

**REGIONAL DISTRICT OF NANAIMO**

**REGULAR BOARD MEETING  
TUESDAY, JULY 27, 2010**

**C I R C U L A T E D R E P O R T  
F O R A G E N D A**

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**ADMINISTRATOR'S REPORT**

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Vancouver Island University Transit Exchange Agreement.



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**TO:** Dennis Trudeau  
General Manager, Transportation & Solid Waste Services

**DATE:** July 23, 2010

**FROM:** Jim Pope  
Manager, Fleet and Transit Operations

**FILE:** 0620-01

**SUBJECT:** Vancouver Island University Transit Exchange Agreement

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**PURPOSE**

To bring forward an agreement to construct a new transit exchange at Vancouver Island University. This agreement provides for the use of a portion of Vancouver Island University property for the operation of a transit exchange.

**BACKGROUND**

Two significant infrastructure grant programs under the Federal Gas Tax Funding Program are currently available for transit projects. The two programs are the Public Transit Agreement (PTA) and the Public Transit Infrastructure Program (PTIP).

To be eligible the project must contribute to reducing greenhouse gas emissions, reducing smog-forming air emissions or increasing transit ridership. The resulting asset must be primarily for public use and benefit and owned by the eligible recipient.

One of the projects approved under this program is the construction of a new transit exchange at Vancouver Island University (VIU) on Fourth Street. The existing VIU transit exchange that is accessed off Fifth Street incurs lengthy delays when buses depart from the University. These delays waste fuel and increase the times on scheduled runs. In addition the existing exchange is not sized for planned future transit expansions.

Staff has worked with the City of Nanaimo, BC Transit and VIU in the design and relocation of the exchange to Fourth Street. The new exchange will be a significant improvement over the existing exchange due to better egress and being appropriately sized for future expansions. This will contribute to increased University ridership and overall efficiency of the service. The cost of the project has been estimated at \$595,000.

VIU has agreed to provide a location on their property for the transit exchange provided the RDN can fund the cost of the design and construction of the project. VIU has engaged a consultant with previous experience on construction projects on the University property. In addition VIU has agreed to manage the project; this is desirable since construction will take place on one of the University's integral transportation corridors.

VIU has been working on a master plan at the University, which may mean the proposed exchange will have to be moved in the future. VIU has indicated that if the RDN utilizes the Gas Tax funding for this project, VIU would pay for the design and construction of a similar sized exchange on their property if the exchange had to be moved.

Staff has prepared an agreement (Appendix A) that will allow the construction of a transit exchange on VIU property and ensure the RDN has access to the site for transit purposes. The agreement also includes provisions for a maximum of \$595,000 of Gas Tax funds to be contributed to VIU for the design and construction of the new transit facility. In addition the agreement includes provisions for VIU to be responsible, at its sole cost, for all costs of the relocation of the transit exchange, including dismantling and reconstruction.

VIU officials are anxious to begin the construction of this project as soon as possible so fall classes are not disrupted. Full completion of this project would also meet the terms of the Gas Tax Agreement for the use of these funds.

## **ALTERNATIVES**

1. That the Board approve the Vancouver Island University Transit Exchange Agreement.
2. That the Board not approve the Vancouver Island University Transit Exchange Agreement and provide alternate direction to staff.

## **FINANCIAL IMPLICATIONS**

Except for the staffing required to manage the project work, there are no direct financial implications for approving the agreement. The total cost of the VIU transit exchange project will be covered by Gas Tax grants. If the grants are not utilized by March 2011 they will be returned to the Federal government.

## **SUMMARY/CONCLUSIONS**

The existing VIU transit exchange that is accessed off Fifth Street incurs lengthy delays when buses depart from the University. These delays waste fuel and increase the times on scheduled runs. In addition the existing exchange is not sized for planned future transit expansions.

Staff has worked with the City of Nanaimo, BC Transit and VIU in the design and relocation of the exchange to Fourth Street. The new exchange will be a significant improvement over the existing exchange due to better egress and being appropriately sized for future expansions. This will contribute to increased University ridership and overall efficiency of the service. The cost of the project has been estimated at \$595,000.

Staff has been successful in obtaining full Gas Tax funding for this project.

VIU has agreed to provide a location on their property for the transit exchange provided the RDN can fund the cost of the design and construction of the project. VIU has agreed to manage the project; this is desirable since construction will take place on one of the University's integral transportation corridors.


