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South Coast British Columbia  
Transportation Authority

**Disclaimer:**

*This sample agreement has been made available by TransLink for general informational purposes only. The circumstances of each AID development are individually reviewed and TransLink will tailor the required agreement(s) to the relevant circumstances. TransLink expressly disclaims all liability in respect of actions taken or not taken based on the contents of this sample agreement.*

\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(the "Registered Owner")

\_\_\_\_\_  
(the "Beneficial Owner")

Dear Sirs/Mesdames:

**Re: [Legal Description] (the "Property")**

The Registered Owner and the Beneficial Owner (jointly and severally, the "Owner") hereby represent and warrant to South Coast British Columbia Transportation Authority ("TransLink") that the Owner is the sole registered and beneficial owner of the Property and is proposing to **[redevelop/develop]** the Property (the "Development").

**[Note: The following language in bold print reflects the numerous variables that must be addressed in order to complete each Support Agreement. Not all of the variables will apply in any particular case. The language is illustrative only.]**

**[[BC Transportation Financing Authority ("BCTFA")/TransLink] is the owner of certain lands and premises [adjacent to/in the vicinity of] the Property legally described as [Legal Description] (the "BCTFA/TransLink Lands").]**

**[AND/OR]**

**[[BC Transportation Financing Authority ("BCTFA")/TransLink] is the registered owner of a [statutory right of way and/or covenant] over a portion of the Property shown on Plan \_\_\_\_\_ (the "SRW**

Area”) pursuant to an agreement registered in the Land Title Office under number \_\_\_\_\_ (the “SRW Agreement”).]

[AND/OR]

[BC Transportation Financing Authority (“BCTFA”)/TransLink is the [holder/beneficiary] of certain rights over streets in the City of \_\_\_\_\_ [adjacent to/in the vicinity of] the Property (the “License Area”) pursuant to an agreement with the City of \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ (the “License Agreement”).]

[Pursuant to the SRW Agreement/License Agreement,] [and/or] [On the BCTFA/TransLink Lands/SRW Area/License Area,] a [SkyTrain station/Canada Line station/guideway/elevated guideway/tunnel/tracks] and other [SkyTrain/Canada Line] infrastructure and works (collectively, the “Transit Facilities”) have been constructed and are being operated [on/adjacent to] [the Property and/or the BCTFA/TransLink Lands and/or the SRW Area and/or the License Area].

Pursuant to the *South Coast British Columbia Transportation Authority Act* [, *Orders of the Lieutenant Governor in Council and/or the BC Transportation Financing Authority Transit Assets and Liabilities Act* and /or agreements between Her Majesty the Queen in right of the Province of British Columbia and/or BCTFA] and TransLink, TransLink is responsible for the management, operation and maintenance of the Transit Facilities and has contracted with [British Columbia Rapid Transit Company Ltd./InTransit BC Limited Partnership] for the operation and maintenance of the Transit Facilities.

The Development is such that it [will/may] have interfaces with and may have impacts upon the Transit Facilities [and/or the BCTFA/TransLink Lands and/or the SRW Area and/or the License Area] [and the rights granted to BCTFA/TransLink by the SRW Agreement and/or the License Agreement], and the City of \_\_\_\_\_ may require, as conditions of granting development approvals for the Development, that TransLink be satisfied with any such interfaces and impacts and that TransLink’s requirements in connection therewith be satisfied. Accordingly, the Owner has requested that TransLink, among other things:

- (a) provide to the Owner or the Owner’s consultants record drawings, specifications and other information relating to the Transit Facilities;
- (b) participate in the site planning process and conduct a review of the Owner’s drawings, specifications, work methodology and work plans for the Development to identify potential interfaces with and impacts upon the Transit Facilities [and/or BCTFA/TransLink Lands and/or the SRW Area and/or the License Area] [and the rights granted to BCTFA and/or TransLink by the SRW Agreement and/or the License Agreement], and to specify to the Owner any conditions of TransLink with respect to the Development; and
- (c) work with the Owner and its consultants to find solutions to satisfy TransLink’s requirements;

all pursuant to TransLink’s Consent Process (as defined and described below). This will require that TransLink allocate staff, hire consultants and otherwise incur costs for which TransLink must be reimbursed.

