on Schedule E2, if the Down Escalator Requirement applies;
- (ccc) "Station Temporary Right of Way" means a Right of Way and any other rights to be granted by PRL in favour of the Province, substantially in the form of Schedule L4, for a term of 12 months (subject to extension as provided therein) for a temporary construction, storage and staging area required for the construction of the Station, over the portion of the PRL Lands substantially as shown shaded in blue on Schedule E1, if the Down Escalator Requirement does not apply, or on Schedule E2, if the Down Escalator Requirement applies;
- (ddd) "Station Value" has the meaning set forth in Section 2.2;
- (eee) "Table of Values" means the table of the values of the City Rights of Way and City Temporary Licences attached hereto as Schedule K;
- (fff) "Tenants" means the tenants of Coquitlam Centre; and
- (ggg) "TransLink" means the South Coast British Columbia Transportation Authority, as continued under the *South Coast British Columbia Transportation Authority Act* (British Columbia), and includes a subsidiary as defined in the *South Coast British Columbia Transportation Authority Act*, and its successors.

1.2 Schedules – The following Schedules are attached hereto and made part of this Agreement:

Schedule A – Legal descriptions of City Lands, PRL Lands and City/Burnaby Lands;

Schedule B – Areas of the City Rights of Way and the City Temporary Licences;

Schedule C – Area of City/Burnaby Land Rights;

Schedule D – Area of the PRL Guideway Right of Way and PRL Guideway Temporary Right of Way;

Schedule E – Area of the Station Right of Way and the Station Temporary Right of Way;

Schedule F – Station Plans;

Schedule G – Plan of Lincoln Drive Re-alignment;

Schedule H – Station Design;

Schedule I – Form of PRL Security;

Schedule J - Additional area required for Statutory Right of Way along Pinetree Way as contemplated in Section 12.2;

Schedule K – Table of Values for City Rights of Way and City Temporary Licences;

Schedule L – PRL Rights of Way;

Schedule M – City Rights of Way and City Temporary Licences; and

Schedule N – Areas subject to the City Station Right of Way and the City Temporary Licence - Adjacent to Station.

1.3 References and Headings – The references "hereunder", "herein" and "hereof" refer to the provisions of this Agreement and references to Articles, Recitals, Sections and Schedules herein refer to Articles, Recitals, Sections of or Schedules to this Agreement. The division of this Agreement and the headings of the Articles, Recitals, Sections, Schedules and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provision hereof. Any reference to time shall refer to Pacific Standard Time or Pacific Daylight Saving Time, during the respective intervals in which each is in force in the Province of British Columbia.

1.4 Singular/Plural and Derivatives – Whenever the singular or masculine or neuter is used in this Agreement or in the Schedules, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a derivative of such term shall have a corresponding meaning unless the context otherwise requires.

1.5 Including – The word "including", when following any general term or statement, and whether or not it is followed by such words as "without limitation", is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, and the general term or statement shall be interpreted to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

1.6 Mandatory Provisions – The words "will" and "shall" as used in this Agreement are synonymous with each other and used interchangeably herein to designate a mandatory requirement or obligation, as applicable.

1.7 Statutory References – Any reference to a statute of any governmental authority shall include and shall be deemed to be a reference to such statute and to the regulations or orders made pursuant thereto and all amendments made thereto and in force from time to time, and to any statute, regulation or order that may be passed which has the effect of supplementing the statute so referred to or the regulations or orders made pursuant thereto.

1.8 Date for Performance – If the date for the performance of any obligation hereunder or the date for the delivery of any notice or the provision of any approval or consent contemplated hereunder falls on a day that is not a Business Day, then such date will be deemed to be the next following Business Day.

1.9 Waiver of Contra Proferentum – The Parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose counsel) prepared the executed agreement or any earlier draft of the same, or against the Party benefiting from such terms or provisions.

1.10 Currency – All dollar amounts referred to in this Agreement are in Canadian dollars.

1.11 Jurisdiction of the Province – Nothing in this Agreement shall be construed as an agreement by the Province to restrict, limit or otherwise fetter in any manner the Province's ability to introduce, pass, amend, modify, replace, revoke or otherwise exercise any rights or authority regarding legislation, regulations, policies or any other authority of the Province.

1.12 No Fettering – Nothing in this Agreement shall be construed as an agreement by the City to restrict, limit or otherwise fetter in any manner the exercise by the Municipal Council of the City of its duties, rights or authority in regards to any matter, and nothing in this Agreement shall fetter the City's Approving Officers in the exercise of their duties.

1.13 No Derogation from Laws – No provision of this Agreement is intended to derogate from or be inconsistent with or in conflict with any laws and no provision of this Agreement shall be interpreted in a manner which results in any such derogation, inconsistency or conflict and, if any such provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any laws, the applicable laws shall prevail and such provision shall be read down or rendered inoperative (either generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be and, if any such provision is found by a court of competent jurisdiction to derogate from any laws, then such provision shall be read down or rendered inoperative (either generally or in such particular situation, as appropriate) to the extent of the derogation.

1.14 Severability – Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the Parties shall promptly endeavour in good faith to

negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

2. OVERALL COST AND CONTRIBUTIONS

2.1 Down Escalator Requirement – As initially conceived by the Province, the Down Escalator Requirement did not apply to the Evergreen Line. TransLink has recently determined that the Down Escalator Requirement should apply to all transit stations throughout the Evergreen Line, including to the Station. In order to implement the Down Escalator Requirement, it will be necessary to incur substantial additional costs for the Evergreen Line. The Province has not determined whether it will implement the Down Escalator Requirement in the design and construction of the Evergreen Line, but if it does, the Province has established the design and construction cost of implementing the Down Escalator Requirement for the Station at

s.16,s.17

2.2 Value of Station – The Parties each acknowledge and agree that the value of the Station, based upon the cost of the design, construction, testing and commissioning of the Station and including all work required to integrate the Station into the Project, as determined by the Province (the "Station Value") is:

- (a) s.16,s.17 if the Down Escalator Requirement applies to the Station; and
- (b) s.16,s.17 if the Down Escalator Requirement does not apply to the Station.

2.3 Contribution by PRL and City – PRL and the City will contribute the following amounts on account of the Station Value, pursuant to Sections 4 and 5 of this Agreement:

- (a) PRL, either:
  - (i) s.16,s.17 if the Down Escalator Requirement applies to the Station;  
or
  - (ii) s.16,s.17 if the Down Escalator Requirement does not apply to the Station.(in either case, the "PRL Contribution"); and
- (b) the City, either:
  - (i) s.16,s.17 if the Down Escalator Requirement applies to the Station;  
or
  - (ii) s.16,s.17 if the Down Escalator Requirement does not apply to the Station.(in either case, the "City Contribution"),

and the Parties agree that the PRL Contribution and the City Contribution represent the total of all contributions that the City and PRL are obligated to make in connection with the Station.

2.4 Taxes – The PRL Contribution and the City Contribution are inclusive of all harmonized sales tax, goods and services tax, sales tax or social service tax that might from time to time be payable thereon, and the Province will be solely responsible to account for payment of such taxes, to the extent that the same are exigible.

2.5 Cost Risk – The Province acknowledges and agrees that it will be solely responsible for the design, construction, testing and commissioning of the Evergreen Line, including the Guideway and the Station, which the Province will manage through the Project Agreement with the Primary Contractor. Accordingly, all risk that the actual cost of the design, construction, testing and commissioning of the Station and work required to integrate the Station into the Project will exceed the Station Value will be borne by the Province and neither the City nor PRL will have any liability for any such cost risk.

2.6 Independent Obligations – The Parties each acknowledge and agree that the obligations of PRL and the City to pay or provide the PRL Contribution and the City Contribution, respectively, to the Province are independent obligations, and PRL will have no obligation in any circumstances to contribute to the City Contribution, and the City will have no obligation in any circumstances to contribute to the PRL Contribution.

2.7 Failure to Contribute – If either the City or PRL fails to make its respective contribution, the Province will:

- (a) pursue its remedies under this Agreement against the Party in breach; and
- (b) nevertheless continue with the design, construction, testing and commissioning of the Station,

provided always that if both the City and PRL fail to make their respective contributions, the Province will have no obligation to continue with the design, construction, testing and commissioning of the Station.

2.8 Station Name – The Province acknowledges that the City and PRL wish to have the Station named as "Coquitlam City Centre". The City and PRL acknowledge that naming of the stations on the Evergreen Line is under the jurisdiction of and entirely controlled by TransLink. The Province agrees that it will not object to the application by the City and PRL to TransLink to name the Station as "Coquitlam City Centre".

2.9 Adjustment of City Station Right of Way – If any part of the City Lands which are shown hatched or cross hatched in blue on Schedule B6 are required for passenger pickup and drop off or other vehicular access to or egress from the transit station located at the Evergreen Cultural Centre site located at 1205 Pinetree Way following substantial completion thereof, such City Lands will be included in the City Station Right of Way and the necessary adjustment will be made to include the area thereof in column 4 of the Table of Values at the rate contemplated in column 5 of the Table of Values so as to increase the value of the City Station Statutory Right of Way as set out in column 3 of the Table of Values.

3. REPRESENTATIONS

3.1 Authority – Each of the Parties represents to the others that it has obtained such authorizations as may be required in order to legally bind itself to the obligations on its part as are contained in this Agreement.

4. CONTRIBUTION SOURCES

4.1 Sources of City Contribution – The City Contribution shall be paid to the Province, or credited on account of the City Contribution, as follows:

- (a) the P3 Funding Contribution;
- (b) the City Property Contribution Values;
- (c) the City Resource Contribution, as contemplated in Section 6.5, which the City and the Province agree has a contribution value of s.16,s.17 and
- (d) the City Cash Contribution.

4.2 Sources of PRL Contribution – The PRL Contribution shall be paid to the Province, or credited on account of the PRL Contribution, as follows:

- (a) the PRL Property Contribution Values; and
- (b) the PRL Cash Contribution.

5. PAYMENT OF CASH CONTRIBUTIONS

5.1 Payment Amounts and Dates – The City and PRL shall each pay the following amounts to the Province on account of the City Cash Contribution and the PRL Cash Contribution, respectively:

- (a) the Initial Payments, within five Business Days following the Execution Date; and
- (b) the following payments on account of the remaining balance of their respective Cash Contributions (collectively, the "Fractional Payments"):
  - (i) 1/12 of the remaining balance of their respective Cash Contributions within five business days following the Commencement Date;
  - (ii) 1/12 of the remaining balance of their respective Cash Contributions on the later of December 31, 2012 or within five business days following the Commencement Date;
  - (iii) 1/6 of the remaining balance of their respective Cash Contributions on each of December 31, 2013, December 31, 2014 and December 31, 2015; and

- (iv) the remaining balance of their respective Cash Contributions on the later of March 31, 2016 or the date of delivery of notice of substantial completion of the construction of the Project by the certified professional responsible therefor under the Project Agreement.

5.2            City Fractional Payments – The Province and the City acknowledge and agree that:

- (a) the amount and timing of the P3 Funding Contribution are not known;
- (b) each parcel of the City Lands includes lands which will be subject to a City Right of Way and a City Temporary Licence;
- (c) the City Property Contribution Values set out for City Rights of Way in column 3 of the Table of Values and for City Temporary Licences in column 6 of the Table of Values are estimates only and have been calculated based on the estimated areas of the City Guideway Rights of Way and the City Temporary Licences;
- (d) the estimated areas of the City Guideway Rights of Way are as set out in column 4 of the Table of Values and the estimated areas of the City Temporary Licences are as set out in column 7 of the Table of Values;
- (e) the Province will cause the areas of each City Right of Way and City Temporary Licence to be surveyed by a licensed British Columbia land surveyor to whom the City has no reasonable objection (in this Section 5.2, the "Surveyor"), once the final location of such areas have been determined by the Province, and in any event, by no later than the date of substantial completion of the Project;
- (f) subject to adjustment pursuant to Section 5.2(g), the agreed City Property Contribution Value per square foot of area for the City Guideway Rights of Way is as set out in the column 5 of the Table of Values;
- (g) if the actual area of any City Right of Way is determined by the Surveyor to be different from that indicated in column 4 of the Table of Values, the City Property Contribution Value for such City Right of Way will be determined by multiplying the actual area of such City Right of Way, measured in square feet, by the agreed City Property Contribution Value per square foot set out in the column 5 of the Table of Values;
- (h) if the actual area of any City Temporary Licence is determined by the Surveyor to be different from that indicated in column 7 of the Table of Values, subject to adjustment pursuant to Sections 5.2(k) and 5.2(m), the City Property Contribution Value for the first year of such City Temporary Licence, measured in square feet, will be determined by multiplying the actual area of such City Temporary Licence by the agreed City Property Contribution Value per square foot set out in the column 8 of the Table of Values;

- (i) the agreed City Property Contribution Value per square foot of area for any City Temporary Licence set out in column 8 of the Table of Values applies if the first day of such City Temporary Licence (in this Section 5.2, the "Licence Start Date") occurs during the period which commences on the Commencement Date and ends on the first anniversary of the Commencement Date (in this Section 5.2, the "First Year"), and will otherwise be as determined in Section 5.2(k);
- (j) for the purposes of this Section 5.2:
  - (i) "Vancouver Price Index" means the Vancouver Consumer Price Index for a month as established by Statistics Canada in its publication entitled *The Consumer Price Index*, Catalogue 62-001 and found at: <http://www40.statcan.gc.ca/l01/cst01/cpis02a-eng.htm>;
  - (ii) "Base Index" means the Vancouver Price Index for the month during which the Commencement Date occurs; and
  - (iii) if the Vancouver Price Index ceases to be published, the parties, each acting reasonably, will agree on an alternative means to that set out in this Section 5.2 to index City Property Contribution Values for the City Temporary Licences;
- (k) if the Licence Start Date for any City Temporary Licence does not commence during the First Year, the City Property Contribution Value for the annual licence fee shown in column 6 of the Table of Values for that City Temporary Licence will be adjusted on the basis that the agreed City Property Contribution Value per square foot shown in the relevant row of column 8 of the Table of Values will be adjusted effective on the anniversary of the Commencement Date by multiplying such City Property Contribution Value per square foot by the quotient obtained by dividing the Vancouver Price Index for the most recently reported month applicable at the time of the Licence Start Date by the Base Index, and the resulting agreed City Property Contribution Value per square foot will apply to determine the City Property Contribution Value for the first year of such City Temporary Licence;
- (l) the Province may extend the term of any City Temporary Licence on a month-to-month basis upon 30 days prior written notice to the City at a rate equal to the actual area of such City Temporary Licence, measured in square feet, multiplied by the monthly agreed City Property Contribution Value per square foot set out in the column 9 of the Table of Values, subject to adjustment pursuant to Section 5.2(m);
- (m) if the Province extends the term of a City Temporary License, the monthly rate set out in column 9 of the Table of Values, adjusted to reflect any adjustment pursuant to Section 5.2(k), shall be adjusted on the basis that the agreed City Property Contribution Value per square foot shown in the relevant row of column 9 of the Table of Values will be adjusted effective on each anniversary of the

Commencement Date, by multiplying the quotient obtained by dividing the Vancouver Price Index for the most recently reported month by the Base Index, and the resulting adjusted agreed City Property Contribution Value per square foot will apply to each of the monthly payments for the relevant City Temporary Licence for each month of the ensuing 12 month period, ending in the month on which the anniversary of the Commencement Date occurs, whereupon the agreed City Property Contribution Value per square foot for such Temporary Licence will be readjusted in accordance with this Section 5.2(m); and

- (n) in the case of the City's interest in the City/Burnaby Lands, the City Property Contribution Value will be as may be agreed between the City and the Province, which City Property Contribution Value shall not be less than the market value which is agreed or awarded in expropriation proceedings between the City of Burnaby and the Province for the corresponding interest of the City of Burnaby in the City/Burnaby Lands. If the City and the Province do not agree on the City Property Contribution Value of the City's interest in the City/Burnaby Lands, the City Property Value Contribution for the City's interest in the City/Burnaby Lands will be the market value determined pursuant to the *Expropriation Act* or by such other means as the City and the Province may agree in writing.

5.3 Security for PRL Fractional Payments – PRL will, on or before the date that is five Business Days following the Commencement Date, grant or provide to the Province, as collateral security for the payment of the PRL Fractional Payments, either:

- (a) the PRL Security and will cause the PRL Security to be registered in priority to any mortgage charges and assignments of rents registered against title to the PRL Lands; or
- (b) the Letter of Credit.

If PRL fails to pay any PRL Fractional Payment within five Business Days of written notice from the Province that PRL failed to pay such PRL Fractional Payment when it was due, or if PRL fails to make arrangements satisfactory to the Province, acting reasonably, to replace any Letter of Credit which is due to expire before all PRL Fractional Payments have been made at least 10 Business Days before such expiry, the Province may accelerate and demand immediate payment of all outstanding PRL Fractional Payments and exercise all available remedies pursuant to the PRL Security or the Letter of Credit to collect such PRL Fractional Payments.

5.4 Substitution and Release of Security – PRL may elect, at any time prior to the payment of the final PRL Fractional Payments, to substitute the PRL Security or the Letter of Credit, as the case may be, with such substitute security in the place and stead of the PRL Security or the Letter of Credit, as may be acceptable to the Province, acting reasonably. The Province agrees that it will register a discharge of the PRL Security from title to the PRL Lands or return the Letter of Credit, as the case may be, forthwith upon provision by PRL to the Province of such substituted security, and in any event, forthwith upon payment by PRL of the final PRL Fractional Payment.

5.5 Potential Over Contribution - The Province agrees that if, at the date of delivery of notice of substantial completion of the construction of the Project, as determined pursuant to the Project Agreement, the combined quantum of the City Cash Contribution (including the City's Initial Payment and any P3 Funding Contribution), the City Property Contribution Values, and the City's Resource Contribution exceed the quantum of the City Contribution, the Province will, within 30 days, pay to the City such excess, in cash.

## 6. COVENANTS OF PRL AND THE CITY

6.1 PRL Indemnity - PRL indemnifies and shall save harmless the Province and the City from and against any and all claims, actions, suits or proceedings brought against the Province or the City by any Tenants with respect to business loss, injurious affection, nuisance or disturbance damages suffered by Tenants arising out of the construction of the Station, including the portion of the Guideway located in the Station, and for greater certainty the PRL Indemnity shall not extend to any claims made by Tenants related to:

- (a) the negligence of the Primary Contractor;
- (b) the construction of the Guideway located outside the Station; or
- (c) the operation or use of the Guideway or the Station.

The PRL Indemnity will extend to all claims, action, suits or proceedings against the Province or the City by the Tenants, notice of which has been given to the City, the Province or PRL on or before the second anniversary of the date of substantial completion of the Project, as determined by the Project Agreement, and shall thereafter be of no further force or effect.

6.2 Release - The City and PRL each acknowledges that the design and construction of the Station and performance by the Province of its covenants herein contained constitutes complete and sufficient compensation for the PRL Rights of Way and the City Contributed Land Rights. Save and except to the extent that the Province proceeds with an expropriation of all or any part of the City Contributed Land Rights as contemplated pursuant to Section 5.2(n) (in respect of which all the respective rights and remedies of the City are reserved) the City and PRL each release the Province from any claim for loss, damages or right of recovery which it may suffer or incur and for which it may have been entitled to compensation if the PRL Rights of Way or the City Contributed Land Rights had been acquired pursuant to the provisions of the *Expropriation Act*, R.S.B.C. 1996, c.125, including any claims for disturbance damages, business losses, injurious affection or legal and appraisal costs.

6.3 Registration - The City and PRL each agrees to execute and deliver the City Rights of Way and the PRL Rights of Way, respectively, to the Province for registration against title to the applicable City Lands and the PRL Lands on or before June 1, 2012. The City shall also execute and deliver to the Province the City Temporary Licences on or before June 1, 2012. Notwithstanding any other provision of this Agreement, the Province may, upon delivery of reasonable notice to the City and PRL prior to the execution of the City Contributed Land Rights and the PRL Rights of Way, direct the City and PRL to grant the City Contributed Land Rights and the PRL Rights of Way, respectively, to the Province or to BCTFA, or to both the Province and BCTFA.

6.4 Priority of Registration – Upon registration of the PRL Rights of Way, PRL will obtain priority of registration for the PRL Rights of Way over the PRL Subordinate Charges. Upon registration of the City Rights of Way, the City will grant or obtain priority for the registered City Rights of Way over the City Subordinate Charges.

6.5 City Resource Contribution – The City agrees that it will provide the City Resource Contribution to the Province for the duration of the Project.

## 7. BONUS DENSITY CONTRIBUTION BY THE CITY

7.1 Bonus Density – The City agrees with PRL to recognize the Bonus Density Credit as a credit toward future Bonus Density Payments otherwise legally due and payable to the City at the time of any future development on the PRL Lands that may be undertaken by the Centre Owner, on the basis that:

- (a) the Bonus Density Credit will be available for the Centre Owner to utilize for a period of 20 years from the Execution Date on the basis that a maximum of 50% of any amount due and payable by the Centre Owner as a Bonus Density Payment can be funded from the Bonus Density Credit which will be reduced as it is drawn on by the Centre Owner;
- (b) the City's bonus density framework for the City's City Centre lands may change from time to time, and the bonus density framework applicable to the assessment of any Bonus Density Payments on the PRL Lands will be assessed in accordance with the framework in effect at the time of any application by the Centre Owner for bonus density on the PRL Lands;
- (c) in the event that PRL conveys any of the PRL Lands to a Centre Owner or subsequently subdivides the PRL Lands and conveys them to a Centre Owner, PRL will be solely responsible for expressly allocating any potential Bonus Density Credit entitlement to that Centre Owner at the time of purchase and sale and if no such allocation is expressly made in writing between PRL and the Centre Owner, the City will not be obligated to credit such Centre Owner with any portion of the Bonus Density Credit; and
- (d) nothing in this Agreement or the eventual construction of the Station as contemplated hereby will prejudice the City's or municipal Council's right and ability to make land use and policy decisions in accordance with the *Local Government Act* and *Community Charter*.

## 8. MUTUAL SUBJECT CONDITION

8.1 Mutual Condition – The obligations of each of the Parties hereunder is subject to and conditional upon the Province entering into the Project Agreement with the Primary Contractor for the Project, on or before December 31, 2012, or such other later date as the Parties may agree.

8.2 Benefit of Mutual Condition – The Mutual Condition is for the benefit of all of the Parties and may not be unilaterally waived by any of them.

8.3 Consequence of Not Satisfying the Mutual Condition – If the Mutual Condition set forth in Section 8.1 is not satisfied or waived by all of the Parties on or before December 31, 2012, or such later date as the Parties may agree:

- (a) this Agreement will terminate and be of no further force or effect;
- (b) the Province will forthwith return the Initial Payments to the City and PRL;
- (c) the Province will forthwith register a discharge of the PRL Security from title to the PRL Lands and return the Letter of Credit or discharge or return any substitute security contemplated by Section 5.4, as the case may be; and
- (d) the Province will forthwith register, or cause to be registered, discharges of the City Contributed Land Rights and the PRL Rights of Way from title to the City Lands and the PRL Lands, respectively.

## 9. DOWN ESCALATOR TERMINATION RIGHT

9.1 Down Escalator Requirement – The Province, in its discretion, will notify the City and PRL, in writing, as to whether or not the Down Escalator Requirement applies to the Evergreen Line (including the Station) on or before December 8, 2011. If the Province does not notify the City and PRL in writing by 5:00 PM on December 8, 2011 as to whether or not the Down Escalator Requirement applies, the Down Escalator Requirement will be deemed to apply to the Evergreen Line and the Station.

9.2 PRL and City – If, as contemplated in Section 9.1, the Province has notified the City and PRL that the Down Escalator Requirement applies or if the Down Escalator Requirement is deemed to apply, at any time up to and including 5:00 PM on January 30, 2012, either the City or PRL may, by delivery of written notice to the Province, terminate this Agreement if either the City or PRL is not prepared to make the City Contribution or the PRL Contribution, as applicable, in the amounts set out in Section 2.3(a)(i) or Section 2.3(b)(i), respectively. Each of the City and PRL shall be deemed conclusively to have waived the Down Escalator Termination Right if either the City or PRL, as the case may be, fails to notify the Province in writing by 5:00 PM on January 30, 2012 that it is exercising the Down Escalator Termination Right.

9.3 Benefit of the Down Escalator Termination Right – The Down Escalator Termination Right is for the benefit of the City and PRL. If the Down Escalator Termination Right is exercised by the City or PRL on or before January 30, 2012:

- (a) this Agreement will terminate and be of no further force or effect with regard to the Station, however the Province will have the right to acquire:
  - (i) the City Contributed Land Rights from the City on the terms set out in this Agreement;

- (ii) the PRL Guideway Right of Way from PRL at a price of s.16,s.17 and
- (iii) the PRL Temporary Guideway Right of Way from PRL at a price of s.16,s.17
- (b) the Province will reimburse to PRL and the City the Initial Payments;
- (c) the Province will forthwith register a discharge of the PRL Security from title to the PRL Lands and return the Letter of Credit or discharge or return any substitute security contemplated by Section 5.4, as the case may be; and
- (d) the Province will discontinue the design and construction of the Station and may proceed with the design and construction of the Guideway on such basis as the Province determines is in the best interest of the Province, provided that the future addition of a station to the Evergreen line in the area contemplated by this Agreement is not precluded.

#### 10. P3 FUNDING TERMINATION RIGHT AND ASSISTANCE

10.1 City Right -- At any time, up to and including 5:00 PM on March 1, 2012, the City may, by delivery of written notice to the Province and PRL, terminate this Agreement if the City is not satisfied that it will receive the P3 Funding Contribution on terms and conditions satisfactory to the City and in an amount sufficient to satisfy the City's Fractional Payments. The City shall be deemed conclusively to have waived the P3 Funding Termination Right if the City fails to notify the Province and PRL in writing by 5:00 PM on March 1, 2012 that the City is exercising the P3 Funding Termination Right.

10.2 Benefit of P3 Funding Termination Right -- The P3 Funding Termination Right is for the sole benefit of the City. If the P3 Funding Termination Right is exercised or is not waived or deemed to have been waived by the City on or before March 1, 2012:

- (a) this Agreement will terminate and be of no further force or effect with regard to the Station, however the Province will have the right to acquire:
  - (i) the City Contributed Land Rights from the City on the terms set out in this Agreement;
  - (ii) the PRL Guideway Right of Way from PRL at a price of s.16,s.17 and
  - (iii) the PRL Temporary Guideway Right of Way from PRL at a price of s.16,s.17
- (b) the Province will retain the Initial Payments and be under no obligation to either the City or PRL to account in respect thereof;

- (c) the Province will forthwith register a discharge of the PRL Security from title to the PRL Lands and return the Letter of Credit or discharge or return any substitute security contemplated by Section 5.4, as the case may be; and
- (d) the Province will discontinue the design and construction of the Station and may proceed with the design and construction of the Guideway on such basis as the Province determines is in the best interest of the Province, provided that the future addition of a station to the Evergreen line in the area contemplated by this Agreement is not precluded.

10.3 Cooperation and Assistance – The Province and PRL each agree to provide reasonable support to the City in its application to PPP Canada for the processing of and receipt by the City of the P3 Funding Contribution. Neither the Province nor PRL will be required to provide support which may contravene any agreement to which either of them is a party, or any policy which either of them has regarding confidentiality or any other matter. The Province will not be required to provide support which may in any way affect the Build Canada funding for the Project.

## 11. RELEASE

The City and PRL each acknowledge that if either the Down Escalator Termination Right or the P3 Funding Termination Right are exercised and the Province proceeds to acquire the City Contributed Land Rights, the PRL Guideway Right of Way and the PRL Temporary Guideway Right of Way as contemplated in either Section 9.3 or Section 10.2, the payment of the amounts contemplated in Section 9.3 or Section 10.2 and the performance by the Province of its other covenants herein contained constitutes complete and sufficient compensation for the City Contributed Land Rights, the PRL Guideway Right of Way and the PRL Temporary Guideway Right of Way. Save and except to the extent that the Province proceeds with an expropriation of all or any part of the City Contributed Land Rights as contemplated pursuant to Section 5.2(n) (in respect of which all the respective rights and remedies of the City are reserved) the City and PRL each release the Province from any claim for loss, damages or right of recovery which it may suffer or incur and for which it may have been entitled to compensation if such PRL Rights of Way or the City Contributed Land Rights had been acquired pursuant to the provisions of the *Expropriation Act*, R.S.B.C. 1996, c.125, including any claims for disturbance damages, business losses, injurious affection or legal and appraisal costs.

## 12. CROSSING OF PINETREE WAY

12.1 Crossing Design – The Province and the City acknowledge and agree that, if the Station is built, the Guideway will have a "low profile" design where it crosses Pinetree Way. The Primary Contractor has the flexibility to adjust the alignment profile, including modifications of the Station, provided always that:

- (a) a clear minimum vertical clearance of 5 meters is provided between the paved surface of Pinetree Way and the underside of the Guideway and all related works and structures;

- (b) no bent structures are used for the Pinetree Way crossing; and
- (c) the design of the Station does not include a mezzanine level.

12.2 Road Widening – If the crossing of the Guideway is undertaken on the basis contemplated in Section 12.1, the Parties acknowledge that the design requirements set out in Section 12.1 will likely require widening of the centre road median at Pinetree Way adjacent to the Guideway crossing and the shifting of the traffic lanes and sidewalk to the east, specifically along the section of Pinetree Way where it fronts Henderson Place. The City agrees to provide a Right of Way for rights of public passage to accommodate the sidewalk shift fronting Henderson Place with an area substantially as shown on the relevant drawing annexed hereto as Schedule J. The City will be responsible for acquiring such additional Right of Way area as may be required to accommodate the shifting of the traffic lanes, up to a maximum cost to the City of

s.16,s.17 and such costs will be borne entirely by the City and will not be added to the amount of the City contribution. If the cost of acquiring such additional Right of Way area exceeds s.16,s.17 the Province will reimburse to the City such excess costs promptly upon receipt of a request and reasonable substantiation of such costs from the City.

### 13. MISCELLANEOUS

#### 13.1 Forms of Rights of Way and City Temporary Licences

- (a) The Province and PRL acknowledge and agree that:
  - (i) the Station Right of Way will be in substantially the form of Schedule L1 attached hereto;
  - (ii) the Station Temporary Right of Way will be in substantially the form of Schedule L2 attached hereto;
  - (iii) the PRL Guideway Right of Way will be in substantially the form of Schedule L3 attached hereto; and
  - (iv) the PRL Guideway Temporary Right of Way will be in substantially the form of Schedule L4 attached hereto.
- (b) The Province and the City acknowledge and agree that:
  - (i) the City Guideway Right of Way will be in substantially the form of Schedule M1 attached hereto;
  - (ii) the City Station Right of Way will be in substantially the form of Schedule M2 attached hereto;
  - (iii) the City Temporary Licence – Adjacent to Guideway will be in substantially the form of Schedule M3 attached hereto; and

- (iv) the City Temporary Licence – Adjacent to Station will be in substantially the form of Schedule M4 attached hereto.
- (c) The Parties agree that:
  - (i) the Province and PRL may make such amendments to the PRL Rights of Way as they may agree, without having such amendments approved by the City; and
  - (ii) the Province and the City may make such amendments to the City Rights of Way and the City Temporary Licences as the Province and the City may agree, without having such amendments approved by PRL.

13.2 Confidentiality – The Parties agree that this Agreement, and any associated information, materials and documentation related to the construction of the Station and the Project are and will be confidential. The Parties will only disclose information relating to this Agreement or the Project with the prior consent of the other Parties except for disclosure of:

- (a) information that is already in the public domain;
- (b) information required to be disclosed by law, including by the *Freedom of Information and Protection of Privacy Act* (British Columbia);
- (c) in the case of the Province, information that is required to be disclosed to permit the Station to be included in the scope of the work for the Project, provided that in making such disclosure, the Province will not disclose the possibility of the City receiving the P3 Funding Contribution until the same has been publicly announced; or
- (d) in the case of the City, this Agreement to PPP Canada for the purposes of making its application for the P3 Funding Contribution.

