

CONTRIBUTION AGREEMENT

MILLENNIUM LINE BROADWAY EXTENSION MLBE PROJECT

THIS CONTRIBUTION AGREEMENT is executed as of the ____ day of June, 2018 (the “**Execution Date**”),

BETWEEN:

SOUTH COAST BRITISH COLUMBIA TRANSPORTATION AUTHORITY, an entity continued under the *South Coast British Columbia Transportation Authority Act* (British Columbia)
400-287 Nelson’s Court, New Westminster, BC V3L 0E7

(“**TransLink**”)

AND:

CITY OF VANCOUVER, an entity continued under the *Vancouver Charter* (British Columbia)
453 West 12th Ave Vancouver, BC V5Y 1V4

(the “**City**”)

WHEREAS:

- A. The Mayors’ Council on Regional Transportation’s 2014 report entitled Regional Transportation Investments, a Vision for Metro Vancouver (the “**Mayors’ Vision**”) identifies rapid transit between Commercial Drive and the University of British Columbia along the Broadway Corridor as a priority to ensure that the transportation needs of the region are met.
- B. TransLink, as a regional transportation agency, has the mandate to plan, prioritize, secure funding and deliver transportation and transit projects, and create an integrated transportation and transit system within the regional transportation service region as defined in the *South Coast British Columbia Transportation Authority Act* (British Columbia) (the “**TransLink Act**”).
- C. The Mayors’ Vision includes the first phase of rapid transit between Commercial Drive and the University of British Columbia, with such first phase comprising an approximately 6.0 km extension of the Millennium Line from its current terminus at VCC- Clark Station to a new western terminus at Arbutus Street (the “**MLBE Project**”).
- D. The City, as the host municipality of the MLBE Project has the mandate to provide governance within its municipal boundaries pertaining to the exercise of powers and duties provided to it under the *Vancouver Charter*.
- E. The Mayors’ Vision calls on parties to enter into one or more Project Partnership Agreements (each, a “**PPA**”) whenever the region is making a major investment involving significant cost and risk, the success of which depends on higher degrees of coordination, collaboration and mutually supportive actions by multiple partners. The Parties agree that the MLBE Project requires such PPAs.

- F. This MLBE Project will have four PPAs:
- (i) an executed Memorandum of Understanding between TransLink and the City, dated September 20, 2017;
 - (ii) a Supportive Policies Agreement between TransLink and the City dated June ____, 2018;
 - (iii) this Contribution Agreement; and
 - (iv) a Project Master Agreement (the “**PMA**”) to be entered into between TransLink and the City prior to the release of the Request for Proposals for design and construction of the MLBE Project.
- G. The PMA is intended to be a comprehensive agreement between TransLink (or the delivery agent for the MLBE Project) and the City and will set out the parties’ respective legal rights and obligations regarding the design, construction, and operation of the MLBE Project, including without limitation, the allocation of legal and financial risk and the legal grant of access rights to TransLink over City MLBE Lands.
- H. To meet the requirements under the TransLink Act for investment plans to be properly funded with established funding resources, TransLink has requested the City confirm its ability and intent to provide certain financial contributions to TransLink which are additional to what the PMA would normally provide and which in part relate to the prior access agreements for the Expo Line and Millennium Line.
- I. This Contribution Agreement is intended to confirm the financial contributions which the City is making to TransLink with respect to the Expo Line and Millennium Line and to set out the mutual intent of the parties with respect to the financial contributions to be made by the City with respect to the MLBE Project pending their inclusion in the PMA.

NOW THEREFORE:

The Parties hereby acknowledge, confirm and agree as follows:

1.0 INTERPRETATION

1.1 Definitions

In this Contribution Agreement, including the Recitals and Schedules hereto, unless otherwise specified or the context otherwise requires, the following words and expressions have the following meanings:

- (a) “**Annual Commercial Revenue Report**” has the meaning given in Section 3.7(b);
- (b) “**Annual Fibre Revenue Report**” has the meaning given in Section 4.3;
- (c) “**Approved CRU Plan**” has the meaning given to it in Section 3.2(a);
- (d) “**BCTFA**” means the British Columbia Transportation Financing Authority;
- (e) “**Business Day**” means a day on which banks are open for business in the City of Vancouver except a Saturday, Sunday or “holiday” (as such term is defined in the *Interpretation Act* (British Columbia));

- (a) “**City**” means the municipal corporation called the “City of Vancouver” and continued pursuant to the *Vancouver Charter*;
- (f) “**City CRCA Share**” has the meaning given in Section 3.7(a)(ii);
- (g) “**City CRU Share**” has the meaning given in Section 3.7(a)(i);
- (h) “**City Engineer**” means the City’s General Manager of Engineering Services as such title may be amended or superseded from time to time;
- (i) “**City Expo/Millennium Lands**” means the portions of Designated Street (as that term is used in the Street Use Agreement) occupied by the Expo Line as well as the portions of City Lands (as that term is used in the Millennium Line Access Agreement) occupied by the Millennium Line;
- (j) “**City Expo/Millennium/MLBE Lands**” means:
 - (i) City MLBE Lands;
 - (ii) and
 - (iii) City Expo/Millennium Lands;
- (k) “**City Fibre Share**” has the meaning given in Section 4.3;
- (l) “**City MLBE Lands**” means the interest in land set out in Schedule A;
- (m) “**CRCA Agreement**” has the meaning set out in Section 3.4(a);
- (n) “**CRCA Contractor**” has the meaning set out in Section 3.8(a);
- (o) “**CRCA Gross Revenue**” means all monetary and in-kind revenues, receipts, and benefits of any nature, as well as the fair market value of all goods and services received from any third party in exchange for or by way of barter for the provision of goods and services, as accounted for in accordance with PSAB received or earned directly or indirectly by TransLink or any of its affiliates or subsidiaries in connection with any CRCA;
- (p) “**CRU**” means a commercial retail unit located at a SkyTrain Station, and for further certainty, means units having demising walls and a store-front which is parallel to or recessed from the walls of a SkyTrain Station at the perimeter of the pedestrian traffic areas, and include as examples the Legacy CRU and any CRUs that exist elsewhere on the Expo Line and Millennium Line as at the Execution Date;
- (q) “**CRU Gross Revenue**” means all monetary and in-kind revenues, receipts, and benefits of any nature, as well as the fair market value of all goods and services received from any third party in exchange for or by way of barter for the provision of goods and services, as accounted for in accordance with PSAB received or earned directly or indirectly by TransLink or any of its affiliates or subsidiaries in connection with a Legacy CRU or MLBE CRU, and for further certainty includes, without limitation, payments characterized under any related agreement as “base rent” or “percentage rent”;
- (r) “**Customer Related Commercial Activities**” or “**CRCA**” means all retail activities including the operation of vending machines, automatic teller machines (or ATMs), newspaper vending boxes, portable kiosks, other transportation-related activities or services for the benefit of TransLink’s customers, and any other similar activities or

services undertaken by TransLink or its contractors on the City Expo/Millennium/MLBE Lands, provided the foregoing expressly excludes:

- (i) CRUs (which are dealt with in Sections 3.2, 3.3 and 3.5(d)) ;
- (ii) marketing and advertising (which are dealt with in Section 3.5(b)); and
- (iii) telecommunications services (which are dealt with in Section 3.5(c)),

and further provided that such activities are completely located within the area of each relevant SkyTrain Station that is:

- (iv) secured by a gate that restricts public access when such station is not in operation;
 - (v) is within the areas designed and intended for the flow of passenger and pedestrian traffic (as opposed to the areas set back from these areas and specifically designed for CRU); and
 - (vi) is within the City Expo/Millennium/MLBE Lands;
- (s) **“Draft Template”** has the meaning set out in Section 3.1(a);
 - (t) **“Effective Date”** has the meaning given in Section 1.7;
 - (u) **“Execution Date”** has the meaning given at the top of the first page of this Contribution Agreement;
 - (v) **“Expiry Date”** has the meaning given in Section 1.8;
 - (w) **“Expo Line”** means the ALRT (as that term is defined in the Street Use Agreement) as it exists on the Execution Date;
 - (x) **“Fibre Gross Revenue”** means the City’s proportionate share of all monetary and in-kind revenues, receipts, and benefits of any nature, as well as the fair market value of all goods and services received from any third party in exchange for or by way of barter for the provision of goods and services, as accounted for in accordance with PSAB received or earned directly or indirectly by TransLink or any of its affiliates or subsidiaries from all sources in connection with Fibre Optics, with such proportionate share being based on the percentage of the Fibre Optics that are in, on, above or below the City Expo/Millennium Lands for each particular New Fibre Agreement;
 - (y) **“Fibre Optics”** means the fibre-optic cables currently owned by TransLink, BCTFA, or any other agent or affiliate of TransLink or BCTFA, and which consist of 144 strands of optical fibre currently installed along the guideways of the Millennium Line and Expo Line, including any future replacements thereof (but expressly excluding any and all future expansions in capacity or additions thereto);
 - (z) **“Filming”** means TransLink allowing third party movie, film, music, promotional, or other entertainment or educational content producers to utilize the SkyTrain Stations within the Expo Line or Millennium Line or along the MLBE Project for the purposes of filming, recording, or similar activities associated with producing the entertainment or educational content of their production, provided always that such activity is expressly limited to and is not carried out outside of the portion of the SkyTrain Station that is

secured by a gate that restricts public access when such SkyTrain Station is not in operation;