VIU has been working on a master plan at the University, which may mean the proposed exchange will have to be moved in the future. VIU has indicated that if the RDN utilizes the gas tax funds for this project that they would pay for the design and construction of a similar sized exchange on their property if the exchange had to be moved.


Staff has prepared an agreement that will allow the construction of a transit exchange on VIU property and ensure the RDN has access to the site for transit purposes. The agreement also includes provisions for a maximum of \$595,000 of Gas Tax funds to be contributed to VIU for the design and construction of the new transit facility. In addition the agreement includes provisions for VIU to be responsible, at its sole cost, for all costs of the relocation of the transit exchange, including dismantling and reconstruction.

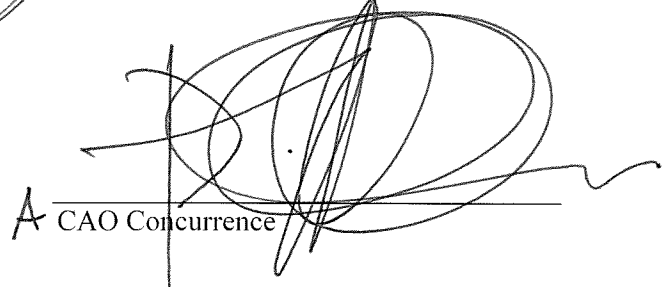
Based on the foregoing, staff recommends that the Vancouver Island Transit Exchange Agreement be approved.

**RECOMMENDATIONS**

1. That the Board approve the Vancouver Island Transit Exchange Agreement.

  
Report Writer

  
General Manager Concurrence

  
A CAO Concurrence

**TRANSIT EXCHANGE AGREEMENT**

This Agreement is dated for reference the \_\_\_\_ day of \_\_\_\_\_, 2010

BETWEEN:

**VANCOUVER ISLAND UNIVERSITY**

900 Fifth Street  
Nanaimo, BC V9R 5S5

(the "**University**")

OF THE FIRST PART

AND:

**REGIONAL DISTRICT OF NANAIMO**

6300 Hammond Bay Road  
Nanaimo, BC V9T 5N2

(the "**Regional District**")

OF THE SECOND PART

**WHEREAS:**

- A. The Regional District operates a public bus transit system in the Regional District of Nanaimo;
- B. The University is the owner in fee simple of lands legally described as:  
  
PID 000-359-173  
  
Lot 1, Section 1, Nanaimo District, Plan 35726 except part in Plans VIP66138 and VIP66141  
  
(the "**Lands**")
- C. The Regional District wishes to locate and operate a public transit exchange (the "**Transit Exchange**") for benefit of the University, on that portion of the Lands described in Schedule "A" attached hereto (the "**University Site**") and forming part of this Agreement
- D. The University has agreed to construct the Transit Exchange on behalf of the Regional District and grant to the Regional District a licence over the University Site for the purposes of using, operating and maintaining the Transit Exchange, subject to the terms and conditions contained in this Agreement.

**NOW THIS AGREEMENT WITNESSES** that in consideration of the premises, covenants and agreements hereinafter contained, the sufficiency and receipt of which is hereby acknowledged, the parties covenant and agree each with the other as follows:

**1.0 TERM**

1.1 The term of this Agreement shall be twenty five (25) years commencing the \_\_\_\_ day of \_\_\_\_\_, 2010 and expiring on the \_\_\_\_ day of \_\_\_\_\_, 2035 (the “**Term**”), unless earlier terminated as provided for under this Agreement.

**2.0 LICENCE**

2.1 The University, subject to the performance and observance by the Regional District of the terms and conditions contained in this Part 2.0, grants to the Regional District a right by way of licence for the Regional District, its agents, employees, contractors, subcontractors, licensees, invitees including all members of the public, at all times, to use the University Site for the purposes of:

- (a) the Transit Exchange operated by or on behalf of the Regional District including access, egress, parking of buses and pick-up and drop off of passengers; and
- (b) generally doing all acts, things and matters necessary for or incidental to the exercise of the rights granted to the Regional District under this Part 2.

2.2 The University further grants to the Regional District, its successors and assigns, and all of its employees, agents, servants, workers, contractors and subcontractors together with machinery, vehicles, equipment, and materials, the right by way of licence to go upon, return, pass over and use the University Site for the purposes of constructing, erecting, maintaining, repairing, improving, clearing, inspecting, replacing and operating the Transit Exchange on the surface thereof for the better use and enjoyment of the University Site by members of the public, and any ancillary improvements including sidewalks, bus shelters, benches, signs and road painting in connection therewith.