Therefore, the Owner hereby agrees to reimburse TransLink for all costs and expenses incurred by TransLink from time to time in connection with the Development and the Consent Process including, without limitation, reviewing and advising with respect to the drawings, specifications, work

methodology and work plans for the Development, any site monitoring by or for TransLink with respect to the Development, and any other matters required of or by TransLink in connection with the Consent Process and Development, which costs and expenses shall include, without limitation, TransLink's own staff costs (at the rates set out in Schedule A), costs of TransLink's subsidiaries and operating companies, consultants' costs, professional fees and legal costs and expenses, plus a mark-up of 20% on all such costs except TransLink staff costs, and applicable taxes. As costs are incurred by TransLink, TransLink will invoice the Owner for the costs plus the mark-up of 20% and taxes, and will include copies of third party invoices. The Owner must pay TransLink's invoices within 30 days.

The Owner may request that TransLink send invoices pursuant to this letter agreement to a person or entity designated by the Owner in writing (the "**Designated Person**"). The Owner agrees that by sending the invoices to the Designated Person, TransLink will be deemed for all purposes to have provided the invoices to the Owner, and the Owner will remain fully responsible and liable for payment of the invoices in accordance with this letter agreement.

The Owner shall provide to TransLink, as security for amounts payable to TransLink under this letter, a clean, irrevocable letter of credit in the amount of \$ \_\_\_\_\_ payable at sight and in form and content acceptable to TransLink. TransLink will draw on the letter of credit to pay TransLink invoices if payment of those invoices by the Owner is not made within 30 days. In such case the Owner must provide to TransLink replacement security for the amount drawn in the form of an additional letter of credit in form and content acceptable to TransLink, failing which TransLink shall be entitled to suspend or terminate the Consent Process and to stop incurring costs, without obligation or liability to the Owner. TransLink shall also be entitled to draw on the letter of credit or any additional letter of credit for its full amount if it is not renewed at least 30 days before its expiry date, in which event TransLink will hold the proceeds as security for use to pay unpaid invoices on the same basis as set out above.

The letter of credit is only an interim measure and the amount of the letter of credit is simply a figure chosen to enable TransLink to commence the work thereby incurring costs. The actual costs could be higher or lower than such amount. If at any time TransLink determines:

- (a) that the estimated costs plus mark-up thereon and taxes will be materially higher than the amount of the letter of credit such that in TransLink's opinion additional security is required; or
- (b) that the total amount of unpaid invoices for costs and mark-up thereon and taxes, together with the aggregate of costs that have been incurred but not yet invoiced and mark-up thereon and taxes, exceeds the amount then available to be drawn under the letters of credit provided by the Owner as security;

then the Owner agrees to provide additional security in the form of an additional letter of credit, in an amount and in form and content satisfactory to TransLink, failing which TransLink shall be entitled to stop all work and to stop incurring costs without any obligation or liability to the Owner. The amount of the letter of credit or any additional letter of credit shall not limit the Owner's obligations to reimburse TransLink for its costs, mark-up and taxes as provided above.

The parties acknowledge and agree that the amounts paid or payable to TransLink pursuant to the foregoing will be payable in any event and are non-refundable, including if the Development does not proceed, or if acceptance of the drawings and specifications for the Development is never granted by TransLink, or if further agreements or consents are never entered into or given for any reason.

All amounts payable by the Owner to TransLink under this letter agreement are net of applicable taxes, and the Owner shall in addition pay to TransLink all such taxes as and when required by applicable law.

This letter agreement only provides for reimbursement of costs and expenses of TransLink, plus mark-up thereon and taxes. This letter agreement does not constitute consent to or approval of or acceptance of the proposed Development or any drawings, specifications, reports, work methodology or work plans with respect thereto. In order to obtain any such consent, the Owner agrees to participate in, comply with and be bound by TransLink's Adjacent and Integrated Development (AID) Project Consent Process (the "**Consent Process**") attached hereto as Schedule B. This letter agreement fulfils part, but not all, of the requirements of Phase 2 of the Consent Process. The Owner confirms and agrees that it will not commence or carry out or permit any site preparation, excavation, construction or other work with respect to the Development on the Property until the Consent Process has been complied with and all requirements of the Consent Process have been met including submission to and acceptance by TransLink of drawings, specifications, reports, work methodology and work plans for the Development as contemplated by the Consent Process and execution and delivery by the Owner and TransLink of further agreements as contemplated by the Consent Process including a Consent Agreement (Consent to Construction) contemplated by Phase 7 of the Consent Process.

