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ADMINISTRATIVE REPORT

Report Date: July 7, 2009
Contact: Bryan Newson
Contact No.: 604.871.6002
RTS No.: 07558
VanRIMS No.: 08-2000-20
Meeting Date: July 21, 2009

TO: Vancouver City Council

FROM: Managing Director of Cultural Services in consultation with General Manager of Engineering Services

SUBJECT: Canada Line Public Art Program

RECOMMENDATION

- A. THAT Council authorize Cultural Services staff to develop and participate in a Canada Line Public Art Program on the terms and conditions outlined in this report, and as agreed in-principle by the City and by InTransitBC and Canada Line Rapid Transit, Inc. on December 23, 2008, in the letter attached as Appendix A.
- B. THAT Council set the amount of City Retail Compensation for permitting InTransitBC to lease retail operations in Canada Line stations occupying City Street rights of way at \$20,000 per year, as recommended by the General Manager of Engineering Services.
- C. THAT Council waive the \$20,000 per year City Retail Compensation fee recommended in B., above, provided InTransitBC dedicates it to the Canada Line Public Art Program and additionally contributes 2% of gross revenues from station retail lease sales (estimated to be at least \$80,000 per year), as agreed in-principle on December 23, 2008.
- D. THAT Council authorize staff to participate in the Canada Line Public Art Program and jointly allocate an annual budget estimated at \$100,000 on the commission, installation, maintenance and removal of Station artworks.
- E. THAT staff report back on the Canada Line Public Art Program after the development of an administration model satisfactory to the Managing Director of Cultural Services, and one year of operation under such model.

- F. THAT the Director of Legal Services be authorized to draw agreements on behalf of the City with InTransitBC, Canada Line Rapid Transit, Inc., artists, curators, galleries, and others as needed to implement the Canada Line Public Art Program generally as outlined in this report, including the following terms and conditions, all to the satisfaction of the Managing Director of Cultural Services and the General Manager of Engineering Services:
- i. That the City Retail Compensation fee referenced in B. above be updated periodically to reflect rate changes consistent with retail uses on City Street right of way,
 - ii. That the City Retail Compensation fee become due and payable to City general revenue in the event the Canada Line Public Art Program discontinues or the City discontinues its participation and;
 - iii. That City contributions to the Canada Line Public Art Program be directed after the inaugural exhibition to the exhibition of artworks curated or commissioned through processes approved by the Managing Director of Cultural Services.

GENERAL MANAGER'S COMMENTS

The General Manager of Community Services RECOMMENDS A through F.

CITY MANAGER'S COMMENTS

The City Manager RECOMMENDS approval of the foregoing.

COUNCIL POLICY

The Public Art Program was adopted in 1991 to incorporate contemporary art into public areas under civic jurisdiction. Program revisions adopted in 2008 encourage partnerships with other institutions, governments, and agencies, in part to further Program goals in public places beyond civic jurisdiction.

Fees are paid to the City for retail operations which encroach on City Streets or Street rights of way. These fees are reviewed periodically to ensure they recover the full cost of providing City services, or are equivalent to competitive charges where the fee is of a market nature.

PURPOSE

This report requests City Council to formalize an agreement in-principle between the City and InTransitBC and Canada Line Rapid Transit, Inc. jointly to develop, fund and administer a Canada Line Public Art Program of temporary art installations at Canada Line stations. Council authorization is required to implement the agreement, which appears as Appendix A.

BACKGROUND

InTransitBC is the private company responsible for constructing and operating the new Canada Line. Canada Line Rapid Transit, Inc. is Translink's (the owner's) representative in the project. Together with the City, InTransitBC and Canada Line Rapid Transit, Inc. agreed in-principle on December 23, 2008, to develop a Canada Line Public Art Program providing temporary public art installations at Canada Line stations. This is an innovative and exceptional opportunity, first proposed by InTransitBC and Canada Line Rapid Transit, Inc., to enhance the enjoyment, interest, and contemporary art education of transit users along the line. Implementing this agreement is subject to Council approval (Appendix A).

DISCUSSION

InTransitBC has a 30-year concession to operate the Canada Line. Upon City advice and with City agreement, InTransitBC is installing retail spaces within the fare paid zones of all Vancouver stations except 49th Avenue. The City supports these retail operations because they provide extra "eyes" within the stations and contribute to public safety. In exchange for permitting retail operations within the City Street right of way, the City is entitled to a City Retail Compensation fee. By terms of the agreement noted above (Appendix A), the General Manager of Engineering Services, with the advice of Real Estate Services, agreed to initial City Retail Compensation of \$20,000 per year for use of the City right of way.

