

**Disclaimer:**

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**CRANE OVERSWING AGREEMENT**

**THIS AGREEMENT** is made as of \_\_\_\_\_, 201\_\_\_\_,

**BETWEEN:**

**SOUTH COAST BRITISH COLUMBIA TRANSPORTATION AUTHORITY,**  
having an office at 400 – 287 Nelson’s Court, New Westminster, BC V3L  
0E7

(“TransLink”)

**AND:**

(\_\_\_\_\_)

(the “Developer”)

[NTD: Make sure all registered and beneficial owners are included as  
the “Developer”.]

**WITNESSES THAT WHEREAS:**

- A. [BC Transportation Financing Authority (“BCTFA”) is the owner of certain lands and premises  
legally described as:

(Legal Description)

(the “Lands”);

[AND/OR]

[BC Transportation Financing Authority (“BCTFA”)/TransLink is the registered owner of  
statutory right of way \_\_\_\_\_ (the “SRW”) over a portion shown on plan  
\_\_\_\_\_ (the “SRW Area”) of certain lands and premises legally described as:

(Legal Description);]

- B. The Developer is the registered and beneficial owner in fee simple of the lands and premises  
legally described as:

(PID #s)

(the “Developer’s Property”);

- C. **[On and adjacent to the Lands] OR [on and adjacent to the SRW Area] OR [on and adjacent to the Developer's Property] [SkyTrain/Canada Line/Evergreen Line/transit bus] transit facilities** have been constructed and are being operated (the "Transit Facilities");
- D. Pursuant to the *South Coast British Columbia Transportation Authority Act* (the "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 maintenance and operation of the Transit Facilities as part of the regional transportation system (as defined in the Act) within the transportation service region (as defined in the Act) (the "Transit System"), **[and has contracted with British Columbia Rapid Transit Company Ltd. ("BCRTC") / InTransitBC Limited Partnership ("InTransitBC"), West Coast Express Ltd. ("WCE")/Coast Mountain Bus Company Ltd. ("CMBC") and other subsidiaries and contractors of TransLink for that purpose]**;
- E. The Developer is developing the Developer's Property and is constructing or causing to be constructed on the Developer's Property a project (the "Project"), and in connection with the Project the Developer wishes to erect on the Developer's Property and to operate and dismantle in proximity to the Transit Facilities as shown generally in Schedule E attached hereto, one or more construction cranes (collectively, the "Crane"); and
- F. The parties have agreed to enter into this Agreement to set out the terms and conditions that are to govern the operation of the Crane in relation to the **[Lands, the SRW Area and the] Transit Facilities.**

**NOW THEREFORE**, in consideration of the agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto covenant and agree as follows:

1. With respect to the Crane and the erection, operation, condition and dismantling of the Crane, the Developer covenants and agrees to observe, perform and comply with, and to cause to be observed, performed and complied with, at all times, the terms and conditions of this Agreement including the terms and conditions of Schedules C, D and E attached hereto.
2. The term of this Agreement shall commence on \_\_\_\_\_, 201\_\_ and end on \_\_\_\_\_, 201\_\_ or when the Crane has been fully removed from the Developer's Property, whichever is later.
3. The Developer shall pay to TransLink:
  - (a) a fee for the period from \_\_\_\_\_, 201\_\_ to \_\_\_\_\_, 201\_\_, **[minimum one year term]** in the amount of \$34,500.00, **[fee for a one year term]** plus applicable taxes, payable in full in advance on the date of this Agreement; and
  - (b) a fee of \$2,875.00, **[monthly rate]** plus applicable taxes, for each month or part thereof following \_\_\_\_\_, 201\_\_ that the Crane or part thereof remains on the Developer's Property, payable in full monthly in advance on \_\_\_\_\_, 201\_\_ and on the \_\_\_ day of each month thereafter until the Crane has been fully removed from the Developer's Property.

No fee or part of any fee paid by the Developer under this Agreement shall be refundable for any reason.