- (aa) **“Finalized Template Retail Agreement”** has the meaning set out in Section 3.1(e);
- (bb) **“FIPPA”** means the *Freedom of Information and Protection of Privacy Act* in British Columbia, as such Act may be amended or superseded from time to time;
- (cc) **“Individual CRCA”** has the meaning set out in Section 3.8(a);
- (dd) **“Individual CRCA Expenses”** has the meaning set out in Section 3.8(d)(ii);
- (ee) **“Individual CRCA Revenue”** has the meaning set out in Section 3.8(d)(ii);
- (ff) **“Legacy CRUs”** means the following CRUs:
 - (i) at Burrard Station, the existing CRU of approximately 470 square feet that is located in the transit plaza on the P1 level, outside of the fare gates and adjacent to the Bentall Centre access door, as shown on the plan attached as Schedule C to this Contribution Agreement; and
 - (ii) at Granville Station, the existing CRU of approximately 300 square feet that is located at the concourse level of the Granville Station outside of the fare gates adjacent to the Seymour Street entrance, as shown on the plan attached as Schedule D to this Contribution Agreement;
- (gg) **“Mayors’ Council”** means the Mayors’ Council on Regional Transportation as established under the TransLink Act;
- (hh) **“Mayors’ Vision”** has the meaning set out in Recital A;
- (ii) **“Millennium Line”** means the RTPO Work (as that term is defined in the Millennium Line Access Agreement) as it exists on the Execution Date of this Agreement;
- (jj) **“Millennium Line Access Agreement”** means the SkyTrain Millennium Line Access Agreement entered into as of May 23, 2000 by the City of Vancouver and British Columbia Transit;
- (kk) **“Minimum Threshold Amount”** means the following amounts for each respective calendar year:
 - (i) for 2019: \$638,408;
 - (ii) for 2020: \$974,551;
 - (iii) for 2021: \$1,260,149;
 - (iv) for 2022: \$1,487,429;
 - (v) for 2023: \$1,714,708;
 - (vi) for 2024: \$2,879,573; and
 - (vii) for 2025 and each successive calendar year: the immediately prior year’s Minimum Threshold Amount plus an amount equal to the immediately prior year’s Minimum Threshold Amount multiplied by a number equal to the

percentage change in the All-items Consumer Price Index for British Columbia, not seasonally adjusted, as published by Statistics Canada for such year (as compared to the prior year);

- (ll) “**MLBE CRU**” means one CRU on the concourse level of and within the “Fare Paid” zone at each of the six MLBE Project SkyTrain Stations;
- (mm) “**MLBE CRU Agreement**” has the meaning set out in Section 3.2(b);
- (nn) “**MLBE Project**” has the meaning given in Recital C;
- (oo) “**MLBE Project SkyTrain Stations**” means the six SkyTrain Stations to be constructed along the MLBE Project, which as of the Execution Date, have the following names: Great Northern Way Station, Mount Pleasant Station, Broadway-City Hall Station, Oak-VGH Station, South Granville Station, and Arbutus Station;
- (pp) “**New Fibre Agreement**” has the meaning set out in Section 4.1(b);
- (qq) “**New Legacy CRU Agreement**” has the meaning given in Section 3.3;
- (rr) “**Party**” means a party to this Contribution Agreement and “**Parties**” means both of them together;
- (ss) “**Permitted Fibre Optics Uses**” means the leasing, licensing, or other revenue-generating access or use rights granted by TransLink or its affiliates to any third party for the use of the Fibre Optics;
- (tt) “**Permitted Retail Agreement**” has the meaning set out in Section 3.1;
- (uu) “**Permitted Retail Uses**” means any use of a CRU or CRCA, which would be permitted by the City in respect of that CRU or CRCA if the City Expo/Millennium/MLBE Lands on which that CRU or CRCA is located were on private land zoned for Retail Use (as defined in the City’s Zoning and Development By-law from time to time for the District Schedule applicable to the location of that CRU or CRCA), provided such Retail Use complies with the terms of this Agreement, and was owned by a private business and the private business was applying for a business licence and tenant improvement permit on private property zoned for retail use;
- (vv) “**PMA**” means a Project Master Agreement as set out in Recital F(iv);
- (ww) “**PPA**” means a Project Partnership Agreement as set out in Recital E;
- (xx) “**PSAB**” means the accounting standards for the use of the public sector in Canada as published, amended or approved from time to time by the Public Sector Accounting Board as such Board may be succeeded from time to time;
- (yy) “**Regional Transportation System**” has the meaning ascribed to it in the TransLink Act;
- (zz) “**Retail Agreement Requirements**” has the meaning set out in Section 3.1(a);
- (aaa) “**SkyTrain Station**” means any building housing the passenger on-boarding and off-boarding area for the Expo Line, Millennium Line, or, upon construction of the MLBE Project within the MLBE Project;
- (bbb) “**Street Use Agreement**” means the Street Use Agreement, dated January 7, 1987, as amended, between the City and British Columbia Transit, as transferred to BC Transportation Financing Authority by *BC Transportation Financing Authority Transit Assets and Liabilities Act* (British Columbia) and the benefit of which has been assigned to TransLink pursuant to Order in Council 399/99, which granted TransLink the ability to

exercise the rights granted to BCTFA pursuant to the Street Use Agreement but did not make TransLink an agent of BCTFA;

- (ccc) “**Street Vending By-law**” means the City of Vancouver Street Vending By-law No. 10868 as such By-law may be amended or superseded from time to time;
- (ddd) “**Term**” has the meaning set out in Section 1.8;
- (eee) “**Total Revenue**” means the sum of:
 - (i) CRU Gross Revenue;
 - (ii) Fibre Gross Revenue; and
 - (iii) CRCA Gross Revenue;
- (fff) “**TransLink Act**” has the meaning set out in Recital B;
- (ggg) “**Vancouver**” means the geographical area generally known as the “City of Vancouver”, the boundaries of which are legally described in Section 6 of the *Vancouver Charter* (but in this Contribution Agreement does not mean the City or the municipal corporation which provides the local government for Vancouver).

1.2 Recitals and Schedules

The Recitals and all Schedules to this Contribution Agreement are incorporated into and form an integral part of this Contribution Agreement.

1.3 Number and Gender

In this Contribution Agreement, words importing the singular number include the plural and vice versa and words importing the neuter, masculine or feminine genders include all genders.

1.4 Headings

The headings in this Contribution Agreement have been inserted for convenience of reference only and will not affect in any way the meaning or interpretation of this Contribution Agreement.

1.5 Statutory References

Each reference in this Contribution Agreement to an enactment is deemed to be a reference to that enactment, and to the regulations made under that enactment, as the same may be amended or re-enacted from time to time.

1.6 Legal Effect of Agreement

This Contribution Agreement is intended to be legally binding on and enforceable by the Parties in accordance with its terms, except for those portions which are expressed as subject to further negotiation and agreement which portions will become legally enforceable and binding upon their incorporation into the PMA and the execution of the PMA by the Parties.

1.7 Effective Date

Notwithstanding Section 1.6 and the entering into of this Contribution Agreement on the Execution Date, this Contribution Agreement will have no legal effect unless and until the date upon which the Mayors' Council approves TransLink's 2018-2027 Investment Plan or such other investment plan (as defined in and required by the TransLink Act that includes the implementation of the MLBE Project (the "**Effective Date**"). If the Effective Date does not occur within 12 months of the Execution Date, this Contribution Agreement will be null and void and of no legal force or effect.

1.8 Term

The term ("**Term**") of this Contribution Agreement will start on the Effective Date and then end on the Expiry Date. Subject to sooner cancellation pursuant to the Street Use Agreement (with respect to Expo Line matters), the Millennium Line Access Agreement (with respect to Millennium Line matters), PMA (with respect to MLBE matters), or Sections 3.6 and 4.2 of this Contribution Agreement, the expiry date ("**Expiry Date**") is the date which is the 11th anniversary of the date on which the MLBE Project begins operations with fare-paying members of the public travelling on the MLBE Project.

1.9 Effect of Expiry

Starting 3 years prior to the Expiry Date of this Contribution Agreement, the parties intend to negotiate in good faith for a renewal or replacement of this Contribution Agreement. Any existing CRCA Agreement, MLBE CRU Agreement, New Legacy CRU Agreement, or New Fibre Agreement (provided it has been entered into in compliance with this Contribution Agreement) will not be cancelled merely by reason of the expiry of this Contribution Agreement but will remain in place until its cancellation or expiry in accordance with its terms except that:

- (a) no CRCA Agreement, MLBE CRU Agreement or New Legacy CRU Agreement be permitted to extend beyond 10 years from the Expiry Date; and
- (b) no New Fibre Agreement be permitted to extend beyond 10 years from the Expiry Date.

