

**Disclaimer:**

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**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** made the \_\_\_ day of \_\_\_\_\_, 202\_\_\_,

**BETWEEN:**

\_\_\_\_\_

(the "Recipient")

**AND:**

**SOUTH COAST BRITISH COLUMBIA TRANSPORTATION AUTHORITY**, having an office at 400-287 Nelson's Court, New Westminster, British Columbia, V3L 0E7, Canada

("TransLink")

**WHEREAS:**

- A. The Recipient is considering redeveloping property legally described as PID \_\_\_\_\_ (the "**Project**");
- B. In order to assist the Recipient's work on the Project, TransLink and/or its subsidiaries and operating companies will be disclosing certain documents and information to the Recipient; and
- C. The Recipient has agreed to secure and maintain the confidentiality of all documents and information disclosed or made available to it by TransLink and/or its subsidiaries and operating companies in accordance with the terms and conditions set out in this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the foregoing and other good and valuable consideration, the parties hereto covenant and agree as follows:

- 1. The Recipient shall maintain a secret and confidential status at all times for any and all Information disclosed or made available to the Recipient by or on behalf of TransLink and/or its subsidiaries and operating companies through their respective directors, officers, employees, agents and/or representatives, including without limitation, consultants or service providers of any of the foregoing (collectively, the "**Disclosing Parties**"). The Recipient shall be entitled to disclose the Information on a need to know basis only to its employees, contractors, consultants and service providers (the "**Personnel**") and to no other person or legal entity, and shall cause the Personnel to maintain a secret and confidential status for the Information on terms no less

stringent than those set out herein. In this Agreement, “**Information**” means any and all documents and information (whether or not marked as “confidential” or “proprietary”) disclosed or made available by any of the Disclosing Parties to the Recipient or its Personnel and shall include, without limitation, all information, documents, data or other materials received by the Recipient or its Personnel from any of the Disclosing Parties, including but not limited to all information, ideas, inventions, concepts, data, plans, programs, designs, drawings, models, as-built drawings, samples, specifications, operations, methods, processes, applications, technology, know-how, techniques, software, systems, or other materials, whether in writing or oral, and for greater certainty includes all data of the Disclosing Parties, whether owned by or licensed to such Disclosing Party from both private and public vendors and associated files, in part or whole, represented and stored in any medium.

2. The Recipient shall at all times, and shall cause the Personnel to at all times, use the Information only for the purpose of working on the Project and for no other use or purpose whatsoever. The Recipient and the Personnel shall use the Information only during the period commencing on the date of this Agreement and ending on \_\_\_\_\_, 201\_\_ or such later date as specified in writing at any time by TransLink (the “**Information Use Period**”).
3. The Recipient shall at all times, and shall cause the Personnel to at all times to, protect the Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which the Recipient uses for its confidential information that it does not wish disclosed to the public. Except as expressly permitted by this Agreement or as required by law, the Recipient and the Personnel shall not directly or indirectly disclose or make available any of the Information to any person, firm, company, entity or other party for any use whatsoever, except with respect to Information that:
  - (a) is or becomes publicly available or in the public domain through no fault or failure to act by the Recipient or the Personnel in breach of this Agreement;
  - (b) was already known to the Recipient or the Personnel prior to disclosure by the Disclosing Parties and the Recipient can establish that the Recipient or the Personnel had such knowledge prior to such disclosure; or
  - (c) is required to be disclosed in judicial or administrative proceedings, or is otherwise requested or required to be disclosed by law or regulation, provided that prior to such required disclosure, the Recipient shall give the Disclosing Parties reasonable notice of such required disclosure (to the extent permitted by law).
4. At the end of the Information Use Period, or earlier upon request of any of the Disclosing Parties, the Recipient must, as directed by any of the Disclosing Parties, either return all copies of records containing any part of the Information to TransLink or securely, permanently and irreversibly destroy or remove all copies of records containing any part of the Information so that the Information cannot be reconstructed or recovered in any way, and deliver to TransLink written confirmation of such destruction or removal from an officer of the Recipient. The Recipient shall ensure that at the end of the Information Use Period all Information has been fully removed from the possession and control of the Recipient and the Personnel. Notwithstanding the foregoing, the Recipient may, and may allow the Personnel to, retain copies of the Information contained in routine back-up systems not accessible in the ordinary

course of business and for archival purposes, subject always to the terms of this Agreement. The return of such documents shall in no event relieve the Recipient of its obligations of confidentiality set out in this Agreement with respect to such returned Information. This section survives the expiry or termination of this Agreement.