City Agreement In-principle to Develop a Canada Line Public Art Program

The General Manager of Engineering Services also agreed in-principle, subject to Council approval, to waive that fee if InTransitBC and Canada Rapid Transit, Inc. joined the City in the development, funding and administration of a Canada Line Public Art Program. If waived for that purpose, InTransitBC would retain and direct the fee to the Program, as the City's contribution to Program funding. For its part, InTransit agreed in-principle, subject to the City's fee waiver and to City participation in the Program, to contribute 2% of the gross revenues it receives from its sale of retail leases, at a projected minimum of \$80,000. This amount plus the redirected City fee make a Program budget of \$100,000 per year.

Inaugurating a Canada Line Public Art Program

Cultural Services and InTransitBC would begin the Public Art Program when transit service begins later this fall. To do so, InTransitBC has offered to provide the \$100,000 budget in advance of receiving any revenue from the sale of retail leases. This budget would consist of the City's redirected fee of \$20,000 and an \$80,000 advance on the revenues that InTransitBC anticipates from retail lease sales. Having the Program budget in advance would enable artworks to be installed in time for the opening of the Canada Line.

Sustainable Program Funding

As noted above, InTransitBC by agreement will dedicate 2% of gross sales of its retail leases to the Program budget. Once the retail leases begin to contribute cash flow and InTransitBC has recovered its \$100,000 advance, it will continue to pay 2% in order to accumulate an ongoing annual Program budget it estimates to be at least \$100,000 (including the City contribution). InTransitBC has agreed to pay the 2% fees that are surplus to its initial \$100,000 budget to the City, until a structure for ongoing program administration is jointly developed.

Funds not spent in one year would be carried forward and added to the \$100,000 budget available for subsequent years. Until such time as an administration structure for the Program is jointly developed by the City and InTransitBC.

In addition to its cash contribution, InTransitBC has committed to review its capacity to provide in-kind contributions to the Program, such as assistance with artist installations and the printing of exhibition brochures, etc.

Partnering in this way with InTransitBC enables the City to participate in an innovative art program, largely funded by non-City revenue, that aligns with and achieves many City Public Art Program goals. Furthermore, the Retail Compensation fee reverts to general City revenue if the Program discontinues or the City no longer participates.

First Round Art Selections

The Canada Line Public Art Program would consist of temporary installations at Canada Line Stations. The limited time before the Line opens precludes new artwork commissions for this first exhibition, and the Program would start by installing artworks on offer by individual artists and by private operations, including Douglas Udell Gallery and the Vancouver Biennale. Again, due to the short time available, an inaugural selection of works has been proposed by an advisory panel of expert collectors and arts supporters. The advisory panel consists of Colleen and Howard Nemin, well known collectors who have served on the boards of the Contemporary Art Gallery and other arts organizations; Joost Bakker, a distinguished architect who has also served on several arts boards; and Douglas Udell, whose gallery represents several important Canadian sculptors. Jean-Marc Arbaud, CEO of InTransit BC, and Jane Bird, CEO of Canada Line Rapid Transit, Inc., represented their respective organizations. City staff have reviewed the proposed selections and placements of these works and believe that a selected number of the proposed projects will make a very good inaugural exhibition.

Next Round Exhibitions

Cultural Services believe the Canada Line Public Art Program would be well launched by the first-round installations proposed by the advisory panel. For subsequent exhibitions, staff would seek to broaden the range of work installed by offering exhibition opportunities and fees to artists and curators working with artist-run centres and non-profit galleries. This would be achieved by introducing a curatorial approach to maximize opportunities for artists working in non-commercial practices or who do not have gallery representation. A curatorial approach would also maximize artwork-and-station compatibility, art-practice diversity, and thematic consistency. Staff would also work with InTransitBC and Canada Line Rapid Transit, Inc. to forge curatorial partnerships with other institutions and participation by others, such as the highly respected program of First Nations artwork at YVR. Consistent with the City's need for transparency and accountability, staff recommend that for exhibitions subsequent to the first, all City funds contributed to the Program be expended on artworks selected through processes approved by the Managing Director of Cultural Services.

Program Management

Various options for ongoing program administration are under consideration, including administration by a new or existing non-profit arts organization. Rather than predetermine an administration model, staff propose to join InTransitBC and Canada Line Rapid Transit, Inc.

in the implementation of the first art installations and, based on that experience, jointly develop an administrative structure and process for subsequent exhibitions. Staff will work with InTransitBC and Canada Line Rapid Transit, Inc. to develop and report back on an administrative structure satisfactory to the Managing Director of Cultural Services.

An Existing City/Translink Partnership: Main Showcase Public Art

The City and Translink are currently joint partners on *88 Blocks*, a program of temporary and permanent public art installations on Main Street, installed in conjunction with the Main Street Transportation Showcase. The Program has been well received in the community. The Canada Line Program would be the first of its kind on TransLink's rail system. It also differs in that a modest City contribution levers a substantial contribution from InTransit BC. In both programs, staff believe the City's public art experience will provide access to a broad and diverse range of artistic and curatorial practices, to the benefit of transit user's experience.