4. The Developer acknowledges that the use of the Transit Facilities for the operation of the Transit System is paramount. The Developer shall not interfere with, damage, impede or otherwise adversely affect the integrity, safety and security of the Transit Facilities or the operation or use thereof. Where TransLink is of the opinion that the Crane or the erection, operation, condition, use or dismantling of the Crane:
  - (a) is causing or could cause damage to or interference with the Transit Facilities or the operation or use thereof; or
  - (b) is creating or could create a danger or hazard to or with respect to the Transit Facilities or the operation or use of the Transit System or to passengers of the Transit System; or
  - (c) is materially non-compliant with any of the terms and conditions of this Agreement;

TransLink may require the Developer to cease erection, operation, use or dismantling of the Crane until an appropriate remedial action or repair is undertaken in the manner required by TransLink. In such event, the Developer shall immediately cease erection, operation, use or dismantling of the Crane and shall diligently pursue remedial action or repairs, provided that, in the event of damage to any part of the Transit Facilities, TransLink will carry out any necessary repairs of the Transit Facilities, the cost of which, together with an administrative fee of twenty percent (20%) of such costs, and all applicable taxes, the Developer shall pay to TransLink on demand.

5. The Developer shall indemnify and save harmless TransLink, **[BCTFA, InTransitBC, BCRTC, WCE and CMBC]** including their respective directors, officers, employees, contractors, agents and representatives, from and against any and all liabilities, actions, claims, losses, costs, expenses and damages suffered or incurred by any of them or any other person as a result of the Crane or the erection, operation or dismantling of the Crane, or any activities of the Developer or any of its employees, agents, contractors or subcontractors pursuant to this Agreement, or any activities of any other person who is in any way involved with the Crane or the erection, operation or dismantling of the Crane, or any negligence, willful misconduct or breach of this Agreement by the Developer or any of its employees, agents, contractors or subcontractors or any other person who is in any way involved with the Crane or the erection, operation or dismantling of the Crane. This indemnity shall survive any expiration or termination of this Agreement.
6. The Developer covenants and agrees with TransLink as follows:
  - (a) in relation to the Crane and the erection, operation, condition and dismantling thereof, the Developer shall cause to be observed and complied with, at all times, in addition to the requirements contained in Schedules C, D and E, any other requirements of TransLink communicated to the Developer in writing (either by TransLink directly or indirectly through its service providers, subsidiaries or on-site transit personnel) that TransLink considers, in its sole discretion, to be necessary to ensure public safety (including of transit passengers and employees), the protection and preservation of the Transit Facilities and the continued safe operation of the Transit System;