1.10 Effect of Cancellation

In the event that this Contribution Agreement is cancelled in whole or in part prior to the Expiry Date, then any existing CRCA Agreement, MLBE CRU Agreement, New Legacy CRU Agreement, or New Fibre Agreement (that is not part of the reason for the cancellation) will not be cancelled merely by reason of the cancellation of this Contribution Agreement but will remain in place until its cancellation or expiry in accordance with its terms except that:

- (a) no CRCA Agreement, MLBE CRU Agreement or New Legacy CRU Agreement will be permitted to extend beyond 10 years from the cancellation date; and
- (b) no New Fibre Agreement will be permitted to extend beyond 10 years from the cancellation date.

2.0 REAL PROPERTY

2.1 City MLBE Lands

- (a) The City will contribute to the MLBE Project, for a price of \$1 payable by TransLink, such portions of the City MLBE Lands, to the extent required by the MLBE Project, and

for the specific purposes required, in accordance with the terms and conditions of the PMA to be negotiated by the Parties. The licensing, assignment, or other disposition of the City MLBE Lands to TransLink will be undertaken by the City prior to the financial close of the MLBE Project in accordance with the terms and conditions of the PMA. Notwithstanding the contribution of the City MLBE Lands, no fee simple interest will be transferred to TransLink and the City will reserve all other rights the City has in and to the City MLBE Lands except to the extent expressly conveyed to TransLink in the PMA.

- (b) For the purposes of calculating the City’s financial contribution to the MLBE Project, the City and TransLink agree that the City MLBE Lands listed in Schedule A will be deemed to have an aggregate value of \$99.8 million, in accordance with the valuation methodology and the associated valuation agreed to by the City and TransLink in July 2017.
- (c) For greater certainty, but subject always to Section 2.1 above, and the last sentence of Section 1.7 above, the City confirms that upon the execution and delivery of the PMA, the expiry or cancellation of this Contribution Agreement will have no legal effect on:
 - (i) the PMA; or
 - (ii) any MLBE CRU Agreement, CRCA Agreement, New Legacy CRU Agreement or New Fibre Agreement except the term of any such agreement as provided for in Sections 1.9 and 1.10 above.

3.0 PERMITTED RETAIL USES

Pursuant and subject to the terms and conditions of this Contribution Agreement, Section 2.05(b) of the Street Use Agreement and Sections 6.1(b) and (c) of the Millennium Line Access Agreement, but only for the Term, and in consideration for the City CRU Share or City CRCA Share, as applicable, the City Engineer now consents to the following Permitted Retail Uses on the following terms and conditions:

3.1 Consent Protocol, Timing and Effect

Whenever in Sections 3.2, 3.3 or 3.4, TransLink requests that the City Engineer consent to, and approve, an MLBE CRU Agreement, New Legacy CRU Agreement, or a CRCA Agreement (each a “**Permitted Retail Agreement**”), the City Engineer shall give his consent and approval in accordance with, and provided that, the following conditions are, in the opinion of the City Engineer, acting reasonably, satisfied:

- (a) TransLink shall submit to the City Engineer for review a draft template (“**Draft Template**”) of the applicable Permitted Retail Agreement that TransLink considers satisfies the requirements of Sections 3.2, 3.3 or 3.4, as applicable (the “**Retail Agreement Requirements**”);
- (b) the City Engineer will then promptly review and approve, or provide comments on, the Draft Template but must reply with an approval or, acting reasonably, reasons why certain provisions of the Draft Template do not conform to the Retail Agreement Requirements,
- (c) the City Engineer must reply in accordance with paragraph (b) as soon as practicable but in any event within 20 Business Days from the receipt of a Draft Template;
- (d) if the City Engineer provides reasons why certain provisions of the Draft Template do not comply with the Retail Agreement Requirements, the Parties will work diligently to settle

the form of the Draft Template within the 20 Business Day period contemplated in paragraph (c);

- (e) upon completion of the process described in paragraphs (b) and (c), the Draft Template will be deemed to be the final approved form of the Draft Template (a **“Finalized Template Retail Agreement”**)
- (f) each time TransLink requests that the City Engineer consent to, and approve, a Permitted Retail Agreement, TransLink shall submit the following to the City Engineer:
 - (i) a final but unexecuted copy of such Permitted Retail Agreement; and
 - (ii) a blacklined copy comparing the applicable Finalized Template Retail Agreement against the Permitted Retail Agreement contemplated in paragraph (i) above to show the cumulative changes made to the Finalized Template Retail Agreement;
- (g) provided that the Permitted Retail Agreement submitted pursuant to paragraph (f) above meets the Retail Agreement Requirements, the City Engineer will provide, in writing to TransLink, his consent and approval of such Permitted Retail Agreement as soon as practicable but in any event no later than within 5 Business Days of receipt of same pursuant to paragraph (f) above;
- (h) if, in the opinion of the City Engineer, acting reasonably, the Permitted Retail Agreement does not comply with the Retail Agreement Requirements then the City Engineer will provide, in writing to TransLink, reasons why certain provisions of the Permitted Retail Agreement do not comply, as soon as practicable but in any event within the 5 Business Day period contemplated in paragraph (g);
- (i) whenever the City Engineer has declined to approved a Permitted Retail Agreement pursuant to paragraph (h), TransLink may re-submit a revised Permitted Retail Agreement to the City Engineer and paragraphs (g) to (k) will apply to the revised and re-submitted Permitted Retail Agreement;
- (j) if no written consent and approval, or if no written reasons for declining such consent and approval, are provided to TransLink in respect of a Draft Template within the 20 Business Day period contemplated in paragraph (c) above, or in respect of a Permitted Retail Agreement within the 5 Business Day period contemplated in paragraph (g) above, and if, in TransLink’s opinion, acting reasonably, the Retail Agreement Requirements have been satisfied, the City Engineer will be deemed to have provided his consent and approval of such Draft Template or Permitted Retail Agreement as the case may be; and
- (k) upon approval by the City Engineer of the Permitted Retail Agreement, TransLink shall not amend any of the terms of such Permitted Retail Agreement prior to its execution and delivery by TransLink and the tenant/licensee unless TransLink re-submits such amended Permitted Retail Agreement to the City Engineer for approval in accordance with paragraph (f) above.

Any consent given by the City Engineer under this Section 3.1 is not an approval of the use under City bylaws, nor approval of the terms as being in compliance with this Contribution Agreement. TransLink remains obligated to comply with the terms of this Contribution Agreement at all times following the receipt of consent.

3.2 MLBE CRUs

- (a) At least 60 days prior to entering into, renewing, extending, modifying, or replacing any agreement with a third party for any MLBE CRU, or commencing the operation of a MLBE CRU, TransLink will prepare and submit a plan that is prepared by a licensed BC Land Surveyor to the City Engineer that:
- (i) generally outlines the proposed location and size of the relevant MLBE CRU relative to property lines and the SkyTrain Station plans (as they then exist);
 - (ii) shows that the proposed location of each MLBE CRU is:
 - (A) within the area of a MLBE Project Station that is:
 - (1) secured by a gate that restricts public access when such station is not in operation;
 - (2) is on the concourse level and in the “Fare Paid” zone; and
 - (3) is within the City MLBE Lands; and
 - (B) when combined with the other MLBE CRUs does not cause the aggregate square footage of all MLBE CRUs to exceed 5,000 square feet;
 - (iii) limits the MLBE CRU to one MLBE CRU per MLBE Project Station unless otherwise agreed to by the City Engineer; and
 - (iv) otherwise complies with the requirements of this Contribution Agreement;
- (collectively, the “**Approved CRU Plan**”).
- (b) Whenever TransLink proposes to enter into, renew, extend, modify, or replace any agreement with a third party for any MLBE CRU, TransLink will obtain the City Engineer’s consent and approval of the proposed agreement (“**MLBE CRU Agreement**”) in accordance with Section 3.1. For the purposes of Section 3.1, TransLink shall ensure that every MLBE CRU Agreement:
- (i) has the Approved CRU Plan attached to it and contains a provision that limits the usable area being granted to the tenant or licensee to the area set out on the Approved CRU Plan;
 - (ii) sets out approved uses which are consistent with Permitted Retail Uses and not permit anything except Permitted Retail Uses;
 - (iii) expressly prohibits the display or sale of tobacco, alcohol, marijuana, or other goods or items reasonably considered by the City Engineer to be inappropriate for sale by a public governmental authority;
 - (iv) be stated as the entire agreement between TransLink and its tenant or licensee;
 - (v) requires the tenant or licensee to:

- (A) add the City as a named or additional insured, and
- (B) release and indemnify, the City and its agents,

to the same extent as TransLink and its agents under the MLBE CRU Agreement;
- (vi) will not have a term which exceeds the lesser of (A) the periods set out in sections 1.9 and 1.10, and (B) the lesser of 10 years (including all rights of renewal or extension) and the remainder of the term of the PMA;
- (vii) does not allow modifications of the agreement without the prior written consent of the City Engineer (such consent not to be withheld in a manner inconsistent with the terms of this Contribution Agreement) and expressly name the City as a third party beneficiary of the agreement;
- (viii) require TransLink’s tenant or licensee to comply with all City bylaws and the terms of this Contribution Agreement as they apply to TransLink’s tenant or licensee but for certainty, and only because the agreement will be with respect to a MLBE CRU located on City MLBE Lands and governed by the PMA, the City now acknowledges and confirms that the Street Vending By-law and assessment-based provisions of the Real Property Taxation provisions of the Vancouver Charter will not apply to the user or TransLink with respect to the MLBE CRU; and
- (ix) requires TransLink’s tenant or licensee to acknowledge that its MLBE CRU Agreement is subject to a revenue-sharing agreement between the City and TransLink and that under the terms of that agreement, TransLink is required to submit a copy of the MLBE CRU Agreement to the City and that the tenant or licensee consents to the disclosure of such information by TransLink to the City during the term of the MLBE CRU Agreement provided always that the City agrees with TransLink to keep such information confidential (subject to the provisions of FIPPA).