Please confirm the Owner's agreement to the foregoing by signing this letter agreement where indicated below and returning a signed version to us by courier or by email. A signed version in PDF format delivered by email shall have the same effect as a signed original.

In order for the Consent Process to proceed, please also arrange to provide TransLink with the letter of credit within 14 days after the date of execution by you of this letter agreement. We would suggest that the bank initially provide a draft of the letter of credit so that we can settle its terms before it is finally issued.

Yours truly,

**SOUTH COAST BRITISH COLUMBIA TRANSPORTATION AUTHORITY**

Per:

Name:

Title:

The agreement of the Owner to the foregoing is hereby confirmed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
by its authorized signatory:

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
by its authorized signatory:

\_\_\_\_\_  
Name:  
Title:

SAMPLE

**SCHEDULE A  
TRANSLINK STAFF RATES**

Senior Manager	-	\$200.00 per hour
Manager / Project Manager	-	\$180.00 per hour
Other TransLink staff	-	\$155.00 per hour

SAMPLE

## SCHEDULE B

### TRANSLINK'S ADJACENT AND INTEGRATED DEVELOPMENT (AID) PROJECT CONSENT PROCESS

#### INTRODUCTION

The following is an outline of TransLink's Adjacent and Integrated Development (AID) Project Consent Process (the "**Consent Process**"). It is intended as a guideline to obtaining TransLink's consent to developments adjacent to or integrated with transit infrastructure and operations, but is not exhaustive of all potential issues or requirements. TransLink reserves the right to amend or supplement the Consent Process at any time and from time to time without notice.

The Consent Process consists of eight phases as follows:

- Phase 1 – Project Overview and Scope Presentation
- Phase 2 – Support Agreement and Non-Disclosure Agreement
- Phase 3 – Preliminary (Schematic) Design Review
- Phase 4 – Final (Detailed) Design Review
- Phase 5 – Construction Work Plan Review
- Phase 6 – Related Agreements, Insurance and Additional Security
- Phase 7 – Consent Agreement (Consent to Construction)
- Phase 8 – Construction Monitoring

TransLink has designed its Consent Process to mirror a typical municipal approval process. Phase 3 (Preliminary Design Review) is intended to be undertaken concurrent with a project owner's application for rezoning and development permit. Phases 4-6 are intended to be undertaken concurrent with an application for building permit, and Phase 7 (Consent) is intended to be granted at approximately the same time as a municipality issues a building permit. All of this assumes that the project owner has initiated the Consent Process early enough to allow both parties to undertake the process in proper sequence and in a reasonable time frame.

Notwithstanding the intent to mirror a typical municipal approval process, TransLink does not warrant that the various milestones in the Consent Process, or the issuance of approvals, consents or other documents in the Consent Process, will occur within any particular time frames or according to a project owner's schedule or at all. TransLink will conduct the Consent Process in the ordinary course of its business. However, TransLink shall not be responsible or liable if for any reason the timing of the various milestones in the Consent Process or the issuance of approvals, consents or other documents in the Consent Process do not meet the project owner's schedule or do not coincide with any other events or circumstances affecting project owner's development or are delayed or do not occur.

TransLink's Real Estate Division will coordinate the Consent Process from TransLink's side and will be the project owner's principal point of contact at TransLink. A project owner can initiate the Consent Process or hold preliminary discussions with AID staff by doing one of the following:

- Send an email to [AIDreview@translink.ca](mailto:AIDreview@translink.ca);
- Submit an AID Project Consent request form online at [www.translink.ca/realestate](http://www.translink.ca/realestate);
- Call TransLink Reception at 778.375.7500 and ask for the Manager, Development Services, Real Estate Division.

## **DESCRIPTION OF PHASES AND MILESTONES**

### **Phase 1 – Project Overview and Scope Presentation**

To initiate Phase 1, the project owner should contact TransLink before or just after applying for rezoning and development permit. The project owner will present its schematic plans and describes its goals and objectives to TransLink staff. Staff will begin to identify potential impacts on transit infrastructure, facilities and operations, and suggest ways to mitigate those impacts. In cases where the project owner proposes to integrate the project with a SkyTrain or Canada Line station or another transit facility, TransLink will consider whether this is a desirable objective and if so, will outline additional conditions and requirements for such integration. In all cases, if TransLink determines that there are enough impacts to trigger the Consent Process, it will notify the project owner and prepare a Support Agreement and possibly a Non-Disclosure Agreement for the project owner to execute.