FINANCIAL IMPLICATIONS

Partnering with InTransit BC enables the City to participate in an innovative art program largely funded by non-City revenue. The General Manager of Engineering Services agrees in principle, subject to Council approval, to waive a fee of \$20,000 per year for the use of the City right of way if InTransitBC and Canada Line Rapid Transit, Inc. joined the City in the development, funding, and administration of a Canada line Public Art Program. The Compensation fee reverts to general City revenue if the program discontinues or the City no longer participates.

SOCIAL IMPLICATIONS

Artworks in the stations will offer an experience of contemporary art to transit users, enhancing their transit experience, sparking their imaginations, and contributing to their visual literacy. Through its placement on the airport-serving transit line, the Program will contribute to Vancouver's international image as a creative city, and will also, of course, provide opportunities for artists working in non-commercial practices.

IMPLEMENTATION PLAN

With Council approval, the City and InTransit BC will enter an agreement providing for waiver of the Retail Compensation fee, its redirection to a Canada Line Public Art Program budget, and InTransitBC's contribution of 2% of retail lease revenues as described above. The agreement will also provide for periodic adjustment of the City Retail Compensation fee to reflect the increase in the value of the service provided. At the same time, Cultural Services staff will work with InTransit BC to develop an on-going administration model for the program for report back to Council.

COMMUNICATIONS PLAN

The Canada Line Public Art Program will be of significant interest to the public and the artist community and should be publicized through a communications plan developed and implemented cooperatively by the partners.

CONCLUSION

City participation in the Canada Line public art program, based on the dedication of fees received for commercial use of the City right of way, will meet City cultural goals by providing an enhanced experience of art for Canada Line users and broaden opportunities for artists working in non-commercial practices.

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ENGINEERING SERVICES
T.R. Timm, P.Eng., General Manager

December 23, 2008

File No.:

Mr. Jean-Marc Arbaud
President and Chief Executive Officer
InTransit British Columbia Limited Partnership
1020 - 1075 West Georgia Street
Vancouver, British Columbia V6E 3C9

and

Ms. Jane Bird
Chief Executive Officer
Canada Line Rapid Transit Inc.
1650 - 409 Granville Street
Vancouver, BC V6C 1T2

Dear Mr. Arbaud and Ms. Bird:

RE: *Vancouver Access Agreement dated November 30, 2004, as amended (the "Access Agreement") between South Coast British Columbia Transportation Authority (formerly Greater Vancouver Transportation Authority) ("TransLink"), Canada Line Rapid Transit Inc. (formerly, RAV Project Management Ltd.) ("CLCO") and the City of Vancouver (the "City")*

And RE: *Operation of Retail Facilities within the Stations*

We write to confirm our agreement pursuant to Section 6.2 of the Access Agreement, on the terms and conditions set out in this letter, to the installation and operation of Retail Facilities (as hereinafter defined) in the Stations along the Vancouver Segment. Capitalized terms used herein and not otherwise defined will have the meaning given to such terms in the Access Agreement.

The City will permit CLCO, InTransit BC Limited Partnership (the "**Concessionaire**") and any sub-licensee or subcontractor of any tier of the Concessionaire to:

- (a) use the System-Required Lands, the RAV Infrastructure and the access rights granted to CLCO under the Access Agreement to install and operate Retail Facilities in the Stations; and
- (b) conduct all activities ancillary thereto (including, without limitation, incorporating into the design and construction of the Stations such infrastructure as the Concessionaire deems appropriate and licensing or leasing the Retail Facilities to third parties on the terms and conditions as the Concessionaire may determine in its sole discretion without any compensation or obligation to the City other than as set out herein).

For the purposes herein, "**Retail Facilities**" means any or all of the facilities described in **Schedule "A"** to this letter. The City confirms that any permits or approvals required by CLCO, its assignee or TransLink, the Concessionaire (or their sub-licensees or subcontractors of any tier), in respect of the Retail Facilities will be issued by the City in accordance with the letter agreements dated September 15, 2004 and November 22, 2004, respectively, between the City and Richmond Airport Vancouver Rapid Transit Project (now CLCO).

In consideration of the City's agreement to permit the installation and operation of the Retail Facilities in the Stations, the Concessionaire, or after the termination of the Concession Agreement, CLCO, its assignee or TransLink, will agree to assume all costs and liabilities in connection with the installation and operation of the Retail Facilities and pay an annual fee (the "**City Retail Compensation**") to the City, as determined by the Vancouver City Council (the "**City Council**") on the terms and conditions set out herein and otherwise, for so long as the Concessionaire (or its sub-licensees or subcontractors of any tier) or CLCO (or its assignee or TransLink) are operating the Retail Facilities. The Concessionaire (or CLCO, its assignee or TransLink, after the termination of the Concession Agreement) agrees it will notify the City in writing when it has ceased to operate the Retail Facilities, and the City agrees that no City Retail Compensation will be payable following the cessation of such operation of the Retail Facilities.