3.3 Legacy CRUs

Upon the termination or expiry of any existing tenant’s or licensee’s agreement with TransLink to use a Legacy CRU, and prior to renewing, extending, modifying, or replacing the existing agreement for same, TransLink will obtain the City Engineer’s consent and approval of the proposed agreement (a “**New Legacy CRU Agreement**”) in accordance with Section 3.1 for the use of the Legacy CRU.

- (a) For the purposes of Section 3.1, TransLink shall ensure that every New Legacy CRU Agreement must:
 - (i) have attached a plan that:
 - (A) is prepared by a licensed BC Land Surveyor and outlines the proposed location and size of the Legacy CRU relative to property lines;
 - (B) shows that the proposed location of the Legacy CRU is:

- (1) unless it complies with paragraph (2)d below, no bigger than and in the same location as the prior Legacy CRU, or
 - (2) within the area of a SkyTrain Station that is:
 - a secured by a gate that restricts public access when such station is not in operation;
 - b on the concourse level;
 - c within City Expo/Millennium Lands; and
 - d when combined with the other Legacy CRU does not cause the aggregate square footage of both Legacy CRUs to exceed 1,000 square feet; and
- (C) otherwise complies with the requirements of this Contribution Agreement,
- (ii) include the following conditions:
- (A) set out approved uses which are consistent with Permitted Retail Uses and not permit anything except Permitted Retail Uses;
 - (B) expressly prohibit the display or sale of tobacco, alcohol, marijuana, or other goods or items reasonably considered by the City Engineer to be inappropriate for sale by a public governmental authority;
 - (C) be stated as the entire agreement between TransLink and its tenant or licensee;
 - (D) limit the retail use area to the same location and no bigger area than the Legacy CRUs;
 - (E) require TransLink's tenant or licensee to:
 - (1) add the City as a named or additional insured, and
 - (2) release and indemnify, the City and its agents,to the same extent as TransLink and its agents under the New Legacy CRU Agreement between TransLink and its tenant or licensee;
 - (F) not have a term which exceeds the lesser of (A) the periods set out in sections 1.9 and 1.10, and (B) the lesser of 10 years (including all rights of renewal or extension) and the remainder of the term of the Street Use Agreement;
 - (G) not allow modification of the New Legacy CRU Agreement without the prior written consent of the City Engineer (such consent not to be withheld in a manner inconsistent with the terms of this Contribution

Agreement) and expressly name the City as a third party beneficiary of the agreement;

- (H) require TransLink's tenant or licensee to comply with all City bylaws and the terms of this Contribution Agreement as they apply to TransLink's tenant or licensee, but for certainty, and only because the agreement will be with respect to a Legacy CRU located on City Expo/Millennium Lands and governed by the Street Use Agreement, the City now acknowledges and confirms that the Street Vending By-law and assessment-based provisions of the Real Property Taxation provisions of the *Vancouver Charter* will not apply to the user or TransLink with respect to the Legacy CRU; and
- (I) require TransLink's tenant or licensee to acknowledge that its New Legacy CRU Agreement is subject to a revenue-sharing agreement between the City and TransLink and that under the terms of that agreement, TransLink is required to submit a copy of the New Legacy CRU Agreement to the City and that the tenant or licensee consents to the disclosure of such information by TransLink to the City during the term of the New Legacy CRU Agreement provided always that the City agrees with TransLink to keep such information confidential (subject to the provisions of FIPPA).

3.4 Customer Related Commercial Activities

- (a) Subject to the second sentence of this Section 3.4(a), prior to entering into, renewing, extending, modifying or replacing any agreement with a third party for any CRCA, TransLink will obtain the City Engineer's consent and approval of the proposed agreement (a "**CRCA Agreement**") in accordance with Section 3.1. When:
 - (i) the CRCA Agreement was in effect prior to the Execution Date and is not being amended except to extend or renew its terms, and
 - (ii) the scope of services, locations and goods provided pursuant to the CRCA Agreement will not change,

TransLink does not require the consent of the City Engineer under this section 3.4(a), provided a copy of the renewal or extension document is provided to the City Engineer within 30 Business Days of the execution of such renewal or extension document.

- (b) For the purposes of Section 3.1, TransLink shall ensure that every CRCA Agreement must:
 - (i) require that each CRCA must not take up more than 45 square feet of space in a SkyTrain Station;
 - (ii) set out approved uses which are consistent with Permitted Retail Uses and not permit anything except Permitted Retail Uses;

- (iii) expressly prohibit the display or sale of tobacco, alcohol, marijuana, or other goods or items reasonably considered by the City Engineer to be inappropriate for sale by a public governmental authority;
 - (iv) be stated as the entire agreement between TransLink and its tenant or licensee;
 - (v) require TransLink's tenant or licensee to:
 - (A) add the City as a named or additional insured, and
 - (B) release and indemnify, the City and its agents,to the same extent as TransLink and its agents under the CRCA Agreement;
 - (vi) not have a term which exceeds the lesser of (A) the periods set out in sections 1.9 and 1.10, and (B) the lesser of 10 years (including all rights of renewal or extension) and the remainder of the term of the Street Use Agreement, Millennium Line Access Agreement, or PMA, as applicable;
 - (vii) not allow modification of the CRCA Agreement without the prior written consent of the City Engineer (such consent not to be withheld in a manner inconsistent with the terms of this Contribution Agreement) and expressly name the City as a third party beneficiary of the agreement;
 - (viii) require TransLink's tenant or licensee to comply with all City bylaws and the terms of this Contribution Agreement as they apply to TransLink's tenant or licensee, but for certainty, and only because the agreement will be with respect to a CRCA located on City Expo/Millennium/MLBE Lands and governed by the Street Use Agreement, Millennium Line Access Agreement and/or PMA, the City now acknowledges and confirms that the Street Vending By-law and assessment-based provisions of the Real Property Taxation provisions of the Vancouver Charter will not apply to the user or TransLink with respect to the applicable CRCA referenced in the CRCA Agreement; and
 - (ix) require TransLink's tenant or licensee to acknowledge that its CRCA Agreement is subject to a revenue-sharing agreement between the City and TransLink and that under the terms of that agreement, TransLink is required to submit a copy of the CRCA Agreement to the City and that the tenant or licensee consents to the disclosure of such information by TransLink to the City during the term of the CRCA Agreement provided always that the City agrees with TransLink to keep such information confidential (subject to the provisions of FIPPA).
- (c) The City acknowledges that TransLink may require a CRCA operator to bear the cost of the City CRCA Share generated by that CRCA. TransLink will advise the City in writing if the operator of that CRCA does not wish to operate that CRCA due to the financial burden of bearing the City CRCA Share. In such event, the City and TransLink agree to use commercially reasonable efforts to work out an arrangement to incent the operator to operate that CRCA.

3.5 Consent for Other Uses – No City Revenue Share

The City is not entitled to a share of any revenues generated by the following permitted uses:

- (a) **Filming:** Pursuant to Section 2.05(b) of the Street Use Agreement and Sections 6.1(b) and (c) of the Millennium Line Access Agreement, but only for the Term, the City Engineer now consents to Filming (as limited by the definition of “**Filming**”).
- (b) **Advertising and Marketing:**
 - (i) **Existing Advertising and Marketing:** In this Section 3.5(b), “**Existing Advertising and Marketing**” means the following activities as at the Execution Date:
 - (A) the platform and static poster frames and the scroller frames installed on the interior walls of existing SkyTrain Stations,
 - (B) the vertical card frames and the interior card frames installed inside SkyTrain cars;
 - (C) the space for “Sky Strips” and “Sky Wraps” on the exterior of SkyTrain cars and the space for wall murals and floor graphics on the interior of SkyTrain cars;
 - (D) advertising on bike parking lockers or racks;
 - (E) any digital advertising, product sampling and other relating advertising or marketing activities as currently permitted and exercised pursuant to TransLink’s contract with its advertising agency,

but expressly excludes any and all advertising or marketing directly or indirectly carried out in conjunction with any CRCA.
 - (ii) **Consent for Existing Advertising and Marketing:** Pursuant to Section 2.05(b) of the Street Use Agreement and Sections 6.1(b) and (c) of the Millennium Line Access Agreement, but only for the Term, the City Engineer now consents to advertising and marketing in the SkyTrain Stations and in and on SkyTrain cars along the Millennium Line, Expo Line and the MLBE Project provided the nature, scope and scale of such advertising and marketing is the same as Existing Advertising and Marketing.
 - (iii) **No Consent for Other Advertising or Marketing:** Except as permitted pursuant to section 3.4 No consent is hereby given for any advertising or marketing that is not Existing Advertising and Marketing unless the City and TransLink agree, each acting reasonably, on how to share revenues generated by such other advertising or marketing.
- (c) **Existing Telecommunications Services:**
 - (i) **Telecommunication Services:** In this Section 3.5(c), “**Telecommunication Services**” means cellular and wifi services for TransLink’s customers using the

Expo Line, Millennium or MLBE Project but expressly excludes Permitted Fibre Optics Uses or any use contemplated in a CRCA, except, and only to the extent that, the Telecommunications Services reasonably requires the use of the Fibre Optics.