5. The Recipient agrees to, and to direct the Personnel to, use the Information in a professional manner. The Recipient agrees to, where reasonably and practically possible, document all uses, modifications, and application of the Information, providing to TransLink, within a reasonable time, after receipt of written request, all documentation (including but not limited to all: metadata, methodology, computer scripts, computer programs, computer files) as well as documentation with respect to access to applications, computer files and databases where the Information was used by the Recipient or the Personnel, for the purposes of data auditing and ensuring adherence to this Agreement.
6. The Recipient acknowledges that the Information is supplied on an "as is, where is" basis and that no warranty as to the accuracy, correctness or completeness of the Information is made and no warranty is made as to the current nature of any of the Information. All warranties, representations and conditions regarding the Information (expressed or implied) including all implied warranties, representations and conditions of merchantability and fitness for a particular purpose or use, are disclaimed. In no event shall any of the Disclosing Parties or any supplier of the Information to the Disclosing Parties be liable to the Recipient or the Personnel for damages for lost profits, lost savings, or other incidental, direct, indirect, consequential or special damages.
7. All Information copied or reproduced in whole or in part and any further copies, reproductions or facsimiles thereof shall be and remain the property of the applicable Disclosing Party and shall constitute Information hereunder. Summaries or aggregations of the Information, in part or whole, shall also be considered Information as pertaining to this Agreement. The Recipient agrees that the Recipient and the Personnel shall not acquire any right, title or interest in or to the Information.
8. TransLink or its designates shall have the right to request a certificate signed by the Chief Financial Officer (or equivalent if the Recipient does not have a Chief Financial Officer) of the Recipient:
  - (a) at any time during or after the Information Use Period, confirming that, to the best of their knowledge, at all times during the Information Use Period the Recipient and the Personnel have complied with the terms of this Agreement with respect to the Recipient's use of the Information, provided that such certificate shall not be requested more than once every 12 months; and
  - (b) at any time after the Information Use Period, or during the Information Use Period if a request has been made by the Disclosing Parties for return or destruction of the Information as contemplated in Section 4, confirming that as at the date of such certificate, all Information has been fully removed from the possession and control of the Recipient and the Personnel as required by the terms of this Agreement.

This section survives the expiry or termination of this Agreement.

9. The Recipient shall indemnify and hold harmless the Disclosing Parties and each of them from and against all losses, damages, costs and expenses (including, without limitation, actual legal fees and disbursements) suffered by the Disclosing Parties or any of them as a result, directly or indirectly, of any breach of the terms and covenants of this Agreement or the use of the Information by the Recipient and/or the Personnel. The Recipient acknowledges that a breach of any of the covenants or provisions herein or the unauthorized use of the Information may cause any or all of the Disclosing Parties irreparable harm that cannot be adequately compensated for by damages. Accordingly, in the event of any threatened or actual breach of this Agreement, any or all of the Disclosing Parties may, in addition to any specific remedy for relief, seek to enforce the performance of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction. This section survives the expiry or termination of this Agreement.
10. This Agreement shall be governed by and construed in accordance with the laws of British Columbia, Canada. The parties attorn to the exclusive jurisdiction of the courts of the Province of British Columbia, Canada.
11. If any term or covenant of this Agreement is wholly or partially invalid or unenforceable, such term or covenant shall be severable and this Agreement shall be interpreted as if the invalid or unenforceable term or covenant had not been a part hereof.
12. The failure by either party to insist in any one or more instances upon the strict performance of any one of the covenants contained herein shall not be construed as a waiver or relinquishment of such covenant. No waiver by either party of any such covenant shall be deemed to have been made unless expressed in writing and signed by the waiving party.
13. This Agreement constitutes the entire agreement between the parties with respect to securing and maintaining the confidentiality of the Information and supersedes all prior negotiations, proposals and agreements, whether oral or written, with respect to securing and maintaining the confidentiality of the Information.
14. Time shall be of the essence of this Agreement.
15. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns. If the Recipient is comprised of more than one person or legal entity, the obligations of the Recipient under this Agreement shall be the joint and several obligations of each person and legal entity comprising the Recipient.

- 16. This Agreement may be executed in counterparts, each of which, when so executed and delivered by all parties, will be deemed to be an original hereof, and all executed counterparts together, whether facsimile, email copy, photocopy or original, will be effective as if one original of this Agreement had been executed by all the parties to this Agreement.
- 17. No modification or change to this Agreement shall be valid unless made in writing and signed by both parties. The parties agree that the execution of this Agreement does not in any way constitute a binding commitment on the part of either party to enter into or complete negotiations or enter into a binding agreement with respect to the Project.
- 18. The Recipient acknowledges that this Agreement and all information provided by the Recipient to the Disclosing Parties is subject to the British Columbia *Freedom of Information and Protection of Privacy Act*.

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

**SOUTH COAST BRITISH COLUMBIA  
TRANSPORTATION AUTHORITY,**  
by its authorized signatories:

\_\_\_\_\_, by its authorized signatory(ies):

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

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

Per: \_\_\_\_\_  
Senior Legal Counsel

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