13.3 Public Announcements – None of the Parties shall make any public announcement regarding the existence or terms of this Agreement (including without limitation the possible availability of the P3 Funding Contribution or the provision of the PRL Security), without the prior written consent of the other Parties, and without limiting the generality of the foregoing, the Parties agree that no public announcements regarding the construction of the Station will be made prior to PPP Canada and the City announcing the availability of the P3 Funding Contribution to the City.

13.4 Costs – Except to the extent specified in this Agreement, each of the Parties will incur and be responsible for their own costs in connection with the negotiation of this Agreement and the steps and actions contemplated by this Agreement.

13.5 Tender – Any tender of documents or money may be made upon the Party being tendered or upon its solicitors by certified cheque, bank draft or wire transfer.

13.6 Time of Essence – Time is of the essence of this Agreement, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Parties or by their respective solicitors who are hereby expressly appointed in this regard.

13.7 Unavoidable Delay – Notwithstanding anything in this Agreement to the contrary, whenever and to the extent that any Party hereto shall be unable to fulfil, or shall be delayed or restricted in the fulfilment of any obligation hereunder by reason of strike, lock-out, war or acts of military authority, rebellion or civil commotion, fire or explosion, flood, wind, water, earthquake, act of God, virulent or communicable disease outbreak, public health emergency, epidemic, quarantine, pandemic, other casualty of the foregoing character or as a result or consequence of computer breakdown or malfunction caused by computer virus, such Party shall be entitled to extend the time for fulfilment of such obligation by a time equal to the duration of such delay or restriction (unless such obligation relates to the payment of money, in which case the extension of time shall not exceed three Business Days), and no Party hereto shall be entitled to compensation for any inconvenience, nuisance or discomfort thereby occasioned, and shall not be entitled to cancel or terminate this Agreement. The date or period by which any obligation of the Parties is to be performed or any consent or approval is to be provided or obtained shall be automatically extended for the period of such delay or restriction. Upon the expiry of such period of delay and restriction, time shall again become of the essence of this Agreement.

13.8 Binding Agreement – The Parties each acknowledge and agree that although the obligations of the Parties to complete the transactions contemplated by this Agreement are subject to the waiver or satisfaction of the Mutual Condition and to the City not exercising the P3 Funding Termination Right and to neither the City nor PRL exercising the Down Escalator Termination Right:

- (a) the Mutual Condition and the non-exercise of the Down Escalator Termination Right and the P3 Funding Termination Right are not conditions to this Agreement being a binding agreement; and
- (b) this Agreement, once executed and unconditionally delivered by all of the Parties, is not void, voidable, revocable or otherwise capable of being terminated by any Party until the respective times limited for the satisfaction or waiver of the Mutual Condition or the exercise of Down Escalator Termination Right or the P3 Funding Termination Right have expired, except as otherwise expressly provided herein or otherwise agreed by the Parties in writing.

13.9 Notices – Any notice to be given under this Agreement shall be in writing and shall be validly given if delivered, transmitted by facsimile or mailed in Canada by prepaid registered post to the Parties as follows:

(a) To PRL at:

Morguard Investments Limited  
400 - 333 Seymour Street  
Vancouver, British Columbia, V6B 5A6

Attention:     Retail Asset Manager  
Fax No.        (604) 685-0161

with a copy to:

Borden Ladner Gervais LLP  
1200 Waterfront Centre  
200 Burrard Street  
Vancouver, British Columbia V7X 1T2

Attention:     David Longcroft  
Fax No.        (604) 622-5877

(b) To the City at:

3000 Guildford Way  
Coquitlam, British Columbia V3B 7N2

Attention:     General Manager of Strategic Initiatives  
Fax No.        (604) 927-3015

with a copy to: City Solicitor

Fax No.        (604) 927-3445

(c) To the Province at:

Evergreen Line Rapid Transit Project Office  
2900 Barnet Highway  
Coquitlam, British Columbia V3B 0G1

Attention:     Project Director  
Fax No.        (604) 927-4453

with a copy to:

Legal Services Branch  
Finance, Commercial & Transportation  
7<sup>th</sup> Floor, 1675 Douglas Street  
P.O. Box 9289 Stn Prov Govt  
Victoria, British Columbia V8W 9J7

Attention:     Sara Louise Goodman  
Fax No.        (250) 387-1010

or to such other address or facsimile number as a Party may advise the others by written notice hereunder. Any notice addressed and provided as aforesaid shall be deemed to have been given on the day of delivery or transmission by facsimile, if a Business Day, and if not a Business Day, then on the next Business Day or if mailed, on the third Business Day following the posting thereof, provided that if there is a postal strike, dispute or slowdown, notices shall only be effective if delivered or transmitted by facsimile.

13.10 Entire Agreement – This Agreement is the entire agreement between the Parties pertaining to the cost, funding, design and construction of the Station and other matters provided herein, and supersedes all prior agreements, negotiations and discussions, whether oral or written, of the Parties, including the Term Sheet between the Parties dated October 10, 2011, and there are no agreements, covenants, representations or warranties, express, implied, statutory, collateral or otherwise, save as set forth herein. This Agreement shall not be amended except in a written instrument executed by all of the Parties or their solicitors on their behalf and stated to be an amendment to this Agreement.

13.11 Assignment – No Party may assign its respective interest in any part of this Agreement without the prior written consent of the others, which consent will not be unreasonably withheld, provided always that the Province may, without the consent of the other Parties, assign its rights in respect of the PRL Rights of Way and the City Contribution Land Rights to BCTFA and/or TransLink or any operator of the Evergreen Line from time to time.

13.12 Governing Law – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The Parties agree to submit to the exclusive jurisdiction of the courts of the Province of British Columbia with respect to any dispute relating to this Agreement and to appoint respective agents for the receipt and service of process in British Columbia.

13.13 Binding Effect – This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

13.14 Further Assurances – The Parties shall with reasonable diligence do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further

documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.

13.15 No Implied Waiver – The failure of any Party to insist at any time upon the strict performance of any covenant or agreement herein or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or a relinquishment thereof for the future. No payment or receipt by a Party of a lesser amount than due under this Agreement shall be deemed to be other than on account of the earliest payment due hereunder, nor shall any endorsement or statement on any cheque or any letter accompanying any cheque or payment due under this Agreement be deemed an accord and satisfaction, and the Parties may accept such cheque or payment without prejudice to the Party's right to recover the balance of such payment or pursue any other remedy permitted herein.

13.16 Execution – This Agreement may be executed by the Parties and transmitted by facsimile or other electronic means and if so executed and transmitted, this Agreement shall be for all purposes as effective as if the Parties had delivered an executed original Agreement.

13.17 Counterparts – This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document, provided that the Parties will, within a reasonable period of time following the Execution Date, deliver to each other an originally executed copy of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the year and date first above written.

**PENSIONFUND REALTY LIMITED**

Per: \_\_\_\_\_

Authorized Signatory

Per: \_\_\_\_\_

Authorized Signatory

**THE CITY OF COQUITLAM**

Per: \_\_\_\_\_

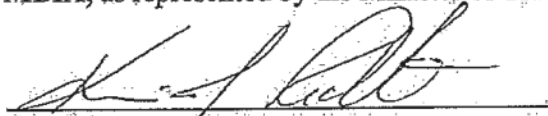
Authorized Signatory

Per: \_\_\_\_\_

Authorized Signatory

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

Per:

A handwritten signature in dark ink, appearing to read 'Kevin Richter', is written over a horizontal line.

Kevin Richter  
Assistant Deputy Minister, Infrastructure Department  
Ministry of Transportation and Infrastructure

documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.

13.15 No Implied Waiver – The failure of any Party to insist at any time upon the strict performance of any covenant or agreement herein or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or a relinquishment thereof for the future. No payment or receipt by a Party of a lesser amount than due under this Agreement shall be deemed to be other than on account of the earliest payment due hereunder, nor shall any endorsement or statement on any cheque or any letter accompanying any cheque or payment due under this Agreement be deemed an accord and satisfaction, and the Parties may accept such cheque or payment without prejudice to the Party's right to recover the balance of such payment or pursue any other remedy permitted herein.

13.16 Execution – This Agreement may be executed by the Parties and transmitted by facsimile or other electronic means and if so executed and transmitted, this Agreement shall be for all purposes as effective as if the Parties had delivered an executed original Agreement.

13.17 Counterparts – This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document, provided that the Parties will, within a reasonable period of time following the Execution Date, deliver to each other an originally executed copy of this Agreement.

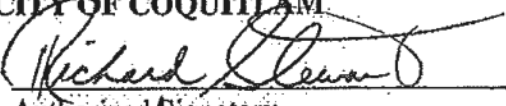
IN WITNESS WHEREOF the Parties have executed this Agreement as of the year and date first above written.

**PENSIONFUND REALTY LIMITED**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**THE CITY OF COQUITLAM**

Per:   
Authorized Signatory

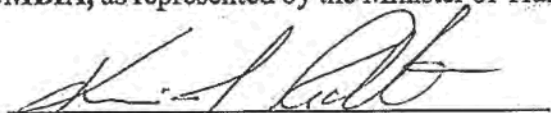
**Richard Stewart**  
Mayor

Per:   
Authorized Signatory

**James Gilbert**  
City Clerk

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

Per:

A handwritten signature in black ink, appearing to read 'Kevin Richter', is written over a horizontal line.

Kevin Richter  
Assistant Deputy Minister, Infrastructure Department  
Ministry of Transportation and Infrastructure

**SCHEDULE A**

**LEGAL DESCRIPTIONS OF CITY LANDS, PRL LANDS  
AND CITY/BURNABY LANDS**

s.16,s.17

**SCHEDULE B1**

**AREAS OF CITY RIGHTS OF WAY AND CITY TEMPORARY LICENCES**

s.16,s.17

**SCHEDULE B2**

s.16,s.17

**SCHEDULE B3**

s.16,s.17

**SCHEDULE B4**

s.16,s.17

**SCHEDULE B5**

s.16,s.17

**SCHEDULE B6**

s.16,s.17

**SCHEDULE C1**

**AREA OF CITY/BURNABY LAND RIGHTS**

s.16,s.17

**SCHEDULE C2**

s.16,s.17

**SCHEDULE D**

**AREA OF PRL GUIDEWAY RIGHT OF WAY AND  
TEMPORARY RIGHT OF WAY**

s.16,s.17

**SCHEDULE E1**

**AREA OF STATION RIGHT OF WAY AND TEMPORARY RIGHT OF WAY**  
**(WITHOUT DOWN ESCALATOR REQUIREMENT)**

s.16,s.17

**SCHEDULE E2**

**AREA OF STATION RIGHT OF WAY AND TEMPORARY RIGHT OF WAY**  
**(WITH DOWN ESCALATOR REQUIREMENT)**

s.16,s.17

**SCHEDULE F1**

**STATION PLANS**

s.16,s.17

**SCHEDULE F2**

s.16,s.17

**SCHEDULE F3**

s.16,s.17

**SCHEDULE F4**

s.16,s.17

**SCHEDULE F5**

s.16,s.17

**SCHEDULE F6**

s.16,s.17

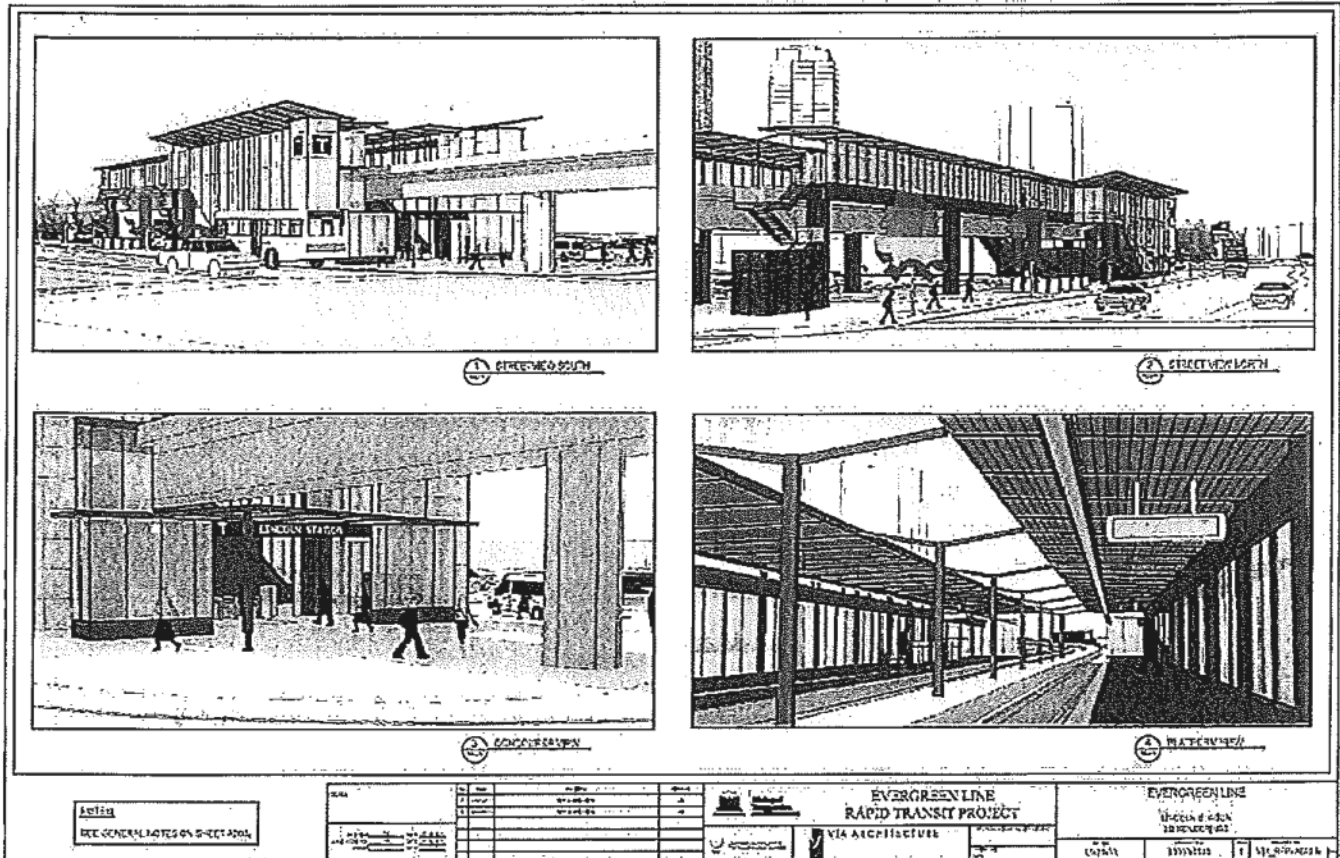
**SCHEDULE F7**

s.16,s.17

**SCHEDULE F8**

s.16,s.17

# **SCHEDULE F9**



**SCHEDULE G**

**PLAN OF LINCOLN DRIVE RE-ALIGNMENT**

s.16,s.17

## **SCHEDULE H**

### **STATION DESIGN**

The City and PRL acknowledge that the Project, including the Station, will be designed and constructed in accordance with the Project Agreement, which is a "design-build" contract, and that the Station Plans are conceptual and do not necessarily show the Station as it will be actually be constructed. The Station will be constructed in general conformity with the Station Plans, inclusive of agreed upon amendments outlined below. The finishing and plaza development for the Station will be to the same standard as other stations constructed along the Evergreen Line. While the Province agrees to consult with the Parties with respect to design, the Province reserves sole control and discretion regarding all design and construction details regarding the Station. For the purpose of clarity, there will be no generally accessible public washroom incorporated into the Station.

s.16,s.17

Page 116 to/à Page 122

Withheld pursuant to/removed as

s.16;s.17

**SCHEDULE L**  
**PRL RIGHTS OF WAY**

**SCHEDULE L1**

**PART 2 - TERMS OF INSTRUMENT**

**GUIDEWAY STATUTORY RIGHT OF WAY**

**BETWEEN:**

**PENSIONFUND REALTY LIMITED**

(the "Transferor")

**AND:**

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

(the "Transferee")

**WHEREAS:**

- A. The Transferor, being the Transferor named in Item 5 of Part 1 of this Instrument, is the registered owner of the Lands.
- B. The Transferee, being the Transferee named in Item 6 of Part 1 of this Instrument, has constructed or will construct the Transit System, parts of which are situate on or within the SRW Area.
- C. The Transferee wishes to acquire a permanent Statutory Right of Way over the SRW Area for the purpose of planning, acquiring, constructing, operating and maintaining the Transit Facilities as part of the Transit System.
- D. This Statutory Right of Way is granted pursuant to Section 218 of the *Land Title Act* of British Columbia. The rights created by this Instrument are necessary for the operation and maintenance of the Transit System and for the undertaking of the Transferee.

**NOW THEREFORE** in consideration of the sum of \$1.00 paid by the Transferee to the Transferor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the grants, covenants and agreements contained herein, the parties hereby agree that the Transferee hereby acquires the following rights and obligations, and the following interests in Lands are hereby vested in the Transferee:

# 1. DEFINED TERMS

1.1 The following terms shall have the meanings hereinafter specified:

- (a) **"Guideway"** means that part of the Transit System, comprising both superstructure and substructure, on which transit vehicles operate, whether elevated, at grade or below grade, including all beams, slabs, columns and foundations and ancillary structures;
- (b) **"Instrument"** means this Form C Charge Part 1 General Instrument and Part 2 Terms of Instrument;
- (c) **"Lands"** means the lands described in Item 2 of Part 1 of this Instrument;
- (d) **"LTSA"** means the Land Title Division of the Land Title and Survey Authority of British Columbia, and includes any successor office;
- (e) **"Plan"** means the statutory right of way plan which is deposited with the LTSA under document number BCP♦;
- (f) **"SRW Area"** means that part of the Lands shown outlined in bold on the Plan;
- (g) **"Statutory Right of Way"** means the aggregate of legal entitlements and obligations described in this Instrument for exercise by the Transferee and, where required by the context, includes this Instrument as an agreement among the parties;
- (h) **"Transferee"** means the person identified in Item 6 of Part 1 of this Instrument or any person to whom the Statutory Right of Way may be transferred from time to time;
- (i) **"Transferor"** means the person named as Transferor in Item 5 of Part 1 of this Instrument or such other person as may be the owner from time to time of that portion of the Lands in which the SRW Area is located;
- (j) **"Transit Facilities"** means all infrastructure, structures, equipment, systems, fixtures, facilities and other property constituting part of the Transit System or otherwise used or intended to be used in association with the Transit System, including any and all buildings, improvements, structures, works, apparatus, appliances, the bed for tracks, rolling stock, walkways, controls, facilities for electric lights, heat, communication, power systems, conduits, pipes, ducts, lines, mains, antenna, footings, pillars, columns, pilings, foundations, cables (including fibre optic cables), anchors, tracks, platforms, Guideways, access and parking facilities, vehicle maintenance, storage and operations facilities, signs, fences, retaining walls, pipes, wires, machinery, equipment, escalators, elevators, ticket vending machines, fare gates, and apparatus for telephones, electric lights, heat and power and anything else constituting part of the Transit System from time to time required, built, constructed, erected or installed as part of the Transit System,

as such infrastructure, equipment, systems, fixtures, facilities and property may be constructed, installed, altered, upgraded and augmented from time to time and all renewals and replacements, parts, equipment, materials, additions and substitutions for the said Transit Facilities, including any component thereof or which is ancillary thereto; and

- (k) "Transit System" means the totality of the automated light rail rapid transit system for the transportation of people, goods and information commonly known as the "SkyTrain System" in the Greater Vancouver area, in the Province of British Columbia, of which the SRW Area and the Transit Facilities form a part.

## 2. STATUTORY RIGHT OF WAY

- 2.1 The Transferor acknowledges that the Transferee is hereby granted this Statutory Right of Way as a component of a provincial public undertaking as defined in the *Transportation Act*, SBC 2004, c. 44, forming part of the Transit System.

- 2.2 The Transferor does by this Instrument grant and convey to the Transferee and its assigns, agents, contractors, servants, employees, workers, contractors, subcontractors, licensees, permittees, servants, directors, officers and officials, and all persons thereby authorized, in perpetuity, the exclusive, full, free and uninterrupted right, license, easement, liberty and privilege, and right of way, in common with the Transferor, to enter, labour, go, work, be on, return, pass and repass in or over the SRW Area at all times by day and night, with or without vehicles and equipment (whether motorized or not) and any materials or supplies to:

- (a) inspect, examine and conduct tests of the condition of the SRW Area to determine its condition and the condition of any existing improvements located in or on the SRW Area prior to the design and construction of the Transit Facilities;
- (b) construct, store, assemble, change, commission, design, disassemble, improve, maintain, reassemble, reconstruct, renovate, repair, replace, test, retest and use the Transit Facilities or any component of the Transit Facilities and, in furtherance of these purposes, to alter and otherwise disturb the SRW Area generally as the Transferee in its discretion sees fit, including the removal or alteration of improvements of any sort, all in accordance with the Transferee's undertaking and in furtherance of the design, construction, renovation and repair of the Transit Facilities;
- (c) fence off or otherwise secure all or parts of the SRW Area whenever the Transferee is constructing, maintaining, repairing, operating, replacing or removing Transit Facilities for safety purposes and to secure the property of the Transferee and its assigns, agents, contractors, servants, employees, workers, contractors, subcontractors, licensees, permittees, servants, directors, officers and officials which is used or stored for the purposes contemplated by this Instrument;
- (d) operate and maintain the Transit Facilities or any component of the Transit Facilities as part of the Transit System, and for such purposes generally to do in,

upon, over or under the SRW Area all acts or things and matters which in the discretion of the Transferee are necessary or incidental to the business, maintenance, operation, repair or removal of the Transit Facilities and the Transit System;

- (e) install, operate, repair, maintain and replace telecommunications and other linear systems and equipment, including antennae, transmitters, cabling and fibre optic networks within or on the Guideway, whether such systems are required in connection with the Transit System or are used for other purposes, including third party commercial ventures;
- (f) subject to any applicable law, install and maintain advertising on the Transit Facilities and on or in transit vehicles which operate on or as part of the Transit System;
- (g) undertake, perform and complete surveys, tests, inspections and examinations of the Transit Facilities and the Transit System;
- (h) clear the SRW Area and keep it clear of all vehicles, fences, buildings, structures, foundations, equipment, obstructions, trees, vegetation or other growth (including anything permitted by Section 3.6) which might, in the opinion of the Transferee, interfere with, impede, hinder, obstruct or endanger the exercise of the rights granted to the Transferee under this Instrument;
- (i) do all acts which, in the opinion of the Transferee, acting reasonably, are necessary and incidental to the business of the Transferee in connection with the foregoing; and
- (j) allow the general public to use the Transit Facilities and those portions of the SRW Area which are suitable for pedestrian use as passengers on the Transit System, including the full, free and uninterrupted right, license, liberty and privilege to enter, go, work, be on, return, pass and repass in, on and over any part of the SRW Area which is suitable for pedestrian use, all for the public utilization of the Transit Facilities and any component thereof as a part of the Transit System, and for all other purposes which are necessary or incidental to traveling in and on the Transit Facilities and vehicles operating thereon as part of the Transit System.

2.3 The Transferee agrees that the SRW Area (other than any areas of the SRW Area which are subject to an overlapping statutory right of way for any transit station which is part of the Transit System) will be used by the Transferee for the Guideway, and that no structures or buildings other than the Guideway (whether or not they may be Transit Facilities) will be installed by the Transferee in the SRW Area unless required for the use of the Guideway and the vehicles operated thereon as part of the Transit System.

2.4 The Transferor hereby grants to the Transferee, and its servants, agents, employees, workers, contractors, subcontractors, and licensees, together with machinery, vehicles, equipment and materials, the right at all times to enter upon and to pass and repass over

the Private Roads as may reasonably be required for the purpose of ingress to and egress from the SRW Area, provided always that the Transferee, and its servants, agents, employees, workers, contractors, subcontractors, and licensees shall not park vehicles or store or deposit equipment and materials on the Private Roads or in any other manner block or obstruct the full operating use of the Private Roads without the prior written consent of the Transferor, acting reasonably and with regard to the efficient functioning of the shopping centre or other buildings located on the Lands from time to time, or the carrying out of any development, re-development or construction thereof. In this Section 2.4, "Private Roads" means private roads and drive aisles that may from time to time exist or be constructed on the Lands.

- 2.5 Except as required for safety reasons in the exercise of its rights pursuant to this Instrument, the Transferee shall not prevent or impair reasonable access over the SRW Area to the parking lot and improvements of the Transferor on the Lands during the hours that the businesses of the Transferor and its tenants would otherwise be open. In the event that the temporary closure of such access, or the extension of such a closure, is necessary, the Transferee or its contractors shall provide advance notice to the Transferor. The information to be provided to the Transferor must include the reason for and duration of the closure, as well as options for safe alternative access, if available.

### 3. OBLIGATIONS AND RETAINED RIGHTS OF THE TRANSFEROR

- 3.1 The Transferor shall not, nor shall the Transferor grant permission to any other person to, erect, place, install or maintain any vehicles, buildings, structures, equipment, pipes, wires, conduits, trees, vegetation or other growth on, over or under any portion of the SRW Area that, in the opinion of the Transferee, might endanger, impede, disturb, injure or interfere with the construction, testing, commissioning, operation, use, maintenance, repair, alteration, disassembly, reassembly, renovation or replacement of the Transit Facilities or interfere with the SRW Area or access to the SRW Area or the rights granted to the Transferee by this Instrument.
- 3.2 Without limiting Sections 3.1, the Transferor shall not, nor shall the Transferor grant permission to, without the prior written consent of the Transferee, in the Transferee's discretion:
- (a) conduct excavations or blasting in the vicinity of any Transit Facilities;
  - (b) construct buildings or other permanent structures under, over or within one horizontal metre of the Transit Facilities;
  - (c) introduce substances in quantities or concentrations which exceed prescribed criteria, standards or conditions under any law; or
  - (d) attach anything to or hang anything from the Transit Facilities.

Any permission or consent by the Transferee to do anything which is prohibited by or subject to the consent or permission of the Transferee hereunder may be made or granted subject to such conditions and requirements as the Transferee, in its discretion, deems

necessary or appropriate in view of the Transferee's rights and obligations under this Instrument.

- 3.3 The Transferor acknowledges and agrees that the Transferee may grant to third party providers the right and entitlement to utilize the SRW Area for all lawful uses permitted to the Transferee herein, and without restricting the generality of that entitlement, including for independent commercial ventures, water, sewage, electricity, fibre optic, cabling and telecommunications systems and utilities, provided that the same are installed within or on the Guideway, and including the display of advertising material on the Transit Facilities and on or in vehicles which operate on or as part of the Transit System.
- 3.4 The Transferor further agrees, upon a written request from the Transferee, to grant to any third party provider a right of way for any use contemplated in Section 3.3, and to execute and deliver such right of way and any related instrument required by the Transferee or such third party, in such form and containing such content as may be required by the Transferee or the third party, which form shall be suitable for registration in the LTSA if so required by the Transferee or third party, provided that such right of way co-exists entirely within the boundaries of the SRW Area, and in the case of commercial ventures, within or on the Guideway. No such right of way or related instrument shall confer upon third parties any rights or entitlements beyond those provided in this Instrument.
- 3.5 The Transferor shall execute all further documents that may be required to assure the rights granted to the Transferee by this Instrument.
- 3.6 Without derogating from or enlarging the retained rights of the Transferor as owner of the Lands and subject to Sections 3.1 and 3.2 hereof, the Transferor may, at the risk and expense of the Transferor, use any part of the SRW Area which is not under construction, occupied by or required for the use of the Transit Facilities for the following purposes and activities:
  - (a) the parking and movement of vehicles;
  - (b) the placement of vegetation (other than trees);
  - (c) the installation of public art;
  - (d) the installation of commercial or recreational structures;
  - (e) the creation of parks or park-type facilities;
  - (f) the construction of pedestrian or bicycle pathways;
  - (g) the installation of lighting and signage and supporting structures;
  - (h) the installation of improvements to accommodate the public for recreation, rest, walking and cycling;

- (i) the installation of curbs, gutters and paved areas
- (j) the installation of municipal infrastructure and public realm improvements; and
- (k) the granting of statutory rights of way, easements, dedications or other interests within the SRW Area.

#### **4. OWNERSHIP OF WORKS**

- 4.1 The Transit Facilities are and shall at all times remain personalty and the property of the Transferee, despite the degree by which the same may be annexed or affixed to the freehold of the Lands. The Transferee shall be entitled at any time and from time to time to remove the Transit Facilities, in whole or in part, and the Transit Facilities shall be freely alienable by the Transferee as its own property.
- 4.2 All property rights, title and interest in the Transit Facilities are and continue to be vested in the Transferee.

#### **5. SRW AREA**

- 5.1 The rights described in this Instrument shall run with the Lands.
- 5.2 Neither the Transferor nor any successor in title to the Lands shall be liable for breaches or the non-observance or non-performance of any obligations under this Instrument which arises after the Transferor or such successor in title has ceased to be the registered owner of the SRW Area. The Transferor or its successors in title, as the case may be, shall remain liable after ceasing to be the registered owner of the SRW Area or any portion of the SRW Area, as the case may be, for all breaches of and the non-observance and non-performance of any term, condition, covenant or other provision of this Instrument that occurred while the Transferor or such successor in title, as the case may be, was the registered owner of the SRW Area or such portion, as the case may be.
- 5.3 The Transferee shall design and construct any Guideway within the City of Coquitlam so that the vertical clearance between the under surface of such Guideway and the paved surface of any public road, highway or street is not less than 5 metres, and so that the vertical clearance between the under surface of such Guideway and the paved surface of any driveway which is in existence as of the date of this Instrument is no less than 4.5 metres.

#### **6. PRIORITY OF REGISTRATION**

- 6.1 The Transferor covenants and agrees whenever required by the Transferee, acting reasonably, to sign and deliver, or to arrange for the signing and delivery by others, of any priority agreement included within this Instrument (or in a separate instrument) that may be required by the Transferee to ensure that the within Statutory Right of Way is registered as a charge against the title to the Lands with priority in registration to all financial encumbrances as well as to any charges, whether of a financial nature or not,

which may conflict with the rights conferred hereby, save any reservations or exceptions contained in any Crown grant of the Lands.

## 7. INDEMNITY AND ENVIRONMENTAL MATTERS

- 7.1 Subject to Sections 7.2 and 8.2, the Transferee indemnifies and shall hold the Transferor harmless from all actions, proceedings, suits, demands, costs and expenses arising out of the exercise by the Transferee of its rights under this Instrument, except to the extent that any such actions, proceedings, suits, demands, costs and expenses are caused by or contributed to by the Transferor, its successors, assigns, agents, contractors, subcontractors, licensees, tenants, sub-tenants, employees, permittees, invitees, servants and officials.
- 7.2 The Transferee's obligation to indemnify and hold harmless the Transferor in Section 7.1 does not extend to any claim or liability arising solely from or related to the presence in soil, sediment, water or groundwater, on or off the SRW Area, of any substance in quantities or concentrations exceeding prescribed criteria, standards, or conditions under any law except to the extent that such substance is introduced into the soil, sediment, water or groundwater by the Transferee.
- 7.3 The Transferor warrants and represents to the Transferee, with the knowledge that the Transferee shall rely upon these warranties and representations in entering into this Instrument, that:
  - (a) the Transferor's use of the SRW Area and, to the best of its knowledge, all previous uses of the SRW Area have not resulted in the presence, in any soil, sediment, water or groundwater on or under the SRW Area of any substance in quantities or concentrations which exceed prescribed conditions in any law;
  - (b) to the best of the Transferor's knowledge, there are no toxic, hazardous, dangerous or potentially dangerous substances stored on the SRW Area and there are no storage containers for those substances located on or under the SRW Area;
  - (c) the Transferor has delivered to the Transferee all reports, assessments, audits, studies, permits, licences and records prepared or issued which are within the Transferor's possession or control which concern the environmental condition of the SRW Area;
  - (d) to the best of the Transferor's knowledge, there is no claim or litigation pending or threatened against the Transferor or any other person concerning the environmental condition of the SRW Area;
  - (e) to the best of the Transferor's knowledge, no order has been made or threatened to be made against the Transferor or any other person by any competent governmental authority concerning the environmental condition of the SRW Area; and

- (f) to the best of the Transferor's knowledge, the SRW Area has not been used for industrial or commercial purposes described in Schedule 2 of the *Contaminated Sites Regulation* under the *Environmental Management Act*.