City staff has determined that City Retail Compensation in respect of the Retail Facilities described in Schedule "A" hereto of \$20,000 per year is reasonable on the basis of the following factors:

- the number and location of the Retail Facilities (including, without limitation, applicable neighbourhood zoning);
- the square footage of each of the Retail Facilities and the aggregate square footage of all the Retail Facilities; and
- annual fees and other street rental rates established by City Council for comparable retail activities.

Following the countersignature hereof by CLCO and the Concessionaire, City staff will prepare a report to City Council recommending, *inter alia*, that the City Retail Compensation be established in the annual amount of \$20,000. Upon the unfettered determination by City Council of the City Retail Compensation, the City will thereafter deliver written notice (the "**Notice of Compensation Amount**") to the Concessionaire and CLCO detailing the particulars of the determination by City Council of City Retail Compensation.

Within 30 days of receiving the Notice of Compensation Amount in respect of the determination by City Council of the City Retail Compensation, the Concessionaire may notify the City in writing of its decision to not proceed with the operation of the Retail Facilities, and in such case, City Retail Compensation will not be payable by the Concessionaire (or, after the termination of the Concession Agreement, by CLCO or TransLink). For greater certainty, if following receipt of the Notice of Compensation Amount, the Concessionaire notifies the City that it does not intend to proceed with the operation of Retail Facilities, this letter agreement will be at an end and of

no further force or effect and the Concessionaire and CLCO agree that they will have no recourse against the City in respect of the same. If no such notice (as set out herein) is given to the City by the Concessionaire within 30 days of receiving the Notice of Compensation Amount, the Concessionaire is deemed to have accepted the determination by City Council of the City Retail Compensation.

We also confirm that the City agrees in-principle to the creation and funding of a public art program (the "**Art Program**") supporting the purchase and installation of art works within the Concessionaire's Operation and Maintenance Licence (as such term is defined in the Concession Agreement) along the Canada Line. It is contemplated by the parties that, pursuant to the terms of the Art Program, the City would agree to waive the payment by InTransit (or CLCO or TransLink, as applicable) of the City Retail Compensation in exchange for InTransit (or CLCO or TransLink, as applicable) paying into the Art Program 2% of the gross sales generated by the Retail Facilities on an annual basis. The Art Program is subject to City Council approval, and the City agrees that it will work with the Concessionaire to prepare a report for consideration by City Council regarding the proposed Art Program.

The parties hereto acknowledge and agree that this letter and any agreement regarding the Retail Facilities and the Art Program will form the basis for formal amendments to the Access Agreement, the terms of which shall be agreed upon between the parties.

Finally, the City confirms and acknowledges that any revenue derived from the Retail Facilities which is not payable as City Retail Compensation or pursuant to the Art Program will be for the sole account of CLCO (or TransLink, as applicable) or the Concessionaire or any other party designated by CLCO (or TransLink, as applicable) or the Concessionaire in their sole discretion.

This letter agreement will enure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns. Please confirm your agreement to the foregoing terms by signing below and returning a copy of this letter to us, and to the other party addressed above.

Yours truly,

Tom Timm, P. Eng.
General Manager
tomtimmm@vancouver.ca
tel: 604.873.7300

Acknowledged and agreed as of _____, 2008

**InTransit British Columbia GP Ltd. as general partner of
InTransit British Columbia Limited Partnership**

Per: _____
Jean-Marc Arbaud, President and Chief Executive Officer

Acknowledged and agreed as of 23 December, 2008

Canada Line Rapid Transit Inc.

Per: _____
Jane Bird, Chief Executive Officer

Schedule A
Retail Facilities

1. Location and Approximate Size of the Retail Facilities

Station	Approximate Size (metre²)
Waterfront Station	65
Vancouver City Centre Station	70
Yaletown-Roundhouse Station	2 facilities, each of which is 40
Olympic Village Station	35
Broadway-City Hall Station	50
King Edward Station	80
Oakridge-41 st Avenue Station	45

2. Intended Use of the Retail Facilities

Sale by CLCO, the Concessionaire and sublicensors or subcontractors of any tier of the Concessionaire or CLCO to passengers on the Canada Line of food, beverages and related items of convenience, including but not limited to, promotional items (including but not limited to branded cups, T-shirts, gift baskets, coupons and gift certificates), books and literature, newspapers, magazines and confectionary items.