- (ii) ***Consent for Telecommunications Services:*** Pursuant to Section 2.05(b) of the Street Use Agreement and Sections 6.1(b) and (c) of the Millennium Line Access Agreement, but only for the Term, the City Engineer now consents to TransLink providing Telecommunication Services in the SkyTrain Stations and trains along the Millennium Line, Expo Line and the MLBE Project.
- (iii) ***Pursuing Seamless Connectivity:*** Each of the City and TransLink agree to use commercially reasonable efforts, each bearing its own costs unless otherwise agreed, to pursue seamless connectivity to each other's telecommunications systems within the SkyTrain Stations and trains along the Millennium Line, Expo Line and the MLBE Project.
- (d) ***Existing CRCA:***
 - (i) ***Existing CRCA:*** In this Section 3.5(d), "**Existing CRCA**" means an individual physical CRCA unit currently operating at a SkyTrain Station as at the Execution Date pursuant to a written agreement between TransLink and the CRCA operator that was entered into prior to the Execution Date (an "**Existing CRCA Agreement**"). An example of an Existing CRCA is an automated teller machine or a newspaper vending box.
 - (ii) ***Exclusions from Existing CRCA:*** Existing CRCA expressly excludes (the "**Existing CRCA Exclusions**"): (A) any individual physical CRCA unit that is added or commences operation at a SkyTrain Station after the Execution Date pursuant to the terms of an Existing CRCA Agreement, (B) any individual physical CRCA unit that is added or commences operation at a SkyTrain Station after the Execution Date pursuant to the terms of a new agreement entered into by TransLink and the CRCA operator after the Execution Date, and (C) any new or expanded scope of services provided or goods supplied which were not provided or supplied as at the Execution Date. For greater clarity, the City is entitled, pursuant to Section 3.7, to a share of the revenue generated by Existing CRCA Exclusions.

3.6 Permitted Retail Uses - Condition

The consent granted in Sections 3.1 – 3.5 above is for the duration of the Term, but is subject to automatic cancellation where, (1) TransLink is in breach of a material term of this Contribution Agreement, or (2) TransLink's tenant or licensee is in breach of a material term of the applicable New Legacy CRU Agreement, MLBE CRU Agreement, or CRCA Agreement and TransLink does not take commercially reasonable steps to enforce its agreement with such tenant or licensee.

For greater clarity, in respect of CRUs, this Agreement only applies to MLBE CRUs and Legacy CRUs and does not apply to any other CRU (including, without limitation, any CRU in respect of which consent from the City was obtained pursuant to a written agreement that was entered into by the City and TransLink prior to the date of this Agreement) located at a SkyTrain Station along the Millennium Line or Expo Line.

3.7 City CRU Share and City CRCA Share

- (a) Provided that the Total Revenue is at least equivalent to the Minimum Threshold Amount for the respective year, TransLink will pay to the City an amount equal to the sum of the following:
- (i) 10% of all CRU Gross Revenue (the “**City CRU Share**”); and
 - (ii) 10% of all CRCA Gross Revenue subject to the adjustments, as applicable, pursuant to section 3.8 (the “**City CRCA Share**”).

For greater clarity, the City agrees that TransLink will not be required to pay the City CRU Share or the City CRCA Share, or any portions thereof, in any calendar year unless the Total Revenue for that year is at least equivalent to the Minimum Threshold Amount.

- (b) The amounts to be calculated under this section shall be calculated by TransLink every calendar year starting January 1 of each year. TransLink shall provide to the City Engineer within 90 days of the end of each calendar year a full and reasonably detailed report (“**Annual Commercial Revenue Report**”) showing monthly receipts of (1) CRU Gross Revenue by each individual CRU and (2) CRCA Gross Revenue by each Individual CRCA, along with totals and calculations for year end. The City CRU Share and City CRCA Share shall be paid to the City concurrently with delivery of the Annual Commercial Revenue Report and no later than 90 days after the end of each calendar year. If any year of this Contribution Agreement is less than a full calendar year, TransLink shall calculate and pay the City CRU Share and City CRCA Share by prorating the Minimum Threshold Amount and then applying this clause to the partial period of that shorter year.

3.8 City CRCA Share Adjustment Calculation

Revenue from the following CRCAs will not be included in the calculation of CRCA Gross Revenue for the purpose of calculating the City CRCA Share under Section 3.7(a)(ii):

- (a) revenue from Existing CRCAs, but excluding Existing CRCA Exclusions,
- (b) revenue from Existing Advertising and Marketing,
- (c) revenue from Telecommunications Services, and
- (d) revenue from Individual CRCAs where the Individual CRCA Revenue does not exceed Individual CRCA Expenses for a particular Individual CRCA by more than 10% in the applicable calendar year, on the basis that:
 - (i) each CRCA will be treated as an individual CRCA (each an “**Individual CRCA**”) based on the contractor (“**CRCA Contractor**”) with whom TransLink has a CRCA Agreement;
 - (ii) the CRCA Gross Revenue from an Individual CRCA (“**Individual CRCA Revenue**”) will be compared to the direct out-of-pocket costs payable to or required, and the in-kind value of any portion of TransLink employee time or resources that are directly related (and documented) to such Individual CRCA,

under the express terms of the CRCA Agreement between TransLink and the CRCA Contractor (“**Individual CRCA Expenses**”); and

- (iii) each Individual CRCA will then be assessed at the end of each calendar year.

3.9 Other Costs

Currently, under the *Vancouver Charter and Assessment Act*, the City Expo/Millennium/MLBE Lands are exempt from assessment-based taxation and so no assessment-based real property taxes are currently payable by TransLink, the City, or occupants or licensees of same. In the event that future legislative changes are enacted by the Province of British Columbia that impose taxes on a user of a CRU and part or all of those taxes accrue to the sole benefit of the City (and are not merely collected by the City as an agent of another level of government), the City and TransLink will negotiate an equitable adjustment to this Contribution Agreement that ensures that the City does not receive more or less than the City CRU Share after taking such legislative change into account.

3.10 Value of Permitted Retail Uses Opportunities

For the purposes of calculating the City’s financial contribution to the MLBE Project, the City and TransLink agree that the total of the CRU Gross Revenue less the City CRU Share will be deemed to have a value of:

- (a) \$174,260 in 2019;
- (b) \$277,451 in 2020;
- (c) \$332,728 in 2021;
- (d) \$332,728 in 2022;
- (e) \$332,728 in 2023; and
- (f) \$1,221,433 in 2024.

3.11 Addition of Burrard Station to Expo Line Agreement

- (a) The City agrees to deliver, at its sole cost, a volumetric survey (“**Burrard Plan**”) prepared by a licensed BC Land Surveyor setting out the boundaries of the Burrard Station in relation to the property lines in a form satisfactory to BCTFA and to attach the Burrard Plan to the Burrard Street Station Amendment.
- (b) The City agrees to execute and deliver the amendment to the Expo Line Agreement (“**Burrard Street Station Amendment**”) attached as Schedule B to this Contribution Agreement within 5 Business Days of the following conditions being met:
 - (i) BCTFA executes, delivers, and registers against title to Art Phillips Park, at its sole cost, a Discharge of the Right of Reverter currently registered on title to the lands under Plan 18929 and delivers a copy of the updated title search and registered discharge to the City Solicitor showing same has been fully registered; and

- (ii) BCTFA has duly executed and delivered the Burrard Street Station Amendment to the City.
- (c) The rights and obligations of the Parties with respect to the CRU at Burrard Station will be suspended until such time as the conditions in Section 3.11 (b) are met.

3.12 Support for Customer-Related Commercial Activities

The City will enable TransLink's success in the Customer-Related Commercial Activities by supporting and approving, in a timely manner, any necessary City related permit applications for such Customer-Related Commercial Activities and any other acts required by the City that TransLink or its commercial partners must carry out in order to undertake such Customer-Related Commercial Activities.