## 8. MISCELLANEOUS

- 8.1 Subject to the requirements of Section 218 of the *Land Title Act*, the Transferee may freely licence or assign its rights and benefits under this Instrument in whole or in part, without the consent of the Transferor, on such terms as the Transferee may consider appropriate. The registration in the LTSA of an assignment by the Transferee pursuant to this provision shall release the Transferee from further responsibility for the observance or performance of the obligations described herein except for responsibility for the consequences of events which have occurred prior to the date and time of the registration of such assignment.
- 8.2 Neither the Transferee nor any successor in interest to the rights of the Transferee pursuant to this Instrument shall be liable for breaches or the non-observance or non-performance of any obligations under this Instrument which arise after the Transferee or such successor in interest has ceased to be the registered holder of the rights and interests conferred on the Transferee by this Instrument. The Transferee and its successors in interest, as the case may be, shall remain liable after ceasing to be the registered holder of the rights and interests conferred by this Instrument, as the case may be, for all breaches of and the non-observance and non-performance of any term, condition, covenant or other provision of this Instrument that occurred while the Transferee or such successor in interest, as the case may be, was the registered owner of the Transferee's rights and interests in this Instrument.
- 8.3 The references "hereunder", "herein" and "hereof" refer to the provisions of this Instrument and references to Sections herein refer to Sections of this Instrument. The division of this Instrument and the headings of Sections and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provision hereof.
- 8.4 Whenever the singular or masculine or neuter is used in this Instrument, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a derivative of such term shall have a corresponding meaning unless the context otherwise requires.
- 8.5 The word "including", when following any general term or statement, and whether or not it is followed by such words as "without limitation", is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, and the general term or statement shall be interpreted to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

- 8.6 The words "will" and "shall" as used in this Instrument are synonymous with each other and used interchangeably herein to designate a mandatory requirement or obligation, as applicable.
- 8.7 Any reference to a statute of any governmental authority shall include and shall be deemed to be a reference to such statute and to the regulations or orders made pursuant thereto and all amendments made thereto and in force from time to time, and to any statute, regulation or order that may be passed which has the effect of supplementing the statute so referred to or the regulations or orders made pursuant thereto.
- 8.8 The Transferor and the Transferee each waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Instrument that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same, or against the party benefiting from such terms or provisions.
- 8.9 Nothing in this Instrument shall be construed as an agreement by the Transferee to restrict, limit or otherwise fetter in any manner the Transferee's ability to introduce, pass, amend, modify, replace, revoke or otherwise exercise any rights or authority regarding legislation, regulations, policies or any other authority.
- 8.10 No provision of this Instrument is intended to derogate from or be inconsistent with or in conflict with any laws and no provision of this Instrument shall be interpreted in a manner which results in any such derogation, inconsistency or conflict and, if any such provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any laws, the applicable laws shall prevail and such provision shall be read down or rendered inoperative (either generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be and, if any such provision is found by a court of competent jurisdiction to derogate from any laws, then such provision shall be read down or rendered inoperative (either generally or in such particular situation, as appropriate) to the extent of the derogation.
- 8.11 Each provision of this Instrument shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Instrument is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Instrument. If any such provision of this Instrument is held to be invalid, unenforceable or illegal, the Parties shall promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Instrument as nearly as possible to its original intent and effect.
- 8.12 No term, condition, covenant or other provision of this Instrument shall be considered to have been waived by either the Transferee or the Transferor unless such waiver is expressed in writing by the Transferee or the Transferor, as applicable. The waiver by the Transferee or the Transferor of any breach by the other of any term, condition, covenant or other provision of this Instrument shall 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 the Transferee or the Transferor to any act by the other which requires the consent or approval of the other shall not be considered to waive or render unnecessary such consents or approvals to any subsequent same or similar act. The single or partial exercise by the Transferee or the Transferor of any right under this Instrument shall not preclude any other or future exercise thereof or the exercise of any other right.

- 8.13 Subject to the requirements of Section 218 of the *Land Title Act*, this Instrument shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns. Every reference to a party in this Instrument shall be deemed to include the heirs, executors, administrators, successors, successors in title and assigns, employees, servants, agents, officers, contractors, permittees, licencees and invitees of that party, wherever the context so requires.
- 8.14 This Instrument shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The parties hereto hereby irrevocably attorn to the jurisdiction of the courts of the Province of British Columbia in all matters relating to the interpretation or enforcement of this Instrument.
- 8.15 Where an entitlement in this Instrument is conferred upon more than one party, the entitlement may be exercised by all parties upon whom the entitlement is conferred acting together or by any one or more of them acting alone.
- 8.16 Time is of the essence of this Instrument.

IN WITNESS WHEREOF the parties hereto have executed this Instrument as of the day, month and year shown in Item 8 of Part 1 of this Instrument.

END OF DOCUMENT

Page 135 to/à Page 163

Withheld pursuant to/removed as

s.16;s.17

SCHEDULE M

CITY STATION RIGHTS OF WAY AND CITY TEMPORARY LICENCE

Page 165 to/à Page 186

Withheld pursuant to/removed as

s.16;s.17

**SCHEDULE M3**

**CITY TEMPORARY LICENCE – ADJACENT TO GUIDEWAY**

THIS LICENCE dated for reference the ♦ day of ♦, 201♦.

BETWEEN:

**CITY OF COQUITLAM**

(the "Licensor")

AND:

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

(the "Licensee")

**WHEREAS:**

- A. The Licensor is the registered owner of the Lands.
- B. The Licensee has constructed or will construct the Transit System, parts of which are situate on or within the Licence Area.
- C. The Licensee wishes to acquire a Temporary Licence over the Licence Area for the purpose of planning, designing and constructing Transit Facilities as part of the Transit System.
- D. The rights created by this Instrument are necessary for the construction of the Transit System and for the undertaking of the Licensee.

**NOW THEREFORE** in consideration of the sum of \$1.00 paid by the Licensee to the Licensor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the grants, covenants and agreements contained herein, the parties hereby agree that the Licensee hereby acquires the following rights and obligations, and the following interests in Lands are hereby vested in the Licensee:

**1. DEFINED TERMS**

1.1 The following terms shall have the meanings hereinafter specified:

- (a) "Guideway" means that part of the Transit System, comprising both superstructure and substructure, on which transit vehicles operate, whether

elevated, at grade or below grade, including all beams, slabs, columns and foundations and ancillary structures;

- (b) **"Guideway SRW"** has the meaning set out in Section 2.2;
- (c) **"Instrument"** means this City Temporary Licence;
- (d) **"Lands"** means the lands described in Schedule A hereto;
- (e) **"Licence Area"** means that part of the Lands shown outlined in bold on the Plans;
- (f) **"Licence"** means the aggregate of legal entitlements and obligations described in this Instrument for exercise by the Licensee and where required by the context, includes this Instrument as an agreement among the parties;
- (g) **"Licensee"** means Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure or any person to whom the Licence may be transferred from time to time;
- (h) **"Licensor"** means the City of Coquitlam or such other person as may be the owner from time to time of that portion of the Lands in which the Licence Area is located;
- (i) **"LTSA"** means the Land Title Division of the Land Title and Survey Authority of British Columbia, and includes any successor office;
- (j) **"Plans"** means the plans which shows the locations of the Licence Area, a copy of which plans are attached hereto as Schedule B;
- (k) **"Station"** means a transit station for passengers and other purposes to be used in conjunction with the other Transit Facilities as part of the Transit System, including all ancillary Transit Facilities and infrastructure;
- (l) **"Term"** means the period commencing on the date specified by notice in writing by the Licensee to the Licensor (provided that such notice is delivered no later than 30 days prior to the commencement of the Term) and which ends on the first anniversary of the commencement of the Term, but which is subject to extension as provided herein.
- (m) **"Transit Facilities"** means all infrastructure, structures, equipment, systems, fixtures, facilities and other property constituting part of the Transit System or otherwise used or intended to be used in association with the Transit System, including any and all buildings, improvements, structures, works, apparatus, appliances, bed of tracks, rolling stock, walkways, controls, facilities for electric lights, heat, communication, power systems, conduits, pipes, ducts, lines, mains, antenna, footings, pillars, columns, pilings, foundations, cables (including fibre optic cables), anchors, tracks, platforms, Guideways, access and parking facilities,

vehicle maintenance, storage and operations facilities, signs, fences, retaining walls, pipes, wires, machinery, equipment, escalators, elevators, ticket vending machines, fare gates, and apparatus for telephones, electric lights, heat and power and anything else constituting part of the Transit System from time to time required, built, constructed, erected or installed as part of the Transit System, as such infrastructure, equipment, systems, fixtures, facilities and property may be constructed, installed, altered, upgraded and augmented from time to time and all renewals and replacements, parts, equipment, materials, additions and substitutions for the said Transit Facilities, including any component thereof or which is ancillary thereto; and

- (n) "Transit System" means the totality of the automated light rail rapid transit system for the transportation of people, goods and information commonly known as the "SkyTrain System" in the Greater Vancouver area, in the Province of British Columbia, of which the Transit Facilities form a part.

## 2. GRANT OF LICENCE

- 2.1 The Licensor acknowledges that the Licensee is hereby granted this Licence as a component of a provincial public undertaking as defined in the *Transportation Act*, SBC 2004, c. 44, forming part of the Transit System.
- 2.2 The Licensor has granted to the Licensee statutory rights of way in respect of the Transit Facilities under Section 218 of the *Land Title Act*, RSBC 1996, c. 250 which is registered in the LTSA under document number ♦ (the "Guideway SRW"). The area of the Guideway SRW is adjacent to the Licence Area. It is the intention of the Licensor and the Licensee that the Guideway SRW and this Licence are complementary and that the rights of the Licensee under the Guideway SRW and this Licence will be exercised in such manner as to facilitate the design and construction of the Guideway.
- 2.3 For the duration of the Term, the Licensor does by this Instrument grant and convey to the Licensee and its assigns, agents, contractors, servants, employees, workers, contractors, subcontractors, licensees, permittees, servants, directors, officers and officials, and all persons thereby authorized, the exclusive, full, free and uninterrupted right, license, liberty and privilege, in common with the Licensor, to enter, labour, go, work, be on, return, pass and repass in or over the Licence Area at all times by day and night, with or without vehicles and equipment (whether motorized or not) and any materials or supplies to:
- (a) inspect, examine and conduct tests of the condition of the Licence Area to determine its condition and the condition of any existing improvements located in or on the Licence Area prior to the design and construction of the Transit Facilities;
  - (b) construct, store, assemble, change, commission, design, disassemble, improve, maintain, reassemble, reconstruct, renovate, repair, replace, test, retest and use

materials, tools and equipment required for the design and construction of the Transit Facilities or any component of the Transit Facilities;

- (c) fence off or otherwise secure all or parts of the Licence Area whenever the Transferee is constructing, maintaining, repairing, replacing or removing Transit Facilities for safety purposes and to secure the property of the Licensee and its assigns, agents, contractors, servants, employees, workers, contractors, subcontractors, licensees, permittees, servants, directors, officers and officials which is used or stored for the purposes contemplated by this Instrument; and
- (d) clear the Licence Area and keep it clear of all vehicles, fences, buildings, structures, foundations, equipment, obstructions, trees, vegetation or other growth which might, in the opinion of the Licensee, interfere with, impede, hinder, obstruct or endanger the exercise of the rights granted to the Licensee under this Instrument.

2.4 For the duration of the Term and any extensions thereof, the Licensor does by this Instrument grant and convey to the Licensee and its assigns, agents, contractors, servants, employees, workers, contractors, subcontractors, licensees, permittees, servants, directors, officers and officials, and all persons thereby authorized, together with machinery, vehicles, equipment and materials, the rights at all times to enter upon and to pass and repass over such of the Lands of the Licensor as may reasonably be required for the purpose of ingress to and egress from the Licence Area and for purposes which are permitted by this Instrument.

2.5 The Licensee may extend the Term of this Licence on 30 days written notice delivered to the Licensor, and on such terms as are agreed between the Licensor and the Licensee, for periods of one or more months, provided that all such extension periods are continuous, and provided that the Licensee may not extend the Term for a period longer than 12 months.

### **3. FEES PAYABLE BY THE LICENSEE**

3.1 The Licence fee payable by the Licensee in respect of the Term of the Licence, and any extension thereto, will be calculated in accordance with the provisions of Section 5.2 and Schedule K of the Contribution Agreement concluded between the Licensee, Pensionfund Realty Ltd and the Licensor dated for reference November 16, 2011.

3.2 During the Term, the Licence fee payable by the Licensee in respect of this Licence will be credited to the City's Property Contribution Value as defined in the Contribution Agreement.

### **4. OBLIGATIONS AND RETAINED RIGHTS OF THE LICENSOR**

4.1 For the duration of the Term, the Licensor shall not, nor shall the Licensor grant permission to any other person to, erect, place, install or maintain any vehicles, buildings, structures, equipment, pipes, wires, conduits, trees, vegetation or other growth on, over or under any portion of the Licence Area that, in the opinion of the Licensee, might

endanger, impede, disturb, injure or interfere with the construction, testing, commissioning, operation, use, maintenance, repair, alteration, disassembly, reassembly, renovation or replacement of materials, tools and equipment required for the construction of the Transit Facilities or any component of the Transit Facilities or interfere with the Licence Area or access to the Licence Area or the rights granted to the Licensee by this Instrument.

- 4.2 Without limiting Section 4.1, the Licensor shall not, for the duration of the Term, conduct excavations or blasting on or adjacent to the Licence Area without the prior consent in writing of the Licensee, which consent may not be unreasonably withheld.
- 4.3 The Licensor shall execute all further documents that may be required to assure the rights granted to the Licensee by this Instrument.

## 5. OWNERSHIP OF PROPERTY

- 5.1 All materials, tools and equipment and any temporary improvements used by the Licensee and its assigns, agents, contractors, servants, employees, workers, contractors, subcontractors, licensees, permittees, servants, directors, officers and officials within the Licence Area are and shall at all times remain personalty, despite the degree by which the same may be annexed or affixed to the freehold of the Lands. The Licensee and its assigns, agents, contractors, servants, employees, workers, contractors, subcontractors, licensees, permittees, servants, directors, officers and officials shall be entitled at any time and from time to time to remove such materials, tools and equipment, which shall be freely alienable as their own property.
- 5.2 Upon expiry of the Term, the Licensee shall remove all materials, equipment and any temporary improvements installed by it within the Licence Area and shall, at its sole expense, restore the Licence Area to substantially the same condition as existed upon commencement of the Term.

## 6. LICENCE AREA

- 6.1 The Licensor shall not, during the Term or any extension of the Term, transfer or convey any interest in the Licence Area or grant any right to use the Licence Area to any person without first disclosing the rights of the Licensee as contained in this Instrument and obtaining an agreement in form and content satisfactory to the Licensee from the person who is acquiring the interest in or right to use the Licence Area to be bound by this Instrument and to recognize the rights of the Licensee as herein contained.
- 6.2 Provided that the Licensor obtains an agreement in favour of the Licensee as contemplated by Section 6.1, the Licensor shall not be liable for breaches or the non-observance or non-performance of any obligations under this Instrument which arise after the Licensor has ceased to be the registered owner of the Licence Area. The Licensor shall remain liable after ceasing to be the registered owner of the Licence Area or any portion of the Licence Area, as the case may be, for all breaches of and the non-observance and non-performance of any term, condition, covenant or other provision of

this Instrument that occurred while the Licensor was the registered owner of the Licence Area or such portion, as the case may be.

## 7. INDEMNITY AND ENVIRONMENTAL MATTERS

- 7.1 Subject to Sections 7.2 and 8.2, the Licensee indemnifies and shall hold the Licensor harmless from all actions, proceedings, suits, demands, costs and expenses arising out of the exercise by the Licensee of its rights under this Instrument, except to the extent that any such actions, proceedings, suits, demands, costs and expenses are caused by or contributed to by the Licensor, its successors, assigns, agents, contractors, subcontractors, licensees, tenants, sub-tenants, employees, permittees, invitees, servants and officials:
- 7.2 The Licensee's obligation to indemnify and hold harmless the Licensor in Section 7.1 does not extend to any claim or liability arising solely from or related to the presence in soil, sediment, water or groundwater, on or off the Licence Area, of any substance in quantities or concentrations exceeding prescribed criteria, standards, or conditions under any law except to the extent that such substance is introduced into the soil, sediment, water or groundwater by the Licensee.
- 7.3 The Licensor warrants and represents to the Licensee, with the knowledge that the Licensee shall rely upon these warranties and representations in entering into this Instrument, that:
- (a) the Licensor's use of the Licence Area and, to the best of its knowledge, all previous uses of the Licence Area have not resulted in the presence, in any soil, sediment, water or groundwater on or under the Licence Area of any substance in quantities or concentrations which exceed prescribed conditions in any law;
  - (b) to the best of the Licensor's knowledge, there are no toxic, hazardous, dangerous or potentially dangerous substances stored on the Licence Area and there are no storage containers for those substances located on or under the Licence Area;
  - (c) the Licensor has delivered to the Licensee all reports, assessments, audits, studies, permits, licences and records prepared or issued which are within the Licensor's possession or control which concern the environmental condition of the Licence Area;
  - (d) to the best of the Licensor's knowledge, there is no claim or litigation pending or threatened against the Licensor or any other person concerning the environmental condition of the Licence Area;
  - (e) to the best of the Licensor's knowledge, no order has been made or threatened to be made against the Licensor or any other person by any competent governmental authority concerning the environmental condition of the Licence Area; and
  - (f) to the best of the Licensor's knowledge, the Licence Area has not been used for industrial or commercial purposes described in Schedule 2 of the *Contaminated Sites Regulation* under the *Environmental Management Act*.

## 8. MISCELLANEOUS

- 8.1 The Licensee may freely licence or assign its rights and benefits under this Instrument in whole or in part, without the consent of the Licensor, on such terms as the Licensee may consider appropriate. Upon written notice to the Licensor of an assignment by the Licensee pursuant to this provision, the Licensee shall be released from further responsibility for the observance or performance of the obligations described herein except for responsibility for the consequences of events which have occurred prior to the date and time of the registration of such assignment.
- 8.2 Neither the Licensee nor any successor in interest to the rights of the Licensee pursuant to this Instrument shall be liable for breaches or the non-observance or non-performance of any obligations under this Instrument which arise after the Licensee or such successor in interest has ceased to be the registered holder of the rights and interests conferred on the Licensee by this Instrument. The Licensee and its successors in interest, as the case may be, shall remain liable after ceasing to be the registered holder of the rights and interests conferred by this Instrument, as the case may be, for all breaches of and the non-observance and non-performance of any term, condition, covenant or other provision of this Instrument that occurred while the Licensee or such successor in interest, as the case may be, was the holder of the Licensee's rights and interests in this Instrument.
- 8.3 The references "hereunder", "herein" and "hereof" refer to the provisions of this Instrument and references to Sections herein refer to Sections of this Instrument. The division of this Instrument and the headings of Sections and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provision hereof.
- 8.4 Whenever the singular or masculine or neuter is used in this Instrument, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a derivative of such term shall have a corresponding meaning unless the context otherwise requires.
- 8.5 The word "including", when following any general term or statement, and whether or not it is followed by such words as "without limitation", is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, and the general term or statement shall be interpreted to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.
- 8.6 The words "will" and "shall" as used in this Instrument are synonymous with each other and used interchangeably herein to designate a mandatory requirement or obligation, as applicable.
- 8.7 Any reference to a statute of any governmental authority shall include and shall be deemed to be a reference to such statute and to the regulations or orders made pursuant thereto and all amendments made thereto and in force from time to time; and to any

statute, regulation or order that may be passed which has the effect of supplementing the statute so referred to or the regulations or orders made pursuant thereto.

- 8.8 The Licensors and the Licensee each waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Instrument that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same, or against the party benefiting from such terms or provisions.
- 8.9 Nothing in this Instrument shall be construed as an agreement by the Licensee to restrict, limit or otherwise fetter in any manner the Licensee's ability to introduce, pass, amend, modify, replace, revoke or otherwise exercise any rights or authority regarding legislation, regulations, policies or any other authority.
- 8.10 Nothing in this Instrument shall be construed as an agreement by the Licensors to restrict, limit or otherwise fetter in any manner the exercise by the Municipal Council of the Licensors of its duties, rights or authority in regards to any matter, and nothing in this Instrument shall fetter the Licensors' Approving Officers in the exercise of their duties.
- 8.11 No provision of this Instrument is intended to derogate from or be inconsistent with or in conflict with any laws and no provision of this Instrument shall be interpreted in a manner which results in any such derogation, inconsistency or conflict and, if any such provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any laws, the applicable laws shall prevail and such provision shall be read down or rendered inoperative (either generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be and, if any such provision is found by a court of competent jurisdiction to derogate from any laws, then such provision shall be read down or rendered inoperative (either generally or in such particular situation, as appropriate) to the extent of the derogation.
- 8.12 Each provision of this Instrument shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Instrument is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Instrument. If any such provision of this Instrument is held to be invalid, unenforceable or illegal, the Parties shall promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Instrument as nearly as possible to its original intent and effect.
- 8.13 No term, condition, covenant or other provision of this Instrument shall be considered to have been waived by either the Licensee or the Licensors unless such waiver is expressed in writing by the Licensee or the Licensors, as applicable. The waiver by the Licensee or the Licensors of any breach by the other of any term, condition, covenant or other provision of this Instrument shall 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 the Licensee or the Licensors to any act by the other which

requires the consent or approval of the other shall not be considered to waive or render unnecessary such consents or approvals to any subsequent same or similar act. The single or partial exercise by the Licensee or the Licensor of any right under this Instrument shall not preclude any other or future exercise thereof or the exercise of any other right.

- 8.14 This Instrument shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns. Every reference to a party in this Instrument shall be deemed to include the heirs, executors, administrators, successors, successors in title and assigns, employees, servants, agents, officers, contractors, permittees, licencees and invitees of that party, wherever the context so requires.
- 8.15 This Instrument shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The parties hereto hereby irrevocably attorn to the jurisdiction of the courts of the Province of British Columbia in all matters relating to the interpretation or enforcement of this Instrument.
- 8.16 Where an entitlement in this Instrument is conferred upon more than one party, the entitlement may be exercised by all parties upon whom the entitlement is conferred acting together or by any one or more of them acting alone.
- 8.17 Time is of the essence of this Instrument.

**IN WITNESS WHEREOF** the parties hereto have executed this Instrument as of the day, month and year referred to above:

**CITY OF COQUITLAM**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

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

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**SCHEDULE A**  
**The Lands**

s.16,s.17

### THE PLANS

[Attach plans showing the locations of the Licensed Areas]

**SCHEDULE M4**

**CITY TEMPORARY LICENCE – ADJACENT TO STATION**

THIS LICENCE dated for reference the ♦ day of ♦, 201♦.

BETWEEN:

**CITY OF COQUITLAM**

(the "Licensor")

AND:

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

(the "Licensee")

**WHEREAS:**

- A. The Licensor is the registered owner of the Lands.
- B. The Licensee has constructed or will construct the Transit System, parts of which are situate on or within the Licence Area.
- C. The Licensee wishes to acquire a Temporary Licence over the Licence Area for the purpose of planning, designing and constructing Transit Facilities as part of the Transit System,
- D. The rights created by this Instrument are necessary for the construction of the Transit System and for the undertaking of the Licensee.

**NOW THEREFORE** in consideration of the sum of \$1.00 paid by the Licensee to the Licensor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the grants, covenants and agreements contained herein, the parties hereby agree that the Licensee hereby acquires the following rights and obligations, and the following interests in Lands are hereby vested in the Licensee:

**1. DEFINED TERMS**

1.1 The following terms shall have the meanings hereinafter specified:

- (a) "Guideway" means that part of the Transit System, comprising both superstructure and substructure, on which transit vehicles operate, whether

elevated, at grade or below grade, including all beams, slabs, columns and foundations and ancillary structures;

- (b) **"Instrument"** means this City Temporary Licence;
- (c) **"Lands"** means the lands described in Schedule A hereto;
- (d) **"Licence Area"** means that part of the Lands shown outlined in bold on the Plans;
- (e) **"Licence"** means the aggregate of legal entitlements and obligations described in this Instrument for exercise by the Licensee and where required by the context, includes this Instrument as an agreement among the parties;
- (f) **"Licensee"** means Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure or any person to whom the Licence may be transferred from time to time;
- (g) **"Licensor"** means the City of Coquitlam or such other person as may be the owner from time to time of that portion of the Lands in which the Licence Area is located;
- (h) **"LTSA"** means the Land Title Division of the Land Title and Survey Authority of British Columbia, and includes any successor office;
- (i) **"Plans"** means the plans which shows the locations of the Licence Area, a copy of which plans are attached hereto as Schedule B;
- (j) **"Station"** means a transit station for passengers and other purposes to be used in conjunction with the other Transit Facilities as part of the Transit System, including all ancillary Transit Facilities and infrastructure;
- (k) **"Station SRW"** has the meaning set out in Section 2.2;
- (l) **"Term"** means the period commencing on the date specified by notice in writing by the Licensee to the Licensor (provided that such notice is delivered no later than 30 days prior to the commencement of the Term) and which ends on the second anniversary of the commencement of the Term, but which is subject to extension as provided herein.
- (m) **"Transit Facilities"** means all infrastructure, structures, equipment, systems; fixtures, facilities and other property constituting part of the Transit System or otherwise used or intended to be used in association with the Transit System, including any and all buildings, improvements, structures, works, apparatus, appliances, bed of tracks, rolling stock, walkways, controls, facilities for electric lights, heat, communication, power systems, conduits, pipes, ducts, lines, mains, antenna, footings, pillars, columns, pilings, foundations, cables (including fibre optic cables), anchors, tracks, platforms, Guideways, access and parking facilities,

vehicle maintenance, storage and operations facilities, signs, fences, retaining walls, pipes, wires, machinery, equipment, escalators, elevators, ticket vending machines, fare gates, and apparatus for telephones, electric lights, heat and power and anything else constituting part of the Transit System from time to time required, built, constructed, erected or installed as part of the Transit System, as such infrastructure, equipment, systems, fixtures, facilities and property may be constructed, installed, altered, upgraded and augmented from time to time and all renewals and replacements, parts, equipment, materials, additions and substitutions for the said Transit Facilities, including any component thereof or which is ancillary thereto; and

- (n) "Transit System" means the totality of the automated light rail rapid transit system for the transportation of people, goods and information commonly known as the "SkyTrain System" in the Greater Vancouver area, in the Province of British Columbia, of which the Transit Facilities form a part.

## 2. GRANT OF LICENCE

- 2.1 The Licensor acknowledges that the Licensee is hereby granted this Licence as a component of a provincial public undertaking as defined in the *Transportation Act*, SBC 2004, c. 44, forming part of the Transit System.
- 2.2 The Licensor has granted to the Licensee statutory rights of way in respect of the Transit Facilities under Section 218 of the *Land Title Act*, RSBC 1996, c. 250 which is registered in the LTSA under document number ♦ (the "Station SRW"). The area of the Station SRW is adjacent to the Licence Area. It is the intention of the Licensor and the Licensee that the Station SRW and this Licence are complementary and that the rights of the Licensee under the Station SRW and this Licence will be exercised in such manner as to facilitate the design and construction of the Station and the Guideway located in the Station.
- 2.3 For the duration of the Term, the Licensor does by this Instrument grant and convey to the Licensee and its assigns, agents, contractors, servants, employees, workers, contractors, subcontractors, licensees, permittees, servants, directors, officers and officials, and all persons thereby authorized, the exclusive, full, free and uninterrupted right, license, liberty and privilege, in common with the Licensor, to enter, labour, go, work, be on, return, pass and repass in or over the Licence Area at all times by day and night, with or without vehicles and equipment (whether motorized or not) and any materials or supplies to:
  - (a) inspect, examine and conduct tests of the condition of the Licence Area to determine its condition and the condition of any existing improvements located in or on the Licence Area prior to the design and construction of the Transit Facilities;
  - (b) construct, store, assemble, change, commission, design, disassemble, improve, maintain, reassemble, reconstruct, renovate, repair, replace, test, retest and use

materials, tools and equipment required for the design and construction of the Transit Facilities or any component of the Transit Facilities;

- (c) fence off or otherwise secure all or parts of the Licence Area whenever the Transferee is constructing, maintaining, repairing, replacing or removing Transit Facilities for safety purposes and to secure the property of the Licensee and its assigns, agents, contractors, servants, employees, workers, contractors, subcontractors, licensees, permittees, servants, directors, officers and officials which is used or stored for the purposes contemplated by this Instrument; and
- (d) clear the Licence Area and keep it clear of all vehicles, fences, buildings, structures, foundations, equipment, obstructions, trees, vegetation or other growth which might, in the opinion of the Licensee, interfere with, impede, hinder, obstruct or endanger the exercise of the rights granted to the Licensee under this Instrument.

2.4 For the duration of the Term and any extensions thereof, the Licensor does by this Instrument grant and convey to the Licensee and its assigns, agents, contractors, servants, employees, workers, contractors, subcontractors, licensees, permittees, servants, directors, officers and officials, and all persons thereby authorized, together with machinery, vehicles, equipment and materials, the rights at all times to enter upon and to pass and repass over such of the Lands of the Licensor as may reasonably be required for the purpose of ingress to and egress from the Licence Area and for purposes which are permitted by this Instrument.

2.5 The Licensee may extend the Term of this Licence on 30 days written notice delivered to the Licensor, and on such terms as are agreed between the Licensor and the Licensee, for periods of one or more months, provided that all such extension periods are continuous, and provided that the Licensee may not extend the Term for a period longer than 12 months.

2.6 Prior to undertaking any work pursuant to the Station SRW which materially impairs access to the existing improvements constructed in the southerly part of the Lands, the Transferee shall construct a temporary access to the Lands for the duration of construction in the form of a two-lane wide paved driveway which permits right turn in and right turn out vehicular access to and egress from the Lands to Guildford Way. Such driveway shall be constructed to the standards of the existing Private Road on the Lands with which it will connect and will be located at a point designated by the Transferor. Upon completion of construction of the Station, the Transferee shall remove the temporary access and restore the area to as good or better condition than existed prior to the driveway installation.

### 3. FEES PAYABLE BY THE LICENSEE

3.1 The Licence fee payable by the Licensee in respect of the Term of the Licence, and any extension thereto, will be calculated in accordance with the provisions of Section 5.2 and

Schedule K of the Contribution Agreement concluded between the Licensee, Pensionfund Realty Ltd and the Licensors dated for reference November 16, 2011.

- 3.2 During the Term, the Licence fee payable by the Licensee in respect of this Licence will be credited to the City's Property Contribution Value as defined in the Contribution Agreement.

