

Agreement Identification Number # 039LA0238

EXECUTION COPY

AGREEMENT

BETWEEN

**Her Majesty the Queen in the Right of the Province of British Columbia, as represented by
the MINISTER OF TRANSPORTATION AND INFRASTRUCTURE**

(the “Province”)

AND

City of Port Moody

(the “City”)

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THIS AGREEMENT is dated for reference the 27 day of February, 2017

BETWEEN:

Her Majesty the Queen in the Right of the Province of British Columbia, as represented by the MINISTER OF TRANSPORTATION AND INFRASTRUCTURE

(the "Province")

AND

City of Port Moody

(the "City")

WHEREAS:

- A. The Province has entered into a Design Build Finance Agreement dated December 11, 2012 (the "**Project Agreement**") with Evergreen Rapid Transit Holdings Inc. (the "**Primary Contractor**") in relation to the design, construction and financing of the Evergreen Line Rapid Transit Project (the "**Project**").
- B. The Province and the City entered into a Municipal Agreement dated October 31 2011 with respect to the various aspects of the delivery of the section of the Project defined as the Port Moody Segment in the agreement (the "**Municipal Agreement**").
- C. The Province and the City wish to enter into this Agreement in order to document arrangements agreed between the Province and the City in relation to certain aspects of the implementation of the Project in the City of Port Moody.

NOW THEREFORE and for good and valuable consideration, (the receipt and sufficiency of which is hereby acknowledged by the Province and the City, each to the other), the Parties agree as follows:

REMOVAL FROM CITY INFRASTRUCTURE WORK

- 1. With respect to the City Infrastructure Work that the Ministry was required to perform in connection with the construction of the Project Infrastructure comprised in the Port Moody Segment at the Ministry's sole cost and expense as contemplated by Section 6.3 of the Municipal Agreement, the parties have agreed as follows:

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- a. the following items of scope are to be removed from the City Infrastructure Work:
 - (1) the Charles Street Intersection Improvements;
 - (2) the View Street right out communications box relocation;
 - (3) the View Street traffic controller replacement;
 - (4) the paving of Clarke Street; and
 - (5) the paving of Spring Street,particulars of which are set out in Schedule A hereto (the “**Scope Reductions**”); and
 - b. the City will design, construct and complete or will procure the diligent design, construction and completion of works in substitution for the Scope Reductions (the “**City’s Street Works**”). For certainty, in the event that the City has not completed the City’s Street Works within 5 years of the date of this Agreement, the City shall advise the Province of the reasons for the delay and the anticipated date of completion of same.
2. Subject to the terms of this Agreement, the Province will contribute up to \$652,591.20 (inclusive of all applicable taxes other than GST) (the “**Contribution**”), to the City towards the City’s conduct of the City’s Street Works.
 3. The City agrees that the City’s Street Works will fully replace and supercede the Scope Reductions.
 4. The City agrees that it will notify the Province before the City makes any significant changes to or substitutions of the components of the City’s Street Works that are intended to replace and supercede the Scope Reductions.
 5. The City acknowledges and agrees that:
 - a. the Province has no obligations or commitments to the City in respect of the City’s Street Works other than as expressly set out in this Agreement;
 - b. the Province’s obligations contained or referred to in the Municipal Agreement with respect to City Street Modifications (as defined in the Municipal Agreement) on Charles Street, View Street, Clarke Street and Spring Street are fully discharged by this Agreement and that the Province has no further obligations with respect to City Street Modifications (as defined in the Municipal Agreement) with the exception of outstanding deficiency items identified in the deficiency list dated September 23, 2016; and
 - c. without prejudice to the generality of the forgoing, as between the Province and the City, the City will be responsible at all times for all aspects of and requirements associated with design, conduct and delivery of the work comprising the City’s Street Works, including the procurement, design, construction, supervision, testing, commissioning, insurance, maintenance and repair of the City’s Street Works.

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EXPANSION OF CITY INFRASTRUCTURE WORK

6. The Province and the City have agreed that the restoration of Balmoral Drive is generally required (consisting of the repaving Balmoral Drive, from Barnet Frontage Road to CP property line, including granular base, and related traffic management) (the "**Balmoral Restoration Work**") and have agreed as follows:
 - a. the Province has taken steps pursuant to the terms of the Project Agreement to include the Balmoral Restoration Work within the Project; and
 - b. the Province has procured the construction and completion of the Balmoral Restoration Work by the Primary Contractor as part of the Project and pursuant to and in accordance with the terms of the Project Agreement.
7. The City agrees to reimburse the Province for the Balmoral Restoration Work which reimbursement shall not exceed the sum of \$10,000.00 inclusive of all applicable taxes other than GST.

INVOICING AND PAYMENT

8. In order to receive the payment set out in section 2 of this Agreement, the City will submit invoices for payment to the Province referencing 039LA0238, accompanied by a written statement as to the nature of the requested payment.
9. The City and the Province agree that amounts payable by the Province to the City pursuant to this Agreement shall be deducted from the amounts payable by the City to the Province pursuant to this Agreement. Schedule B hereto sets out a reconciliation of such amounts to determine the net payment.