4.0 PERMITTED FIBRE OPTICS USES

4.1 Consent for Permitted Fibre Optics Uses

Pursuant to Section 2.05(b) of the Street Use Agreement and Sections 6.1(b) and (c) of the Millennium Line Access Agreement, but only for the Term, and in consideration for the City Fibre Share, the City Engineer now consents to the Permitted Fibre Optics Uses on the following terms and conditions:

- (a) Whenever in this Section 4.1 TransLink requests that the City Engineer consent to, and approve, a New Fibre Agreement (as defined below), the City Engineer shall give his consent and approval in accordance with the process set out in Section 3.1 provided that the term "Permitted Retail Agreement" shall mean a New Fibre Agreement and any reference to Retail Agreement Requirements shall mean a reference to the requirements of this Section 4.1.
- (b) Whenever TransLink proposes to enter into, renew, extend, modify, or replace any agreement with a third party for Permitted Fibre Optics Uses, TransLink will obtain the City Engineer's consent and approval of the proposed agreement ("**New Fibre Agreement**") in accordance with Section 4.1(a).
- (c) For the purposes of Section 4.1(a), TransLink shall ensure that every New Fibre Agreement must:
 - (i) have attached to it as a schedule, a plan that:
 - (A) is prepared by a licensed BC Land Surveyor and outlines the proposed location, size, and configuration of Fibre Optics proposed to be used under the New Fibre Agreement;
 - (B) is prepared by a duly licensed telecommunications engineer that shows in sufficient detail for the City Engineer to ascertain the size and number of optical fibres, telecommunications capacity, attachment infrastructure, and other technical and physical aspects of the Fibre Optics proposed to be used under the New Fibre Agreement;
 - (C) otherwise complies with the requirements of this Contribution Agreement,

- (ii) set out approved uses which are consistent with Permitted Fibre Optics Uses and not permit anything except Permitted Fibre Optics Uses;
- (iii) be stated as the entire agreement between TransLink and the third party user;
- (iv) require the user to:
 - (A) add the City as a named or additional insured, and
 - (B) release and indemnify, the City and its agents,to the same extent as TransLink and its agents under the agreement between TransLink and the user;
- (v) not have a term which exceeds the lesser of (A) the periods set out in sections 1.9 and 1.10, and (B) the lesser of 10 years (including all rights of renewal or extension) and the remainder of the term of the Street Use Agreement or Millennium Line Access Agreement, as the case may be;
- (vi) not allow modification of the New Fibre Agreement without the prior written consent of the City Engineer (such consent not to be withheld in a manner inconsistent with the terms of this Contribution Agreement) and expressly name the City as a third party beneficiary of the agreement;
- (vii) require the user to comply with all laws applicable to telecommunications, City bylaws, other applicable laws, and the terms of this Contribution Agreement as they apply to the user, but for certainty, and only because the agreement will be with respect to telecommunications located on City Expo/Millennium Lands and governed by the Street Use Agreement or Millennium Line Access Agreement, as the case may be, the City now acknowledges and confirms that the Street Vending By-law and assessment-based provisions of the Real Property Taxation provisions of the Vancouver Charter will not apply to the user or TransLink with respect to a New Fibre Agreement; and
- (viii) require the user to acknowledge that its New Fibre Agreement is subject to a revenue-sharing agreement between the City and TransLink and that under the terms of that agreement, TransLink is required to submit a copy of the New Fibre Agreement to the City and that the user consents to the disclosure of such information by TransLink to the City during the term of the New Fibre Agreement provided always that the City agrees with TransLink to keep such information confidential (subject to the provisions of FIPPA).

4.2 Permitted Fibre Optics Uses - Condition

The consent granted in Section 4.1 is for the duration of the Term but is subject to automatic cancellation where, (1) TransLink is in breach of a material term of this Contribution Agreement, or (2) TransLink's user is in breach of a material term of a New Fibre Agreement and TransLink does not take commercially reasonable steps to enforce its agreement with such user.

4.3 City Fibre Share

Provided that the Total Revenue is at least equivalent to the Minimum Threshold Amount for the respective year, TransLink will pay to the City an amount equal to ten per cent (10%) of the Fibre Gross Revenue (the "**City Fibre Share**"). For greater clarity, the City agrees that TransLink will not be required to pay the City Fibre Share, or portions thereof, until such time as the Total Revenue is at least equivalent to the Minimum Threshold Amount for the respective year. The amounts to be calculated under this section shall be calculated by TransLink every calendar year starting January 1 of each year. TransLink shall provide to the City Engineer within 90 days of the end of each calendar year a full and reasonably detailed report ("**Annual Fibre Revenue Report**") showing monthly receipts of Fibre Gross Revenue by user and by New Fibre Agreement, along with totals and calculations for year end. The City Fibre Share shall be paid to the City concurrently with delivery of the Annual Fibre Revenue Report and no later than 90 days after the end of each calendar year. If any year of this Contribution Agreement is less than a full calendar year, TransLink shall calculate and pay the City Fibre Share by prorating the Minimum Threshold Amount and then applying this clause to the partial period of that shorter year.

4.4 Value of Fibre Optic Rights Contribution

For the purposes of calculating the City's financial contribution to the MLBE Project, the City and TransLink agree that the total of the Fibre Optic Revenue less then City Fibre Share will be deemed to have a value of:

- (a) \$430,866 in 2019;
- (b) \$646,294 in 2020;
- (c) \$861,726 in 2021;
- (d) \$1,077,157 in 2022;
- (e) \$1,292,588 in 2023; and
- (f) \$1,508,020 in 2024.

5.0 OTHER OPPORTUNITIES

5.1 Other Revenue Measures

In any given year, if the Total Revenue is less than the Minimum Threshold Amount for such year, the City and TransLink agree to work together cooperatively to determine what other measures can be implemented to ensure that the Total Revenue can meet the Minimum Threshold Amount, and upon such determination, to negotiate mutually satisfactory terms and conditions of such measures, including:

- (a) an agreement to enable, and to establish the terms of revenue sharing from, Fibre Optics along the MLBE Project, and if such agreement is achieved, to include such terms into the PMA; and

- (b) an agreement (or appropriate amendments to the Street Use Agreement, Millennium Line Access Agreement and/or PMA), to enable, using measures wholly in the City’s power, TransLink activities to generate increased revenues along the Vancouver portion of the Regional Transportation System that in turn would increase the Total Revenue, provided that TransLink and the City can agree on:
 - (i) the mutual sharing of such revenues; and
 - (ii) the implementation timing and scope of such measures.

5.2 TransLink-City Partnership

Regardless of the amount of Total Revenue, the City and TransLink agree to continually work together cooperatively to explore additional new commercial activities partnerships (excluding any Customer-Related Commercial Activities) to enhance and augment the Expo Line, Millennium Line, and MLBE Project with the objectives of (a) improving the experience of customers on the Regional Transportation System and (b) gaining value to offset future transit investments. The Parties further agree that any such partnerships:

- (a) could include partnerships with third parties adjacent to properties owned by either Party, in which case such opportunities will be undertaken in accordance with each Party’s then-existing policies and by-laws, including TransLink’s Adjacent and Integrated Development programme;
- (b) will be undertaken so as to minimize any cost or expense on the part of the City or TransLink and not require the City or TransLink to incur any cost or expense, and
- (c) will use as a guide a gross 10% or other revenue-sharing model considered equitable in the circumstances, all as set out in a written agreement to amend this Contribution Agreement, the Street Use Agreement, Millennium Line Access Agreement or PMA.

5.3 Further Assurances/Commitments

The City and TransLink will continue to work together cooperatively and in good faith to negotiate and enter into further agreements to effect and implement the City MLBE Project Contribution to the MLBE Project, including (but, for greater clarity, not limited to):

- (a) the PMA (which will include a licence to TransLink to use the City MLBE Lands for \$1.00 on terms and conditions analogous to those agreed upon between the City and TransLink (and its predecessors) for the Expo Line, Millennium Line, and Canada Line); and
- (b) will execute and deliver all further documents and instruments and do all further acts and things as may be reasonably required to evidence, carry out and give full effect to the terms and conditions of this Contribution Agreement, the Street Use Agreement, the Millennium Line Agreement, and Canada Line Agreement.

6.0 MISCELLANEOUS

6.1 Audit Rights

(a) Informal Audit Rights

The City will have the right, at the City's expense and upon 5 Business Days' notice to TransLink to review and inspect all of the operational and financial records of TransLink relating to the calculation of and payments of any amounts to the City in accordance with this Agreement.

(b) Retention of Records

TransLink will retain all records, data, financial information and all other information in all media relating to the calculation and payment of any amounts to the City for a period of 10 years following the respective year to which such amounts relate except that no records need be retained following 10 years after the expiry or sooner cancellation of this Agreement.

(c) Formal Audit Rights

In the event that there is any question, in the sole opinion of the City Engineer, as to whether TransLink has properly accounted for or reported or paid the amounts required to be paid to the City under this Agreement, the City may on its own initiative appoint an independent auditor to audit TransLink and its affiliates but only in respect of amounts required to be paid to the City under this Agreement. Prior to commencing the audit, the City will give TransLink 5 Business Days' notice of the audit and will concurrently give TransLink the firm name, individual name(s), qualifications and professional designation of the City's auditor(s), with reasonable particulars. If each individual auditor is a certified public accountant and is in good standing with his or her professional association (and is not an employee of the City), such auditor(s) will be conclusively deemed to be mutually acceptable to both TransLink and the City, subject only to paragraph (d) below.