**4. OBLIGATIONS AND RETAINED RIGHTS OF THE LICENSOR**

- 4.1 For the duration of the Term, the Licensor shall not, nor shall the Licensor grant permission to any other person to, erect, place, install or maintain any vehicles, buildings, structures, equipment, pipes, wires, conduits, trees, vegetation or other growth on, over or under any portion of the Licence Area that, in the opinion of the Licensee, might endanger, impede, disturb, injure or interfere with the construction, testing, commissioning, operation, use, maintenance, repair, alteration, disassembly, reassembly, renovation or replacement of materials, tools and equipment required for the construction of the Transit Facilities or any component of the Transit Facilities or interfere with the Licence Area or access to the Licence Area or the rights granted to the Licensee by this Instrument.
- 4.2 Without limiting Section 4.1, the Licensor shall not, for the duration of the Term, conduct excavations or blasting on or adjacent to the Licence Area without the prior consent in writing of the Licensee, which consent may not be unreasonably withheld.
- 4.3 The Licensor shall execute all further documents that may be required to assure the rights granted to the Licensee by this Instrument.

**5. OWNERSHIP OF PROPERTY**

- 5.1 All materials, tools and equipment and any temporary improvements used by the Licensee and its assigns, agents, contractors, servants, employees, workers, contractors, subcontractors, licensees, permittees, servants, directors, officers and officials within the Licence Area are and shall at all times remain personalty, despite the degree by which the same may be annexed or affixed to the freehold of the Lands. The Licensee and its assigns, agents, contractors, servants, employees, workers, contractors, subcontractors, licensees, permittees, servants, directors, officers and officials shall be entitled at any time and from time to time to remove such materials, tools and equipment, which shall be freely alienable as their own property.
- 5.2 Upon expiry of the Term, the Licensee shall remove all materials, equipment and any temporary improvements installed by it within the Licence Area and shall, at its sole expense, restore the Licence Area to substantially the same condition as existed upon commencement of the Term.

**6. LICENCE AREA**

- 6.1 The Licensor shall not, during the Term or any extension of the Term, transfer or convey any interest in the Licence Area or grant any right to use the Licence Area to any person.

without first disclosing the rights of the Licensee as contained in this Instrument and obtaining an agreement in form and content satisfactory to the Licensee from the person who is acquiring the interest in or right to use the Licence Area to be bound by this Instrument and to recognize the rights of the Licensee as herein contained.

- 6.2 Provided that the Licensor obtains an agreement in favour of the Licensee as contemplated by Section 6.1, the Licensor shall not be liable for breaches or the non-observance or non-performance of any obligations under this Instrument which arise after the Licensor has ceased to be the registered owner of the Licence Area. The Licensor shall remain liable after ceasing to be the registered owner of the Licence Area or any portion of the Licence Area, as the case may be, for all breaches of and the non-observance and non-performance of any term, condition, covenant or other provision of this Instrument that occurred while the Licensor was the registered owner of the Licence Area or such portion, as the case may be.

## 7. INDEMNITY AND ENVIRONMENTAL MATTERS

- 7.1 Subject to Sections 7.2 and 8.2, the Licensee indemnifies and shall hold the Licensor harmless from all actions, proceedings, suits, demands, costs and expenses arising out of the exercise by the Licensee of its rights under this Instrument, except to the extent that any such actions, proceedings, suits, demands, costs and expenses are caused by or contributed to by the Licensor, its successors, assigns, agents, contractors, subcontractors, licensees, tenants, sub-tenants, employees, permittees, invitees, servants and officials.
- 7.2 The Licensee's obligation to indemnify and hold harmless the Licensor in Section 7.1 does not extend to any claim or liability arising solely from or related to the presence in soil, sediment, water or groundwater, on or off the Licence Area, of any substance in quantities or concentrations exceeding prescribed criteria, standards, or conditions under any law except to the extent that such substance is introduced into the soil, sediment, water or groundwater by the Licensee.
- 7.3 The Licensor warrants and represents to the Licensee, with the knowledge that the Licensee shall rely upon these warranties and representations in entering into this Instrument, that:
- (a) the Licensor's use of the Licence Area and, to the best of its knowledge, all previous uses of the Licence Area have not resulted in the presence, in any soil, sediment, water or groundwater on or under the Licence Area of any substance in quantities or concentrations which exceed prescribed conditions in any law;
  - (b) to the best of the Licensor's knowledge, there are no toxic, hazardous, dangerous or potentially dangerous substances stored on the Licence Area and there are no storage containers for those substances located on or under the Licence Area;
  - (c) the Licensor has delivered to the Licensee all reports, assessments, audits, studies, permits, licences and records prepared or issued which are within the Licensor's possession or control which concern the environmental condition of the Licence Area;

- (d) to the best of the Licensor's knowledge, there is no claim or litigation pending or threatened against the Licensor or any other person concerning the environmental condition of the Licence Area;
- (e) to the best of the Licensor's knowledge, no order has been made or threatened to be made against the Licensor or any other person by any competent governmental authority concerning the environmental condition of the Licence Area; and
- (f) to the best of the Licensor's knowledge, the Licence Area has not been used for industrial or commercial purposes described in Schedule 2 of the *Contaminated Sites Regulation* under the *Environmental Management Act*.

## 8. MISCELLANEOUS

- 8.1 The Licensee may freely licence or assign its rights and benefits under this Instrument in whole or in part, without the consent of the Licensor, on such terms as the Licensee may consider appropriate. Upon written notice to the Licensor of an assignment by the Licensee pursuant to this provision, the Licensee shall be released from further responsibility for the observance or performance of the obligations described herein except for responsibility for the consequences of events which have occurred prior to the date and time of the registration of such assignment.
- 8.2 Neither the Licensee nor any successor in interest to the rights of the Licensee pursuant to this Instrument shall be liable for breaches or the non-observance or non-performance of any obligations under this Instrument which arise after the Licensee or such successor in interest has ceased to be the registered holder of the rights and interests conferred on the Licensee by this Instrument. The Licensee and its successors in interest, as the case may be, shall remain liable after ceasing to be the registered holder of the rights and interests conferred by this Instrument, as the case may be, for all breaches of and the non-observance and non-performance of any term, condition, covenant or other provision of this Instrument that occurred while the Licensee or such successor in interest, as the case may be, was the holder of the Licensee's rights and interests in this Instrument.
- 8.3 The references "hereunder", "herein" and "hereof" refer to the provisions of this Instrument and references to Sections herein refer to Sections of this Instrument. The division of this Instrument and the headings of Sections and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provision hereof.
- 8.4 Whenever the singular or masculine or neuter is used in this Instrument, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a derivative of such term shall have a corresponding meaning unless the context otherwise requires.
- 8.5 The word "including", when following any general term or statement, and whether or not it is followed by such words as "without limitation", is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, and the general term or statement shall be interpreted to refer to all other items or

matters that could reasonably fall within the broadest possible scope of the general term or statement.

- 8.6 The words "will" and "shall" as used in this Instrument are synonymous with each other and used interchangeably herein to designate a mandatory requirement or obligation, as applicable.
- 8.7 Any reference to a statute of any governmental authority shall include and shall be deemed to be a reference to such statute and to the regulations or orders made pursuant thereto and all amendments made thereto and in force from time to time, and to any statute, regulation or order that may be passed which has the effect of supplementing the statute so referred to or the regulations or orders made pursuant thereto.
- 8.8 The Licensor and the Licensee each waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Instrument that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same, or against the party benefiting from such terms or provisions.
- 8.9 Nothing in this Instrument shall be construed as an agreement by the Licensee to restrict, limit or otherwise fetter in any manner the Licensee's ability to introduce, pass, amend, modify, replace, revoke or otherwise exercise any rights or authority regarding legislation, regulations, policies or any other authority.
- 8.10 Nothing in this Instrument shall be construed as an agreement by the Licensor to restrict, limit or otherwise fetter in any manner the exercise by the Municipal Council of the Licensor of its duties, rights or authority in regards to any matter, and nothing in this Instrument shall fetter the Licensor's Approving Officers in the exercise of their duties.
- 8.11 No provision of this Instrument is intended to derogate from or be inconsistent with or in conflict with any laws and no provision of this Instrument shall be interpreted in a manner which results in any such derogation, inconsistency or conflict and, if any such provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any laws, the applicable laws shall prevail and such provision shall be read down or rendered inoperative (either generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be and, if any such provision is found by a court of competent jurisdiction to derogate from any laws, then such provision shall be read down or rendered inoperative (either generally or in such particular situation, as appropriate) to the extent of the derogation.
- 8.12 Each provision of this Instrument shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Instrument is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Instrument. If any such provision of this Instrument is held to be invalid, unenforceable or illegal, the Parties shall promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity,

unenforceability or illegality and to restore this Instrument as nearly as possible to its original intent and effect.

- 8.13 No term, condition, covenant or other provision of this Instrument shall be considered to have been waived by either the Licensee or the Licensor unless such waiver is expressed in writing by the Licensee or the Licensor, as applicable. The waiver by the Licensee or the Licensor of any breach by the other of any term, condition, covenant or other provision of this Instrument shall 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 the Licensee or the Licensor to any act by the other which requires the consent or approval of the other shall not be considered to waive or render unnecessary such consents or approvals to any subsequent same or similar act. The single or partial exercise by the Licensee or the Licensor of any right under this Instrument shall not preclude any other or future exercise thereof or the exercise of any other right.
- 8.14 This Instrument shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns. Every reference to a party in this Instrument shall be deemed to include the heirs, executors, administrators, successors, successors in title and assigns, employees, servants, agents, officers, contractors, permittees, licencees and invitees of that party, wherever the context so requires.
- 8.15 This Instrument shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The parties hereto hereby irrevocably attorn to the jurisdiction of the courts of the Province of British Columbia in all matters relating to the interpretation or enforcement of this Instrument.
- 8.16 Where an entitlement in this Instrument is conferred upon more than one party, the entitlement may be exercised by all parties upon whom the entitlement is conferred acting together or by any one or more of them acting alone.
- 8.17 Time is of the essence of this Instrument.

**IN WITNESS WHEREOF** the parties hereto have executed this Instrument as of the day, month and year referred to above.

**CITY OF COQUITLAM**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

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

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**SCHEDULE A**  
**The Lands.**

s.16,s.17

## THE PLANS

[Attach plans showing the locations of the Licensed Areas]

**SCHEDULE N1**

**AREAS SUBJECT TO THE CITY STATION RIGHT OF WAY AND THE CITY  
TEMPORARY LICENCE - ADJACENT TO STATION**

s.16,s.17

**SCHEDULE N2**

s.16,s.17

CW4787979.6

**EVERGREEN LINE RAPID TRANSIT PROJECT**

**COQUITLAM MUNICIPAL AGREEMENT**

**BETWEEN**

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

**AND**

**CITY OF COQUITLAM**

**January 31, 2012**

# TABLE OF CONTENTS

<b>1. DEFINED TERMS.....</b>	<b>2</b>
<b>2. PROJECT ALIGNMENT AND GRANT OF RIGHTS OF ACCESS, OCCUPATION AND USE .....</b>	<b>8</b>
2.1 Acknowledgement and Acceptance of Alignment of Coquitlam Segment .....	8
2.2 Construction-Required Lands .....	8
2.3 Access and Occupation Of System-Required Lands .....	9
2.4 City Fee Simple Lands.....	9
2.5 Notice of Access and Use of Project-Required Lands.....	9
2.6 Emergencies .....	10
2.7 Additional Lands .....	10
2.8 Non-Derogation of Grant .....	10
2.9 Time Limits on the Province's Exercise of Access and Occupation Rights.....	11
2.10 Province Rights and Authority and Ownership of Project Infrastructure .....	11
2.11 City Development Approvals .....	12
2.12 City Ownership of Installations forming Part of City Infrastructure and City Utilities	13
2.13 City Rights and Authority .....	13
<b>3. PRE-EXISTING RIGHTS, PROTECTION OF PROVINCE'S RIGHTS AND CITY USE OF PROJECT-REQUIRED LANDS .....</b>	<b>13</b>
3.1 Pre-Existing Rights on Project-Required Lands .....	13
3.2 Protection of the Province's Rights in Relation to Pre-Existing Rights Holders .....	13
3.3 Use of Project-Required Lands following Effective Date .....	14
<b>4. COOPERATION AND WORK PRIORITY .....</b>	<b>15</b>
4.1 Work Cooperation During Planning, Construction, Testing and Commissioning of the Coquitlam Segment .....	15
4.2 Coquitlam Segment Schedule and Work Priority .....	16
4.3 Traffic Management Plan.....	16
4.4 Hours of Project Work .....	17
<b>5. DESIGN AND CONSTRUCTION CRITERIA .....</b>	<b>17</b>
5.1 General .....	17
5.2 City Infrastructure and City Utilities Generally .....	18
5.3 Utility Connections.....	18
5.4 Coquitlam Stations .....	19
5.5 Future Power Propulsion Station .....	19
<b>6. MISCELLANEOUS PROVISIONS RELATING TO PROJECT WORK .....</b>	<b>19</b>
6.1 Plans, Drawings, Surveys and other Information with respect to Project Infrastructure .....	19
6.2 Plans, Drawings, Surveys and other Information with respect to City Infrastructure and City Utilities.....	20
6.3 City Infrastructure Work.....	20
6.4 City Utilities.....	22
6.5 City-Exclusive Work.....	23
6.6 City Enhancements .....	23
6.7 City Major Works .....	24

6.8	Fieldwork .....	24
6.9	Repairs to Damaged City Infrastructure .....	24
6.10	Repairs to Damaged Project Infrastructure .....	24
6.11	Landscaping .....	25
6.12	Third Party Signage .....	25
6.13	Burquitlam Bus Facility .....	25
6.14	Property Access .....	25
6.15	Re-Paving.....	26
6.16	Closure of Roads.....	26
<b>7.</b>	<b>ASSIGNMENT AND EXERCISE OF RIGHTS .....</b>	<b>26</b>
7.1	Assignment by Province .....	26
7.2	Rights Exercisable by Province's Contractors, Subcontractors and Agents .....	26
<b>8.</b>	<b>INDEMNIFICATION/CONDUCT OF INDEMNIFIED CLAIMS .....</b>	<b>26</b>
8.1	Indemnity.....	26
8.2	Conduct of Claims .....	27
<b>9.</b>	<b>DISPUTE RESOLUTION .....</b>	<b>29</b>
9.1	Dispute Resolution Procedure for Construction .....	29
9.2	Progress of Project.....	30
<b>10.</b>	<b>NOTICES.....</b>	<b>30</b>
10.1	Notices .....	30
<b>11.</b>	<b>GENERAL .....</b>	<b>31</b>
11.1	Effective Date and No Right of Termination .....	31
11.2	Further Assurances .....	31
11.3	Sections, Schedules and Interpretation .....	31
11.4	No Deemed Waiver .....	31
11.5	Enurement and Binding Effect .....	31
11.6	Governing Law .....	31
11.7	Severability .....	32
11.8	Reference to Statutes.....	32
11.9	Jurisdiction of the Province.....	32
11.10	Entire Agreement.....	32
<b>12.</b>	<b>SCHEDULES.....</b>	<b>33</b>
12.1	Schedules.....	33
Schedule A	- Coquitlam Segment Alignment	
Schedule B	- Plans and Legal Descriptions of Construction-Required Lands	
Schedule C	- Plans and Legal Descriptions of System-Required Lands	
Schedule D	- City Fee Simple Lands	
Schedule E	- City Street Modifications	
Schedule F	- List of City-Exclusive Work	
Schedule G	- Demolitions and Utility Service Capping Procedure	

# **EVERGREEN LINE RAPID TRANSIT PROJECT COQUITLAM MUNICIPAL AGREEMENT**

This Agreement is dated for reference ♦, 2012.

BETWEEN:

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

(the “**Province**”)

AND:

**CITY OF COQUITLAM**

(the “**City**”)

## **WHEREAS:**

- A. The Province has undertaken the planning and design, and will undertake the construction, testing and commissioning of the Evergreen Line, which includes the Coquitlam Segment;
- B. The Province and the City are entering into this Agreement in respect of various matters pertaining to the development, design, construction, testing and commissioning of the Evergreen Line, including the Coquitlam Segment, by the Province in order to enable the operation, maintenance and rehabilitation of the Evergreen Line, including the Coquitlam Segment, by the Operator, as more particularly set forth herein
- C. The Province is committed to following all applicable Provincial and Federal legislation as well as Provincial Environmental Assessment commitments, as may be amended, from time to time, in the design, construction and delivery of the Coquitlam Segment;
- D. The Province is committed to public communications and consultation with the City and affected stakeholders in connection with the Evergreen Line;
- E. The Province and the City intend to work co-operatively with each other;
- F. The City recognizes that the Province intends to rely on its legislated authority concerning its use and development of the Evergreen Line Project;
- G. The Province and the City support the continued transit-oriented development of lands adjacent to the Project;
- H. The Province recognizes that the Project is being constructed and will operate in part within the existing City transportation and utility network, that the City will have an ongoing need to maintain and operate the City infrastructure and the Project and City will work together to provide access to the City to accommodate said needs; and

I. In order to complete the development, design, construction, testing and commissioning of the Evergreen Line, the Province requires access and occupation of certain lands in the City of Coquitlam including through rights-of-way, and other access and occupation rights over City Streets and City Fee Simple Lands that may be required for the Project.

**NOW THEREFORE**, in consideration of their mutual promises and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto), the City and the Province hereby agree, each with the other, as follows:

## 1. DEFINED TERMS

In this Agreement, the following definitions apply:

- (a) **“Additional Lands”** means any City Lands which are added to or substituted for any part of the Project-Required Lands pursuant to Section 2.7;
- (b) **“Agreement”** means this “Evergreen Line Rapid Transit Project - Coquitlam Municipal Agreement”, including all of the Schedules referenced and identified in Article 12 of this Agreement, all as the same may be amended, modified or restated from time to time by written agreement between the parties hereto;
- (c) **“Burquitlam Station Bus Facility”** means the bus facility located between Como Lake Avenue and Smith Avenue, east of Clark Road;
- (d) **“Business Day”** means any day which is not a Saturday, Sunday or statutory holiday in the Province of British Columbia;
- (e) **“Chief Administrative Officer”** means the person holding that position in the City, or any successive position or title of this nature, or his or her designate;
- (f) **“City Enhancement”** means any new works, infrastructure or upgrade of any existing City Infrastructure completed by the Province or to be carried out as part of the design and construction of any Project Infrastructure comprised in the Coquitlam Segment as expressly requested by the City to the Province as additional work beyond required Like for Like restoration for an agreed upon price in advance;
- (g) **“City-Exclusive Work”** means work relating to the construction, maintenance, modification, removal, replacement, expansion, extension or enlargement of any of the items or components of City Infrastructure, as identified in Schedule F, which may only be undertaken by the City or City-contracted work forces;
- (h) **“City Fee Simple Lands”** means the lands of which the City is the registered owner in the Land Title Office which are listed in Schedule D;
- (i) **“City Included Parties”** means, with respect to the City, any director, officer, elected official, employee, agent, contractor or licensee or any other party for whom the City is responsible at law;
- (j) **“City Infrastructure”** means the municipal infrastructure and systems, fixtures and facilities which are constructed, maintained and operated by or on behalf of

the City, including City Streets, existing pavement, boulevards, trees, landscaping, curbs, gutters, drainage inlet structures, street lighting, traffic signals and signs, and additions or City Enhancement(s) thereto or widenings, relocations or extensions thereof, but not including City Utilities;

- (k) **“City Infrastructure Work”** means the relocation, widening, extension, removal, replacement, repair, alteration or stopping up of, or connection to, any City Infrastructure, whether temporary or permanent;
- (l) **“City Lands”** means any City Street and City Fee Simple Lands which are owned or controlled by the City;
- (m) **“City of Coquitlam”** means the geographic area within the municipal boundaries defined by the letters patent of the City;
- (n) **“City Representative”** means one or more senior representatives designated by written notice given by the City to the Province from time to time with at least one representative as having full authority to represent and bind the City in connection with all matters pertaining to this Agreement;
- (o) **“City Street”** includes streets, roads, highways, bridges, viaducts, lanes, pathways and sidewalks and any other ways normally open or reasonably capable of use by the public:
  - (i) including land dedicated or established as “Road” on the records of the Land Title Office;
  - (ii) including land over which the City has statutory rights-of-way for public road, lane or access purposes;
  - (iii) excluding any private easement or right of way over private property; and
  - (iv) excluding any Provincial highways or any other highways excluded pursuant to Section 35(2) of the *Community Charter* (British Columbia);
- (p) **“City Street Modifications”** means the modifications to City Streets which will be made in connection with the Project, as conceptually illustrated in the drawings set out in Schedule E to this Agreement;
- (q) **“City Utilities”** means storm, sanitary, and water infrastructure works excluding drainage inlet structures;
- (r) **“Contribution Agreement”** means the agreement between the City, the Province and Pensionfund Realty Limited concerning the funding and construction of the Lincoln Station, dated for reference November 16, 2011;
- (s) **“Coquitlam Segment”** means that portion of the Evergreen Line located within the City of Coquitlam as generally shown on the plans attached as Schedule A;
- (t) **“Coquitlam Segment Schedule”** means the Province’s schedule for the design, construction, testing and commissioning of the portion of the Evergreen Line

comprising the Coquitlam Segment, as the same may be amended by the Province;

- (u) **“Construction-Required Lands”** means City Lands described in Schedule B in respect of which access and Exclusive Occupation or Non-Exclusive Occupation and use, as determined by the Province is or may be required to facilitate activities required in connection with the construction of the Project Infrastructure comprised in the Coquitlam Segment, and includes any Additional Lands which may be added to or substituted for any part of the Construction-Required Lands pursuant to Section 2.7;
- (v) **“Dispute”** means any dispute between the City and the Province with respect to any Referable Matter or any other matter of disagreement between the City and the Province which either party states in writing is a “Dispute” to be resolved pursuant to the Dispute Resolution Procedure;
- (w) **“Dispute Resolution Procedure”** means the procedure for resolution of any Dispute set out in Section 9.1;
- (x) **“Effective Date”** means the date upon which this Agreement has been signed by each of the City and the Province and fully executed **copies** of this Agreement have been unconditionally delivered to each of the City and the Province, or such other date as the Province and the City agree in writing is the Effective Date;
- (y) **“Exclusive Occupation”** means the physical occupation of Project-Required Lands whereby access and use of such Project-Required Lands are restricted to the Province and its Contractors only, as outlined in 2.2, 2.3, and subject to the provisions set out in sections 2.5 and 2.6 of this Agreement;
- (z) **“Executive Project Director”** means the person designated by written notice given by the Province to the City from time to time as holding the position of Executive Project Director for the Project and having full authority to represent and bind the Province in connection with all matters pertaining to the Project including this Agreement;
- (aa) **“Evergreen Line”** means all of the advanced rapid transit infrastructure to be designed, created, constructed, supplied, tested and commissioned by the Province, or on behalf of the Province between Lougheed Town Centre and the terminus of the Evergreen Line to be constructed in the vicinity of the Douglas College campus in Coquitlam and, for greater certainty, includes the various components of the Evergreen Line as they are designed, created, constructed, supplied, tested and commissioned;
- (bb) **“Guideway”** means that part of the Project Infrastructure comprising the support structure on which the passenger transit vehicles operate, including all structural, aesthetic, functional and non-functional components of the support structure and including all footings, pillars, columns, walls, floors, roof, pilings, foundations, beams, tunnel and tunnel support structures, overpass support structures, underpass support structures, rails, tracks, cables, conduits, wires, machinery, equipment and apparatus for communication systems and equipment for ventilation and fire protection, including vents, shafts, cross-passages and vent

grates at street level, train control, safety, security, lighting, heating, electric services, water, sewage and drainage systems and all ancillary improvements, facilities, equipment and structures forming part of any of the foregoing and including all those portions which pass through each of the Stations;

- (cc) **"Indemnified Party"** has the meaning set out in Section 8;
- (dd) **"Indemnifying Party"** has the meaning set out in Section 8;
- (ee) **"Land Title Office"** means the Lower Mainland Land Title Office, or any other office, registry or authority in which or through which title to lands within the City of Coquitlam may be registered or transferred;
- (ff) **"Like-for-Like"** means in relation to any City Infrastructure or City Utilities which is being relocated, replaced or repaired as part of the Project Work, a standard for the relocation, replacement, or repair pursuant to which the functionality, capacity, and service of such infrastructure is equivalent to that which existed prior to the relocation, replacement, or repair, provided that design details, materials and construction specifications for the relocated, replaced or repaired infrastructure shall be consistent with the current City standard;
- (gg) **"Lincoln Station"** so named for the purposes of this Agreement (subject to final naming to be determined outside of this Agreement), means the proposed Station which may be constructed by the Province at the north-west corner of Pinetree Way and Lincoln Avenue, in accordance with the Contribution Agreement;
- (hh) **"Non-Exclusive Occupation"** means the physical occupation of Project-Required Lands where access and use of the Project-Required Lands is shared with third parties but may be controlled by the Province where necessary to ensure timely delivery of the Project;
- (ii) **"Operator"** means TransLink or any other operator from time to time of the SkyTrain System;
- (jj) **"Other Rights and Uses"** means retail and commercial uses within stations, advertising within Stations and on Vehicles, and third-party communication and utility services;
- (kk) **"Post-Construction Condition Surveys"** means post-construction condition surveys of the condition of City Infrastructure conducted by the Province after completion of any Project Work affecting such City Infrastructure as contemplated in Section 6.1(c);
- (ll) **"Pre-Construction Condition Surveys"** means pre-construction condition surveys of the condition of City Infrastructure conducted by the Province prior to commencement of any Project Work affecting such City Infrastructure as contemplated in Section 6.1(c);
- (mm) **"Pre-Existing Rights"** means any valid contractual or statutory rights in favour of any person, other than the City, to use all or any part of the Project-Required

Lands as at the Effective Date and which may affect all or any portion of such Project-Required Lands following the Effective Date;

- (nn) **"Pre-Existing Rights Holder"** means the owner, licensee, grantee or other beneficiary or holder of the benefit of any Pre-Existing Rights;
- (oo) **"Pre-Existing Rights Holder's Works"** means any of the structures, buildings, poles, fixtures, fittings, equipment, machinery, cables, conduits, pipes, wires or other apparatus, improvements or works installed or owned by a Pre-Existing Rights Holder;
- (pp) **"Project"** means the design, construction, testing, commissioning and commencement of service of the Evergreen Line;
- (qq) **"Project Completion Date"** means the date on which the construction, testing and commissioning phase of the Project has been completed, which date will be confirmed by delivery of written notice from the Province to the City as soon as reasonably practicable following the Project Completion Date;
- (rr) **"Project Infrastructure"** means anything required, built, constructed, erected, installed or operated as part of the Project Work, including without limitation the Guideways, the Stations, any vehicle storage facility, tunnels, bridges, power substations, utilities and telecommunication equipment and facilities (whether or not required for the operation of the Evergreen Line) and all other improvements, facilities, equipment or structures which form part of and/or are necessary for the Evergreen Line but does not include City Infrastructure or City Enhancements;
- (ss) **"Project-Required Lands"** means, collectively, the Construction-Required Lands and the System-Required Lands;
- (tt) **"Project Work"** means all work required in the design, construction, testing, and commissioning of the Evergreen Line, including the design, construction, inspection, repair and alteration of Project Infrastructure;
- (uu) **"Province"** means Her Majesty the Queen in Right of the Province of British Columbia;
- (vv) **"Provincial Representative"** means the person designated by written notice given by the Province to the City from time to time as holding the position of Provincial Representative and having full authority to represent and bind the Province in connection with all dealings with the City under this Agreement;
- (ww) **"Qualified Governmental Entity"** means any of the following:
  - (i) any ministry or department of the Province;
  - (ii) any person having the legal capacity, power and authority to become a party to and to perform the Province's obligations under this Agreement, the duties, obligations and liabilities of which are guaranteed or supported by the Province or any ministry or department of the Province;

- (iii) the Federal Government of Canada; and
  - (iv) any person having the legal capacity, power and authority to become a party to and to perform the Federal Government of Canada's obligations under this Agreement, the duties, obligations and liabilities of which are guaranteed and supported by the Federal Government of Canada or any ministry or department of the Federal Government of Canada;
- (xx) **"Referable Matter"** means any matter arising under or in connection with this Agreement which could reasonably be expected to materially and adversely affect the ability to:
- (i) complete the design, construction, testing and commissioning of the Coquitlam Segment or any material part thereof and in accordance with the Coquitlam Segment Schedule;
  - (ii) expeditiously effect repairs, maintenance or, as necessary, modifications to the Evergreen Line;
  - (iii) achieve, maintain or restore compliance with the performance standards to which the Evergreen Line will be designed; or
  - (iv) operate, maintain, repair or rehabilitate the Evergreen Line.
- (yy) **"SkyTrain System"** means the SkyTrain rapid transit system presently operated by TransLink on its Millennium Line and Expo Line, into which the Evergreen Line, upon completion, will be fully integrated;
- (zz) **"Station"** means a structure on the Evergreen Line at which passengers will be permitted to embark and disembark, including all footings, pillars, columns, pilings, foundations, beams, floors, walls, roofs, decks, platforms, shelters and other building support structures or enclosures provided for the safety, shelter, direction and fare control of passengers during boarding and detraining, including all ancillary fixtures, fittings, equipment, machinery, cables, conduits, pipes, wires and other apparatus for the communication, safety, security, lighting, heating, electrical, water, sewer and drainage systems and all other improvements, facilities, equipment and structures forming part of each Station, but excluding those portions which comprise the Guideway;
- (aaa) **"System-Required Lands"** means City Lands described in Schedule C and any Additional Lands added to or substituted for any part of the System-Required Lands pursuant to Section 2.7 in respect of which access and temporary or permanent Exclusive or Non-Exclusive Occupation and use, as determined by the Province at any time up to Project Completion is required for purposes of construction, operation, maintenance, inspection, repair, alteration, renovation, modification, rehabilitation, reconstruction or removal of all or any component of the Project Infrastructure comprised in the Coquitlam Segment; provided always that the System-Required Lands expressly exclude any areas outside of a one (1) meter buffer area around the outside boundaries of the actual spaces occupied by of Project Infrastructure and a one (1) meter buffer area around the air space required for the dynamic movement of Vehicles on the Guideway

unless the Province and City mutually agree to extend the area beyond this one meter limit;

- (bbb) **"Term"** means that period commencing on the Effective Date and continuing thereafter for the duration of the functional and operational life of the Project or such earlier a date upon which the Province notifies the City that the Province no longer requires the rights granted by the City to the Province under this Agreement for the purposes of the Coquitlam Segment;
- (ccc) **"Traffic Management Plan"** means a plan for the management of traffic interruptions, rerouting and detours and other traffic impacts which may be required as a result of the Project, as submitted by the Province for comment by the City Representative as contemplated in Section 4.3, as the same may be amended by the Province at any time;
- (ddd) **"TransLink"** means South Coast British Columbia Transportation Authority, as continued under the *South Coast British Columbia Transportation Authority Act* (British Columbia), and includes a subsidiary as defined in the *South Coast British Columbia Transportation Authority Act* (British Columbia) and its successors;
- (eee) **"Vehicles"** means all rolling stock used to carry passengers on the Evergreen Line and any other part of the SkyTrain System and any other vehicles as may be required for the operation, repair and maintenance of the Evergreen Line or any other part of the SkyTrain system;
- (fff) **"Zone of Influence"** means the area containing any City Infrastructure or City Utility that may potentially be damaged or impacted, directly or indirectly by the Project Work, including areas within the Construction Required Lands and as may be further determined by the Province.

## **2. PROJECT ALIGNMENT AND GRANT OF RIGHTS OF ACCESS, OCCUPATION AND USE**

### **2.1 Acknowledgement and Acceptance of Alignment of Coquitlam Segment**

The City acknowledges the alignment of the Coquitlam Segment as proposed by the Province and generally consents to such alignment, including without limitation the locations of the Coquitlam Stations comprised therein, as generally shown on the plans attached as Schedule A to this Agreement. The Province acknowledges and agrees that material changes to the alignment of the Coquitlam Segment will not be made without consultation with the City.