APPROPRIATIONS RISK

10. Notwithstanding any other provision of this Agreement, the payment of money by the Province to the City pursuant to this Agreement is subject to:
 - a. there being sufficient monies available in an appropriation, as defined in the B.C. *Financial Administration Act* (the "FAA"), to enable the Province in any fiscal year when any payment of money by the Province falls due pursuant to this Agreement, to make that payment; and
 - b. Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in subparagraph (a) of this section.

INDEMNIFICATION

11. The City will at all times indemnify and save harmless the Province and the employees, servants, agents and elected officials of the Province from and against any and all claims, actions, causes of action, demands, losses, damages, costs, liabilities, expenses, fines, fees, penalties, assessments and levies, made against or incurred, suffered or sustained by any of them, at any time or times (whether such interest, fines or costs are court ordered or otherwise and whether before or after the expiration or termination of this Agreement) where the same or

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any of them are sustained in any way as a result of or in connection with this Agreement, which indemnity will survive the expiration or sooner termination of this Agreement.

TERMINATION

12. If either Party is in default of any of the material terms of this Agreement, and upon notice of such a default from the non-defaulting Party, fails to remedy the default within 30 days of the date of such notice, the non-defaulting Party may terminate this Agreement and pursue any other remedy to which the non-defaulting Party may be entitled.

REPRESENTATIVE AND NOTICE

13. The City representative for the purposes of administering and receiving notices pursuant to this Agreement is:

Attn: Manager, Engineering Services
City of Port Moody
100 Newport Drive
Port Moody, BC V3H 5C3
Phone: 604 469-4550
Fax: 604 469-4500

The City may replace the City representative by notice in writing to the Province.

14. The Province representative for the purposes of administering and receiving notices pursuant to this Agreement is:

Attn: Segment Manager – Port Moody
Ministry of Transportation and Infrastructure
2900 Barnet Hwy, Coquitlam, BC
Phone: 604-927-4452
Fax: 604-927-4453

With copy to:

Attn: Associate Project Director – Evergreen Line Rapid Transit Project
Ministry of Transportation and Infrastructure
2900 Barnet Hwy, Coquitlam, BC
Phone: 604-927-4452
Fax: 604-927-4453

The Province may replace the Province representative by notice in writing to the City.

GENERAL

15. The Parties agree that any amendment to the terms and conditions of this Agreement must be in writing and duly executed by both Parties.

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16. The Parties agree to negotiate all disputes arising from this Agreement in good faith after receiving written notification of the existence of a dispute from any Party.
17. Each Party will at all times treat as confidential all documents and other information supplied to or obtained by such Party from the other Party as a result of this Agreement and, except as required by law, will not permit the publication, release or disclosure of the same without the prior written consent of the disclosing Party. This obligation survives the completion or termination of this Agreement.
18. The Parties agree that the Schedules to this Agreement form part of this Agreement.
19. The Parties agree that this Agreement will be construed in accordance with the laws of the Province of British Columbia. A reference to a statute in this Agreement, whether or not that statute has been defined, means a statute of the Province of British Columbia, unless otherwise stated and includes all amendments to it, the regulations made under it and any enactment passed in substitution therefore or replacement thereof.
20. The City acknowledges and agrees that the Province has not made and makes no representations or warranties whatsoever in relation to the subject matter of this Agreement other than, if any, as may be set out expressly herein.
21. This Agreement is governed exclusively by, and is to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia, and the laws of British Columbia and the laws of Canada applicable in British Columbia are the proper law of this Agreement.
22. This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the parties will constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form, provided that any party providing its signature in faxed form shall promptly forward to each other party an original signed copy of this Agreement which was so faxed.
23. Except as expressly provided otherwise in this Agreement, any waiver of any provision of this Agreement shall only be effective if in writing signed by the waiving party, and no failure by any party at any time to exercise a right or remedy under or to enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement shall be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms. Any waiver shall only apply to the specific matter waived and only in the specific instance and for the specific purpose for which it is given.
24. This Agreement (including the Schedules) constitutes the entire agreement between the parties with respect to all matters contained herein and supersedes all prior agreements and communications (both oral and written) between any of the parties with respect to all matters contained herein.
25. Time is of the essence in this Agreement.