(d) Contesting Appointment of Auditor

If TransLink has any reason to believe the auditor is unqualified or biased, TransLink must make application to court for determination of the issue by commencing the proceedings in Vancouver within 30 Business Days of the start of the audit. The court proceedings will not alter the binding nature of the audit unless the court finds that the auditor is biased, incompetent or unqualified.

(e) Auditor is Expert Not Arbitrator

The auditor will act as an expert and not an arbitrator and the auditor's report will be conclusive and binding on both parties, subject only to paragraph (g).

(f) Formal Audit Result

If the auditor concludes that TransLink has understated the amounts payable to the City by more than 5% per annum in any given calendar year, then TransLink will pay the full cost of the audit and all arrears with simple interest at Prime plus 1% per annum, all as calculated by the auditor within 10 Business Days of receiving a copy of the auditor's report. In all other cases, the City will be responsible for the full cost of the audit.

If the auditor concludes that there are insufficient records (using PSAB) to determine the actual amount under or over-paid, the auditor will provide the auditor's best estimate of such amount and the auditor's best estimate will be conclusively deemed to be the actual amount under or over-paid.

Where the auditor concludes that TransLink has under-paid the amounts payable to the City by 5% or less per annum in any given calendar year, then TransLink will pay all arrears with simple

interest at Prime plus 1% per annum within 10 Business Days of receiving a copy of the auditor's report save and except TransLink will not be required to pay the cost of the audit.

Where the auditor concludes that TransLink has over-paid the amounts payable to the City in any given calendar year, then the City will pay the amount of such over-payment with simple interest at Prime plus 1% per annum within 10 Business Days of receiving a copy of the auditor's report.

(g) Disputing the Audit Results

Where the auditor has made the determinations, estimates and calculations set out in paragraph (f), the City and TransLink must comply with the results of the audit and make the payments as determined, estimated and calculated by the auditor. However, either party may dispute those results and submit such dispute in accordance with Section 6.2 below. Only if, under such dispute resolution process, it is established, or agreed by the parties, that the auditor has:

- (i) made a mistake in law,
- (ii) failed to apply PSAB, or
- (iii) made a mistake of fact

will the auditor's determination, estimate or calculation be set aside and replaced with the arbitrator's determination, estimate or calculation.

(h) Ten Year Limit on Liability

Despite any other term of this Section 6.1, the City's liability to refund any over-payment and TransLink's liability to pay any under-payment will be limited to a maximum of 10 calendar years immediately prior to the year in which the audit is commenced.

6.2 Enforcement and Dispute Resolution

- (a) Subject always to paragraph (b) below, in the event the Parties at a staff level are not able to resolve a disagreement over the interpretation or application of any Contribution Agreement provision in any circumstance (including the result of any audit conducted under Section 6.1), or in the event one Party has not performed an obligation or followed through with a commitment set out in this Contribution Agreement and the Parties cannot agree on what measures or steps should be taken, and by who, to rectify or remedy the situation, and to mitigate the potential adverse impacts to the MLBE Project, the Parties will immediately refer the matter in dispute to the Vice President of Transportation Planning or the Vice President of Real Estate and Strategic Sourcing (depending on the subject matter) at TransLink and the General Manager of Planning, Urban Design and Sustainability, the General Manager of Real Estate and Facilities Management or the General Manager of Engineering (depending on the matter to be resolved) at the City who will meet in person on a priority basis to diligently discuss in good faith a possible resolution. If such individuals cannot resolve the matter in dispute within 15 days of it being referred to them by meeting in person (or such other time as the Parties agree), the Parties will immediately refer the matter in dispute to the CEO of TransLink and the City Manager of the City for resolution. If the CEO of TransLink and the City Manager of the City cannot resolve the matter in dispute within 15 days of meeting in person (or such other time as the Parties agree), either Party may refer the matter to be resolved by binding arbitration, in accordance with the rules of the British Columbia International

Commercial Arbitration Centre and if such rules are silent with respect to discovery of documents each Party will be entitled to full discovery of documents and examination for discovery as provided by the Supreme Court Civil Rules (British Columbia), or any other rules agreed to by the Parties.

- (b) Despite paragraph (a) above, nothing in this Section 6.2 or elsewhere in this Contribution Agreement modifies or affects the applicability of the dispute resolution provisions of the Street Use Agreement, Millennium Line Access Agreement, or prior PPAs to any dispute involving the subject matter of those other agreements, unless the subject matter of such dispute overlaps with the subject matter of this Contribution Agreement, in which case such dispute shall be resolved using the process set out in paragraph (a) above.
- (c) Nothing in paragraph (a) above modifies, limits, or restricts each Party's legal rights and remedies at law and in equity before a court of competent jurisdiction.

6.3 Amendments

This Contribution Agreement may not be modified or amended except by an instrument in writing signed by each of the Parties.

6.4 Notice

All notices required or permitted to be given under the terms of this Contribution Agreement will be in writing and may be delivered in person, by courier, or by email to the addresses set forth on page 1 of this Contribution Agreement or at such other addresses as may from time to time be notified in writing by the Parties and to the attention of the following representatives of each Party:

TransLink: VP, Real Estate and Strategic Sourcing

With a copy to:

General Counsel and Corporate Secretary

City: City Engineer

With a copy to:

City Solicitor

Any notice delivered will be deemed to have been given and received at the time of delivery.

6.5 Assignment

- (a) Subject to paragraph (b), this Contribution Agreement and the rights, duties and obligations of any Party under this Contribution Agreement will not be assigned by any Party without the prior written consent of the other Party and any attempt to assign the rights, duties or obligations under this Contribution Agreement without such prior written consent will be of no effect, provided that either Party may assign its rights, duties and obligations to a wholly-owned subsidiary upon providing prior written notice to the other Party.

- (b) Despite paragraph (a),
 - (i) TransLink may, upon providing prior written notice to the City, assign all of its rights (but not part) under the Street Use Agreement, Millennium Line Access Agreement, or the PPAs to any agency, ministry, or other authority or agent of the Province of British Columbia from time to time (including any delivery agent for the MLBE Project), or to any successor or assignee of all of TransLink's rights, powers and obligations under the TransLink Act, and
 - (ii) the City may, upon providing prior written notice to TransLink, assign all of its rights (but not part) under the Street Use Agreement, Millennium Line Access Agreement, or the PPAs to any successor or assignee of all of the City's rights, powers and obligations under the Vancouver Charter;

Provided that in each case the party giving such notice also provides a full and complete copy of the applicable assignment agreement or authorizing enactment, regulation, or order-in-council.

IN WITNESS WHEREOF the Parties have executed this Contribution Agreement on the day and year first above written:

**SOUTH COAST BRITISH COLUMBIA
TRANSPORTATION AUTHORITY**, by its authorized
signatory

By: _____
Name:
Title:

CITY OF VANCOUVER, by its authorized signatory

By: _____
Name:
Title:

**SCHEDULE A:
CITY MLBE LANDS**

Part 1: Fee Simple Lands

| 1. SITE DETAILS - Fee Simple and | | | Project Use | | | | |
|----------------------------------|---------|------------------|------------------------------------|-----------------|-----------------|------------|-----------------|
| No. | Address | Lot Size (sq ft) | Description (Purchase/Rent/Tunnel) | % permanent use | Permanent Sq Ft | Temp Sq Ft | Timeframe (yrs) |
| ARBUTUS | | | | | | | |
| 1 | | | | | | | |
| 2 | | | | | | | |
| 3 | | | | | | | |
| GRANVILLE | | | | | | | |
| No. | Address | Lot Size (sq ft) | Description (Purchase/Rent/Tunnel) | % permanent use | Permanent Sq Ft | Temp Sq Ft | Timeframe (yrs) |
| 6 | | | | | | | |
| 7 | | | | | | | |
| OAK | | | | | | | |
| No. | Address | Lot Size (sq ft) | Description (Purchase/Rent/Tunnel) | % permanent use | Permanent Sq Ft | Temp Sq Ft | Timeframe (yrs) |
| 8 | | | | | | | |
| CAMBIE | | | | | | | |
| No. | Address | Lot Size (sq ft) | Description (Purchase/Rent/Tunnel) | % permanent use | Permanent Sq Ft | Temp Sq Ft | Timeframe (yrs) |
| 9 | | | | | | | |
| 10 | | | | | | | |
| 11 | 450 | | | | | | |
| 12 | | | | | | | |
| 13 | | | | | | | |
| 14 | | | | | | | |
| MAIN | | | | | | | |
| GREAT NORTHERN WAY | | | | | | | |
| No. | Address | Lot Size (sq ft) | Description (Purchase/Rent/Tunnel) | % permanent use | Permanent Sq Ft | Temp Sq Ft | Timeframe (yrs) |
| 15 | | | | | | | |