### **2.2 Construction-Required Lands**

From the Effective Date, the City hereby grants to the Province, for and during the period prior to the Project Completion Date and for such period thereafter as may reasonably be required by the Province, but which period will not exceed two (2) years from the Project Completion Date and at no cost to the Province, except as provided in Section 2.4 or in the Contribution Agreement, the free and unobstructed right of access to and Exclusive or Non-Exclusive Occupation and use, as required by the Province at any time, of the Construction-Required Lands (including the right to exclude, enforce and maintain an action for the exclusion of any

person therefrom) for all purposes relating to the design, construction, maintenance, inspection, repair, modification and reconstruction of the Project, including, access and use for staging and work locations on City Streets. The Province agrees that it is responsible for the Construction-Required Lands in accordance with Section 3.3.

### **2.3 Access and Occupation Of System-Required Lands**

From the Effective Date, the City hereby grants to the Province, at no cost to the Province, except as provided in Section 2.4, or in the Contribution Agreement, and in accordance with any applicable provisions in the Contribution Agreement, the free and unobstructed right of access to and temporary or permanent Exclusive or Non-Exclusive Occupation and use as required by the Province at any time of the System-Required Lands (including the right to exclude, enforce and maintain an action for the exclusion of any person therefrom) for all purposes relating to the design, construction, operation, maintenance, inspection, repair, alteration, renovation, modification, rehabilitation, reconstruction, removal and operation of all or any component of the Project Infrastructure and for Other Rights and Uses.

If, on the Project Completion Date, any System-Required Lands are registered in the Land Title Office, and provided the City does not require the Province to purchase the same pursuant to Section 2.4, the City will grant to the Province a statutory right of way for the purposes of the Evergreen Line with respect thereto in a form satisfactory to the Province, without charge to the Province.

### **2.4 City Fee Simple Lands**

The Parties acknowledge and agree that the acquisition of interests in City Fee Simple Lands for the construction of the Coquitlam Segment has been resolved in the Contribution Agreement. However, if that Agreement is terminated as provided therein, the Province may acquire those interests in the City Fee Simple Lands necessary for the Coquitlam Segment as set out in Schedule D, in accordance with the following provisions:

- (a) Any City Fee Simple Lands will be acquired by the Province from the City at fair market value. The fair market value of the interest in City Fee Simple Lands will be determined by an appraiser who is mutually acceptable to the Province and the City. Any disagreement as to the appointment of such appraiser or as to the appraised value of any interest in City Fee Simple Lands will be resolved pursuant to the Dispute Resolution Procedure.
- (b) The City will transfer the interest in City Fee Simple Lands to the Province, free and clear of all encumbrances, other than Pre-Existing Rights and free and clear of all financial charges.
- (c) The completion of the sale of the interests in City Fee Simple Lands will occur on a Business Day which is designated by the Province on at least 30 days prior written notice to the City, or upon terms as otherwise agreed to in the Contribution Agreement.

### **2.5 Notice of Access and Use of Project-Required Lands**

Except in the case of a perceived emergency or other urgent situation, in which case no prior notice will be required, the Province will give the City Representative not less than 48 hours

prior written notice of its intention to enter on any Project-Required Lands for the purpose of exercising its rights under Sections 2.2 and 2.3. Such notice will set out the date on which the Province intends to enter on the Project-Required Lands identified in the notice, the purpose of the entry, whether permanent or temporary access or use is required and, in the case of any temporary access or use, whether the Province requires Exclusive or Non-Exclusive Occupation and the expected duration of use. Exclusive or Non-Exclusive Occupation will be terminated by the Province by written notice delivered to the City. Entry onto Project-Required Lands which is undertaken in accordance with a Traffic Management Plan will be given no less than 48 hours notice prior to entry. The Province endeavours to complete the construction of the Project as expeditiously as possible.

## **2.6 Emergencies**

Notwithstanding other provisions of this Agreement, In the case of a perceived emergency or other urgent situation, both the Province and the City will be authorized to take all such action as either of them considers necessary and appropriate, without prior written notice to the other in relation to any Project-Required Lands, and to have access to and occupation and use of such Project-Required Lands and any adjacent City Lands which either of them reasonably considers to be required for the purposes of dealing with the emergency or other urgent situation; provided that in such event the party taking such action will, as soon as reasonably practicable, and in any event no later than two Business Days following the occurrence of such emergency or other urgent situation, delivers notice to the other confirming the nature of the emergency or other urgent situation and details as to the actions taken by the party in connection therewith. When the City responds to an emergency caused or contributed to by the Project, the City will recover all reasonable costs of repairs and fieldwork from the Province.

## **2.7 Additional Lands**

If any Additional Lands are required for the Coquitlam Segment along the alignment as shown in Schedule A in addition to or in substitution for the System-Required Lands or the Construction-Required Lands, then upon written request of the Province and consultation with the City and at no cost to the Province, except where the Additional Lands are City Fee Simple Lands for which the Province agrees it will compensate the City as contemplated in the Contribution Agreement, or if that agreement is terminated based on fair market value as contemplated in Section 2.4 of this Agreement, such areas will be added to the System-Required Lands or the Construction-Required Lands, as the case may be, provided that the Province confirms to the City the particulars of the Additional Lands that it requires and provides the City Representative with a list of plans and legal descriptions for such required areas in form similar to the plans and legal descriptions used to identify the Construction-Required Lands in Schedule B or the System-Required Lands in Schedule C as the case may be, and a description of the purpose for which such additional Lands are required and the period of time such Additional Lands are expected to be required and whether the Province will require Exclusive or Non-Exclusive Occupation thereof. Any Additional Lands required for the Coquitlam Segment will be identified by the Province prior to the Project Completion Date.

## **2.8 Non-Derogation of Grant**

The City will not make any grant in derogation from the grants of rights by the City to the Province under this Agreement or otherwise regulate the Project-Required Lands in a way that interferes with or permits the City's licensees, permittees, contractors, agents or employees to interfere with the Project Infrastructure or the Province's access to or occupation and use of the

Project-Required Lands under this Agreement. Without limiting the foregoing, the City will not take or permit any of the City's licensees, permittees, contractors, agents, employees or, to the extent within the City's control, any other persons to take any actions which prevent or interfere with the exercise by the Province of the Province's rights under this Agreement to construct the Coquitlam Segment, subject to Sections 2.11 and 3.3 of this Agreement which enable the City to carry on normal business operations..

## **2.9 Time Limits on the Province's Exercise of Access and Occupation Rights**

Notwithstanding anything to the contrary in this Agreement, in the event the Province fails to commence construction of the Coquitlam Segment on any part of the Project-Required Lands prior to December 31, 2016, then, unless otherwise agreed to in writing by the Parties, any restrictions on the City's access, use and occupation of the Project-Required Lands pursuant to this Agreement will be deemed to be inoperative and terminated, and the City may use any Project-Required Lands in any manner which the City deems appropriate or desirable, without limitation, but only in respect of those portions of the Project-Required Lands that have not already been actively used and occupied for the purpose of constructing the Coquitlam Segment.

## **2.10 Province Rights and Authority and Ownership of Project Infrastructure**

The City acknowledges and agrees that:

- (a) except for the construction and operation of commercial retail units, which are outside the scope of the Project, the Province is exercising its legislated authority concerning its use and development of the Project and in that regard, without limiting the above mentioned legislated authority, the Evergreen Line will be developed, designed, and constructed in accordance with criteria, requirements, codes, processes and policies developed by the Province rather than the by-laws, codes, processes and policies of the City;
- (b) except as otherwise provided in this Agreement, development, building, trade, occupancy or other permits, preliminary or other plan approvals, and other types of construction or similar permits or approvals from the City will not be obtained in connection with the Project, including in respect of the design, construction, operation, maintenance, inspection, repair, alteration, renovation, modification, utility services or interconnections, rehabilitation, reconstruction or removal of all or any component of the Project Infrastructure comprised in the Coquitlam Segment;
- (c) notwithstanding subsection (b), the Province agrees that it will make available to the City certain Project information and drawings developed for the Project by the Province which can be made publicly available;
- (d) the Province is not required to pay any permit fees, development charges or other municipal fees or charges in connection with the Project except for costs associated with City-Exclusive Work in accordance with Section 6.5, emergency work in accordance with section 2.6, or fieldwork performed by the City at the request of the Province;

- (e) the City will provide interconnections of City Utilities to Project Infrastructure and also, disconnections of City Utilities for building demolitions related to the Project at the sole cost to the Province in accordance with Section 5.3 and Schedule G;
- (f) in advance of any permanent interconnections for City Utilities to Project Infrastructure, the Province will provide the City with documents confirming code compliance to the relevant design and construction codes and standards in relation to Project Infrastructure;
- (g) except that which is considered City Infrastructure or City Utilities, the Project Infrastructure situated on, over or under City Lands, is, from the date of construction or installation and will continue thereafter, to be the property of the Province and will be freely alienable by the Province notwithstanding the degree to which the same may be annexed or affixed to land;
- (h) the Province is entitled at any time to remove the Project Infrastructure in whole or in part from Project-Required Lands provided the Province returns such Project-Required Lands to the condition prior to the construction of the Project Infrastructure thereon;
- (i) if and to the extent that any Project Infrastructure on, over or under Project-Required Lands may have vested in the City by operation of law, the City hereby grants, releases, quitclaims, transfers and assigns such Project Infrastructure to the Province; and
- (j) nothing in this Agreement restricts or prohibits the Province from exercising any right, power, privilege or authority or discharging any duty under any applicable law and the Province reserves all of its rights in this regard.

## **2.11 City Development Approvals**

The Province recognizes that the City has a development application approval function and obligation for lands in and around the Coquitlam Segment for all non-Project work and that the City will continue to carry out this municipal responsibility during the construction of the Project. The City and the Province agree to work together to share information and the City will consider incorporating development approval conditions that will support and/or benefit the Project in the course of the development approval process, provided that such conditions are considered fair and reasonable and are within the City's jurisdiction and regulatory authority to secure. In order to facilitate this information sharing, the City will continue to provide the Province with development application information in advance of approval for determination by the Province of any impacts to Project cost or schedule. When work resulting from development approvals is required on Project-Required Lands within areas that the Province has served notice pursuant to Section 2.5, this work will be coordinated by the Prime Contractor as the designated Worksafe BC Prime Contractor for the site, with priority given to avoiding delays to Project schedule, and otherwise wherever possible the City and the Province will coordinate all other works associated with such development approvals.

## **2.12 City Ownership of Installations forming Part of City Infrastructure and City Utilities**

Upon the Project Completion Date or earlier date specifically provided for in this Agreement, all City Infrastructure, City Street Modifications and City Utilities installed by or on behalf of the Province will pass to and be vested in the City and will become the sole property of the City.

## **2.13 City Rights and Authority**

Nothing in this Agreement shall be construed as an agreement by the City to restrict, limit or otherwise fetter in any manner the exercise by the Municipal Council of the City of its duties, rights or authority in regards to any matter, and nothing in this Agreement shall fetter the City's Approving Officers in the exercise of their duties.

## **3. PRE-EXISTING RIGHTS, PROTECTION OF PROVINCE'S RIGHTS AND CITY USE OF PROJECT-REQUIRED LANDS**

### **3.1 Pre-Existing Rights on Project-Required Lands**

The Province acknowledges and agrees that the rights of access and occupation granted by the City to the Province under Sections 2.2 and 2.3 will be subject to any Pre-Existing Rights. Nevertheless, the City and the Province agree that:

- (a) the City will, at the written request of the Province, but subject to agreement between the Province and the City, exercise any contractual rights reserved or available to the City to terminate or modify any such Pre-Existing Rights or to require the removal or relocation of any Pre-Existing Rights Holders' Works as may be required to facilitate the design or construction of the Project Infrastructure or the operation, maintenance or rehabilitation of the Evergreen Line;
- (b) subject to agreement between the Province and the City as to the termination of Pre-Existing Rights, the Province will reimburse the City costs and expenses incurred by the City as a result of such termination or modification of Pre-Existing Rights;
- (c) the Province may enter into negotiations with any Pre-Existing Rights Holders with a view to coordinating the exercise of any such Pre-Existing Rights with the exercise of the rights granted to the Province hereunder or otherwise existing, or with a view to negotiating an agreement with the Pre-Existing Rights Holders dealing with the subordination, modification, assignment, surrender, termination or expropriation of any such Pre-Existing Rights upon terms and conditions as may be agreed between the Province and such Pre-Existing Rights Holders or through any relevant expropriation processes; and
- (d) the Province will deliver to the City copies of any agreements which may be entered into between the Province and any Pre-Existing Rights Holders as contemplated in subsection 3.1(c).

### **3.2 Protection of the Province's Rights in Relation to Pre-Existing Rights Holders**

Following the Effective Date:

- (a) the City will not agree to any modification of Pre-Existing Rights except:
  - (i) when the terms of the Pre-Existing Rights require the City to enter into any such modification; or
  - (ii) otherwise with the prior written consent of the Province, consent to which will not be withheld without explanation; and
- (b) the City will not permit any Pre-Existing Rights Holder to register a statutory right-of-way or other interest in land against title to the Project-Required Lands except:
  - (i) where the terms of the Pre-Existing Rights require the City to consent to or approve the registration of any such statutory right-of-way or other interest in land against title to the Project-Required Lands; or
  - (ii) otherwise with the prior written consent of the Province, consent to which will not be withheld without explanation.

Nothing in the foregoing provisions shall be interpreted to preclude the sale of any City Lands by the City.

Notwithstanding the foregoing, the City and the Province further agree that any restrictions on the City's ability to grant rights to any third party or Pre-Existing Rights Holder in the Construction-Required Lands will become inoperable two (2) days from the date of the Project Completion Date, and the City may thereafter recommence granting rights in the Construction-Required Lands in any manner which the City deems appropriate or desirable, without limitation.

### **3.3 Use of Project-Required Lands following Effective Date**

- (a) The City will operate, repair and maintain City Infrastructure and City Utilities in or on any Project-Required Lands in the normal course and in accordance with the usual practice of the City in relation to such City Infrastructure and/or City Utilities in a manner which does not materially interfere with Project Work unless the Province has notified the City in accordance with Section 2.5 that it requires Exclusive Occupation of the Project-Required Lands in which such City Infrastructure and/or City Utilities are located.
- (b) For so long as the Province has Exclusive Occupation of Project-Required Lands in which City Infrastructure is located, the Province will be responsible for the maintenance and repair of such City Infrastructure during the Province's Exclusive Occupation thereof. Notwithstanding the foregoing, the Province will not be responsible for maintenance and repair of City Utilities, unless such repairs are required as a result of the Project. The City will coordinate access to Project-Required Lands with the Province to complete the repair and maintenance work of City Utilities.
- (c) Subject to Section 6.6 and 6.7, the City will not undertake construction or installation of any new City Infrastructure or City Utilities on Project-Required Lands nor make any material modification or replacement of existing City Infrastructure or City Utilities on Project-Required Lands except upon prior written

notice to and with the consent of the Province, such consent will not be withheld without explanation.

- (d) If the City requires access to Project-Required Lands for operations, maintenance or repair of City Infrastructure or City Utilities and if such operations, maintenance or repair would more than nominally interfere with Project Work, except in the case of an emergency, the City will first contact the Province and the Province and the City will coordinate the Project Work and the operations, repairs or maintenance proposed by the City so as to best accommodate the objectives of both the City and the Province.
- (e) In the case of an emergency, the City will undertake any work performed by it or on its behalf in such manner as will have the least impact reasonably possible on Project Work.
- (f) In addition to the City's obligations under Section 6.10 and 8.1 the City will indemnify the Province against any third party claims made in respect of damage to property, injury or death arising from any failure or malfunction of any City Infrastructure or City Utilities which is caused by the acts or omissions of the City or any City Included Parties in connection with or related to the Project.

Notwithstanding the foregoing the City and the Province further agree that any restrictions on the City's ability to construct, operate, modify or maintain any City Infrastructure in or on the Project-Required Lands, outside of the one (1) meter buffer area around the outside boundaries of the actual spaces occupied by Project Infrastructure and a one (1) meter buffer area around the air space required for the dynamic movement of Vehicles on the Guideway, will become inoperable sixty (60) days following the Project Completion Date and the City may thereafter undertake any construction, operation, modification or maintenance of any City Infrastructure as the City deems appropriate or desirable, without limitation.

#### **4. COOPERATION AND WORK PRIORITY**

##### **4.1 Work Cooperation During Planning, Construction, Testing and Commissioning of the Coquitlam Segment**

- (a) The City and the Province agree to work co-operatively with each other, with the mutual objective of facilitating the expeditious and cost effective completion of the Coquitlam Segment in conjunction with the balance of the Evergreen Line.
- (b) In this regard, the City Representative and the Province Representative or delegates, and such of the City's and the Province's contractors, consultants and personnel as, respectively, the City Representative and the Province Representative deem appropriate will meet periodically, as appropriate, to review the development and construction of the Coquitlam Segment and other matters of concern in relation thereto, with the expectation that such meetings will be scheduled to occur at least monthly and will occur more frequently when appropriate. Notwithstanding the provisions of section 7.2, the Province agrees that the rights and obligations of the Province as set out in section 4.1(b) cannot be exercised or performed by anyone other than the Province.

- (c) Notwithstanding subsection 4.1(b), the City agrees to meet with the Province's contractors, consultants and personnel as required for the Project.

#### **4.2 Coquitlam Segment Schedule and Work Priority**

- (a) As soon as practicable after the Effective Date, the Province will provide the City with a copy of the Coquitlam Segment Schedule and any amendments thereto.
- (b) On the Effective Date, the Province confirms that it has communicated and consulted with the City generally with respect to the Coquitlam Segment Schedule.
- (c) The City acknowledges the necessity of the design, construction, testing and commissioning of the portion of the Evergreen Line comprised in the Coquitlam Segment being completed within the time-lines provided in the Coquitlam Segment Schedule, and the City agrees to work co-operatively with the Province and to perform the City's obligations and commitments hereunder in a timely and expeditious manner so as to facilitate completion of the design, construction, testing and commissioning of the portion of the Evergreen Line comprised in the Coquitlam Segment in accordance with the Coquitlam Segment Schedule. Without limiting the foregoing, the City agrees to treat the design, construction, testing and commissioning of the Coquitlam Segment as a high priority work, to respond to requests for discussion of the Province's plans and drawings and related matters in a timely and expeditious manner, and to cause all departments of the City to respond to requests for review and discussion of the Province's plans and drawings and related matters in a timely and expeditious manner.

#### **4.3 Traffic Management Plan**

- (a) The Province will provide the City Representative with the proposed Traffic Management Plan for Project Work in relation to the Coquitlam Segment and any proposed amendments thereto for review and comment, and will consult with and consider comments received from the City Representative in the course of finalizing such Traffic Management Plan and amendments.
- (b) In connection with the Traffic Management Plans, the Province may be required to temporarily modify the traffic flow of City Streets including modifications to traffic signal and sign infrastructure.
- (c) In connection with the completion of the Project Work in accordance with the Traffic Management Plan, the City acknowledges that the Province will be required to amend existing traffic signal timing on City Streets on a temporary basis in consultation with the City as set-out in Section 4.3(a) within the Construction Required Lands. The Province will administer the timing changes in the field using a contractor deemed qualified by the Province, in consultation with the City, to perform work on traffic signal infrastructure and with traffic control devices. The Province agrees to take over full operational control of traffic control devices for the full duration of Project construction following its first entry into the traffic controller cabinet, such that signal cabinet control remains with the Province until such time as no further signal cabinet access is required by the Province for the Project. During such times of Provincial signal control, the

Province will be fully responsible for ongoing operation and maintenance of the full signal and controller, ensuring the signal cabinet log book is accurately maintained, and clear dated records are kept in respect to signal timing plans and operational states of traffic control devices for handover to the City following Project construction. Following all Project work which necessitates such signal cabinet access by the Province, the Province will coordinate with the City a transfer of the traffic control devices back to the City. The City will have the opportunity to inspect and test the traffic signal infrastructure and traffic control devices at the Province's sole cost prior to operational transfer back to the City. The City acknowledges that it will not modify traffic signal timing within the Construction Required Lands which may impact the Traffic Management Plan without consultation with the Province. Notwithstanding the foregoing, the City agrees that the Province will have final authority with respect to decisions regarding traffic signal timing changes in connection with the Traffic Management Plan within the Construction Required Lands.

- (d) Any temporary modifications to traffic flows on City Streets including modifications to traffic signal and sign infrastructure will be subject to Section 5.2 and will be set out in the Traffic Management Plan.
- (e) The Province and its contractors will implement such Traffic Management Plans as appropriate in light of the Project Work and the City agrees to cooperate with and facilitate any traffic management measures undertaken by the Province or its contractors which conforms therewith; provided that any associated field work completed by the City in this regard and at the request of the Province will be at the sole cost of the Province.
- (f) Subject to Section 5.2, the Province may place, install, affix or post traffic or directional signs and signals, traffic control devices and barriers on City Streets and City Infrastructure as the Province deems appropriate in the public interest to implement the Traffic Management Plan within the Construction-Required Lands.

#### **4.4 Hours of Project Work**

- (a) The Province will establish the hours of work when the Project Work will be performed in order to achieve completion of the Coquitlam Segment within the Coquitlam Segment Schedule.
- (b) The Province will notify the City of the hours of work the Province establishes for the Project and any changes it makes to those hours of work. The Province will consider any recommendations or comments which the City may have in relation to the Project's hours of work.

### **5. DESIGN AND CONSTRUCTION CRITERIA**

#### **5.1 General**

The Province will undertake the Project in conformity with building code and other design and construction standards and criteria developed by the Province for the Project and will meet with the City Representative and City staff periodically, as appropriate, to provide them with

information and consult with them regarding the design and construction standards and criteria developed by the Province for the Project.

## **5.2 City Infrastructure and City Utilities Generally**

- (a) All City Infrastructure, other than City Street Modifications, that requires the rebuilding, relocation, extension, decommissioning, abandonment, or replacement of City Infrastructure, such City Infrastructure so rebuilt, relocated, extended, decommissioned, abandoned or replaced will be undertaken with systems, fixtures and facilities which are of equal quality and capacity to the City Infrastructure so relocated, extended, decommissioned, abandoned or replaced, on a Like-for-Like basis. The City will have the right to accept all City Infrastructure which the Province decommissions, abandons or closes in accordance with this Section 5.2 and if it accepts such City Infrastructure, it may do with it as the City chooses. Such accepted City Infrastructure will be delivered to the City's public works yard, or other location as agreed to by the Parties. Subject to the provisions of Section 6.3 and 6.4, the City agrees that if the City Infrastructure and City Utilities are designed and constructed, in accordance with the City's design guidelines and any other applicable design and construction standards (in place on the Effective Date), such City Infrastructure and City Utilities will be acceptable to the City.
- (b) City Street Modifications will be undertaken in accordance with the conceptual design and requirements shown in Schedule E. The City confirms that the conceptual design, scope of work, and requirements for City Street Modifications shown in Schedule E have been developed by the Province in consultation with the City and that Schedule E satisfies the requirements of the City in relation to the City Streets shown therein on a conceptual basis. Subject to the provisions of Sections 6.3 and 6.4, the City agrees that if the City Street Modifications are constructed in accordance with Schedule E and designed and constructed, in accordance with the City's design guidelines and any other applicable design and construction standards (in place on the Effective Date) including Transportation Association of Canada standards, such City Street Modifications will be acceptable to the City.
- (c) At the completion of all City Infrastructure, City Utilities and City Street Modifications conducted by the Province or its contractor, the City will, subject to Section 6.3 and 6.4, accept and assume responsibility of all such City Infrastructure, City Utilities and City Street Modifications.

## **5.3 Utility Connections**

With the exception of City Exclusive Work, the Province agrees that it will conduct all work related to utility interconnections to the Project Infrastructure and City Infrastructure, and bear all direct costs in respect of its work for utility interconnections and disconnections for structure demolitions related to the Project. The roles and responsibilities of the City and the Province with respect to utility disconnections shall be in accordance with those outlined in Schedule G.

#### **5.4 Coquitlam Stations**

- (a) The Province will provide the City with design drawings of the Coquitlam Stations and their associated station area plans during the design phase of the Project for review and comment.
- (b) The Province agrees that Douglas College station will be designed and constructed so as not to preclude the construction of a future northern entrance.
- (c) The Province will design and construct the Guideway alignment in Coquitlam Segment to accommodate future potential stations to be located in the vicinity of Falcon Drive and Lincoln Avenue.

#### **5.5 Future Power Propulsion Station**

The City agrees that provision for a future Power Propulsion Station near Coquitlam Central Station, if not constructed prior to Project Completion, will be accommodated by the City within System Required Lands at such future date, as may be required.

### **6. MISCELLANEOUS PROVISIONS RELATING TO PROJECT WORK**

#### **6.1 Plans, Drawings, Surveys and other Information with respect to Project Infrastructure**

- (a) Subject to Section 5.4 above and Section 6.3 below, when the Province provides the City with plans, drawings or other information with respect to Project Infrastructure or City Infrastructure to be undertaken by the Province, such plans, drawings and information are provided for review and comment only and the provision thereof to the City will not confer upon the City any right to approve same, unless otherwise provided for in this Agreement.
- (b) The Province commits to providing the City with plans and drawings related to the Coquitlam Segment for review and comment separate from the review that the City may undertake as part of the process established by the British Columbia Environmental Assessment Office. Nothing in this Agreement is intended to diminish or waive any rights the City has with respect to its participation in the Provincial Environmental Assessment review process.
- (c) The City acknowledges that the Province intends to conduct Pre-Construction Condition Surveys and Post-Construction Condition Surveys of City Infrastructure and City Utilities within or in the vicinity of the Coquitlam Segment to establish the location and condition thereof prior to commencement of Project Work within the Zone of Influence of such City Infrastructure and City Utilities, and agrees to make access to such City Infrastructure and City Utilities available to the Province for that purpose. The Province will provide to the City copies of the Pre-Construction Condition Surveys and Post-Construction Condition Surveys for the City Infrastructure and City Utilities as they become available to the Province.
- (d) The Province will endeavour to Provide the City within a reasonable time following the Project Completion Date, in the case of Project Infrastructure, and

within 60 days following substantial completion of City Infrastructure, City Street Modifications and City Utilities, with:

- (i) paper and electronic survey plans showing the location, elevation and approximate dimensions of the columns, piles, footings and other structural elements of the Guideway constructed in the Coquitlam Segment; and
- (ii) record drawings with respect to City Infrastructure and City Utilities all inspection reports with respect to the Project Infrastructure and City Infrastructure, City Street Modifications and City Utilities undertaken by the Province constructed in the Coquitlam Segment.

## **6.2 Plans, Drawings, Surveys and other Information with respect to City Infrastructure and City Utilities**

The City agrees to provide to the Province, in a timely manner and without cost to the Province, copies of any plans, drawing, surveys and other materials and information in the possession or control of the City relevant to the identification, description, condition and location of any City Infrastructure and City Utilities within or in the vicinity of the Coquitlam Segment anticipated to be affected by the Project Work or the operation of the Evergreen Line.

## **6.3 City Infrastructure Work**

The Province and the City agree that, with respect to City Infrastructure Work required in connection with the construction of Project Infrastructure comprised in the Coquitlam Segment:

- (a) following the opportunities for review provided to the City herein, the Province will confirm to the City:
  - (i) the nature and extent of such City Infrastructure Work, based on a review of alternatives, if any, and based on the principle of Like-for-Like repair or replacement as set out in Section 5.2, or in the case of the City Street Modifications as set out specifically in Section 5.2(b); and
  - (ii) a timetable for the commencement, performance and completion and tie-in and integration of such City Infrastructure Work (including City-Exclusive Work) so that it can be completed in compliance with the Coquitlam Segment Schedule;
- (b) Whenever designs or drawings for City Infrastructure are submitted for review and comment to the City by the Province or the Province's contractors, the City will promptly review same and notify the Province or the contractor which has submitted same of any apparent errors or omissions, and the City will in any event provide its comments with respect to any such designs or drawings within 10 Business Days of receipt (unless otherwise agreed to by the Parties, each acting reasonably), failing which the City will be deemed to have no objection thereto);

- (c) the City and the Province or their respective contractors, as the case may be, will commence, perform and complete such City Infrastructure Work in accordance with the Coquitlam Segment Schedule;
- (d) in the event that the Province and/or its contractors decide to undertake City Infrastructure Work identified in the Coquitlam Segment Schedule in a manner that is not consistent with the drawings provided in Schedule E, the Province and /or its contractors will require acceptance from the City prior to commencement of this City Infrastructure Work;
- (e) City Infrastructure Work, including City Street Modifications, undertaken by the Province will be undertaken by the Province and its contractors at the sole cost of the Province;
- (f) City-Exclusive Work or other fieldwork performed by the City at the request of the Province or emergency work performed in accordance with section 2.6 as required for the Project will be undertaken by the City or its contractors at such rates as are ordinarily charged by the City for similar work, as approved by the Province in writing, and the cost of the City work will be payable by the Province to the City within 60 days of receipt of invoice therefore;
- (g) all City Infrastructure Work will be designed by, and all plans for City Infrastructure Work will be sealed by, a Professional Engineer;
- (h) the Province and its contractors will have the right, at any time, on reasonable prior notice, to inspect any City Infrastructure Work undertaken by the City or City-contracted work forces, at the expense of the Province;
- (i) the City will have the right to designate an inspector to inspect any City Infrastructure Work undertaken by the Province or its contractors at such time or times coordinated and agreed upon with the Province, at the Province's expense, at such rates as are ordinarily charged by the City for similar inspections as provided for in this Agreement or otherwise approved by the Province in writing, and the City may inspect City Infrastructure Work at other times on reasonable prior notice, at the expense of the City;
- (j) the City will ensure that its inspection process and procedures for the Evergreen Line are consistent during the period of the Project;
- (k) Within ten (10) Business Days of notice from the Province, the City will coordinate with the Province to undertake a final post-construction inspection of the City Infrastructure Work and City Street Modifications for compliance with Section 5.2 (a) and (b). Within 10 days after the City's inspection, the City will endeavour to provide a letter to the Province listing, with specificity, the deficiencies, if any, of the City Infrastructure Work or City Street Modifications for the Province's consideration. Failure of the City to provide a letter within twenty (20) Business Days for the inspection will be deemed to be acceptance by the City of the City Infrastructure Work and/or City Street Modifications;
- (l) Once the Province has determined that the City Infrastructure Work and/or City Street Modifications are substantially complete, the Province will notify the City in

writing that the City Infrastructure is substantially complete and ready for use for its intended purpose; and

- (m) Any City Infrastructure Work or City Street Modifications completed by the Province will be warrantied by the Province for a period of two years following delivery of notice to the City, as set out in Section 6.3(l), of the specific element(s) of such City Infrastructure Work or City Street Modifications.

#### **6.4 City Utilities**

- (a) The Province and the City agree that, with respect to City Utilities located in the Coquitlam Segment area which may be affected by the construction of the Project Work, the Province will, after consulting with the City Representative on alternatives, confirm to the City:
  - (i) the City Utilities likely to be affected by the Project Work;
  - (ii) the nature and extent of the Province's proposed work on such City Utilities; and
  - (iii) the Province's proposed timetable for the commencement, performance and completion and tie-in and integration of such City Utilities so that it can be completed in compliance with the Coquitlam Segment Schedule.
- (b) Where required in accordance with this Section of 6.4, the Province will repair and replace City Utilities based on the principle of Like-for-Like as set out in Section 5.2 at the Province's sole cost.
- (c) All City Utility Work will be designed by, and all plans for City Utility Work will be sealed by, a Professional Engineer.
- (d) The City will have review, comment and approval rights on work conducted by the Province on City Utilities. The City will work jointly with the Province to develop a schedule for the design and construction of City Utilities. Whenever designs or drawings for City Utilities are submitted by the Province to the City for approval, the City will promptly review and provide comments with respect to any such designs or drawings within ten (10) Business Days of receipt (unless otherwise agreed to by the Parties).
- (e) The Province will coordinate with and seek approval from the City for any temporary use of City Utilities during construction with the understanding that the Province will not be required to obtain any permits as per Section 2.10(b). The Province's contractors will need to make suitable arrangements with the City;
- (f) The City will have the right to designate an inspector to inspect any work for City Utilities undertaken by the Province at such time or times coordinated and agreed upon with the Province, at the Province's expense, at such rates as are ordinarily charged by the City for similar inspections as approved by the Province in writing.

