



Disclaimer:

This sample agreement has been made available by TransLink for general information purposes only. The circumstances of each TOH request 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.

TROLLEY OVERHEAD ADJACENT WORKS AGREEMENT

Date:	Project Municipal Address:	
Project Legal Description:		
(the "Property")		
Registered Owner:		
Beneficial Owner:		
(together with the Registered Owner, the "Owner")		
Owner Address:	Contact Name:	
Owner Phone:	Owner Email:	
General Contractor (for coordination purposes only):		
General Contractor Phone:	General Contractor Email:	

Background: The Owner is undertaking a project on the Property (the "Project"), and in connection with the Project the Owner wishes to (a) have South Coast British Columbia Transportation Authority ("TransLink") make temporary adjustments to infrastructure used by TransLink for the operation of electric trolley buses (the "Infrastructure"), and/or (b) erect on the Property and to operate in proximity to Infrastructure, Equipment. For the purpose of this Agreement, "Equipment" means any equipment, machinery or apparatus including, without limitation, construction cranes, excavators, bulldozers, backhoes, concrete pumping devices, scaffolding or any other form of equipment, machinery or apparatus used in connection with the Project, whether similar or dissimilar to the foregoing.

The Infrastructure to be adjusted by TransLink is more particularly described in Schedule B attached hereto (the "Designated Infrastructure") and may include one or more: (i) power poles, (ii) trolley poles with feeder arms, and (iii) direct current feeder lines and feed spans. The Designated Infrastructure includes, without limitation, all related running wire, catenary support, equipment and other infrastructure that is incidental or ancillary to the Designated Infrastructure.

Fees: The Owner shall pay:

- (a) to TransLink a one-time administrative fee of \$4,350.00, plus applicable taxes;
- (b) to TransLink or, if directed by TransLink, to Coast Mountain Bus Company Ltd. ("CMBC") a relocation fee of \$● as set out in Schedule B attached hereto (together, the "Fee"); and
- (c) to TransLink, all costs and expenses incurred by TransLink and its subsidiaries, all in accordance with Section 2 of the attached terms and conditions.

Compliance: The Owner shall observe, perform and comply with, and cause to be observed, performed and complied with, the following:

- (a) the terms and conditions set out in Schedule A attached hereto;
- (b) the safe work plan, a copy of which is attached as Schedule C hereto;
- (c) the "Instructions to Employers When Planning Work in Proximity to the Energized VDC Trolley Overhead System", a copy of which is attached as Schedule D hereto; and
- (d) the "Trolley Overhead Hazard Advice", a copy of which is attached as Schedule E hereto.

Schedules: The Owner acknowledges that the attached Schedules place additional legal obligations on the Owner, and that the Owner has reviewed the attached Schedules carefully. The Schedules attached to this Agreement are incorporated into and form part of this Agreement as fully as if they were included in the main body of this Agreement.

[Insert name of Registered Owner] , by its authorized signatory:	[Insert name of Beneficial Owner] , by its authorized signatory:	South Coast British Columbia Transportation Authority (TransLink) , by its authorized signatory:
_____	_____	_____
Name: Title:	Name: Title:	Name: Title:



Schedule A Terms and Conditions

- 1. Fee.** The Fee, plus applicable taxes, is non-refundable and payable in full in advance, on the date of this Agreement. Upon receipt of the Fee and the Security (as defined in Section 3), TransLink will temporarily adjust or relocate the Designated Infrastructure, as determined by TransLink in its sole discretion.
- 2. Costs:** The Owner shall pay to TransLink all costs and expenses incurred by TransLink and its subsidiaries in connection with this Agreement and the relocation of the Designated Infrastructure including, without limitation all costs and expenses relating to: (a) any site monitoring by or for TransLink with respect to the Project or the Equipment, (b) any repairs required as a result of an Equipment contact incident with Infrastructure, (c) any rerouting of, or disruption to, transit services caused by the Project or implemented to accommodate the Project including, without limitation, any road closures, detours and temporary relocation of bus stops, and (d) any other matters required of or by TransLink in connection with the Project and the Equipment, which costs and expenses shall include, without limitation, TransLink's own staff costs (being \$● per hour for Senior Managers, \$● per hour for Managers and Project Managers and \$● per hour for other TransLink staff), 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 monthly 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 after the invoice date.
- 3. Security:** The Owner shall provide to TransLink as security for amounts payable to TransLink under this Agreement, a security deposit in the amount of \$● (the "Security"). TransLink may require that the Security take the form of a cash deposit or a clean, irrevocable letter of credit payable at sight and in form and content acceptable to TransLink. TransLink will draw on the Security to pay TransLink invoices if payment of those invoices by the Owner is not made within 30 days. If required by TransLink, the Owner must provide to TransLink replacement security, in such form as required by TransLink, for the amount drawn. TransLink shall also be entitled to draw on any 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. If at any time TransLink determines that additional security is required in order to cover any anticipated costs likely to be incurred by TransLink, or anticipated fees payable by the Owner to TransLink, the Owner shall provide to TransLink additional security in such form and amount as required by TransLink, within 7 days of TransLink's written request. The amount of the Security or any additional security shall not limit the Owner's obligations to reimburse TransLink for its costs, mark-up and taxes as provided herein.
- 4. Coordination:** The Owner 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 and operation of the Equipment, other work activities including construction scheduling, assessing operational impacts and implementing mitigation measures, and any requirements pursuant to this Agreement.
- 5. Compliance:** The Owner shall observe, perform and comply with, and cause to be observed, performed and complied with: (a) while on transit property, any rules and regulations made by TransLink or any of its subsidiaries, and (b) any requirements of TransLink communicated to the Owner 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), and the protection, preservation and continued safe operation of transit vehicles.
- 6. Independent Qualified Safety Watcher:** The Owner shall ensure that an Independent Qualified Safety Watcher is physically present at the Project site at all times while Equipment is located or operating, or activities are occurring, within 3 metres of Infrastructure. For the purpose of this Agreement an "Independent Qualified Safety Watcher" means an accredited arm's length third party, satisfactory

to TransLink in its sole discretion, engaged by the Owner to monitor electrical hazards and promote and ensure safety in connection with the Project. The Owner shall ensure that an Independent Qualified Safety Watcher shall: (a) not be employed by the Owner or any affiliate (as defined in the British Columbia *Business Corporations Act*) of the Owner; (b) have been authorized by TransLink's Trolley Overhead Power Distribution Network Manager to act in the capacity of an Independent Qualified Safety Watcher; and (c) have been authorized and directed by the Owner to order that work be stopped at the Project site for safety purposes, if necessary.

7. TransLink Safety Advisor: TransLink may designate an individual, employed or engaged by TransLink or any subsidiary of TransLink, to regularly monitor the Owner's compliance with the terms and conditions of this Agreement (a "TransLink Safety Advisor"). A TransLink Safety Advisor may at any time and from time to time, without prior notice to the Owner, monitor the Owner's compliance with the terms and conditions of this Agreement and such TransLink Safety Advisor shall be entitled to enter upon the Property to confirm compliance, if required.

8. Non-Compliance / Safety of Transit System: If TransLink determines, in its sole discretion from time to time, that: (a) the Owner has failed to comply with any term or condition of this Agreement (which failure may or may not result in contact with Infrastructure), including any term or condition set out in any Schedules attached hereto; or (b) any action has been taken by the Owner, or by any contractor, agent or representative of the Owner, whether authorized or not, above and beyond that which is set out in the safe work plan attached as Schedule C hereto, or (c) the Project or the Equipment or the erection, operation, condition or use of the Equipment, poses any hazard or danger to Infrastructure, transit operations or transit passengers; then TransLink may, in its sole discretion, require that the Owner take certain corrective action. In addition, and without in any way limiting either TransLink's ability to require that the Owner take certain corrective action or TransLink's right to issue a Stop Work Order (as defined in Section 15), TransLink may, in its sole discretion and from time to time, implement any measures deemed necessary or appropriate by TransLink, in response to events of non-compliance or safety concerns including, without limitation: (i) issuing a written warning, (ii) requiring that the Owner investigate the cause of the non-compliance, take corrective measures to prevent further events of non-compliance or to ensure safety and report such corrective measures to TransLink, (iii) increasing the regularity of Project site visits by the TransLink Safety Advisor, (iv) requiring that a representative of the Owner, together with the Owner's general contractor if required by TransLink, attend an in-person safety meeting with TransLink to address the non-compliance or safety issue, and (v) temporarily stop all work in the vicinity of the Designated Infrastructure, as required by TransLink, until corrective measures have been implemented to TransLink's satisfaction. The Owner shall not attempt to repair any damage to Infrastructure unless expressly authorized to do so by TransLink.