Part 2: Rights of Way

| 2. SITE DETAILS - SRoW's & Other CoV Secured Property Rights | | | Project Use | | | | |
|--|---------|------------------|------------------------------------|-----------------|-----------------|------------|-----------------|
| No. | Address | Lot Size (sq ft) | Description (Purchase/Rent/Tunnel) | % permanent use | Permanent Sq Ft | Temp Sq Ft | Timeframe (yrs) |
| ARBUTUS | | | | | | | |
| 1 | | | | | | | |
| GRANVILLE | | | | | | | |
| OAK | | | | | | | |
| No. | Address | Lot Size (sq ft) | Description (Purchase/Rent/Tunnel) | % permanent use | Permanent Sq Ft | Temp Sq Ft | Timeframe (yrs) |
| 2 | | | | | | | |
| CAMBIE | | | | | | | |
| No. | Address | Lot Size (sq ft) | Description (Purchase/Rent/Tunnel) | % permanent use | Permanent Sq Ft | Temp Sq Ft | Timeframe (yrs) |
| 3 | | | | | | | |
| QUEBEC | | | | | | | |
| 4 | | | | | | | |
| BRUNSWICK STREET - Mid Station | | | | | | | |
| No. | Address | Lot Size (sq ft) | Description (Purchase/Rent/Tunnel) | % permanent use | Permanent Sq Ft | Temp Sq Ft | Timeframe (yrs) |
| 4 | | | | | | | |
| GREAT NORTHERN WAY | | | | | | | |
| No. | Address | Lot Size (sq ft) | Description (Purchase/Rent/Tunnel) | % permanent use | Permanent Sq Ft | Temp Sq Ft | Timeframe (yrs) |
| 5 | | | | | | | |
| 6 | | | | | | | |
| 7 | | | | | | | |
| 8 | | | | | | | |
| 9 | | | | | | | |
| 10 | | | | | | | |

**SCHEDULE B:
Street Use Agreement (Burrard Station) Amendment**

AMENDMENT TO STREET USE AGREEMENT

BURRARD STREET SKYTRAIN STATION

THIS AGREEMENT made as of the ____ day of _____, 2018.

BETWEEN:

BC TRANSPORTATION FINANCING AUTHORITY,
Properties and Land Management Branch Partnerships Department,
Ministry of Transportation and Infrastructure
STN PROV GOVT
Victoria, British Columbia, V8W 9T5

(hereinafter called "BCTFA")

AND:

CITY OF VANCOUVER,
453 West 12th Avenue,
Vancouver, British Columbia, V5Y 1V4

(hereinafter called the "City")

WITNESSES THAT WHEREAS:

- A. The City and British Columbia Transit entered into a Street Use Agreement dated January 7, 1987, as amended (the "**Street Use Agreement**"), whereby the City permitted British Columbia Transit to construct, operate and maintain the ALRT (known as the "**Expo Line**") on Designated Streets (as defined in the Street Use Agreement).
- B. Pursuant to the *BC Transportation Financing Authority Transit Assets and Liabilities Act* (British Columbia), all of the assets and liabilities of British Columbia Transit having a connection to the regional transportation system in the transportation service region (the Greater Vancouver Regional District), including the Street Use Agreement, were transferred to BCTFA.
- C. BCTFA and the City have agreed to amend the Street Use Agreement on the terms and conditions herein set out.

NOW THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars now paid by each party to the other, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties hereto), the parties hereto covenant and agree as follows:

1. The Street Use Agreement shall be amended by:

- (a) adding the plan attached hereto as Schedule A to the Street Use Agreement thereby adding to the definition of "Designated Street" in the Street Use Agreement that portion of street outlined and identified as "Designated Street – Burrard Street SkyTrain Station" on the plan attached hereto as Schedule A; and
 - (b) amending the definition of "ALRT" in the Street Use Agreement to include the Burrard Street SkyTrain Station.
2. Save as amended herein, and prior amendments, the Street Use Agreement is hereby confirmed and shall continue in full force and effect and this Agreement shall have effect as if all the provisions of this Agreement and the Street Use Agreement were contained in one instrument.
 3. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
 4. Capitalized words and expressions used in this Agreement that are defined in the Street Use Agreement and are not otherwise defined herein, shall have the meaning ascribed to them in the Street Use Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF VANCOUVER

By its authorized signatories:

Per: _____
 Jerry Dobrovolny
 General Manager of Engineering Services

Per: _____
 Francie Connell, Q.C.
 Director of Legal Services

BC TRANSPORTATION FINANCING AUTHORITY

By its authorized signatories:

Per: _____
 Name:
 Title:

Per: _____
 Name:
 Title:

{01016903v1}

Schedule A

[TRANSLINK TO INSERT VOLUMETRIC PLAN FOR BARRARD STATION]

{01016903v1}

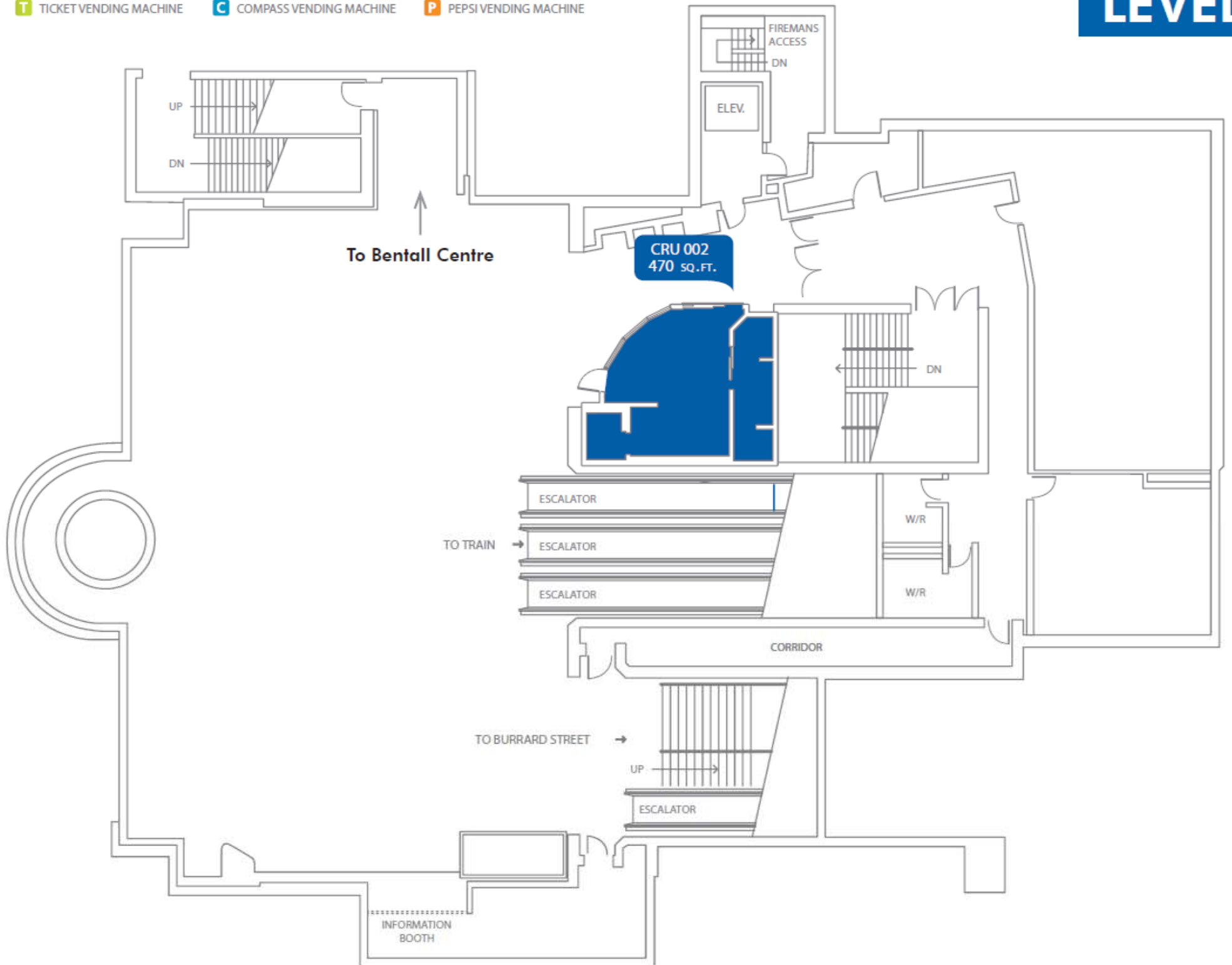
**SCHEDULE C:
Plan Showing Legacy CRU in Burrard Station**

T TICKET VENDING MACHINE

C COMPASS VENDING MACHINE

P PEPSI VENDING MACHINE

LEVEL 1



SCHEDULE D:
Plan Showing Legacy CRU in Granville Station

SITE PLAN

T TICKET VENDING MACHINE

C COMPASS VENDING MACHINE

P PEPSI VENDING MACHINE