- (b) the Developer shall provide to TransLink reasonable notice of any proposed movement of the Crane that may require TransLink's consent, monitoring or supervision pursuant to Schedule D, in each case at the Developer's sole cost and expense, to enable TransLink or its service providers or subsidiaries to schedule appropriate personnel, if required, to monitor and supervise the Crane activity and address operational impacts;
- (c) the Developer shall co-ordinate with such contact persons as TransLink may advise in writing from time to time for the purpose of day to day communications with respect to erection, operation and dismantling of the Crane, other work activities including construction scheduling, operational impacts and mitigation measures, and any requirements pursuant to this Agreement;
- (d) at the option of TransLink, all erection, operation and dismantling of the Crane over the Lands or Transit Facilities shall be subject to the supervision by a representative of TransLink or its service provider or subsidiary, at the Developer's sole cost and expense, and the Developer covenants and agrees to follow or cause to be followed the instructions of such representative;
- (e) the Developer shall cause the Crane to be kept in good and safe condition and repair, and cause the erection, operation and dismantling of the Crane to be undertaken in a safe, secure and good and workmanlike manner;
- (f) in relation to the Crane and the erection, operation, condition and dismantling thereof, the Developer shall obtain all necessary permits and comply with and cause to be complied with all applicable laws, statutes, bylaws, permits, rules, regulations, directives, orders, requirements and directions of federal, provincial, municipal, local and other governmental and quasi-governmental or other competent body, authority, department, commission and board, including WorkSafeBC and the BC Safety Authority, and pay all fees, charges, taxes, expenses and penalties which may be assessed or become payable in respect of the Crane or the erection, operation and dismantling thereof or otherwise howsoever;
- (g) the Developer shall cause to be paid as they fall due all accounts for the Crane and the erection, operation and dismantling thereof and cause to be discharged all claims of builders' liens registered against the **[Lands or the SRW Area or the]** Transit Facilities where such liens arise in connection with the Crane or the erection, operation, maintenance, repair or dismantling thereof;
- (h) the Developer shall immediately report to TransLink any damage to any Transit Facilities **[or any infrastructure located on the Lands or the SRW Area,]** however inconsequential; and
- (i) the Developer shall pay to TransLink, on invoicing, the costs of TransLink and its subsidiaries (which costs and expenses shall include, without limitation, TransLink's own staff costs at the rates set out in Schedule A), service providers, consultants and on-site transit personnel (including consulting, legal and other professional fees and expenses) related to this Agreement or the Crane or the erection, operation, condition or dismantling thereof, including but not limited to costs with respect to granting approvals, monitoring or supervising Crane erection, operations, or dismantling, making adjustments to transit operations, and compensating service providers for any

expenditures or direct losses, together with, in all cases, an administrative fee of twenty percent (20%) of such costs (except TransLink staff costs), and all applicable taxes.

7. The Developer covenants and agrees with TransLink as follows:

- (a) prior to commencing the erection or operation of the Crane on the Developer's Property, the Developer shall, at its own expense, obtain or cause to be obtained wrap up liability insurance including coverage for crane swing operations (or in lieu of coverage for crane swing operations, project specific crane swing insurance satisfactory to TransLink) in an amount that is not less than \$25,000,000.00 per occurrence, insuring the operations of the Developer and all contractors, subcontractors and other persons at the Developer's Property, with TransLink[, **BCTFA, InTransitBC, BCRTC, WCE and CMBC**] named as additional insureds, such insurance to be in forms, on terms and with insurers licensed and authorized to do business in British Columbia, satisfactory to TransLink acting reasonably;
- (b) the Developer shall ensure that the policy for such insurance contains cross liability and severability of interest provisions, and provisions to the effect that the policy will not be cancelled without the insurer giving TransLink 30 days' prior written notice of cancellation;
- (c) at all times during the term of this Agreement, the Developer shall at its own cost and expense maintain or cause to be maintained the policy or policies for such insurance in full force and effect and provide to TransLink on any renewal of the policy or policies a certificate of insurance evidencing such renewal;
- (d) a certificate of insurance confirming the terms of the policy for such insurance and that it is in full force and effect is attached hereto as Schedule F; and
- (e) in the event that at any time during the term the policy or policies for such insurance are cancelled or not renewed or there is a material change in the policy or policies, and in any such case the Developer does not immediately replace or cause to be replaced the policy or policies with equivalent insurance coverage and provide TransLink with a certificate of insurance to that effect, TransLink may at its sole election:
  - (i) arrange replacement insurance and the Developer will promptly pay to TransLink the cost thereof and an administrative fee of twenty percent (20%) of such cost, plus all applicable taxes; or
  - (ii) terminate this Agreement by notice to the Developer with immediate effect, in which event the Developer shall not allow the Crane or any part thereof or anything suspended therefrom to pass through the airspace above **[the Lands or the SRW Area or]** any Transit Facilities.

8. The Developer acknowledges and agrees that any breach of or threatened breach of this Agreement by the Developer, its agents, employees, contractors or subcontractors or any other person involved with the Crane could negatively impact the integrity, security and continuous operation of the Transit Facilities and the Transit System and the safety of transit passengers and the general public and, as such, TransLink will be entitled to seek injunctive relief in a court

of competent jurisdiction without the need to post a bond and without prejudice to any other right or remedy TransLink might have pursuant to this Agreement, at law or in equity.