- (g) Except as outlined in Section 5.3, the City may also inspect City Utilities at other times on reasonable prior notice, at the expense of the City.
- (h) Within ten (10) Business Days of notice from the Province, the City will complete a final post-construction inspection coordinated with the Province. Within 10 days after the City's inspection, the City will provide a letter to the Province either accepting the work and/or listing with specificity any deficiencies of the work relating to City Utilities. Failure of the City to provide a letter within twenty (20) business days will be deemed to be acceptance by the City of the City Utilities.
- (i) All City Utilities constructed by the Province will be transferred to the City once the deficiencies of the final post-construction inspection have been addressed by the Province and the City delivers a letter to the Province stating:
  - (i) the City accepts that the specific element(s) of such utility work is substantially complete and ready for use for its intended purpose; and
  - (ii) the City assumes responsibility of the specific element(s) of such utility work.

The City will provide such letter to the Province within twenty (20) Business Days of the Province advising that the deficiencies in the final post-construction inspection have been addressed by the Province. Failure of the City to deliver such letter in a timely manner will be a deemed acceptance by the City of the City Utilities.

- (j) City Utilities completed by the Province will be warrantied by the Province for a period of two years following acceptance as set out in Section 6.4(h), by the City of the specific element(s) of such utility work.

## **6.5 City-Exclusive Work**

City-Exclusive Work will be undertaken by the City or its contractors at such rates as are ordinarily charged by the City for similar work, which rates will be pre-approved by the Province. City-Exclusive Work will be approved by the Province in advance in writing, unless otherwise provided in this Agreement where written approval is not required. The cost of City-Exclusive Work will be payable by the Province to the City within 60 days of receipt of invoice therefore.

## **6.6 City Enhancements**

The City acknowledges and agrees that in connection with the repair, permanent relocation or replacement of any City Infrastructure or City Utilities, the Province's sole obligation will be to repair, relocate or replace such City Infrastructure or City Utilities on a "Like-for-Like" basis without any obligation as to design, installation, construction, quality of or payment for any City Enhancements.

The Province or its contractors will consider requests by the City for the construction by the Province or its contractors of City Enhancements to City Infrastructure or City Utilities in the course of construction of the Coquitlam Segment, provided that such City Enhancements can be constructed without impacting the Coquitlam Segment Schedule and that such City Enhancements, so approved by the Province or its contractors, are designed and constructed at

the sole cost to the City and without cost risk to the Province. If City Enhancements are to be undertaken, the City will have the right to review, comment and approve the City Enhancement work.

## **6.7 City Major Works**

The Province hereby recognizes the City's intent to replace the watermain on North Road, Clarke Road and Como Lake Avenue ; to conduct street improvements on Clarke Road, to conduct street improvements on Pinetree Way and to construct a sewer force main on Lougheed Highway south of Barnet Highway during the course of Project construction. The Province will consider requests by the City for the construction of these major works prior to or in the course of construction of the Coquitlam Segment, provided that such works can be constructed without impacting the Coquitlam Segment Schedule or adding additional cost to the Project and that such City major works, so approved by the Province or its contractors, are designed and constructed at the sole cost to the City and without risk to the Province.

## **6.8 Fieldwork**

Fieldwork that is required for the Project which is performed by the City at the request of the Province, or without such request in accordance with Section 2.6, will be undertaken by the City or its contractors at such rates as are ordinarily charged by the City for similar work, which rates will be pre-approved by the Province, and the cost of such fieldwork will be payable by the Province to the City within 60 days of receipt of invoice therefore. The City agrees that it will not seek payment pursuant to this provision for fieldwork otherwise performed by the City Resource Contribution as defined in Section 1.1(q) of the Contribution Agreement.

## **6.9 Repairs to Damaged City Infrastructure**

If the Post-Construction Condition Survey, by reference to the Pre-Construction Condition Survey, establishes that the Province or the Province's contractors have damaged any City Infrastructure or City Utilities in the carrying out of the Project Work, City Infrastructure and City Utilities then the Province will repair such damage using current standards, at the Province's expense, to the extent necessary to restore the City Infrastructure to a "Like-for-Like" condition prior to the carrying out of the Project Work, City Infrastructure and City Utilities as evidenced by the relevant Pre-Construction Condition Survey.

For clarity, the Province will not be obligated to repair damage due to ordinary wear and tear to City Infrastructure or City Utilities due to the use of such City Infrastructure or City Utilities in a lawful manner.

## **6.10 Repairs to Damaged Project Infrastructure**

If it is established that the City or contractors working on behalf of the City within the Project Lands, have damaged any Project Infrastructure, then the City will be responsible for reimbursing the Province for the reasonable costs of repairing such damage to the extent necessary to restore the Project Infrastructure to the condition it was in prior to the occurrence of such damage, including any costs incurred as a result of consequential delay in the progress of the Project Work.

### **6.11 Landscaping**

Where practical and where commitment has been made by the Province to install landscaping in connection with the construction of the Evergreen Line, the Province will consider the City's design guideline standards in the development of a landscaping plan for Stations, associated plazas and Guideway areas within the Coquitlam Segment.

### **6.12 Third Party Signage**

- (a) Subject to any applicable laws, all third party signage located within any Station and within or upon any Vehicle will be governed by any signage or advertising policies which the Province may from time to time adopt in respect of the System and/or any other component of a regional transportation system; and
- (b) Subject to any applicable laws, the Province may determine whether and on what terms any advertising signage within any Station and within or upon any Vehicle may be installed, leased, rented, maintained or removed and all revenues derived therefrom will be for the sole account of the Province or any other party designation or determined by the Province, in its sole and unfettered discretion.

### **6.13 Burquitlam Bus Facility**

It is acknowledged by the Province that the City ultimately desires a street integrated bus facility at the Burquitlam Station. In order to accommodate this as redevelopment proceeds in the area, the Province agrees to the following:

- (a) That it will exchange the rights of way it has acquired for the Burquitlam Station Bus Facility for an acceptable alternate facility as developed and accepted mutually by the City and Translink, provided the Province does not incur any additional costs and that the facility is relocated to lands having an equal or greater value near the Burquitlam Station for the same use;
- (b) If the Translink Simon Fraser University gondola commences service, the Province will relinquish any rights of way it has acquired for Burquitlam Station Bus Facility, provided:
  - (i) in exchange therefor, the Province receives from the City or any other party fair market value for the property which comprises the Burquitlam Station Bus Facility; and
  - (ii) the Province receives from Translink written confirmation that it does not require the Burquitlam Station Bus Facility.

### **6.14 Property Access**

Where the placement of columns or other Project Infrastructure requires that access to residential or commercial fee simple lands be altered by the City, the Province will notify the City and provide proposed mitigation plans for review and comment by the City. All direct costs associated with work arising from such alternate property access will be borne by the Province.

### **6.15 Re-Paving**

Within a reasonable time after completion of construction of the Guideway and if required to due to degree of impact of the Evergreen Line, the Province will, repave North Road from Lougheed Highway to Cottonwood Avenue and the northbound lanes on Clarke Road from Smith Avenue to Como Lake Avenue. This provision is supplemental to the provisions of section 6.8.

### **6.16 Closure of Roads**

The Province recognizes that the closures or partial closures of Aberdeen Avenue and Cottonwood Avenue requires Coquitlam City Council approval and associated due process. The Province commits to include these closures in the Project communications and consultation process. City staff support this concept and agree to provide a report to Council with recommendations as part of the associated due process.

## **7. ASSIGNMENT AND EXERCISE OF RIGHTS**

### **7.1 Assignment by Province**

Except as otherwise provided herein, the Province may at any time transfer or assign all or any of its rights and interests under this Agreement to an Operator or to any Qualified Government Entity, and upon any such transfer or assignment, the Province will be released from its obligations under this Agreement to the extent that they are assumed in writing by the transferee or assignee. The City will be provided with written notice of any such transfer or assignment, including a copy of the relevant executed transfer or assignment and assumption agreement (or any relevant authorizing legislation, as applicable).

Effective as of and from the date of any such transfer or assignment, any such transferee or assignee will be entitled to exercise any rights and to enjoy any benefits of the transferor or assignor under this Agreement which have been so transferred or assigned.

### **7.2 Rights Exercisable by Province's Contractors, Subcontractors and Agents**

Except as otherwise provided herein, the rights granted to the Province in this Agreement may be exercised by the Province or any of its contractors, subcontractors, agents, lessees or licencees at any time in connection with the design, construction, testing, commissioning, operation, maintenance and rehabilitation of the Evergreen Line. Without limiting the foregoing, the Province may, at any time, by notice to the City designate and authorize any of the Province's contractors, subcontractors, agents, lessees or licencees or any other person to issue notices and other communications to the City or perform other functions of the Province under the terms of this Agreement, provided that no such person will have authority to amend this Agreement.

## **8. INDEMNIFICATION/CONDUCT OF INDEMNIFIED CLAIMS**

### **8.1 Indemnity**

- (a) Each of the Province and the City (in this Section 8, the "**Indemnifying Party**") will indemnify and save harmless the other (in this Section 8, the "**Indemnified Party**") from and against all liabilities, claims, losses, damages, judgments and reasonable costs and expenses, incurred or sustained by the Indemnified Party

as a result of any breach or non-performance by the Indemnifying Party of any covenant or obligation to be performed or fulfilled by the Indemnifying Party pursuant to this Agreement.

The term “**Indemnified Party**” will, for the purposes of this Section 8.1, include such party’s directors, councillors, officers, employees or agents and the obligations of an Indemnifying Party will extend to any breach or non-performance of this Agreement by its officers, employees and agents.

- (b) Without limiting Section 8.1(a), except to the extent that such liabilities, claims, losses, damages, judgements and reasonable costs and expenses are caused by the wilful misconduct, negligent acts or omissions of the Province, or its officers, employees and agents, the indemnity by the City will extend to any liabilities, claims, losses, damages, judgments and reasonable costs and expenses which are incurred or suffered by the Province because the Province has undertaken City Infrastructure Work or work related to City Utilities in accordance with design criteria or construction standards approved by the City.
- (c) Without limiting section 8.1(a) and in addition to the indemnity provided for therein, the indemnity by the Province will extend to any liabilities, claims, losses, damages, judgments and reasonable costs and expenses which are incurred or suffered by the City, including any director, officer, elected official, employee or agent of the City in connection with the Project which arise from the wilful misconduct or negligent acts or omissions of the Province or any party for whom the Province is responsible at law, except to the extent that such liabilities claims, losses, damages, judgments and reasonable costs and expenses are caused by the wilful misconduct, negligent acts or omissions of the City, or any City Included Parties.
- (d) Subject to and without limiting the City’s obligations in subsections 3.3(f), 8.1(a) and 8.1(b), and in addition to the indemnity provided for therein, the indemnity by the Province will extend to any liabilities, claims, losses, damages, judgments and reasonable costs and expenses which are incurred or suffered by the City, including any director, officer, elected official, employee or agent of the City as a result of claims brought by third parties against the City including any director, officer, elected official, employee or agent of the City which arise from the City fulfilling its obligations to the Province in this agreement, except to the extent that such liabilities claims, losses, damages, judgments and reasonable costs and expenses are caused by the wilful misconduct, negligent acts or omissions of the City, or any City Included Parties, or arise from ex gratia obligations to third parties undertaken by the City or any City Included Parties.

## **8.2 Conduct of Claims**

- (a) If any claim is made against an Indemnified Party entitled to indemnification under Section 8.1, the Indemnified Party will notify the Indemnifying Party as soon as possible of the nature of such claim and the Indemnifying Party will be entitled (but not required) to assume the defence of any suit brought to enforce such claim, provided, however, that the defence will be through legal counsel acceptable to the Indemnified Party and that no settlement may be made by the Indemnifying Party without the prior written consent of the Indemnified Party

which consent will not be unreasonably withheld. If the Indemnifying Party does not assume such defence, the Indemnified Party may do so.

- (b) If the Indemnifying Party assumes the defence of any claim pursuant to subsection 8.1(a), the Indemnified Party will have the right to employ separate counsel in any proceeding described above and to participate in the defence thereof but the fees and expenses of such counsel will be at the expense of such Indemnified Party unless:
  - (i) the employment of such counsel has been authorized by the Indemnifying Party; or
  - (ii) the named parties to any such proceeding include the Indemnifying Party and the Indemnified Party and representation of the parties by the same counsel would be inappropriate due to actual or potential differing interests between them, in which event the fees and expenses of such counsel will be paid by the Indemnifying Party, but will be reimbursed to the Indemnifying Party if the Indemnified Party is not entitled to indemnity in respect thereof pursuant to this Section,

and no settlement or admission of liability, whether before or after an action, if any is commenced, may be made by the Indemnifying Party without the prior written consent of the Indemnified Party, which consent will not be unreasonably withheld.

- (c) If the Indemnified Party assumes the defence of any claim pursuant to this Section 8.2, the Indemnified Party will:
  - (i) provide timely updates on the claim to the Indemnifying Party during the course of the claim; and
  - (ii) not make any settlement of the claim or admission of liability, whether before or after an action, if any is commenced, without the prior written consent of the Indemnifying Party, which consent will not be unreasonably withheld.
- (d) The following provisions will apply to indemnification payments which the Indemnified Party may make to a current or former council member, municipal officer or employee (in this section, a "**Municipal Official**") under Section 287.2 of the *Local Government Act* (British Columbia), which fall within the scope of the indemnity under subsection 8.1(a), (c) or (d):
  - (i) the Indemnified Party will advise the Indemnifying Party of any claim, action or prosecutions contemplated under Section 287.2 as soon as reasonably practicable, but in any event, no later than 30 days after the Indemnified Party becomes aware of the claim, action or prosecution;
  - (ii) if the Indemnified Party (or the Municipal Official) determines to settle the claim, action or prosecution, the Indemnified Party will advise the Indemnifying Party forthwith and will consult with the Indemnifying Party on the settlement before it is concluded, and no settlement or admission

of liability, whether before or after an action, if any is commenced, may be made by the Indemnified Party without the prior written consent of the Indemnifying Party, which consent will not be unreasonably withheld;

- (iii) the Indemnifying Party will not be entitled to defend the claim, action or prosecution against the Municipal Official; and
- (iv) if, under Section 287.2, the Indemnified Party indemnifies a Municipal Official in relation to the matter, then, if the subject matter of the claim, action or prosecution falls within the scope of the indemnity under Section 8.1(a), the Indemnifying Party will indemnify the Indemnified Party (without duplication of any indemnity under subsection 8.1(a), (c) or (d) ):
  - (A) if a court has found against the Municipal Official in the claim, action or prosecution and that finding has not been appealed, or if appealed such finding has not been reversed on appeal, or
  - (B) if the claim, action or prosecution has been settled and the Indemnified Party has complied with subsection 8.2(d)(ii) above.
- (e) Notwithstanding anything to the contrary in this Section 8.2 and without the requirement of the prior approval of the City, the Attorney General of British Columbia will have regulation and conduct of all claims to which subsection 2(i) of the *Attorney General Act* apply.

Notwithstanding the provisions of section 7.2, the Province agrees that the rights and obligations of the Province as set out in section 8 cannot be exercised or performed by anyone other than the Province provided that the Province may appoint another person or delegate the responsibility for managing, supervising, conducting and settling litigation, including litigation involving claims referred to in subsection 8.2(e).

## **9. DISPUTE RESOLUTION**

### **9.1 Dispute Resolution Procedure for Construction**

If any Dispute arises at any time, the party which identifies the Dispute will give written notice of the Dispute to the other and the following provisions will apply:

- (a) The parties agree to endeavour to resolve the Dispute as expeditiously as possible, with a view to enabling the design, construction, testing and commissioning of the Coquitlam Segment to proceed expeditiously in accordance with the Coquitlam Segment Schedule.
- (b) Each of the Province and the City may invite any of its contractors or consultants whose work is the subject of the Dispute to participate in any discussions or proceedings which are the subject of the dispute on terms as to confidentiality and otherwise as the parties may agree.
- (c) The Provincial Representative and the City Representative will examine any matter in Dispute as soon as possible and attempt to resolve the Dispute within 10 Business Days following receipt of the notice of the Dispute.

- (d) If the Provincial Representative and the City Representative are unable to agree on a resolution of the Dispute within ten (10) Business Days following receipt of the notice of the Dispute, the Dispute will be referred to the Executive Project Director and the Chief Administrative Officer of the City for resolution.
- (e) If the Executive Project Director and the Chief Administrative Officer of the City are unable to agree on a resolution of the Dispute within ten (10) Business Days following the date on which the Dispute was referred to them for resolution, then either party may elect to have the Dispute resolved by litigation in the proper judicial forum, unless the Province and the City have agreed in writing as to some alternative means for resolving the Dispute.

Notwithstanding the provisions of section 7.2, the Province agrees that the rights and obligations of the Province as set out in section 9 cannot be exercised or performed by anyone other than the Province.

## **9.2 Progress of Project**

Notwithstanding any Dispute, the Project will continue to the fullest extent possible and each party will continue complying with its obligations under this Agreement until the Dispute has been resolved through the Dispute Resolution Procedure set forth in Section 9.1.

## **10. NOTICES**

### **10.1 Notices**

Any notice given pursuant to this Agreement will be in writing and delivered or sent by facsimile transmission addressed to the parties as follows:

To the City:

**CITY OF COQUITLAM**

Coquitlam City Hall  
300 Guildford Way  
Coquitlam, British Columbia V3B 7N2

Attention: General Manager of Strategic Initiatives

Copy to Municipal Solicitor

Fax: 604-927-3015

To the Province:

**EVERGREEN LINE PROJECT OFFICE**

2900 Barnet Highway  
Coquitlam, British Columbia V3B 0G1

Attention: Project Director

Fax: 604-927-4453

or at such other address or to the attention of such other person as either party may specify by notice in writing given to the other in accordance with the foregoing. The time of giving and receiving any such notice will be deemed to be on the day of delivery, if delivered, or the day of transmittal with confirmation of receipt, if sent by facsimile or the date of transmission, if sent by email unless, in the case of notice sent by facsimile or email, the party sending the facsimile or email is notified by the intended recipient that the facsimile or email has failed or not been received.

## **11. GENERAL**

### **11.1 Effective Date and No Right of Termination**

Except as otherwise provided in this Agreement and the rights granted to the Province hereunder are effective as of and from the Effective Date and will remain in full force and effect thereafter for and during the Term.

The City acknowledges and agrees that no breach of this Agreement by the Province will give rise to any right to terminate this Agreement or result in the suspension, cancellation or termination of all or any of the rights granted to the Province under this Agreement.

### **11.2 Further Assurances**

The Province and the City agree to do all such things, to sign all such documents and to provide all such further assurances as are reasonably required to carry out the intent and purpose of this Agreement in a timely fashion.

### **11.3 Sections, Schedules and Interpretation**

The division of this Agreement into separate Schedules, Articles and Sections and the insertion of headings are for convenience of reference only and will not affect its interpretation.

### **11.4 No Deemed Waiver**

No failure or delay in the exercise of any right under this Agreement will operate as a waiver, nor will any single or partial exercise of any right under this Agreement preclude any other or future exercise of such right or the exercise of any other right. No waiver of any right under this Agreement will be effective unless it is in writing signed by the party sought to be bound thereby.

### **11.5 Enurement and Binding Effect**

Subject to Article 7, this Agreement will enure to the benefit of and be binding on each party and its respective successors and permitted assigns and every reference to the City and the Province will include the successors and permitted assigns of such party, wherever the context so requires.

### **11.6 Governing Law**

The Agreement will be governed by and construed in accordance with the law of British Columbia. Subject to the provisions of Article 9, the parties irrevocably submit to the jurisdiction

of the courts of British Columbia in all matters relating to the interpretation or enforcement of this Agreement.

#### **11.7 Severability**

All of the rights and obligations contained in this Agreement are severable so that if any one or more of such rights and obligations is determined to be void or unenforceable, either in whole or in part, the balance of this Agreement will remain in effect and be binding and enforceable to the fullest extent permitted by law.

#### **11.8 Reference to Statutes**

A reference to a statute or law includes all regulations made thereunder, all amendments to the statute or law in force from time to time, and every statute or law that supplements or supersedes such statute or law.

#### **11.9 Jurisdiction of the Province**

Nothing in this Agreement shall be construed as an agreement by the Province to restrict, limit or otherwise fetter in any manner the Province's ability to introduce, pass, amend, modify, replace, revoke or otherwise exercise any rights or authority regarding legislation, regulations, policies or any other authority of the Province.

#### **11.10 Entire Agreement**

This Agreement is the entire agreement between the Parties pertaining to the development, design and construction, testing and commissioning of the Evergreen Line including the Coquitlam Segment and other matters provided herein, and except with respect to those matters addressed in the Contribution Agreement, this Agreement supersedes all prior agreements, negotiations and discussions, whether oral or written, of the Parties, and there are no agreements, covenants, representations or warranties, express, implied, statutory, collateral or otherwise, save as set forth herein. This Agreement shall not be amended except in a written instrument executed by all of the Parties or their solicitors on their behalf and stated to be an amendment to this Agreement.

## 12. SCHEDULES

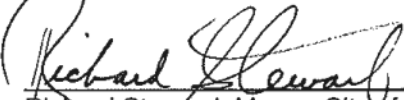
### 12.1 Schedules

The parties agree that the following Schedules are deemed to be attached to this Agreement and form an integral part of this Agreement

Schedule A	-	Coquitlam Segment Alignment
Schedule B	-	Plans and Legal Descriptions of Construction-Required Lands
Schedule C	-	Plans and Legal Descriptions of System-Required Lands
Schedule D	-	City Fee Simple Lands
Schedule E	-	City Street Modifications
Schedule F	-	List of City-Exclusive Work
Schedule G	-	Demolitions and Utility Service Capping Procedure

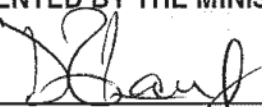
IN WITNESS WHEREOF this Agreement has been executed by the parties hereto.

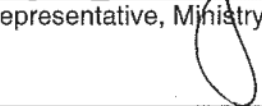
#### CITY OF COQUITLAM

Per:   
Richard Steward, Mayor, City of Coquitlam

Per:   
Jay Gilbert, Clerk, City of Coquitlam

#### HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE

Per:   
Representative, Ministry of Transportation and Infrastructure

Per:   
Representative, Ministry of Transportation and Infrastructure

**SCHEDULE A**  
**Coquitlam Segment Alignment**

Page 249 to/à Page 250

Withheld pursuant to/removed as

s.16;s.17

## **SCHEDULE B**

### **Plans and Legal Descriptions of Construction-Required Lands**

Page 252 to/à Page 260

Withheld pursuant to/removed as

s.16;s.17

## **SCHEDULE C**

### **Plans and Legal Descriptions of System-Required Lands**

Page 262 to/à Page 270

Withheld pursuant to/removed as

s.16;s.17

## **SCHEDULE D**

### **City Fee Simple Lands**

Page 272 to/à Page 279

Withheld pursuant to/removed as

s.16;s.17

**SCHEDULE E**  
**City Street Modifications**

Page 281 to/à Page 286

Withheld pursuant to/removed as

s.16;s.17

## **SCHEDULE F**

### **List of City-Exclusive Work**

s.16,s.17

## **SCHEDULE G**

### **Demolitions and Utility Service Capping Procedure**

1. Province confirms that it will be responsible for providing the City with;
  - i. A description of the parcel on which the building or temporary building to be demolished is located.
  - ii. A detailed description of the method of demolition to be used, the dates and times scheduled for demolition, the method of disposing of the demolition debris, the restoration measures for the parcel following demolition and the safety precautions to be taken on the parcel and adjacent areas during the course of demolition;
  - iii. Evidence that existing services have been capped by the City's Operations Department and utilities providers.
2. Province to complete the normal demolition/utility capping form(s) for review, processing and record of the City.
3. Province to pay a building department inspection charge of \$70 per demolition site for pre-inspections. The building department will leave site safety and management up to the Province, however, will likely drop by the site sometime before and after the demolition to view the site. Any issues of concern will be brought to the attention of the designated Provincial representative.
4. Provincial contractor will be allowed to excavate and cap City sanitary sewer and drainage services per City standard, complete with trench and road/surface restoration to current MMCD standard or better. Prior to trench backfill, the designated City Public Works inspector is to be called to inspect capping work. Minimum 48 hours advance notice to be provided of planned work. Actual costs of field inspection to be at the cost of the Province.
5. Provincial contractor will be allowed to excavate City water service, but shall not operate any water valves or undertake the water service capping. City forces to cap water service and/or operate water valves. The Provincial contractor is to backfill per City standard, complete with trench and road/surface restoration to current MMCD standard or better. Minimum 48 hours advance notice to be provided of planned work. Actual cost of Public Works and field inspection to be at the cost of the Province.
6. Province will provide the City with a letter stating its intentions to pay for any potential damages incurred as a result of building demolitions/utility capping work that is undertaken by the Province.
7. Province will adhere to all provincial safety requirements with respect to the Province's contractor.
8. Province to be responsible for arranging full utility locates.

9. Province will ensure that its contractor will maintain suitable insurance as per the Provinces' insurance requirements.
10. Provincial contractor will provide the City with notice of road closures and a road closure plan in advance of work to be completed.
11. Province will provide a Letter of Authorization to the City to enable payment of City services.





Page 292 to/à Page 321

Withheld pursuant to/removed as

s.16;s.17



October 11, 2012

City of Port Moody  
100 Newport Drive  
Port Moody BC V3H 3E1

Attention: Mr Cory Day  
City Engineer, Engineering and Operations

**Re: Evergreen Line – CPR Track Relocation Project – City of Port Moody Watermain**

We refer to the correspondence between the Province and the City of Port Moody from February and March of this year in which two options were discussed for the design, construction and management of the work (the “**Watermain Work**”) to be undertaken by the Province in relation to an existing 250 mm diameter watermain which is owned by the City (the “**Port Moody Watermain**”). The Port Moody Watermain currently crosses the Canadian Pacific Railway Company (“**CPR**”) right-of-way at Kyle Street (Mile 115.99), between Clarke Street and Columbia Street, in Port Moody.

In the Province’s letter of February 28, 2012, a base case proposal was set out for the encasement of the Port Moody Watermain in its present location (“**Option 1**”). The City proposed an alternative treatment for the Port Moody Watermain which contemplated the installation of a new watermain, complete with steel casing, adjacent to the proposed GVSDD sanitary sewer at Columbia Street (“**Option 2**”). We understand that on March 13, 2012, City Council authorized the Province proceed with the Watermain Work on the basis of Option 2.

The Watermain Work will be subject to the Evergreen Line Rapid Transit Project Port Moody Municipal Agreement between the Province and the City dated October 13, 2011 (the “**Municipal Agreement**”), including Section 6.4 [City Utilities]. The incremental part of the Watermain Work required pursuant to Option 2 over Option 1 is a “City Enhancement” under Section 6.6 [City Enhancements] of the Municipal Agreement.

CPR requires that the City enter into an agreement for the laying of pipelines on railway lands crossing the railway in the form of CPR Agreement No. X-CASC-115-99-P (the “**CPR Crossing Agreement**”) in order to permit the performance of the Watermain Work and the ongoing operation and maintenance of the Port Moody Watermain by the City in its new location.

This letter is to confirm the agreement of the parties with regard to the Watermain Work as set out below:

1. The Province will undertake the Watermain Work on the basis of Option 2, substantially as shown in drawing # R1-703-654 attached to this letter.

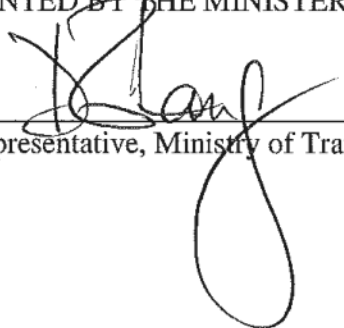
2. The Province will undertake the Watermain Work in accordance with and subject to the applicable provisions of the Municipal Agreement.
3. The Province has undertaken the design of the Watermain Work in consultation with the City to meet the City's requirements and specifications and the requirements of the Municipal Agreement.
4. In addition to meeting the requirements of the City and the Municipal Agreement, the Province will cause the Watermain Work to be performed in compliance with the CPR Crossing Agreement.
5. The Watermain Work will be subject to inspection and acceptance by the City in accordance with the Municipal Agreement. As provided in Section 6.4 of the Municipal Agreement, the City will conduct a post construction inspection of the Watermain Work and will provide a letter to the Province confirming acceptance of the Watermain Work or specifying any deficiencies. When the Watermain Work is completed to the satisfaction of the City, acting reasonably, the City will accept the Watermain Work.
6. The Province estimates that the cost of performing the Watermain Work pursuant to Option 1 would have been \$137,000. The Province estimates that the total cost of performing the Watermain Work pursuant to Option 2 is \$327,000. Therefore, the parties agree that the City's share of the Watermain Work pursuant to Option 2 is \$190,000 (the "City's Share"). The City's Share is subject to adjustment based on the actual costs incurred by the Province in the performance of the Watermain Work.
7. The City will pay the City's Share to the Province within 30 days of the date upon which the City has accepted the Watermain Work, or should have accepted the Watermain Work in accordance with the Municipal Agreement.
8. As provided in the Municipal Agreement, the Watermain Work will be warrantied by the Province for a period of two years following the date the City has accepted, or should have accepted, the Watermain Work.

Please confirm the agreement of the City to the Province undertaking the Watermain Work pursuant to Option 2 on the basis set out above by signing and returning a copy of this letter. A PDF version of the fully signed copy of this letter will confirm the agreement of the parties as set out herein.

Yours truly,

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA  
REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE

Per:

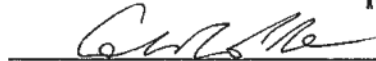
  
Representative, Ministry of Transportation and Infrastructure

Acknowledged and agreed by the City of Port Moody this 11 day of October, 2012

CITY OF PORT MOODY

  
\_\_\_\_\_  
Authorized Signatory

M. E. (MIKE) CLAY, MAYOR

  
\_\_\_\_\_  
Authorized Signatory

**COLLEEN ROHDE, CITY CLERK**

**EVERGREEN LINE RAPID TRANSIT PROJECT**

**BURNABY MUNICIPAL AGREEMENT**

**BETWEEN**

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

**AND**

**CITY OF BURNABY**

THIS AGREEMENT is dated for reference November 7, 2012.

## EVERGREEN LINE RAPID TRANSIT PROJECT

### BURNABY MUNICIPAL AGREEMENT

THIS AGREEMENT is dated for reference November 7, 2012

BETWEEN

**CITY OF BURNABY**, a municipal corporation under the *Local Government Act*

("Burnaby")

AND

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the minister responsible for the *Transportation Act*

(the "Province")

WHEREAS:

- A. The Province has undertaken the planning and design, and will undertake the construction, testing and commissioning of the Evergreen Line, which includes the Burnaby Segment.
- B. The Province and the City intend to work co-operatively with each other.