9. Reporting: The Owner shall immediately report to TransLink any damage to Infrastructure, or any event of non-compliance with the terms of this Agreement, however inconsequential.

10. Operation and Maintenance of Equipment: The Owner shall cause the Equipment to be kept in good and safe condition and repair, and cause the erection and operation of the Equipment to be undertaken in a safe, secure and good and workmanlike manner. In relation to the Equipment and the erection, operation and condition thereof, the Owner 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 bodies, authorities, departments, commissions and boards, including WorkSafeBC and the BC Safety Authority, and pay all fees, charges, taxes, expenses and penalties which may be assessed or become payable in connection with the Project and the Equipment or the erection and operation thereof.



11. Movement of Equipment: If required by TransLink, all erection and operation of Equipment that will pass through the airspace above, or within three (3) metres of, any Infrastructure at the Project site shall be subject to the supervision of a representative of TransLink or its service provider or subsidiary, and the Owner covenants and agrees to follow or cause to be followed the instructions of such representative. The Owner shall provide to TransLink reasonable notice of any proposed movement of Equipment that may require TransLink's consent, monitoring or supervision pursuant to this Agreement, to enable TransLink or its service providers or subsidiaries to schedule appropriate personnel, if required, to monitor and supervise the Equipment activity and address operational impacts.

12. Indemnity: The Owner shall indemnify and save harmless CMBC and TransLink and its subsidiaries, 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, arising out of or in connection with: (a) any breach by the Owner of any term or condition of this Agreement; (b) any negligence or willful misconduct by the Owner or any of its directors, officers, employees, agents, contractors, subcontractors or representatives or any other person who is in any way involved with the Project or the Equipment; and (c) any activities of the Owner or any of its directors, officers, employees, agents, contractors, subcontractors or representatives pursuant to or in connection with this Agreement, or any activities of any other person who is in any way involved with the Project or the Equipment, save and except to the extent caused by the negligence or willful misconduct of TransLink or CMBC.

13. Insurance: The Owner shall, at its sole cost and expense, obtain and keep in force until Project completion, wrap up liability insurance including coverage for crane swing operations, if a construction crane will be used in connection with the Project and will be passing through the airspace above Infrastructure (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 \$10,000,000.00 per occurrence, insuring the operations of the Owner and all contractors, subcontractors and other persons at the Property, with each of South Coast British Columbia Transportation Authority and Coast Mountain Bus Company Ltd. named as Additional Insureds, and otherwise in such forms, on terms and with insurers licensed and authorized to do business in British Columbia, satisfactory to TransLink acting reasonably. The Owner shall ensure that the policies for such insurance contain cross liability and severability of interest provisions, and provisions to the effect that the policy will not be cancelled without giving TransLink 30 days' prior written notice of cancellation. The Owner shall deliver true certificates of insurance to TransLink, evidencing compliance with this Section 13, promptly upon execution of this Agreement by the Owner and from time to time at TransLink's request. In the event that at any time prior to Project completion 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 Owner 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: (a) arrange replacement insurance and the Owner will promptly pay to TransLink the cost thereof and an administrative fee of twenty percent (20%) of such cost, plus all applicable taxes; or (b) issue a Stop Work Order (as defined in Section 15). Notwithstanding the foregoing, the Owner's general contractor identified on the first page of this Agreement may place the insurance required in this Section 13, provided that the Owner is added as an Additional Insured, and provided that the Owner otherwise complies, and causes its general contractor to comply, with all terms and conditions of this Section 13. For greater certainty, any non-compliance by the Owner's general contractor with the terms and conditions of this Section 13 shall be deemed to be non-compliance by the Owner, and TransLink will be entitled to all rights and remedies as if such non-compliance had been committed by the Owner.