1<sup>st</sup> Milestone: TransLink advises the project owner in writing whether or not the project requires TransLink's consent pursuant to the Consent Process.

### **Phase 2 – Support Agreement and Non-Disclosure Agreement**

The Support Agreement is an agreement between the project owner and TransLink that serves two principal purposes. First, it provides the project owner's agreement to participate in and comply with the Consent Process in connection with the project owner's development project and to obtain TransLink's consent before beginning construction. Second, it provides the project owner's agreement to reimburse TransLink for all costs incurred by TransLink and its consultants associated with the project owner's development project.

In order for the Consent Process to proceed, both parties must execute the agreement and the project owner must provide letter of credit or cash security to TransLink for the project owner's agreement to reimburse TransLink's costs.

In some cases, the project owner may also be required to sign a Non-Disclosure Agreement as a condition of TransLink releasing sensitive transit infrastructure design drawings and information to the owner's consultant team.

2<sup>nd</sup> Milestone: TransLink and project owner execute a Support Agreement, and if required, a Non-Disclosure Agreement.

3<sup>rd</sup> Milestone: Project owner provides to TransLink a letter of credit or cash security.

### **Phase 3 – Preliminary (Schematic) Design Review**

TransLink's design review has two distinct phases: Preliminary (Schematic) Design Review and Final (Detailed) Design Review. The Preliminary (Schematic) Design Review phase addresses a variety of technical, operational, maintenance and design issues at a schematic level, such as safety codes, transit infrastructure building codes, design standards, geotechnical stability, and ongoing maintenance of transit facilities.



During this phase, the project owner will provide to TransLink the schematic design of all disciplines, including architectural, landscape, civil, structural, geotechnical and others as required. Depending on the type and complexity of the project, TransLink may also require other drawings, specifications, reports and information, such as a project context statement, multi-modal needs assessment, functional plans and specifications, and geotechnical and other engineering reports.

TransLink and its consultants will review and assess the schematic plans, specifications and reports for, among other things, potential impacts on and interfaces with transit infrastructure, facilities and operations. Based on its review and assessment, TransLink will outline the design standards, technical requirements and other changes that the project owner will need to incorporate into its design and construction work plan. It will also begin to identify any other requirements that need to be met by the project owner during Phase 6 to accommodate such impacts, including related agreements, insurance and additional security.

Once the project owner incorporates TransLink's requirements into the schematic documents and provides TransLink with an updated set of documents, TransLink will conduct a further review for compliance. If the project owner meets all the requirements, TransLink will issue written Preliminary (Schematic) Design Acceptance.

*Such acceptance will be in the form of a letter agreement between the project owner and TransLink and may include conditions and agreements to be fulfilled by the project owner. No other communication will constitute acceptance, consent or approval. Preliminary (Schematic) Design Acceptance does not constitute consent to commence construction of the project owner's development project.*

In some municipalities, TransLink's acceptance will be a "prior to" condition of rezoning or development permit approval. In cases where it is not, TransLink will make reasonable efforts to complete the Preliminary (Schematic) Design Review phase before rezoning or municipal development permit approval, provided of course that the project owner starts the Consent Process early enough and supplies to TransLink in a timely manner everything TransLink requires to complete the Preliminary (Schematic) Design Review phase.

4<sup>th</sup> Milestone: TransLink and project owner execute a Preliminary (Schematic) Design Acceptance letter agreement.

#### **Phase 4 – Final (Detailed) Design Review**

The project owner will submit a complete set of "Issued for Tender" documents that are consistent with the documents accepted by TransLink at the Preliminary (Schematic) Design Review phase and incorporate all of TransLink's requirements identified at that phase, including in the Preliminary (Schematic) Design Acceptance letter agreement. TransLink and its consultants will review the documents for compliance and will also check for any new impacts that may be identified after Preliminary Design Review Acceptance is granted.

Final (Detailed) Design Acceptance will form part of the Consent Agreement to be entered into pursuant to Phase 7 below. No other communication will constitute acceptance or consent to commence construction.

