

**Regional District of Nanaimo Board – Meeting Date: July 25, 2023**

*This document contains closed 'in-camera' meeting decisions that have been released because they are no longer considered sensitive.*

### **Island Rail Corridor Grant Agreement**

It was moved and seconded to rise and report as follows:

Item 6.7 That the fully executed Island Rail Corridor Funding Grant Agreement, dated March 31, 2023, between the Regional District of Nanaimo and the Ministry of Transportation and Infrastructure, is to be made public by publishing the agreement on the Regional District of Nanaimo's website.

CARRIED UNANIMOUSLY

Released: July 25, 2023

**CONDITIONAL GRANT AGREEMENT**

THIS AGREEMENT dated for reference the 31<sup>st</sup> day of **March, 2023** (the "Reference Date")

**BETWEEN:**

**His Majesty the King in Right of the Province of British Columbia,  
represented by the Minister of Transportation and Infrastructure**

("the Ministry")

OF THE FIRST PART

**AND:**

**Regional District of Nanaimo**

(the "Recipient")

OF THE SECOND PART

(together, the "Parties" and singularly, a "Party")

**WHEREAS:**

The Ministry wishes to provide to the Recipient a one-time lump sum grant of \$600,000 to enable the Recipient to engage in the short and long-term planning for the Island Rail Corridor ("the Corridor"), in collaboration with First Nations and local governments impacted and/or bisected by the Corridor.

The grant aims to support cooperative work, across the various First Nations and governments on Vancouver Island, towards the development of a shared vision for the Corridor in the near term and benefits directly impacted communities as well as the whole of Vancouver Island over the long term.

**NOW THEREFORE**, in consideration of the premises, and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each of the Parties), the Parties agree as follows:

**DEFINITIONS**

**1.01** In this Agreement:

- (a) **"Authorized Representative"** means the person or persons with legal authority and agency to legally bind the Recipient, and who signs this document accordingly;
- (b) **"Eligible Costs"** means those costs listed as Eligible Costs in section 1 of Schedule "B" to a maximum of **\$600,000** and excludes Ineligible Costs as listed in section 2 of Schedule "B";
- (c) **"End Date"** means **December 31, 2024**;

- (d) **“Event of Default”** means any of the events described in paragraph 10.01;
- (e) **“Ineligible Costs”** means the costs and expenses described or listed, as applicable, in section 2 of Schedule “B”;
- (f) **“Island Rail Corridor”** means the collection of parcels of lands which make up the Corridor, including the Victoria Subdivision, the Port Alberni Subdivision and the Wellcox spur, as of the date of Execution of this Agreement; and
- (g) **“Term”** means the period in paragraph 3.01.

#### **PAYMENT**

- 2.01** The Ministry will, subject to compliance with the terms of this Agreement, pay to the Recipient an amount of **\$600,000** within 30 calendar days of execution of this Agreement.

#### **TERM OF AGREEMENT**

- 3.01** The term of this Agreement will begin on the Reference Date and will expire on the End Date unless sooner terminated by the Ministry in accordance with Section 3.02.
- 3.02** The Ministry may terminate this Agreement:
  - (a) immediately for the Recipient’s failure to comply with this Agreement by giving written notice of termination; or

#### **REPRESENTATIONS AND WARRANTIES**

- 4.01** The Recipient represents and warrants to the Ministry, with the intent and understanding that the Ministry will rely thereon in entering into this Agreement, that on execution of this Agreement and at all times thereafter:
  - (a) all information and statements required from the recipient, including the application or letter of interest, and other documents and reports furnished or submitted by the Recipient to the Ministry in connection with or pursuant to this Agreement are true and correct to the best of the Recipient’s knowledge;
  - (b) the Recipient has no knowledge of any fact that materially adversely affects, its ability to fulfill its obligations under this Agreement;
  - (c) the Recipient is not in breach of, or in default under, any law, statute or regulation applicable to or binding on it that may affect this Agreement;
  - (d) the Recipient has the power and capacity to accept, execute and deliver this Agreement; and

- (e) this Agreement is binding upon and enforceable against the Recipient in accordance with its terms.