14. Transit System Paramount: The Owner acknowledges that the use of Infrastructure for the operation of electric trolley buses is paramount. The Owner shall not interfere with, damage, impede or otherwise adversely affect the integrity, safety and security of Infrastructure, transit operations or transit passengers.

15. Stop Work Order: If there is any default in the due observance and performance of any of the obligations of the Owner under this Agreement and such default is not

remedied to the satisfaction of TransLink within 2 days after notice of the default is given by TransLink to the Owner, TransLink may issue a written notice to the Owner requiring that the Owner temporarily or permanently stop all work in proximity to Infrastructure (a "**Stop Work Order**"). The Owner shall comply with all terms and conditions set out in a Stop Work Order, which, depending on the circumstances, could include a requirement that the Owner not permit any: (a) Project related activities to occur within 3 metres of Infrastructure or in the airspace above Infrastructure, (b) Equipment or part thereof or anything suspended therefrom to come within 3 metres of Infrastructure, or (c) construction crane forming part of the Equipment to pass through the airspace above Infrastructure.

16. Privacy: The Owner acknowledges that this Agreement and all information provided by the Owner to TransLink is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and agrees that TransLink may, in accordance with such Act, disclose this Agreement and other information and records provided by the Owner to TransLink, to any party without the consent of the Owner.

17. Owner Acknowledgement: The Owner acknowledges and agrees that any breach of or threatened breach of this Agreement by the Owner, its agents, employees, contractors or subcontractors or any other person involved with the Equipment could negatively impact the integrity, security and continuous operation of transit vehicles 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.

18. General:

(a) Assignment. Neither this Agreement nor any rights of the Owner under this Agreement may be assigned, by operation of law or otherwise, without the prior written consent of TransLink.

(b) Binding Effect. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

(c) Compliance with Laws. The Owner shall comply with and observe all applicable federal and provincial laws, all bylaws, and all ordinances, regulations and orders of all municipal authorities having jurisdiction.

(d) Counterparts. This Agreement may be executed in counterparts each of which may be delivered electronically, and will be deemed to be an original, and both of which together will constitute one and the same agreement.

(e) Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matter of this Agreement, and supersedes all previous expectations, understandings, communications, representations and agreements with respect to the subject matter of this Agreement, whether verbal or written, and this Agreement may not be modified or amended, in whole or in part, unless such an amendment is in writing and executed by both the Owner and TransLink.

(f) Further Assurances. Each of the parties shall, upon the request of the other party, do, or cause to be done all further lawful acts, deeds and assurances as may be reasonably necessary or desirable for the better performance of the terms and conditions of this Agreement.

(g) Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and each party expressly submits to the exclusive jurisdiction of the courts of British Columbia and all courts competent to hear appeals therefrom.

(h) Joint and Several. In the event that the Owner is comprised of more than one party, the Owner's obligations under this Agreement shall be joint and several.

(i) Notices. Any notice or other document required or permitted to be given by either party to the other must be in writing and will be deemed to be given if mailed by prepaid registered mail in Canada or delivered if to the Owner, to the address on page 1 of this Agreement, and if to TransLink, to 400-287 Nelson's Court, New Westminster B.C. V3L 0E7, or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered by hand, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

(j) Severability. Each provision of this Agreement is intended to be severable and if any provision is illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the validity of this Agreement or the remaining





provisions.

(k) Time. Time is of the essence in this Agreement.

(l) Waiver. TransLink will not be deemed to have waived the exercise of any right

that it holds under this Agreement unless such waiver is made in writing, and any such written waiver will apply only to the matter so waived and not to any additional, continuing or subsequent matter of the same or different kind.

SAMPLE

Schedule B
CMBC Relocation Costing Document setting out Fee
and description of Designated Infrastructure

[to be inserted]

SAMPLE

**Schedule C
Safe Work Plan**

[to be inserted]

SAMPLE

Schedule D
Instructions to Employers When Planning Work in Proximity
to the Energized VDC Trolley Overhead System

[to be inserted]

SAMPLE

**Schedule E
Trolley Overhead Hazard Advice**

[to be inserted]

SAMPLE