## **Phase 5 – Construction Work Plan Review**

TransLink and the project owner will work together to identify the key risks and causes for interference that construction may impose on transit infrastructure, facilities and operations. The project owner will develop a Construction Work Plan that addresses these risks and causes, and describes methods of construction, risk mitigation and safety monitoring that allows for continuous, safe and efficient transit operations and protects public safety and transit infrastructure. The Construction Work Plan will also incorporate TransLink's standard protocols for working close to transit infrastructure, in particular, within the "Equipment Limits of Approach".

Construction Work Plan Acceptance will form part of the Consent Agreement to be entered into pursuant to Phase 7 below. No other communication will constitute acceptance or consent to commence construction.

## **Phase 6 – Related Agreements, Insurance and Additional Security**

Depending on the outcomes of Phases 3, 4 and 5 above and TransLink's assessment of the project's potential or actual impacts on and interfaces with transit infrastructure, facilities and operations, TransLink may require the project owner to enter into one or more related agreements that may include, but not be limited to, a supplementary statutory right of way agreement and Land Title Act covenants, a beneficial owner agreement (if the registered owner of the project lands is not the sole beneficial owner) and a crane swing agreement. In addition, TransLink will require indemnities and proof of insurance and may require additional survey certificates and letter of credit security.

The related agreements would address, among other things, long term consequences of the impacts and interfaces, and if required such agreements would be registered on title in order to apply beyond the construction phase and bind future owners. The additional letter of credit security would secure the project owner's obligations both during and after construction.

In order to shorten the time required for the project owner to reach Phase 7, the parties will use commercially reasonable efforts to negotiate and conclude related or supplementary agreements pursuant to this Phase 6 concurrently with Phases 3, 4 and 5 above.

- 5<sup>th</sup> Milestone: If required by TransLink, the project owner executes, delivers and causes to be registered on title a supplementary statutory right of way agreement and Land Title Act covenants satisfactory to TransLink.
- 6<sup>th</sup> Milestone: If required by TransLink, the project owner executes TransLink's form of crane overswing agreement (for cranes swinging above guideways, bus loops, structures, stations, bridges, certain roads and other transit infrastructure and facilities).
- 7<sup>th</sup> Milestone: If required by TransLink, the project owner provides additional letters of credit satisfactory to TransLink as security for construction and post-construction obligations.
- 8<sup>th</sup> Milestone: The project owner provides indemnities and proof of insurance satisfactory to TransLink.

## **Phase 7 – Consent Agreement (Consent to Construction)**

Once the project owner and TransLink have completed Phases 1 through 6, and the project owner has fulfilled its obligations with respect thereto and executed and provided to TransLink (and where applicable, registered) the related agreements and documents, TransLink and the project owner will execute a Consent Agreement satisfactory to TransLink, which will:

- (a) provide TransLink's acceptance of the final Issued for Tender drawings and specifications reviewed in Phase 4;
- (b) provide TransLink's acceptance of the final Construction Work Plan settled pursuant to Phase 5; and
- (c) provide TransLink's consent to the work contemplated by the Issued for Tender drawings and specifications and the Construction Work Plan.

The Consent Agreement will constitute TransLink's consent for the project owner to commence and carry out construction of the project owner's development project in accordance with the Consent Agreement.

9<sup>th</sup> Milestone: TransLink and the project owner execute and deliver the Consent Agreement.

## **Phase 8 – Construction Monitoring**

TransLink will monitor construction until completion to ensure that the project owner and its contractor are performing the work in accordance with the Consent Agreement and all other agreements.

### **Notice and Disclaimer**

Any review, approval or acceptance, by or on behalf of TransLink pursuant to the Consent Process of any plans, drawings, specifications, reports, schedules, methods of construction or other information or materials relating to the project owner's development or any other work of or for the project owner, and any consent to or inspection, examination, audit, testing, supervision, monitoring, approval or acceptance of any work by or on behalf of TransLink, shall in all cases be for general compliance only and no such consent, review, inspection, examination, audit, testing, supervision, monitoring, approval or acceptance, whether negligent or otherwise, and no changes suggested or required by TransLink and incorporated into any drawings or specifications or the work, shall relieve the project owner from any of its obligations under applicable laws, any registered agreements or any agreements with TransLink, nor constitute a waiver or release by TransLink of any right of TransLink or any duty or liability owed by the project owner or any of its design professionals, nor create or impose any obligation or liability on TransLink.