**4.02** All statements contained in any document delivered by or on behalf of the Recipient to the Ministry under this Agreement, or in connection with any of the transactions contemplated hereby, will be deemed to be representations and warranties by the Recipient under this Agreement.

**4.03** All representations, warranties, covenants and agreements made herein, and all certificates, applications or other documents delivered by or on behalf of the Recipient, are material and will conclusively be deemed to have been relied upon by the Ministry and will continue in full force and effect during the continuation of this Agreement.

#### **RELATIONSHIP**

**5.01** No partnership, joint venture, agency or other legal entity will be created by, or will be deemed to be created by, this Agreement or any actions of the parties pursuant to this Agreement.

**5.02** The Recipient is an independent entity and is not the servant, employee or agent of the Ministry.

**5.03** The Recipient will not in any manner whatsoever commit or purport to commit the Ministry for the payment of money to any person.

#### **RECIPIENT'S OBLIGATIONS**

**6.01** The Recipient will:

- (a) participate collaboratively with Regional Districts, provincial and federal governments, First Nations and the Island Corridor Foundation towards the development of a shared vision for the Corridor in the near term and benefits directly impacted communities as well as the whole of Vancouver Island over the long term, particularly First Nations, for the use of lands going through or adjacent to their reserves and Traditional territories and to which First Nations agree;
- (b) support the development of a Terms of Reference to formalize the process towards the development of the shared vision, inclusive of how to coordinate planning funding, in collaboration with provincial and federal governments, First Nations and the ICF;
- (c) lead coordination and participation of the respective municipal governments within the Recipient's Regional District boundary;
- (d) consider the following in the development of the shared vision:
  - i. Collaboration between all partners;

- ii. Interests of impacted First Nations;
  - iii. Movement of people and goods via all modes of transportation;
  - iv. Transportation network resiliency on Vancouver Island, in the face of population growth and climate change;
  - v.
  - vi. The goals outlined in the South Island Transportation Strategy and other provincial policies, such as Clean BC and the Goods Movement Strategy; and
  - vii. Safety concerns of communities or other safety considerations or requirements (e.g. Technical Safety BC);
- (e) expend funds received under this Agreement in accordance with the terms of this Agreement, including as necessary, and based on the Terms of Reference, expending the funding toward procurement of external resources, such as engagement or engineering consultants, to support advancing the development of the shared vision and options for the Corridor;
- (f) co-operate with the Ministry in making such public announcements regarding the Agreement as the Ministry sees fit;
- (g) at the request of the Ministry, fully inform the Ministry of the work done and to be done by the Recipient in collaboration with others and in connection with the funding provided pursuant to this Agreement, in accordance with Schedule A Sections 5 and 6;
- (h) observe, abide by and comply with all laws, by-laws, orders, directions, rules and regulations of any competent government including of the Province of British Columbia or any branch or agency thereof directly or indirectly applicable to the Recipient or this Agreement;
- (i) as requested by the Ministry, provide evidence satisfactory to the Ministry that the representations and warranties set forth in paragraph 4.01 are true;
- (j) file all tax, corporate information, if applicable, and other returns required to be filed by the laws of British Columbia or Canada, and will comply with all workers' compensation legislation and other similar legislation to which the Recipient may be subject, and will pay all taxes, fees and assessments calculated to be due by the Recipient under those laws; and
- (k) repay all monies forthwith upon demand by the Ministry if the terms and conditions of this Agreement are not complied with or adhered to.