- 9. If there is any default in the due observance and performance of any of the obligations of the Developer under this Agreement and such default is not remedied to the satisfaction of TransLink within two (2) days after notice of the default is given by TransLink to the Developer, TransLink may terminate this Agreement by notice to the Developer with immediate effect, in which event the Developer shall not allow the Crane or any part thereof or anything suspended therefrom to pass through the airspace above [the Lands or the SRW Area or] any Transit Facilities.
- 10. Any expiration or termination of this Agreement shall be without prejudice to the rights and remedies of TransLink with respect to any indebtedness, liability, event, occurrence or default arising, occurring or existing prior to the effective date of such expiration or termination, which rights and remedies of TransLink shall be preserved and may be exercised by TransLink notwithstanding such expiration or termination.
- 11. All notices, requests, demands, directions, and other communications provided for in this Agreement must, unless otherwise provided in this Agreement, be in writing and will be deemed to have been sufficiently given, delivered or made if they are in writing and either faxed or actually delivered by courier or personal delivery to the applicable party at the following address or such other address of which a party gives notice hereunder:

If to TransLink:

If to the Developer:

South Coast British Columbia  
 Transportation Authority  
 400 – 287 Nelson’s Court  
 New Westminster, B.C.  
 V3L 0E7

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Attention: Manager, Real Estate  
 Facsimile Number: 604.636.4809

Attention: \_\_\_\_\_  
 Facsimile Number: \_\_\_\_\_

Any notice given by delivery will be conclusively deemed to have been given on the day of actual delivery thereof or if given by facsimile, on the day of transmittal thereof if given during the normal business hours of the recipient, and on the next following business day otherwise.

- 12. All monies or amounts payable under this Agreement are net of applicable goods and services taxes, and each party shall pay as and when due and in accordance with applicable law, all goods and services taxes that are payable in respect of any taxable supply under this Agreement or in respect of any amounts payable under this Agreement.
- 13. Notwithstanding any other terms and conditions of this Agreement, the Developer acknowledges that TransLink and its affiliates and subsidiaries are subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) (“**FOIPPA**”) and that this Agreement (including all schedules) and any documents and information supplied by the Developer to TransLink may be subject to public disclosure under FOIPPA. For greater certainty, the Developer hereby consents to the disclosure to third parties pursuant to FOIPPA of the terms

and conditions of this Agreement (including all schedules) and any documents and information supplied by the Developer to TransLink relating thereto.

14. Time is of the essence of this Agreement.
15. No failure to or delay in the exercise of any right under this Agreement on the part of TransLink will operate as a waiver of such right, nor will the single or partial exercise by TransLink of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right by TransLink. No waiver of any provisions of this Agreement will be binding or enforceable unless in writing signed by the waiving party.
16. If any provision of this Agreement is held to be illegal or unenforceable, it will be considered separate and severable from the remainder of such agreement and the remaining provisions will remain in force and be binding on the parties as if the severed provisions had not been included.
17. Each of the parties agrees to do all such things, sign all such documents and instruments and provide all such further documents, information and assurances as may be reasonably requested for the purposes and intent of this Agreement.
18. No remedy conferred upon or reserved to TransLink herein, or by statute or otherwise, will be considered exclusive of any other remedy, and all rights and remedies available under this Agreement shall be cumulative and not alternative and shall be in addition to and not in limitation of any rights and remedies otherwise available at law or in equity. All such rights and remedies of TransLink may be exercised concurrently or successively or in any combination and from time to time and as often as may be deemed expedient by TransLink.
19. This Agreement may be signed in counterparts which, when each party has executed and delivered a counterpart, shall have the same effect as if the signatures on such counterparts were upon the same instrument. This Agreement or any counterpart of it may be signed by a party and delivered by facsimile or email transmission and if so signed and delivered, this Agreement or such counterpart shall for all purposes be as effective as if the party had signed and delivered this Agreement or a counterpart of it bearing an original signature.
20. This Agreement constitutes the entire agreement between TransLink and the Developer pertaining to the operation within the airspace above and adjacent to the **[Lands/SRW Area and]** Transit Facilities of a crane located on the Developer's Property.
21. This Agreement may not be amended or varied except by further written agreement executed by the parties.
22. This Agreement shall in all respects be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.
23. Neither this Agreement nor any rights of the Developer under this Agreement may be assigned without the prior written consent of TransLink. If there is any change in control of the Developer without the prior written consent of TransLink, TransLink may, at its option, terminate this Agreement by notice to the Developer with immediate effect, in which event the Developer shall not allow the Crane or any part thereof or anything suspended therefrom to pass through the airspace above **[the Lands or the SRW Area or]** any Transit Facilities.