The parties agree as follows:

#### ARTICLE 1 – DEFINITIONS

1.1 In this Agreement,

**"Agreement of Purchase and Sale"** means the agreement attached as Schedule B;

**"Burnaby Segment"** means that portion of the Evergreen Line located within the City of Burnaby as generally shown on the plan attached as Schedule A;

**"City Representative"** means the person designated by written notice given by Burnaby to the Province from time to time as holding the position of City Representative and having full authority to represent and bind Burnaby in connection with all dealings with the Province under this Agreement;

**"Effective Date"** means the date upon which this Agreement has been signed by each of the parties and fully executed copies of this Agreement have been unconditionally delivered to each of the parties, or such other date as the parties agree in writing is the Effective Date;

**“Evergreen Line”** means all of the advanced rapid transit infrastructure to be designed, created, constructed, supplied, tested and commissioned by or on behalf of the Province between Lougheed Town Centre and the terminus of the Evergreen Line to be constructed in the vicinity of the Douglas College campus in Coquitlam and, for greater certainty, includes the various components of the Evergreen Line as they are designed, created, constructed, supplied, tested and commissioned;

**“Environmental Assessment Certificate”** means environmental assessment certificate #T10-01 issued pursuant to the Environmental Assessment Act, SBC 2002, c. 43;

**“Executive Project Director”** means the person designated by written notice given by the Province to Burnaby from time to time as holding the position of Executive Project Director for the Project and having full authority to represent and bind the Province in connection with all matters pertaining to the Project including this Agreement;

**“Like-for-Like”** means in relation to any City of Burnaby infrastructure, including utilities, which is being relocated, replaced or repaired as part of the Works, a standard for the relocation, replacement, or repair pursuant to which the functionality, capacity, and service of such infrastructure is equivalent to that which existed prior to the relocation, replacement, or repair, provided that design details, materials and construction specifications for the relocated, replaced or repaired infrastructure shall be consistent with the current City of Burnaby standard;

**“North Road Median”** means the median to be located on North Road between Lyndhurst Street and the Lougheed Highway;

**“Primary Contractor”** means the party who enters into the design build agreement with the Province for the Project;

**“Project”** means the design, construction, testing, commissioning and commencement of service of the Evergreen Line;

**“Project Agreement”** means the design build agreement between the Primary Contractor and the Province for the delivery of the Project;

**“Release of Claims”** means the document in the form attached as Appendix 2 to Schedule B;

**“RFP”** means the Request for Proposals issued by the Province for the Project on November 9, 2011, as amended;

**“Senior Project Manager”** means the person designated by written notice given by the Province to Burnaby from time to time as holding the position of Senior Project Manager and having full authority to represent and bind the Province in connection with all dealings with Burnaby under this Agreement

**“SkyTrain System”** means the SkyTrain rapid transit system presently operated by TransLink on its Millennium Line and Expo Line, into which the Evergreen Line, upon completion, will be fully integrated;

**“Works”** means the Works (Advance) and the Works (SkyTrain) within the City of Burnaby;

**“Works (Advance)”** means the widening of North Road and related infrastructure works within the City of Burnaby, substantially in compliance with *North Road Widening & Duct Bank Construction Tender Drawings* as of 2011 November 28 and including any associated works such as traffic signal control and management; and

**“Works (SkyTrain)”** means all work required in the design, construction, testing, and commissioning of the Burnaby Segment of the Evergreen Line (including modifications to Lougheed Town Centre Station), and related infrastructure works, temporary transit modifications and traffic signal control and management within the City of Burnaby.

1.2 The schedules to this Agreement are as follows:

Schedule A – Burnaby Segment Alignment;

Schedule B – Agreement of Purchase and Sale;

Schedule C – Project Implementation;

Schedule D – Dispute Resolution Procedure;

Schedule E – City Technical Resources; and

Schedule F – City Street Modifications.

## **ARTICLE 2 – LAND TRANSACTION AND OTHER AGREEMENTS**

- 2.1 Not later than five (5) business days after the execution of this Agreement, Burnaby will deliver executed copies of the Agreement of Purchase and Sale.
- 2.2 Not later than ten (10) business days after receipt of the executed documents described in section 2.1, the Province will cause the documents described in section 2.1 to be executed by the BCTFA and the Province, as applicable, and the Province will deliver one fully-executed copy of each document to Burnaby not later than ten (10) business days following execution.
- 2.3 The Release of Claims document will be executed and delivered by Burnaby in accordance with the terms of the Agreement of Purchase and Sale.
- 2.4 If Burnaby does not deliver the executed documents described in section 2.1 within the time provided, this Agreement may terminate at the Province’s discretion.

### ARTICLE 3 – COMMITMENTS BY BURNABY

#### 3.1 Burnaby:

- (a) grants to the Province the free and unobstructed right to operate, maintain, inspect, repair, alter, renovate, modify, rehabilitate, reconstruct and remove, as required, all or any component of the Evergreen Line within the City of Burnaby; and
- (b) agrees that if the city street modifications shown in
  - (i) *North Road Widening & Duct Bank Construction Drawings* as of 2011 December, and
  - (ii) the plans for North Road attached as Schedule F,

are constructed in accordance with those plans and are designed and constructed in accordance with City of Burnaby design guidelines and any other applicable design and construction standards in place on the Effective Date, such city street modifications will be acceptable to Burnaby.

### ARTICLE 4 – COMMITMENTS BY THE PROVINCE

#### 4.1 The Province will:

- (a) cause the Works to be constructed in conformance with the commitments identified in Schedule C;
- (b) maintain on-going liaison with Burnaby on design and construction issues, with the Province's contractor also present, as necessary;
- (c) provide funding for Burnaby's response to Project technical requests based on the terms in Schedule E;
- (d) provide Burnaby with documentation of the Works consisting of:
  - (i) plans showing the location, elevation and approximate dimensions of the columns, piles, footings and other structural elements of the guideway,
  - (ii) record drawings with respect to City of Burnaby infrastructure, including City of Burnaby utilities, and foreign utilities,
  - (iii) inspection reports and
  - (iv) documentation of any other changes such as traffic signal timings; and

the deadline for provision of the documentation set out in section 4.1(d) will, if feasible, be within six months of substantial completion of the Works (Advance) and Works (SkyTrain), respectively;

- (e) the drawings set out in sections 4.1(d)(i) and 4.1(d)(ii) will be provided in both paper and electronic format, the latter being AutoCAD if feasible; and
  - (f) warrant the Works (Advance) for a period of two years from the completion of those works.
- 4.2 The Province will identify improvements that could be undertaken to the resumed roads shown on Appendix 1 to Schedule C, including, without limitation, the Lougheed Highway near Lougheed Station. Such improvements could include those providing public benefit to pedestrians and cyclists, beautification to medians, and public art. s.16,s.17

s.16,s.17

## **ARTICLE 5 – COMMITMENTS BY BOTH PARTIES**

- 5.1 Both parties commit that:
- (a) following Burnaby Council's acceptance by resolution of this Agreement, the parties will proceed expeditiously to implement it;
  - (b) the parties agree to work cooperatively to carry out the terms of this Agreement and to act reasonably and expeditiously in considering any request by the other party;
  - (c) the parties agree to abide by the dispute resolution procedure set out in Schedule D;
  - (d) Burnaby acknowledges that it is the Province's intent to develop, design, and construct the Works in accordance with criteria, requirements, codes, processes and policies developed by the Province rather than those of Burnaby;
  - (e) Burnaby acknowledges that development, building, trade, occupancy or other permits, preliminary or other plan approvals, and other types of construction or similar permits or approvals from Burnaby will not be sought by the Province in connection with the Works;
  - (f) Burnaby will provide field inspections of the Works' tie-ins to existing City of Burnaby utilities and will complete all water main tie-ins; and
  - (g) the Province will provide design drawings to Burnaby in support of a City of Burnaby-initiated rezoning process for Lougheed Town Centre Station, but without limiting or compromising the Province's construction of Lougheed Town Centre Station or any other part of the Works.

## **ARTICLE 6 – ASSIGNMENT AND EXERCISE OF RIGHTS**

- 6.1 The Province may at any time transfer or assign all or any of its rights and interests under this Agreement to the operator of the SkyTrain System, to the B.C. Transportation Financing Authority or to any other governmental body or agency. Upon any such transfer or assignment, the Province will be released from its obligations under this Agreement to the extent that they are assumed in writing by the transferee or assignee.

- 6.2 The City will be provided with written notice of any such transfer or assignment, including a copy of the relevant executed transfer or assignment and assumption agreement (or any relevant authorizing legislation, as applicable).
- 6.3 The rights granted to the Province in this Agreement may be exercised by the Province or any of its contractors, subcontractors, agents, lessees or licencees at any time in connection with the design, construction, testing, commissioning, operation, maintenance and rehabilitation of the Evergreen Line.
- 6.4 Without limiting the foregoing, the Province may, at any time, by notice to the Burnaby designate, authorize any of the Province's contractors, subcontractors, agents, lessees or licencees or any other person to issue notices and other communications to Burnaby or perform other functions of the Province under the terms of this Agreement, provided that no such person will have authority to amend this Agreement.

#### **ARTICLE 7 – OWNERSHIP OF PROJECT INFRASTRUCTURE**

- 7.1 Burnaby acknowledges and agrees that:
- (a) except for accent lighting and trellis, which may be attached to columns, and City of Burnaby utilities which are City of Burnaby infrastructure, the Evergreen Line situated on, over or under lands owned or controlled by Burnaby, is, from the date of construction or installation and will continue thereafter, to be the property of the Province and will be freely alienable by the Province notwithstanding the degree to which the same may be annexed or affixed to land;
  - (b) the Province is entitled at any time to remove the Evergreen Line in whole or in part from lands owned or controlled by Burnaby which have been accessed, used or occupied by the Province for the purposes of construction, operation, maintenance or rehabilitation of any component of the Evergreen Line located within the City of Burnaby, provided the Province returns such lands to the condition prior to the construction of the Evergreen Line thereon;
  - (c) if and to the extent that any Evergreen Line infrastructure on, over or under the lands referred to in paragraph (b) of this section may have vested in the City of Burnaby by operation of law, Burnaby hereby grants, releases, quitclaims, transfers and assigns such Evergreen Line infrastructure to the Province; and
  - (d) nothing in this Agreement restricts or prohibits the Province from exercising any right, power, privilege or authority or discharging any duty under any applicable law and the Province reserves all of its rights in this regard.

#### **ARTICLE 8 – CONFIDENTIALITY**

- 8.1 Burnaby will only disclose information relating to this Agreement with the prior consent of the Province, except for disclosure of information that is:
- (a) already in the public domain;
  - (b) required for the performance of this Agreement or otherwise for the purposes of the Project;

- (c) disclosed as a necessary and unavoidable part of Burnaby's governmental functions and deliberations in council, but to the least extent possible if a public forum must be involved; or
- (d) required to be disclosed by law.

## ARTICLE 9 – MISCELLANEOUS

- 9.1 Except where otherwise specified in this Agreement, this Agreement and the rights granted to the Province hereunder are effective as of and from the Effective Date and will remain in full force and effect in accordance with its terms thereafter unless and until the Province notifies Burnaby that the rights granted by Burnaby under this Agreement are no longer required.
- 9.2 Burnaby acknowledges and agrees that no breach of this Agreement by the Province will give rise to any right to terminate this Agreement or result in the suspension, cancellation or termination of all or any of the rights granted to the Province under this Agreement, provided that such breach is unintentional and the Province works diligently and expeditiously to rectify such breach.
- 9.3 Notwithstanding the foregoing, the Province will indemnify and save harmless Burnaby from and against all losses, expenses, costs, damages and liabilities arising out of any such breach.
- 9.4 All notices, documents or communications between the parties that are required or permitted to be given under this Agreement must be in writing and will be deemed to have been given on the first business day of the recipient following delivery by hand, by courier or by facsimile to the party to whom it is to be given as follows:

- (a) to Burnaby

City of Burnaby  
4949 Canada Way  
Burnaby, British Columbia V5G 1M2  
Attention: Assistant Director Engineering, Development Services  
Facsimile: (604) 294-7425

- (b) to the Province:

Evergreen Line Project Office  
2900 Barnet Highway  
Coquitlam, British Columbia V3B 0G1  
Attention: Executive Project Director  
Facsimile: (604) 927-4453

provided, however, that a party may, by notice in writing to the other party, specify another address or facsimile number for service of notices under this Agreement and, where another address or facsimile number is specified by a party, notice must be delivered to that address or facsimile number in accordance with this section.

- 9.5 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and may not be modified except by subsequent agreement in writing.

- 9.6 No term, condition, covenant or other provision of this Agreement will be considered to have been waived by a party unless such waiver is expressed in writing by the party.
- 9.7 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.
- 9.8 No remedy conferred upon or reserved to either party is exclusive of any other remedy in this Agreement or provided by law, but such remedy will be cumulative and will be in addition to any other remedy in this Agreement or now or hereafter existing at law, in equity or by statute.
- 9.9 This Agreement is binding upon and enures to the benefit of the parties and their successors and permitted assigns.
- 9.10 The parties will perform such further acts and execute such further documents as may reasonably be required to give effect to this Agreement.
- 9.11 This Agreement may be entered into by each party signing a separate copy of it (including a photocopy or facsimile copy) and delivering it to the other party by facsimile or other electronic means with an originally executed copy of it to follow by mail.

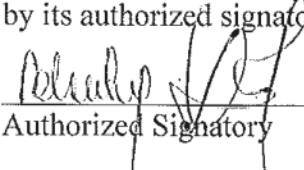
#### ARTICLE 10 – INTERPRETATION

- 10.1 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 10.2 In this Agreement, “person” includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties so require.
- 10.3 Each schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement and, unless the context otherwise requires, any reference to “this Agreement” means this instrument and all of the schedules attached to it.
- 10.4 In this Agreement, the words “including” and “includes”, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific terms or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general terms or statement.
- 10.5 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.
- 10.6 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

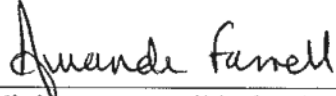
British Columbia or Canada, as the case may be, of like effect and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.

- 10.7 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.
- 10.8 The parties agree that nothing in this Agreement constitutes any of them as the agent, joint venturer or partner of any other party or gives any of them any authority or power to bind any other party in any way.
- 10.9 Time is of the essence of this Agreement.

The parties have executed this Agreement as of the date first written above.

**SIGNED** on behalf of **CITY OF BURNABY**  
by its authorized signatory **BLANKA ZEINABOVA**  
  
Administrative Officer  
Authorized Signatory

**SIGNED** on behalf of **HER MAJESTY THE  
QUEEN IN RIGHT OF THE PROVINCE  
OF BRITISH COLUMBIA** by the  
minister responsible for the *Transportation Act*  
or the minister's authorized representative

  
Minister responsible for the *Transportation Act*  
or the minister's authorized representative

## SCHEDULE A

(of Evergreen Line Rapid Transit Project – Burnaby Municipal Agreement)

### BURNABY SEGMENT ALIGNMENT



**SCHEDULE B**

**(of Evergreen Line Rapid Transit Project – Burnaby Municipal Agreement)**

**AGREEMENT OF PURCHASE AND SALE**

THIS AGREEMENT is dated for reference November 7, 2012

BETWEEN

**CITY OF BURNABY**, a municipal corporation under the *Local Government Act*

(the "Purchaser")

AND

**BC TRANSPORTATION FINANCING AUTHORITY**, a corporation continued under the  
*Transportation Act*

(the "BCTFA")

The parties agree as follows:

**ARTICLE 1 - DEFINITIONS**

1.01 In this Agreement,

"**Agreement**" means this agreement for the purchase and sale of the Land;

"**Completion Date**" means 20 days after this Agreement has been executed by the BCTFA or such other day as the parties agree to in writing, provided that if the Land Title Office is closed on that day, the purchase and sale of the Land will be completed on the next day that office is open;

"**HST**" means the tax imposed under Part IX of the *Excise Tax Act* (Canada);

"**Land**" means

s.16,s.17

"**Land Title Office**" means the land title office for the land title district in which the Land is located;

"**Permitted Encumbrances**" means the liens, charges and encumbrances listed in Appendix 1;

"**Purchase Price**" means the sum of

s.16,s.17

s.16,s.17

"**Release of Claim**" means the release document in the form attached hereto as Appendix 2; and

"**Transfer**" means a transfer of the freehold estate, in fee simple, as prescribed under the *Land Title Act*, of the Land to the Purchaser.

## **ARTICLE 2 - AGREEMENT TO PURCHASE AND SELL**

- 2.01 The Purchaser hereby agrees to purchase, and the BCTFA hereby agrees to sell, the Land in fee simple, subject to the Permitted Encumbrances, for the Purchase Price and on the terms and conditions set out in this Agreement.

## **ARTICLE 3 - PURCHASE PRICE, ADJUSTMENTS AND TAXES**

- 3.01 The Purchaser will deliver the Purchase Price, plus or minus the adjustments provided for in section 4.01, to the BCTFA in accordance with Article 6.
- 3.02 The Purchaser will pay all registration charges, the *Property Transfer Tax Act* tax, the HST and all other taxes and charges payable upon the transfer of the Land to the Purchaser.
- 3.03 If the Purchaser is not registered for HST purposes, it will, on the Completion Date, remit to the BCTFA the HST payable upon the transfer of the Land to the Purchaser. The Purchaser's HST # is  
s.16,s.17 The Purchaser will, in accordance with the *Excise Tax Act* (Canada), account directly to the Receiver General (Canada) for the HST payable upon the transfer of the Land to the Purchaser.
- 3.04 All money to be paid or remitted to the BCTFA under this Agreement will be paid by way of bank draft or certified cheque payable to the BCTFA.

## **ARTICLE 4 - COMPLETION, ADJUSTMENT AND POSSESSION DATE**

- 4.01 The purchase and sale of the Land will be completed, possession will be yielded to the Purchaser free and clear of all liens, charges and encumbrances except the Permitted Encumbrances and all adjustments as to taxes and all other matters normally adjusted between a vendor and purchaser on the sale of real property in British Columbia will be made between the parties at 12:01 a.m. on the Completion Date.
- 4.02 For the purpose of section 4.01, if the BCTFA has paid or will, during the calendar year in which the purchase and sale of the Land is completed, pay a grant in lieu of property taxes for the Land, the grant in lieu of property taxes will be deemed to be property taxes for the Land.

## **ARTICLE 5 - CLOSING DOCUMENTS**

- 5.01 Not later than five days prior to the Completion Date, the Purchaser, at its expense, will prepare and deliver the following documents to the BCTFA for execution:
- (a) the Transfer;
  - (b) a statement of the adjustments provided for in section 4.01; and
  - (c) all other documents necessary to complete the purchase and sale of the Land.
- 5.02 Prior to the Completion Date,
- (a) the BCTFA, at its expense, will deliver the executed documents referred to in section 5.01 to the Purchaser's solicitor, in trust, on the Purchaser's solicitor's undertaking to deliver the Purchase Price and the HST, if any, to the BCTFA in accordance with section 6.03; and
  - (b) the Purchaser, at its expense will deliver the Release of Claim document fully and properly executed by the Purchaser, to the BCTFA's solicitor, in trust, on the BCTFA's solicitor's undertaking not to deal with or make use of it until such time as the Transfer has been submitted for registration in the Land Title Office under section 6.03 and the Purchaser's solicitor is in receipt of a post-application search of the title to the Land indicating that in the normal course of procedure in the Land Title Office the Purchaser will be registered as the owner in fee simple of the Land free and clear of all liens, charges and encumbrances except the Permitted Encumbrances.

## **ARTICLE 6 - CLOSING PROCEDURE**

- 6.01 The Purchaser will cause its solicitor to hold the Transfer in trust to be dealt with in accordance with this Article.
- 6.02 The Purchaser's solicitor, or the solicitor's agent, will attend at the Land Title Office on the Completion Date and conduct a pre-application search of title to the Land and, upon being satisfied that title to the Land is registered in the name of the BCTFA free and clear of all liens, charges and encumbrances except the Permitted Encumbrances, the Purchaser's solicitor, or the solicitor's agent, will apply to register the Transfer in the Land Title Office.
- 6.03 After applying to register the Transfer in the Land Title Office in accordance with section 6.02, the Purchaser's solicitor, or the solicitor's agent, will conduct a post-application search of the title to the Land and, upon confirming that in the normal course of procedure in the Land Title Office the Purchaser will be registered as the owner in fee simple of the Land free and clear of all liens, charges and encumbrances except the Permitted Encumbrances, the Purchaser's solicitor, at the Purchaser's expense, will deliver to the BCTFA the balance of the Purchase Price and the HST, if any, to be remitted to the BCTFA in accordance with section 3.03, together with a copy of the Transfer with registration particulars noted on it.

## **ARTICLE 7 - TRANSFERS ON OR BEFORE THE COMPLETION DATE**

- 7.01 The Purchaser will not, on or before the Completion Date, assign, transfer or dispose of its rights under this Agreement in whole or in part, without the prior written consent of the BCTFA, which consent may be withheld by the BCTFA in its sole discretion.
- 7.02 If the BCTFA provides its consent under section 7.01, the consent does not release the Purchaser from its obligations under this Agreement.

## **ARTICLE 8 - WARRANTIES, REPRESENTATIONS AND ACKNOWLEDGMENTS OF THE PURCHASER**

- 8.01 The Purchaser warrants and represents to the BCTFA, with the knowledge that the BCTFA will rely upon these warranties and representations in entering into this Agreement and completing its obligations under this Agreement, that now and on the Completion Date,
- (a) it is a municipal corporation under the *Local Government Act*;
  - (b) it has the corporate power, capacity and authority to enter into this Agreement and to carry out its obligations under this Agreement, all of which have been authorized by the necessary municipal corporation proceedings; and
  - (c) it has satisfied itself as to
    - (i) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and on or under any surrounding or neighbouring land and the current and past uses of the Land,
    - (ii) the fitness of the Land for any particular use, including the intended use of it by the Purchaser,
    - (iii) the general condition and state of all utilities or other systems on or under the Land, and
    - (iv) the zoning of the Land and the bylaws of the municipality or regional district within which the Land is located which relate to the use and occupation of the Land.
- 8.02 The Purchaser acknowledges and agrees that
- (a) it has inspected the Land and it accepts the Land in the general condition and state in which it was found on the date of that inspection;
  - (b) it has conducted or has had an opportunity to conduct an independent investigation of the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and on or under any surrounding or neighbouring land and the current and past uses of the Land;

- (c) the Land is being sold to it "as is";
- (d) in entering into this Agreement it has not relied upon any warranty or representation given by or on behalf of the BCTFA concerning
  - (i) the fitness of the Land for any particular use, including the intended use of it by the Purchaser,
  - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and on or under any surrounding or neighbouring land and the current and past uses of the Land,
  - (iii) the general condition and state of all utilities or other systems on or under the Land, and
  - (iv) the zoning of the Land and the bylaws of the municipality or regional district within which the Land is located which relate to the use and occupation of the Land;
- (e) it has made its own investigation of the economic feasibility of the development of the Land;
- (f) there are no warranties, representations, collateral agreements or conditions affecting this Agreement except as set out in this Agreement;
- (g) the BCTFA is under no obligation, express or implied, to provide financial assistance or to contribute, in any way, to the Purchaser's cost of servicing or developing the Land or to assist the Purchaser in obtaining any permits or approvals in connection with the Land;
- (h) nothing in this Agreement constitutes it as the agent, joint venturer or partner of the BCTFA; and
- (i) this Agreement and information regarding this Agreement may be disclosed or required to be disclosed under the *Freedom of Information and Protection of Privacy Act*, governmental policy or otherwise.

8.03 If the Purchaser is comprised of more than one person, all covenants and obligations of the Purchaser will be deemed to be joint and several covenants and obligations of each of those persons.

8.04 The Purchaser waives, to the extent permitted by law, any requirement for the BCTFA to provide to the Purchaser a "site profile" for the transfer of the Land under the *Environmental Management Act* or any regulation under that Act.

## ARTICLE 9 - WARRANTIES AND REPRESENTATIONS OF THE BCTFA

- 9.01 The BCTFA warrants and represents to the Purchaser, with the knowledge that the Purchaser will rely upon these warranties and representations in entering into this Agreement and completing its obligations under this Agreement, that:
- (a) it has the power and authority to dispose of the Land and the necessary proceedings have been taken by it to enter into this Agreement and to carry out its obligations under this Agreement;
  - (b) it has a good, safe holding and marketable title to the Land in fee simple free and clear of all liens, charges and encumbrances except the Permitted Encumbrances;
  - (c) all taxes, rates, levies and assessments in respect of the Land will either be paid in full or adjusted between the parties in accordance with section 4.01;
  - (d) neither the execution of this Agreement nor its performance by the Province will result in a breach of any statute, bylaw or agreement affecting the BCTFA or BCTFA Land;
  - (e) there is no claim or litigation pending or threatened against it which would affect the right of the Purchaser to acquire the Land;
  - (f) to the best of its knowledge, the Land has not been used for an industrial or commercial purpose or activity described in Schedule 2 of the *Contaminated Sites Regulation* or any other purpose or activity prescribed under the *Environmental Management Act*; and
  - (g) it is unaware of any environmental contamination of the Land.

#### ARTICLE 10 - MISCELLANEOUS

- 10.01 Time is of the essence of this Agreement.
- 10.02 The Land is at the risk of the BCTFA until the Transfer is submitted for registration in the Land Title Office.
- 10.03 This Agreement is the entire agreement between the parties with respect to the purchase and sale of the Land and may not be modified except by subsequent agreement in writing.
- 10.04 All notices, documents or communications required or permitted to be given under this Agreement must be in writing and will be deemed to have been given if delivered by hand, courier or facsimile to the party to whom it is to be given as follows:

to the Purchaser:

City of Burnaby  
4949 Canada Way  
Burnaby, British Columbia V5G 1M2  
Attention: City Solicitor  
Facsimile: (604)294-7985

to the BCTFA:

Legal Services Branch  
Ministry of Justice  
7<sup>th</sup> Floor – 1675 Douglas Street,  
Victoria, BC V8W 2G5  
(Mailing: PO Box 9289, Stn Prov Govt, Victoria, BC V8W 9J7)  
Attention: Andrea Brace, Legal Counsel  
Facsimile: (250)387-1010

provided, however, that a party may, by notice in writing to the other, specify another address for service of notices under this Agreement and, where another address is specified under this section, notice must be delivered to that address in accordance with this Article.

- 10.05 Delivery of the Transfer to the Purchaser's solicitor and delivery of the executed Release of Claim to the BCTFA's Solicitor and of all money to the BCTFA will be effected by hand or courier to the address specified in this Agreement, such deliveries to be effective only on actual receipt.
- 10.06 The warranties, representations and agreements contained in this Agreement will not be subject to merger but will survive the sale of the Land to the Purchaser.
- 10.07 No term, condition, covenant or other provision of this Agreement will be considered to have been waived by a party unless such waiver is expressed in writing by the party. 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.
- 10.08 No remedy conferred upon or reserved to either party is exclusive of any other remedy in this Agreement or provided by law, but such remedy will be cumulative and will be in addition to any other remedy in this Agreement now or hereafter existing at law, in equity or by statute.
- 10.09 This Agreement is binding upon and enures to the benefit of the BCTFA and its assigns and the Purchaser and its heirs, executors, administrators, successors and permitted assigns.
- 10.10 This Agreement creates contractual rights only between the parties, does not create any equitable or legal interest in the Land and will not be registered by the Purchaser at any land title office at any time. If the Purchaser registers or attempts to register this Agreement at any land title office at any time, this Agreement will be voidable at the BCTFA's option.
- 10.11 The BCTFA and the Purchaser will perform such further acts and execute such further documents as may reasonably be required to give effect to this Agreement.
- 10.12 The appendices to this Agreement form part of this Agreement.

- 10.13 The Purchaser warrants to the BCTFA that the Purchaser has not utilized the services of any real estate agent or salesperson in connection with the purchase or sale of the Land to whom any fees, commission or compensation may be payable by the BCTFA, except to the extent the Land is listed under a multiple listing service.

#### **ARTICLE 11 - INTERPRETATION**

- 11.01 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties so require.
- 11.02 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.
- 11.03 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 11.04 Where there is a reference in this Agreement to an enactment of the Province of British Columbia or of Canada, that reference will include a reference to any prior or subsequent enactment of the Province of British Columbia or Canada, as the case may be, of like effect and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.

11.05 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.

**IN WITNESS WHEREOF** each of the parties hereto have executed this Agreement as set out below:

SIGNED on behalf of  
**BC TRANSPORTATION FINANCING AUTHORITY**  
by its authorized signatory this \_\_\_\_ day of  
\_\_\_\_\_, 2012:

\_\_\_\_\_  
Authorized Signatory

SIGNED on behalf of the **CITY OF BURNABY**  
by its authorized signatory(ies) this \_\_\_\_ day of  
\_\_\_\_\_, 2012:

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

## **APPENDIX 1 TO SCHEDULE B - PERMITTED ENCUMBRANCES**

All subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the Land.

## APPENDIX 2 TO SCHEDULE B – RELEASE OF CLAIMS

### RELEASE OF CLAIMS

THIS RELEASE is dated for reference November 7th, 2012.

BETWEEN:

**CITY OF BURNABY**, a municipal corporation under the *Local Government Act*

(the "Releasor")

AND

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the minister responsible for the *Transportation Act*

(the "Province")

**WHEREAS:**

- A. The Province expropriated the lands described in Attachments 1 and 2 from Burnaby for the Project (as defined below);
- B. The parties have agreed on certain compensation to be paid by the Province to the Releasor and the Province has requested the Releasor to execute and deliver this Release to it.

**IN CONSIDERATION** of the sum of One Dollar (\$1.00) now paid by the Province to the Releasor and the entering into of the Agreement of Purchase and Sale (as defined below), the receipt and sufficiency of which consideration is acknowledged by the Releasor, the parties agree as follows:

- 1. In this Release,

**"Agreement of Purchase and Sale"** means the agreement dated for reference November 7, 2012, of which this Appendix forms a part;

**"BCTFA"** means the BC Transportation Financing Authority, a corporation continued under the *Transportation Act*;

"**Expropriations**" mean the expropriations effected by the Province by Expropriation Notice CA 2544668 as to the lands described in Attachment 1, and by Expropriation Notice CA 2543084 as to the lands described in Attachment 2;

"**Land**" means the land described in Attachments 1 and 2;

"**Project**" means the Evergreen Line Rapid Transit Project;

"**Releasees**" means the BCTFA and the Province and their respective employees, servants, directors, officers, deputies, delegates, representatives, agents, successors and assigns; and

"**Subject Matter**" means the subject matter of this Release as described in subsection 2(a).

2. The Releasor covenants and agrees that

- (a) it will not commence, maintain or assign any action, suit or proceeding of any kind in any Court of law or equity, nor cause, assist in, acquiesce in or permit its name to be used in any legal action, of any kind, directly or indirectly against the Releasees, on account of all actions, causes of action, claims, suits, debts, contracts, damages, demands, costs and expenses of every nature and kind, whether known or unknown which it has had, now has or at any time in the future may have in any way resulting or arising from any cause, matter or thing existing up to the present time or in the future directly or indirectly relating to
  - (i) the Expropriations, and
  - (ii) the compensation to be paid to it for the expropriation of the Land as described in subsection (c) below;
- (b) it will not make any claim or take any proceeding directly or indirectly relating to the Subject Matter against any other person, corporation or entity who might claim contribution or indemnity from the Releasees;
- (c) all claims for compensation which the Releasor may be able to claim under the *Expropriation Act* or the *Transportation Act* have been settled between the parties;
- (d) it is the person entitled to receive compensation with respect to the Subject Matter and it has not assigned the right to receive such compensation to any other person; and
- (e) if it is corporation,
  - (i) it has been incorporated or registered and it exists under the laws of British Columbia or it has been incorporated and it exists under the laws of Canada, and
  - (ii) it has the corporate power, capacity and authority to enter into this Release and its entry into this Release has been authorized by the necessary corporate proceedings.