## RECORDS

7.01 The Recipient will:

- (a) keep proper and accurate financial accounts and records, including but not limited to its contracts, invoices, statements and receipts in respect of the Eligible Costs, for at least six (6) years after this Agreement's End Date; and
- (b) permit the Ministry at any time or times during normal business hours, to copy or audit, or both, any or all of the books of account and records (including supporting documents) referred to in subparagraph (a) of this paragraph

#### **STATEMENTS AND ACCOUNTING**

- 8.01** Within 15 days of the delivery of a written demand from the Ministry, or as otherwise agreed to by the Ministry and the Recipient, the Recipient will provide the Ministry with such current information and documents with respect to the Recipient's operations and activities utilizing this funding and the costs that the funding is supporting and activities, including the invoices, documents, statements and reports.
- 8.02** The Recipient will provide the Ministry with a final report as outlined in Section 4 of Schedule A.

#### **CONFIDENTIALITY**

- 9.01** Subject to Section 6.01, the Province will treat the Recipient's information provided by it pursuant to this Agreement as confidential and shall not, directly or indirectly, disclose, allow access to, transmit or transfer all or a portion of the Information to a third party without the Recipient's prior written consent, unless:
- (a) it is disclosed pursuant to a legal proceeding discovery request, Freedom of Information and Protection of Privacy Act or other jurisdictional equivalent request, investigative demand, subpoena, an order of any court of competent jurisdiction or of any administrative body having jurisdiction,
  - (b) the Recipient consents to the information's release, or
  - (c) the information has already been made public by the Recipient or an independent third party

#### **DEFAULT**

- 10.01** Any of the following events will constitute an Event of Default, namely
- (a) the Recipient fails to comply with any provision of this Agreement;
  - (b) any representation, certification, or warranty made by the Recipient in pursuant to, as a result of or in connection with this Agreement is untrue or incorrect;



- (c) any information, statement, certificate, report or other information or document furnished or submitted by or on behalf of the Recipient pursuant to, as a result of or in connection with this Agreement is untrue or incorrect;
- (d) the Recipient ceases to operate;
- (e) a change occurs with respect to any one or more, including all, of the properties, assets, financial condition, business or operations of the Recipient which, in the opinion of the Ministry, materially adversely affects the ability of the Recipient to fulfill its obligations under this Agreement or to complete the Project;
- (f) an order is made or a resolution is passed or a petition filed for the liquidation or winding up of the Recipient;
- (g) the Recipient becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (h) a bankruptcy petition is filed or presented against, or a proposal under the Bankruptcy Act (Canada) is made by, the Recipient;
- (i) a receiver or receiver-manager of any property of the Recipient is appointed; or,
- (j) the Recipient permits any sum which is not disputed by the Recipient to be due by it to remain unpaid after legal proceedings have been commenced to enforce payment thereof.

**10.02** Upon the occurrence of any Event of Default and at any time thereafter the Ministry may, notwithstanding any other provision of this Agreement, at its complete discretion and exercisable by written notice to the Recipient:

- (a) declare all monies paid under this Agreement, other than monies that have been spent in accordance with the terms of this Agreement, to be immediately repaid by the Recipient to the Ministry; and,
- (b) terminate this Agreement.

**10.03** Any rights, powers and remedies conferred on the Ministry under this Agreement or under any statute or law are not intended to be exclusive and each shall be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Ministry under this Agreement, any other agreement, at law or in equity.

**10.04** The exercise by the Ministry of any right, power, or remedy will not preclude the simultaneous or later exercise by the Ministry of any other right, power or remedy.

#### **MINISTRY**

**11.01** The Recipient will refer all matters pertaining to the Agreement to the Ministry.

**INDEMNITY**

**12.01** The Recipient will at all times indemnify and save harmless the Ministry and the employees, servants, contractors, representatives and agents of the Ministry from and against 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 any of them are based upon or arise out of or from anything done or omitted to be done by the Recipient, directors, officers, employees, contractors or agents, as a result of this Agreement, which indemnity will survive the expiration or sooner termination of this Agreement.

**OTHER FUNDING**

**13.01** If the Recipient receives, or has received, funding from any person, firm, corporation or other government or governmental body for the same purpose as this Agreement, then the Recipient will forthwith provide the Ministry with full and complete particulars thereof.