24. TransLink enters into this Agreement pursuant to its responsibilities pursuant to the 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**]. TransLink does not represent or warrant that this Agreement satisfies the requirements of any other governmental authority or other person or entity with respect to the Project or the subject matters of this Agreement.
25. This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

**IN WITNESS WHEREOF** the parties hereto have executed and delivered this Agreement by their respective authorized signatories as of the date and year first above written.

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

\_\_\_\_\_  
Print Name:

\_\_\_\_\_

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

\_\_\_\_\_  
Print Name:



**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  
DEVELOPER'S PROPERTY**

**[Insert drawing or plan of the Lands/SRW Area/Developer's Property]**

SAMPLE

## SCHEDULE C

[NTD: Attach current document “SkyTrain Limits of Approach – Safety Requirements for Work Near Automated Trains and Infrastructure”]

SAMPLE

**SCHEDULE D**  
**CRANE ERECTION, OPERATION AND DISMANTLING REQUIREMENTS**

1. For the purposes of this Schedule, references to “**Limit 1**”, “**Limit 2**”, “**Limit 3**”, “**Limit 4**”, or any one or more of them, refers to those airspace areas defined and described as Limit 1, Limit 2, Limit 3 and Limit 4 respectively in Schedule C attached to this Agreement, provided that:
  - (a) any building that is a [**SkyTrain Station/Canada Line Station/Evergreen Line Station/SeaBus Terminal**] building on [**or adjacent to**] the [**Lands/SRW Area/Developer’s Property**] and access ways thereto and therefrom, and the airspace above such building and access ways; and
  - (b) any [**bus loop/bus exchange/roadway that is a bus stop, and any sidewalk and bus passenger access or waiting areas adjacent thereto/any cycling path**], and the airspace above such facilities and areas;shall be included within “**Limit 3**”.
2. Under no circumstances may any part of the Crane or the trolley and rigging of the Crane or any load suspended from any part of the Crane be or pass within Limit 1, Limit 2, Limit 3 or Limit 4 except strictly in accordance with the terms of paragraph 3 of this Schedule.
3. The Developer may only erect, operate and dismantle the Crane in accordance with the following requirements:
  - (a) The Developer will cause the Crane to be erected, operated, inspected, maintained and dismantled in strict accordance with all applicable legislation and regulations administered by WorkSafe BC, BC Safety Authority and any other authority having jurisdiction over the erection, operation, inspection, maintenance and dismantling of construction cranes in the Province of British Columbia.
  - (b) After erection of the Crane, but before its operation or use, the Developer must submit to TransLink:
    - (i) the Crane Erection Report for the Crane approved by WorkSafe BC;
    - (ii) a certificate of a certified engineer or certified technologist certifying as follows:
      - (A) that the Crane is equipped with variable frequency electric drive motors to allow for “soft” stopping and starting operations of Crane components when slewing, trolleying and hoisting;
      - (B) that the Crane is equipped with collision avoidance devices that control the movement limits of the Crane components when slewing, trolleying and hoisting; and
      - (C) that the collision avoidance devices have been programmed to prevent a load suspended from the hoisting jib entering or encroaching within Limit 2 and Limit 3.

and

- (iii) such other documents and information as TransLink may from time to time reasonably request with respect to the Crane, its erection and its operations.