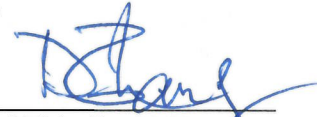
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The Parties have executed this Agreement as of 27th FEBRUARY, 2017

Signed on behalf of Her Majesty the Queen
in the right of the Province of British Columbia,
by a duly authorized representative of the Minister
of Transportation and Infrastructure on Feb 27th, 2017

in the presence of:

Signature of Authorized Representative of
Province



Name and Title: David Chang - Associate
Project Director Evergreen Line Rapid
Transit Project

JMcurtin
Signature of Witness

Julie Martin
Name of Witness

Signed by James Chandler on behalf of the
City of Port Moody on 27th FEB, 2016

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in the presence of:

Signature of Authorized Representative of the
City of Port Moody

Domenico Ieraci
Signature of Witness

Domenico Ieraci
Name of Witness

J. Chandler
Name and Title: James Chandler –
Manager, Engineering Services, City of
Port Moody

Agreement Identification Number # 039LA0238

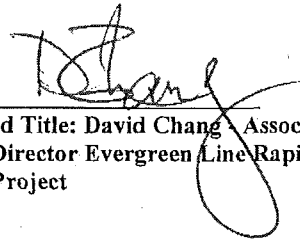
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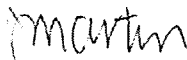
Signed on behalf of Her Majesty the Queen
in the right of the Province of British Columbia,
by a duly authorized representative of the Minister
of Transportation and Infrastructure on Feb 27th, 2017

in the presence of:

Signature of Authorized Representative of
Province



Name and Title: David Chang - Associate
Project Director Evergreen Line Rapid
Transit Project



Signature of Witness

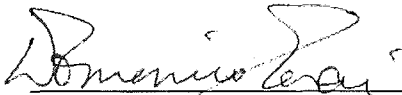
Julie Martin

Name of Witness

Signed by James Chandler on behalf of the
City of Port Moody on 27th FEB, 2016 ^{JB} JC

in the presence of:

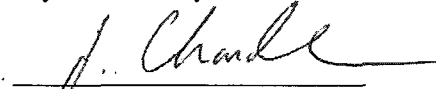
Signature of Authorized Representative of the
City of Port Moody



Signature of Witness

Domenico Ieraci

Name of Witness



Name and Title: James Chandler -
Manager, Engineering Services, City of
Port Moody

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**SCHEDULE A
SCOPE REDUCTIONS**

Description of Removed Scope	Associated Drawing (if any)	Amount owed by the Ministry to the City
Charles Street Intersection Improvements		
<ul style="list-style-type: none"> • Remove and replace existing concrete medians to accommodate larger truck movements through the turn • New sidewalk letdowns on the northwest and northeast corners of the intersection (and small connection of sidewalk on each side) • Remove and replace damaged median barriers in the curve (excluding pre-existing barrier curb) • Remove and replace flexible delineators (approx. 50m in length) • Remove sand barrels at highway sign • Excavation (at a smaller quantity than identified in the original quantity sheet – 151214 attachment) • Cold milling (at a smaller quantity than identified in the original quantity sheet – 151214 attachment) • Asphalt tack coat (at a smaller quantity than identified in the original quantity sheet – 151214 attachment) • Thermoplastic cross walk markings • Relocation of existing highway sign post (inclusive of base and electrical works) • Relocation of existing catch basin in the left turn from Clarke to Charles 	<p>511326-10140-S2SL-41DD-9012</p> <p>City Intersection Improvements Mark-Up 150716</p>	<p>\$94,271.45</p>

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Description of Removed Scope	Associated Drawing (if any)	Amount owed by the Ministry to the City
View Street right out communications box relocation		
<ul style="list-style-type: none"> Remove and replace existing underground wires Repair and relocate existing underground conduits Install 2 new Type 10 junction boxes at each boulevard Testing and commissioning of site installation Pavement removal and repair Associated civil repair Traffic Control 	511326-10140-S2SL-41DD-9013	\$21,000.00
View Street Traffic Controller Replacement		
<ul style="list-style-type: none"> Supply and install 1 P44-Econolite traffic cabinet complete with 1 S6 Alpha UPS System Complete shop test of system Program Cobalt and install in field Traffic Management and control 		\$12,319.75
Paving of Clarke Street		
<ul style="list-style-type: none"> Pave from Queens Street to Kyle Street (inclusive of Kyle/Clarke intersection); ½ road to City account, ½ to Province account (approx. 15m wide) Paving depth of 50mm grind and overlay (with contingency for potential areas with greater degradation) Traffic management 	Clarke Street Paving Quantity Estimate 160511	\$125,000.00
Paving of Spring Street		
<ul style="list-style-type: none"> Moody Street to Electronic Avenue (excluding Hugh/Spring and 	Spring Street Paving Quantity	\$400,000.00

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Description of Removed Scope	Associated Drawing (if any)	Amount owed by the Ministry to the City
Williams/Spring intersections – already done by EGRT) <ul style="list-style-type: none">• ½ road width (approx. 8m width)• Full depth restoration, 150mm asphalt depth• Traffic management	Estimate 160511	
TOTAL		\$652,591.20 (inclusive of all applicable taxes other than GST)

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**SCHEDULE B
RECONCILIATION**

Value of Province Contribution (payable to the City)	\$652,591.20
Value of Balmoral Restoration Work (payable to the Province)	\$10,000.00
Total (payable to the City)	\$642,591.20