**13.02** The Ministry reserves the right to recalculate the maximum contribution to the Recipient under this Agreement as a result of funding identified in Section 13.01.

**NOTICES**

**14.01** Any notice, consent, waiver, statement, other document or payment and any or all of the Material that either party may desire or be required to give or deliver to the other will be conclusively deemed validly given or delivered to and received by the addressee, to the email addresses provided below, through their respective duly authorized representatives, on the date of delivery, or if to the Ministry:

**Ministry of Transportation and Infrastructure**

Attn: Janelle Staite, Deputy Director

Contact: [Janelle.Staite@gov.bc.ca](mailto:Janelle.Staite@gov.bc.ca)

and if to the Recipient:

**Regional District of Nanaimo**

Attn: Douglas Holmes, Chief Administrative Officer

Contact: [dholmes@rdn.bc.ca](mailto:dholmes@rdn.bc.ca)

**14.02** Either Party must give written notice to the other party of any change of email address of the party giving such notice, and after the giving of such notice the email address therein specified will, for purposes of paragraph 14.01, be conclusively deemed to be the address of the party giving such notice.



#### **NON-WAIVER**

- 15.01** No term or condition of this Agreement and no breach by the Recipient of any such term or condition will be deemed to have been waived unless such waiver is in writing signed on behalf of the Ministry by a duly authorized representative of the Ministry.
- 15.02** The written waiver by the Ministry of any breach by the Recipient of any term or condition of the Agreement will not be deemed a waiver of such term or condition or of any subsequent breach by the Recipient of the same or any other term or condition of this Agreement.

#### **INSURANCE**

- 16.01** The Recipient will, without limiting its obligations or liabilities herein, purchase and maintain insurances with insurers licensed in Canada with coverage of a type, and in amounts, that any similar business, acting reasonably, would procure for the size and exposure of the activities and operations during the term of this Agreement.
- 16.02** The Recipient shall require and ensure that its consultants, contractors and subcontractors maintain insurances comparable to those required above.
- 16.03** Upon request by the Ministry, the Recipient will deliver a certified copy of the policies of insurance applicable under this Agreement. No review or approval of any insurance policy by the Ministry derogates from or diminishes the Ministry's rights or the Recipient's liability under this Agreement.

#### **ENTIRE AGREEMENT**

- 17.01** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement.

#### **FURTHER ACTS AND ASSURANCES**

- 18.01** Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

#### **TIME OF ESSENCE**

- 19.01** Time will be of the essence of this Agreement.

#### **SURVIVAL OF PROVISIONS**

- 20.01** All of the provisions of this Agreement in favour of the Ministry and all of the rights and remedies of the Ministry, whether at law or in equity, will survive any expiration or sooner termination of this Agreement.

#### **INTERPRETATION**

- 21.01** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 21.02** The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of this Agreement.
- 21.03** Any reference to a statute in this Agreement, whether or not that statute has been defined, includes all regulations at any time made under or pursuant to that statute and any amendments to that statute.
- 21.04** In this Agreement wherever the singular or neuter is used it will be construed as if the plural or masculine or feminine, as the case may be, had been used where the context so requires.
- 21.05** The Schedules to this Agreement are an integral part of this Agreement as if set out at length in the body of this Agreement.
- 25.06** No amendment or modification to this Agreement will be effective unless it is in writing and duly executed on behalf of each party.
- 25.07** If any provision of this Agreement or the application to any person or circumstances is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be enforceable to the extent permitted by law.
- 25.08** All dollar amounts expressed in this Agreement refer to lawful currency of Canada.
- 25.09** Unless the context otherwise indicates, any reference to this Agreement means this instrument and all of the Schedules attached to it, and any reference to any paragraph or subparagraph by number is a reference to the appropriate paragraph or subparagraph in this Agreement.
- 25.10** Nothing in this Agreement operates as a consent, permit, approval or authorization by the Government of the Province of British Columbia or by any Ministry, Branch or agency thereof, to or for anything related to the Project that by law the Recipient is required to obtain unless it is expressly stated in this Agreement to be such a consent, permit, approval or authorization.
- 25.11** This Agreement may be executed in counterparts by each party under this Agreement signing the original or PDF copy of the Agreement and deliver it to the other party by email, courier or post, or such other method agreed by the parties.