3. The Releasor acknowledges and agrees that
  - (a) this Release may be treated as a defence to any action or proceeding concerning the Subject Matter that may be brought, instituted or taken by it, or on its behalf, against the Releasees and will forever be a complete bar to the commencement or prosecution of any action or proceeding against the Releasees and the Releasor agrees to, and does hereby consent to, the dismissal of any such action or proceeding; and
  - (b) it has read this Release and it has received independent legal advice with respect to the execution of this Release and it confirms that it fully knows and understands its contents and it is entering into this Release of its own free will.
4. No party will, directly or indirectly, assign this Release or any of the rights contained in this Release to any other person.
5. This Release enures to the benefit of, and is binding on, the parties and their respective heirs, executors, administrators and successors.
6. In this Release, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Release it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
7. This Release will be interpreted according to the laws of the Province of British Columbia.
8. Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Release, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Release are enactments of the Province of British Columbia.
9. Each Attachment to this Release is an integral part of this Release as if set-out at length in the body of this Release.
10. Notwithstanding the date of execution of this Release, it is deemed to take effect on the date of the Expropriations.

11. If the Releasor is comprised of more than one person, all covenants and agreements of the Releasor in this Release will be deemed to be joint and several covenants and agreements of each of those persons.

IN WITNESS WHEREOF this Release has been executed as of the date first written above.

**SIGNED** on behalf of **CITY OF BURNABY**  
by its authorized signatory

---

Authorized Signatory

**SIGNED** on behalf of **HER MAJESTY THE  
QUEEN IN RIGHT OF THE PROVINCE  
OF BRITISH COLUMBIA** by the  
minister responsible for the *Transportation Act*  
or the minister's authorized representative

---

Minister responsible for the *Transportation Act*  
or the minister's authorized representative

## ATTACHMENT 1 TO APPENDIX 2– RELEASE OF CLAIMS

s.16,s.17

## ATTACHMENT 2 TO APPENDIX 2- RELEASE OF CLAIMS

s.16,s.17



## SCHEDULE C

### PROJECT IMPLEMENTATION

The Province agrees to and acknowledges the following:

1. Regarding noise attenuation:

- (a) The Province must ensure noise barriers are placed on the guideway just east of Lougheed Station between the Gatineau Place/North Road intersection and the current eastern end of the Evergreen Line platform constructed with the Millennium Line.
- (b) The remainder of the guideway will be designed to facilitate potential future installation of guideway noise barriers.
- (c) Subject to the outcome of post-construction noise monitoring, where noise warrants mitigation, the mitigation will be aimed at addressing the source (road-based and/or guideway-based) of the noise.

2. Regarding Lougheed Town Centre Station:

s.16,s.17

3. Regarding Burnaby-owned infrastructure:

- (a) Like-for-Like replacement of Burnaby-owned infrastructure impacted by the Works as set out in section 7.
- (b) Except as otherwise agreed, the widening of North Road will be substantially in compliance with *North Road Widening & Duct Bank Construction Drawings* as of 2011 December and Schedule F to this Agreement.
- (c) Provide asphalt overlay of the southbound lanes of North Road between Lyndhurst Street and south of Gatineau Place upon completion of guideway construction.

4. Burnaby is saved harmless from any blockage by concrete or sediment of its storm sewer system or release of hazardous waste (as that term is defined in the *B.C. Environmental Management Act*) and/or deleterious substance (as that term is defined in the *Fisheries Act*) into its storm sewer system and into the receiving environment (such as water body, soil or creek bed) which has arisen from undertaking the Works during the Evergreen Line construction period.
5. Regarding non-municipal lands:
  - (a) Any contaminated soil excavated in the course of carrying out the Works (Advance) on lands that have been or will be dedicated to the public as highway will be excavated and removed in conformance with applicable B.C. Ministry of Environment *Technical Guidance on Contaminated Sites*. Any fill material used by the Province for Works (Advance) must meet numerical soil and groundwater standards for commercial lands in accordance with applicable law.
  - (b) Where the Province modifies private titled lands for a temporary bus facility, the Province will, at the end of such usage, not leave any infrastructure on those lands that were not there before the site was modified for use as a temporary bus facility. In particular, the Province will not install parking meters on those lands.
  - (c) For any such lands which the Province has or will dedicate to the public as highway, the Province will, prior to completion of the Works, remove any private infrastructure which would not normally be allowed within a public highway, including but not limited to any parking areas, signage, or underground storage facilities.
6. Regarding the use of land located at 9989 Sullivan Street and 9990 David Drive, (this area is defined for the purposes of this section 6 as "the Sullivan/David Land Area") by the Province:

s.16,s.17

7. Regarding Resumed Roads, defined in Appendix 1 to this Schedule, during the period of construction of the Evergreen Line:
- (a) The Province will keep Burnaby advised concerning any proposed modifications to infrastructure for the Evergreen Line Project after the Effective Date.
  - (b) Before and after construction of the Works (Advance), the Province will carry out pre-construction and post-construction condition surveys of City of Burnaby infrastructure (excluding video surveys inside sanitary and water infrastructure) that may be impacted by construction, and submit copies of all survey materials to Burnaby. Burnaby will review materials and carry out additional post-construction surveys, as applicable.
  - (c) In the event that any of the infrastructure referred to in section 7(b) has been damaged, except where damage is done by Burnaby or parties associated with or working for Burnaby, it will be repaired to Like-for-Like standards at the Province's expense prior to completion of the Project.
  - (d) The repair work will be done by:
    - (i) Burnaby if the damage is to the water system; and
    - (ii) the Province if the damage is to other infrastructure.
  - (e) The Province will not introduce any invasive species as part of the Evergreen Line construction.
  - (f) Except as otherwise agreed, impacted areas excluding roads and sidewalks will be hydroseeded by the Province prior to completion of the Project.
  - (g) While those roads are designated as arterial highways, the Province will have ownership of, and maintenance responsibility for:
    - (i) the road, including sub-grade, curbs, sidewalks, etc.;
    - (ii) infrastructure on or above the road, including but not limited to, signage, street lights and traffic signals, but excluding parking meters; and

- (iii) catch basins and catch basin leads; and,
- (h) While those roads are designated as arterial highways, Burnaby will retain ownership of, and maintenance responsibility for:
  - (i) parking meters;
  - (ii) the water system;
  - (iii) the sanitary system; and
  - (iv) the storm sewer, excluding catch basins and catch basin leads.
- (i) Upon substantial completion of the Works within Burnaby, on a schedule mutually acceptable to Burnaby and Province, Burnaby will undertake a final post-construction inspection of the Burnaby infrastructure for compliance with this Agreement. Within 15 business days after the Burnaby's inspection, Burnaby will provide a letter to the Province listing, with specificity, the deficiencies, if any, of the Works in the context of this Agreement. Where required in accordance with this Agreement, the Province will repair, correct or replace the applicable Burnaby infrastructure at its cost. Failure of Burnaby to provide a letter within 15 business days of the inspection will be deemed to be acceptance by Burnaby of the condition of the Burnaby infrastructure.
- (j) In the case of a perceived emergency or other urgent situation, both the Province and Burnaby will be authorized to take all such action as either of them considers necessary and appropriate, without prior written notice to the other in relation to the subject roads, and to have access to and occupation and use of the subject roads and any adjacent Burnaby lands which either of them reasonably considers to be required for the purposes of dealing with the emergency or other urgent situation; provided that in such event the party taking such action will, as soon as reasonably practicable, and in any event no later than two business days following the occurrence of such emergency or other urgent situation, deliver notice to the other confirming the nature of the emergency or other urgent situation and the actions taken by it in connection therewith.

8. Regarding other general matters:

s.16,s.17

- (c) Burnaby will have an opportunity to comment on design drawings prior to finalization of design for the Works, where applicable.

- (d) Where time permits, Burnaby will have an opportunity to comment on all proposed traffic management plans, including changes to traffic signal timings or other traffic control devices and temporary or permanent closure of any road, lane or sidewalk. Where time does not permit, Burnaby will be advised of these changes as soon as practicable.
- (e) The Province will develop implement and document a post-construction signal timing plan for signalized intersections prior to completion of the Project.

Page 358 to/à Page 362

Withheld pursuant to/removed as

s.16;s.17

**APPENDIX 2 TO SCHEDULE C – PROJECT IMPLEMENTATION**  
**North Road Centre Median**

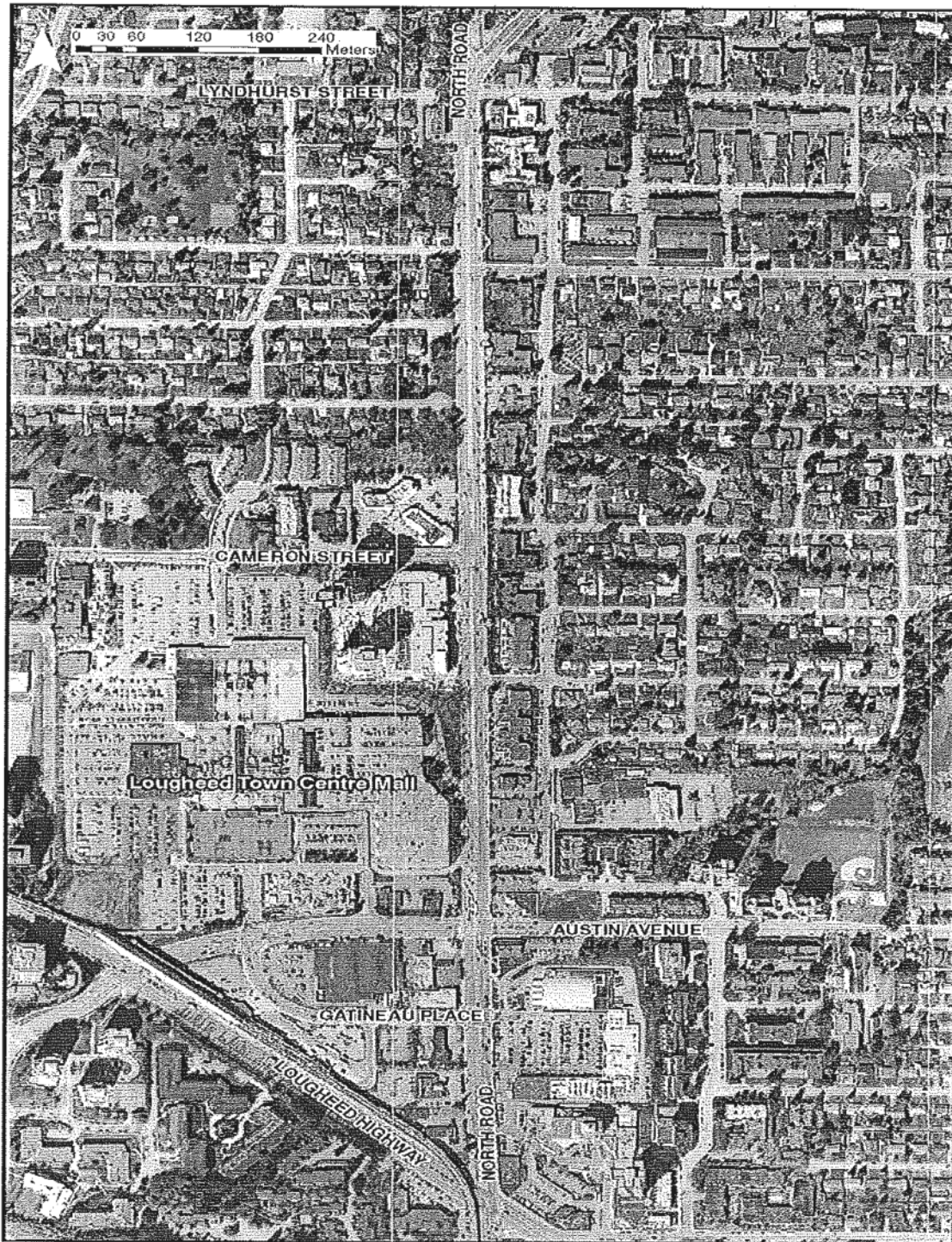
1. The North Road Median is located on North Road south of Lyndhurst Avenue and north of Lougheed Hwy as shown in Drawing 1 below.
2. The Province or its contractor will construct the North Road Median with soft landscaping similar to that described in section 4 in accordance with the Province's commitments in the Proponent's Table of Commitments to the Environmental Assessment Certificate.
3. Burnaby and the City of Coquitlam ("Coquitlam") may choose to upgrade to the "Enhanced Median Treatment" as provided for in sections 5 and 7.
4. The North Road median between Lougheed Hwy and Lyndhurst Avenue will generally be treated with soft landscaping as follows:
  - a. 0.5 metre concrete aprons along the curbs;
  - b. Top soil and bark mulch to BCSLA/BCNLA Landscape standards;
  - c. Planting of 40% shrubs and 60% grass sod to BCSLA/BCNLA standards;
  - d. Irrigation to cover the planting described in section 4(c);
  - e. Electrical service to each island for lighting; and
  - f. Temporary inserts in columns for guideway and column lighting.
5. The current concept for the Enhanced Median Treatment, as developed by Burnaby and Coquitlam, includes:
  - a. Enhanced drainage, including downpipe aesthetic treatment;
  - b. Metal trellis fencing;
  - c. Enhanced planting of shrubs;
  - d. Enhanced irrigation to cover the planting described in section 5(c); and
  - e. Detailed design for the above.
6. Burnaby acknowledges that the responsibility to maintain and repair the soft landscaping referred to in section 4 and the Enhanced Median Treatment works and landscaping will become Burnaby's upon the return of the North Road Median to Burnaby. Burnaby further acknowledges that it may need to acquire rights of access from TransLink in order to carry out such maintenance and repair.
7. Burnaby and Coquitlam have tentatively agreed to share the costs of the Enhanced Median Treatment to a maximum amount of s.16,s.17 including applicable taxes.
8. Burnaby acknowledges that the conceptual drawings, attached as Drawings #2 and #3, are subject to change by the Primary Contractor, who may adjust the centre median to accommodate column placement and guideway alignment.
9. The Province will provide Burnaby with the Primary Contractor's latest drawings that show the final centre median layout as well as final column placements.

10. The details of the Enhanced Median Treatment will be determined in consultation between the Province, Burnaby and Coquitlam.
11. The Province agrees in principle to accept lighting fixtures and related electrical infrastructure attached to the columns prior to the completion of the Evergreen Line subject to the approval by TransLink of the detailed design and the Province negotiating a satisfactory change order with the Primary Contractor under the Project Agreement, and acknowledges that Burnaby and Coquitlam have tentatively agreed to fund such fixtures and electrical infrastructure to a maximum amount of s.16,s.17 including applicable taxes. Burnaby acknowledges and agrees that the ongoing maintenance, repair and replacement of such lighting fixtures and related electrical infrastructure will be the responsibility of Burnaby and Coquitlam and that Burnaby and Coquitlam will need to enter into an appropriate agreement with TransLink regarding same.
12. Burnaby acknowledges that any proposed attachments to columns after completion of the Evergreen Line Project will also require approval from TransLink and will be at Burnaby's cost.
13. The Province will provide the Primary Contractor with the Enhanced Median Treatment design concept and request a price for each of the specific components within that concept, including, without limitation, the detailed design.
14. The Province will provide Burnaby and Coquitlam with the pricing once received from the Primary Contractor.
15. The Province will facilitate a meeting between Burnaby and Coquitlam and the Primary Contractor to review the pricing and to determine the scope of the Enhanced Median Treatment up to a total cost of s.16,s.17 including applicable taxes.
16. Burnaby and Coquitlam may request that the Province issue a change order to the Primary Contractor for the completion of the Enhanced Median Treatment work, and the Province, subject to its entering into an agreement with Burnaby and Coquitlam as to the scope of the change order and the payment of costs related to the change order, and subject to the terms of the Project Agreement with the Primary Contractor, may so proceed.
17. In the case that the Primary Contractor's pricing for the components of the Enhanced Median Treatment is not satisfactory, and if both Burnaby and Coquitlam are in agreement, Burnaby and Coquitlam may request that the Province tender the Enhanced Median Treatment work separately through the BC Bid process, and subject to:
  - (a) the terms of the Project Agreement (if the Enhanced Median Treatment work is carried out prior to substantial completion of the Evergreen Line),
  - (b) the Province entering into an agreement with Burnaby and Coquitlam as to the scope of the proposed work, the payment of costs, the conduct of the tendering and award process and the assumption of risk, and
  - (c) Burnaby and Coquitlam obtaining any necessary approvals from or entering into any agreements with TransLink as may be required,

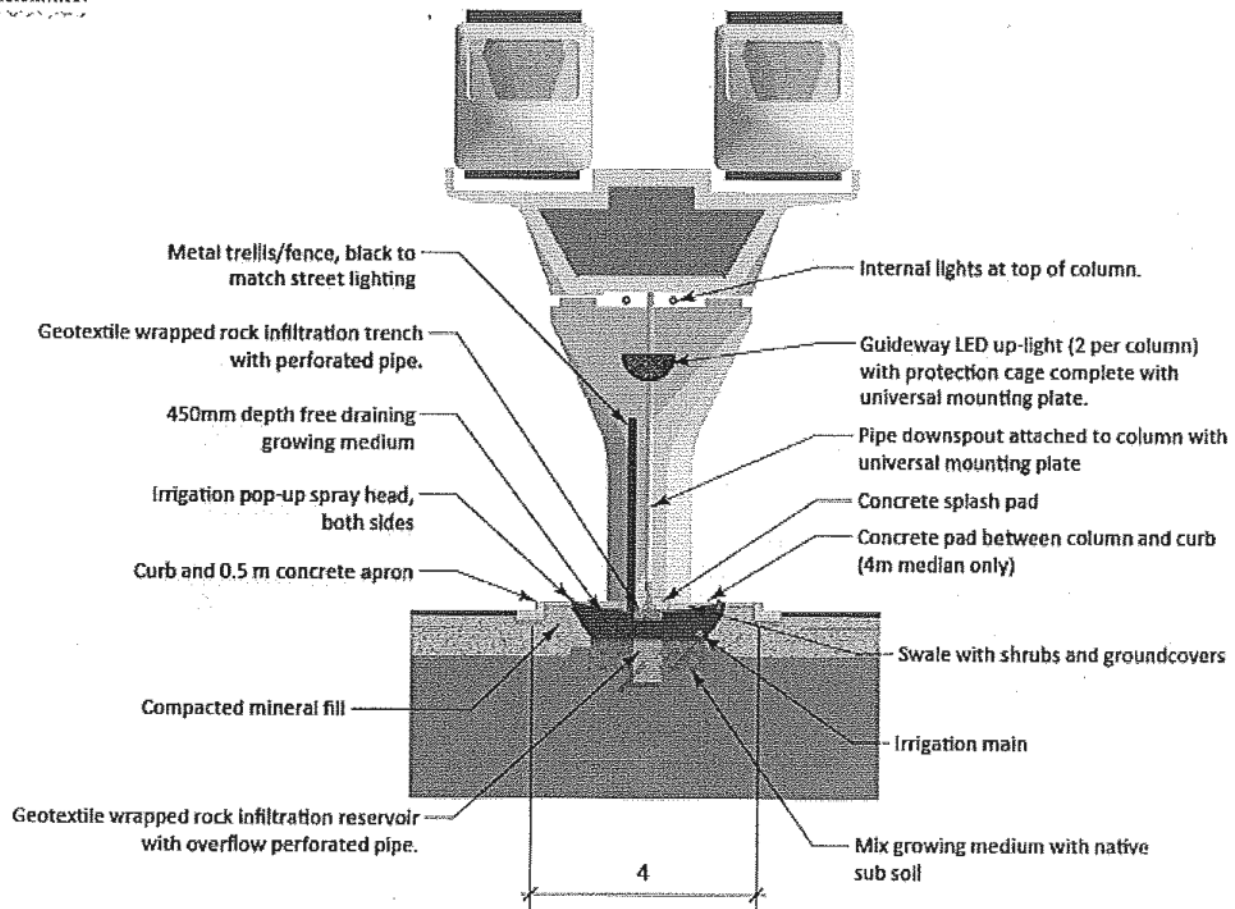
the Province may so proceed.

18. Burnaby and Coquitlam may elect to construct the Enhanced Median Treatment, at their cost, after the Primary Contractor has completed the Evergreen Line, subject to any required approvals or agreement from or with TransLink. In such event, the Province, Burnaby and Coquitlam will enter into an agreement to permit such construction and to deal with related liability, ownership and maintenance issues

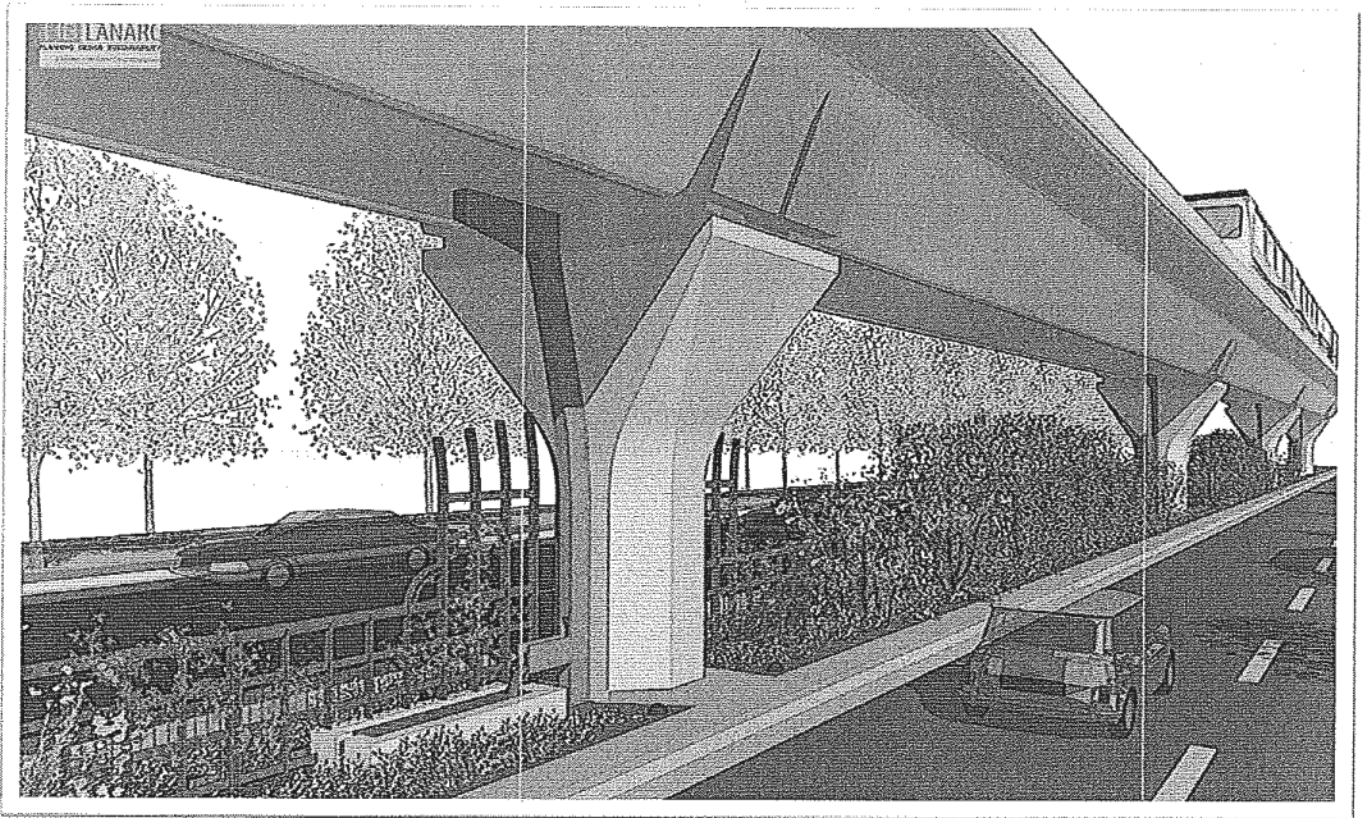
Appendix 2 to Schedule C –Drawing 1



## Appendix 2 to Schedule C – Drawing 2



Appendix 2 to Schedule C - Drawing 3



## **SCHEDULE D – DISPUTE RESOLUTION**

### **Dispute Resolution Procedure**

1. If any Dispute arises at any time, the party which identifies the dispute will give written notice of the Dispute to the other and the following provisions will apply.
2. The parties agree to endeavour to resolve the Dispute as expeditiously as possible, with a view to enabling the design, construction, testing and commissioning of the Burnaby Segment to proceed expeditiously in accordance with the Burnaby Segment schedule.
3. Each of the Province and the City may invite any of its contractors or consultants whose work is the subject of the Dispute to participate in any discussions or proceedings which are the subject of the dispute on terms as to confidentiality and otherwise as the parties may agree.
4. The Senior Project Manager and the City Representative will examine any matter in Dispute as soon as possible and attempt to resolve the Dispute within 10 Business Days following receipt of the notice of the Dispute.
5. If the Senior Project Manager and the City Representative are unable to agree on a resolution of the Dispute within 10 days following receipt of the notice of the Dispute, the Dispute will be referred to the Executive Project Director and the chief administrative officer of the City for resolution.
6. If the Executive Project Director and the chief administrative officer of the City are unable to agree on a resolution of the Dispute within 10 Business Days following the date on which the Dispute was referred to them for resolution, then either party may elect to have the Dispute resolved by litigation in the proper judicial forum, unless the Province and the City have agreed in writing as to some alternative means for resolving the Dispute.

Page 370 to/à Page 372

Withheld pursuant to/removed as

s.16;s.17

## RELEASE OF CLAIMS

THIS RELEASE is dated for reference November 7th, 2012.

BETWEEN:

**CITY OF BURNABY**, a municipal corporation under the *Local Government Act*  
(the "Releasor")

AND

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the minister responsible for the *Transportation Act*  
(the "Province")

WHEREAS:

- A. The Province expropriated the lands described in Attachments 1 and 2 from Burnaby for the Project (as defined below);
- B. The parties have agreed on certain compensation to be paid by the Province to the Releasor and the Province has requested the Releasor to execute and deliver this Release to it.

**IN CONSIDERATION** of the sum of One Dollar (\$1.00) now paid by the Province to the Releasor and the entering into of the Agreement of Purchase and Sale (as defined below), the receipt and sufficiency of which consideration is acknowledged by the Releasor, the parties agree as follows:

- 1. In this Release,

**"Agreement of Purchase and Sale"** means the agreement dated for reference November 7, 2012, of which this Appendix forms a part;

**"BCTFA"** means the BC Transportation Financing Authority, a corporation continued under the *Transportation Act*;

**"Expropriations"** mean the expropriations effected by the Province by Expropriation Notice CA 2544668 as to the lands described in Attachment 1, and by Expropriation Notice CA 2543084 as to the lands described in Attachment 2;

"Land" means the land described in Attachments 1 and 2;

"Project" means the Evergreen Line Rapid Transit Project;

"Releasees" means the BCTFA and the Province and their respective employees, servants, directors, officers, deputies, delegates, representatives, agents, successors and assigns; and

"Subject Matter" means the subject matter of this Release as described in subsection 2(a).

2. The Releasor covenants and agrees that

- (a) it will not commence, maintain or assign any action, suit or proceeding of any kind in any Court of law or equity, nor cause, assist in, acquiesce in or permit its name to be used in any legal action, of any kind, directly or indirectly against the Releasees, on account of all actions, causes of action, claims, suits, debts, contracts, damages, demands, costs and expenses of every nature and kind, whether known or unknown which it has had, now has or at any time in the future may have in any way resulting or arising from any cause, matter or thing existing up to the present time or in the future directly or indirectly relating to
  - (i) the Expropriations, and
  - (ii) the compensation to be paid to it for the expropriation of the Land as described in subsection (c) below;
- (b) it will not make any claim or take any proceeding directly or indirectly relating to the Subject Matter against any other person, corporation or entity who might claim contribution or indemnity from the Releasees;
- (c) all claims for compensation which the Releasor may be able to claim under the *Expropriation Act* or the *Transportation Act* have been settled between the parties;
- (d) it is the person entitled to receive compensation with respect to the Subject Matter and it has not assigned the right to receive such compensation to any other person; and
- (e) if it is corporation,
  - (i) it has been incorporated or registered and it exists under the laws of British Columbia or it has been incorporated and it exists under the laws of Canada, and

- (ii) it has the corporate power, capacity and authority to enter into this Release and its entry into this Release has been authorized by the necessary corporate proceedings.

3. The Releasor acknowledges and agrees that
  - (a) this Release may be treated as a defence to any action or proceeding concerning the Subject Matter that may be brought, instituted or taken by it, or on its behalf, against the Releasees and will forever be a complete bar to the commencement or prosecution of any action or proceeding against the Releasees and the Releasor agrees to, and does hereby consent to, the dismissal of any such action or proceeding; and
  - (b) it has read this Release and it has received independent legal advice with respect to the execution of this Release and it confirms that it fully knows and understands its contents and it is entering into this Release of its own free will.
4. No party will, directly or indirectly, assign this Release or any of the rights contained in this Release to any other person.
5. This Release enures to the benefit of, and is binding on, the parties and their respective heirs, executors, administrators and successors.
6. In this Release, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Release it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
7. This Release will be interpreted according to the laws of the Province of British Columbia.
8. Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Release, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Release are enactments of the Province of British Columbia.
9. Each Attachment to this Release is an integral part of this Release as if set out at length in the body of this Release.
10. Notwithstanding the date of execution of this Release, it is deemed to take effect on the date of the Expropriations.

11. If the Releasor is comprised of more than one person, all covenants and agreements of the Releasor in this Release will be deemed to be joint and several covenants and agreements of each of those persons.

IN WITNESS WHEREOF this Release has been executed as of the date first written above.

**SIGNED** on behalf of **CITY OF BURNABY**  
by its authorized signatory **BLANKA ZEINABOVA**  
*Blanka Zeinabova*  
Authorized Signatory  
Administrative Officer

**SIGNED** on behalf of **HER MAJESTY THE**  
**QUEEN IN RIGHT OF THE PROVINCE**  
**OF BRITISH COLUMBIA** by the  
minister responsible for the *Transportation Act*  
or the minister's authorized representative

*Amanda Farrell*  
Minister responsible for the *Transportation Act*  
or the minister's authorized representative

**ATTACHMENT 1**

s.16,s.17

**ATTACHMENT 2**

s.16,s.17

s.16,s.17



Legal and Lands Department



EVERGREEN LINE RAPID TRANSIT PROJECT INCOMING		
RECIPIENTS	Y	N
Jon Buckle	✓	
Jennifer Locke	✓	
Julie Martin	✓	
TRIM: Peter Mainstevens		

Please reply to:  
Bruce Rose  
City Solicitor  
604-294-7382  
Bruce.Rose@burnaby.ca

by courier

2012 November 15

Evergreen Line Project Office  
2900 Barnet Highway  
Coquitlam BC V3B 0G1

Attn: Jon Buckle

Dear Sirs/Mesdames:

**SUBJECT: EVERGREEN LINE-BURNABY MUNICIPAL AGREEMENT**

We enclose herewith two copies of each of the following documents as executed by the City:

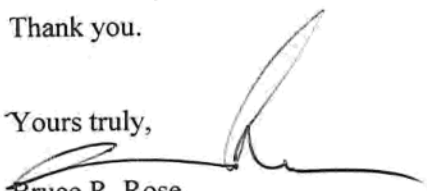
1. Burnaby Municipal Agreement;
2. Agreement of Purchase and Sale;
3. Release of Claims.

Please have the documents executed by the Province or BCTFA, as appropriate, and return one fully executed copy to us.

Please ensure that your copy of the executed Release of Claims is forwarded to Andrea Brace of the Legal Services Branch of the Ministry of Justice to be held pursuant to the terms of Article 5.02(b) of the Agreement of Purchase and Sale.

Thank you.

Yours truly,

  
Bruce R. Rose  
City Solicitor

BR:pa

Copied to: Stuart Ramsey, Manager Transportation Planning

Enclosures

P:\BRUCE\Evergreen Line Office, J Buckle, 20121115.docx