The Developer covenants and agrees not to operate or use the Crane until such report , certificate and other documents and information have been submitted to TransLink.

- (c) Under no circumstances will the programmed limits of the collision avoidance devices be over-ridden by the Crane operator without the prior written consent of TransLink.
- (d) Upon TransLink's approval of a written request by the Developer, the programmed limits of the collision avoidance devices may be over-ridden by the operator provided that the operation of the Crane during the approved overriding period is being supervised on site by TransLink personnel at the Developer's sole cost and expense.
- (e) The operator and rigger of the Crane must at all material times hold valid licenses or certificates recognized in the Province of British Columbia and the operator of the Crane must at all material times hold a valid Full Scope (formerly Class A) crane operating license.
- (f) Under no circumstances will a load suspended from any part of the Crane, or the trolley and rigging of the Crane, pass within Limit 3 during SkyTrain revenue service operating hours. A load suspended from the Crane, or the trolley and rigging of the Crane, may, with TransLink's prior written approval, and under TransLink's site supervision, and at the Developer's sole cost and expense, pass within Limit 2 during SkyTrain revenue service operating hours. Outside of SkyTrain revenue service operating hours, a load suspended from the Crane, and the trolley and rigging of the Crane, may, with TransLink's prior written approval, and under TransLink's site supervision, and at the Developer's sole cost and expense, pass within Limits 2, 3, or 4. At all times, the operator of the Crane must minimize the period of time the loaded hoisting jib enters within Limit 2 and Limit 3 by slewing the loaded hoisting jib in the shortest direction away from Limit 2 and Limit 3.
- (g) The hoisting jib of the Crane, while loaded, excluding any load suspended from any part of the Crane, and excluding the trolley and rigging of the Crane, may pass within Limit 2 and Limit 3, provided the operator of the Crane must minimize the period of time the loaded hoisting jib enters within Limit 2 and Limit 3 by slewing the loaded hoisting jib in the shortest direction away from Limit 2 and Limit 3.
- (h) The hoisting jib of the Crane, while unloaded, excluding the trolley and rigging of the Crane, may pass within Limit 2 and Limit 3, provided that for the purposes of the Crane "weather vaning" when not in operation and at any other time when the Crane is not in operation and unattended, the trolley and rigging of the Crane must be positioned tight to the mast of the Crane.
- (i) When the Crane is not in operation and unattended, it must be unloaded and set to "weather vane" with the trolley and rigging positioned tight to the mast of the Crane.

- (j) Under no circumstances will any part of the Crane's counterweight jib pass within or through Limit 2 or Limit 3.
  - (k) The mast of the Crane must not be erected within Limit 1, Limit 2, Limit 3 or Limit 4.
  - (l) Before dismantling of the Crane, the Developer must submit to TransLink a work plan for the dismantling of the Crane and must obtain TransLink's prior written acceptance of such work plan. The Developer covenants and Agrees not to dismantle the Crane until such work plan has been submitted to and accepted by TransLink.
4. The Developer will make available for examination by TransLink representatives as and when required by TransLink, all inspection, maintenance and load testing reports required by or delivered to authorities having jurisdiction over construction crane operations and maintenance.

**SCHEDULE E  
CRANE OVERSWING DRAWING**

**[NTD: Consider how this relates to the requirements of the Agreement and the other Schedules]**

**[NTD: Show relationship of Cranes and Crane swings to the Lands, the SRW Area and/or the Transit Facilities.]**

SAMPLE

**SCHEDULE F  
DEVELOPER'S CERTIFICATE OF INSURANCE**

SAMPLE