#### **SUCCESSORS AND ASSIGNS**


26.01 This Agreement will continue for the benefit of and be binding upon both the Recipient and its successors and permitted assigns, and the Ministry and its assigns.

**EFFECTIVE DATE**

27.01 Notwithstanding the date of execution or delivery of this Agreement, this Agreement is effective as of the Reference Date.

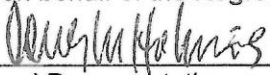
**IN WITNESS WHEREOF** the parties hereto have executed this Agreement by their duly authorized representatives or officers as follows:

Signed on behalf of His Majesty the King in the right of the Province of British Columbia, by a duly authorized representative of the **Minister of Transportation and Infrastructure**



\_\_\_\_\_  
Name: Janelle Staite  
Title: Deputy Director, South Coast Region  
Date: March 31, 2023

Signed on behalf of the **Regional District of Nanaimo**



\_\_\_\_\_  
Authorized Representative

Name: **Douglas Holmes**  
**Chief Administrative Officer**

Title:

Date: MARCH 31, 2023

## SCHEDULE “A”

### INFORMATION

1. Title: Island Rail Corridor Planning Grant: One-time lump sum grant of \$600,000 for participation in discussions and/or planning towards the development of a shared vision for the future of the Vancouver Island Rail Corridor, on the terms and conditions in this Agreement.
2. The Ministry has established a time-limited opportunity for funding to help develop a vision for the future of the Island Rail Corridor. The grant is intended to provide capacity funding for the **Regional District of Nanaimo** enable both the engagement and involvement in short and long-term planning, in collaboration with First Nations and Local governments impacted and/or bisected by the Island Rail Corridor, to develop improvements and plans for the Corridor that benefit people living on Vancouver Island.
3. This grant is intended to facilitate the following activities, in coordination with and across Regional District boundaries, towards the development of a shared vision for the entire Island Rail Corridor:
  - (a) engagement activities,
  - (b) technical analysis, and
  - (c) programming and work planning activities.
4. The Recipient will:
  - (a) pursue work described in this Agreement in the context of the entire corridor, and not exclusively on portions of the Corridor within the Recipient's jurisdiction;
  - (b) conduct this work in consideration of Vancouver Island multi-modal transportation networks and planning considerations (such as population growth and affordable housing needs), but will not expend this funding on studies or other work directed specifically at other transportation corridors; and
  - (c) coordinate and engage municipal governments, First Nations and local stakeholders as part of these pursuits, as necessary and per the terms of this Agreement.

### REPORTING REQUIREMENTS

5. The Recipient will submit interval progress reports as requested by the Ministry and in alignment with other Recipients.

6. The Recipient shall submit a final report, by December 31, 2024, in a form acceptable to the Ministry and in alignment with other Recipients, which provides an overview of the accomplishments during the Term of this Agreement.

**SCHEDULE “B”**

**1. ELIGIBLE COSTS**

Eligible Costs must directly relate to the Island Rail Corridor and may be inclusive of the following:

- i. Public engagement;
- ii. Consulting services costs (engagement, project management, planning and engineering);
- iii. Technical analysis and/or investigations;
- iv. Temporary staff to support the deliverables within the Terms of this Agreement;
- v. Legal costs; or
- vi. Other activities to directly support the deliverables within the Terms of this Agreement.

**2. INELIGIBLE COSTS**

Ineligible Costs include the following:

- i. Capital expenditures;
- ii. Property acquisition;
- iii. Investments or plans directed at other transportation corridors.