2.3 The University hereby reserves to itself from the grant of licence herein, the right for the University, its agents, employees, contractors and subcontractors to have full and complete access to the University Site to carry out any operations associated with the University’s use of the Lands, subject to the limitations imposed under this Agreement.

2.4 Notwithstanding section 2.3, the University will not, nor permit any other person to, without the prior written consent of the Regional District:

- (a) make, place, erect, install, or maintain after the completion of the Transit Exchange contemplated under Part 3 hereof, any building, structure, excavation, pile of material or other obstruction in, under or over the University Site so that it in any way interferes with or damages or prevents access along, to or over the University Site as permitted under this Agreement;
  - (b) do any act or thing which will interfere with or injure the Transit Exchange or any related improvement constructed on, under or over the University Site by the University pursuant to this Agreement or the Regional District in accordance with the rights granted under this Agreement;
  - (c) prevent the Regional District of any member of the public from peaceably holding and enjoying the rights granted herein; or
  - (d) grant another interest or licence in or over the University Site that may adversely affect or interfere with the rights granted to the Regional District under this Agreement.
- 2.5 As far as reasonably possible, the Regional District will make good all damage and disturbance which may be caused to the University Site in the exercise of its rights hereunder except that it is agreed and understood by the parties that the Transit Exchange and related improvements are intended to remain as permanent improvements on the University Site subject to Part 5.0 of this Agreement.
- 2.6 The Regional District will keep the Transit Exchange and such other improvements constructed or placed by the Regional District on the University Site in a good state of repair and cleanliness.
- 2.7 The Regional District will carry out all work permitted herein in a proper and workmanlike manner so as to do as little injury to the University Site in the exercise of its rights hereunder.
- 2.8 The University agrees that in light of the importance of the use and public access to and from the Transit Exchange, it is not appropriate for this Agreement and the rights granted herein to be terminated for default of any provisions in this Part 2.0 and if the Regional District should be in default of this Part 2.0, the University agrees that its remedies are limited to court-ordered damages and a court-ordered injunction and it will not terminate this Agreement as a result thereof.
- 2.9 Notwithstanding any rule of law or equity to the contrary, the Transit Exchange, and all structures, bus shelters, benches, signs and road painting or other related improvements installed in or on the University Site or the Relocation Site as



hereinafter defined by the University or the Regional District under this Agreement shall remain the property of the Regional District notwithstanding that the same may be annexed or affixed to the freehold and if a transit exchange is no longer required on the Lands, shall be removed by the Regional District.

- 2.10 The University does hereby transfer and grant to the Regional District all its right, estate, title, interest or claim to the Transit Exchange and related improvements.
- 2.11 Nothing in this Part 2.0 shall be interpreted as restricting the University's right to make rules or impose restrictions or prohibitions regarding use of the Transit Exchange or the University Site.
- 2.12 For certainty, the term of the licence granted under this Part 2.0 coincides with the term of this Agreement under section 1.1.

### **3.0 CONSTRUCTION OF TRANSIT EXCHANGE**

- 3.1 The University agrees to build the Transit Exchange on the Regional District's behalf in accordance with Schedule "B" attached hereto, **[NTD: to be attached]** and shall complete the construction thereof in accordance with this Agreement no later than the \_\_\_\_\_ day of \_\_\_\_\_, 2010.
- 3.2 The University shall not construct or place any buildings or structures or make any improvements on the University Site unless prior to any construction, it has obtained the Regional District's approval in writing to the site plans, working drawings, plans, specifications and elevations (the "**Plans and Specifications**") in relation to the Transit Exchange;
- 3.3 As soon as possible following construction of the Transit Exchange, the University shall deliver final as-built drawings to the Regional District.
- 3.4 The University will:
  - (a) cause the Transit Exchange to be constructed continuously, diligently, and in a good and workmanlike manner, in accordance with the approved Plans and Specifications, all lawful requirements of any statutory authority, and general and accepted construction practice including adequate supervision;
  - (b) permit the Regional District, or its representatives and appointees, from time to time without reasonably impeding construction, to visit the Land to inspect the progress of construction of the Transit Exchange, ensure compliance with this Agreement and any permits issued by the Regional District and to inspect and test the materials being used and the work being done, and cause its contractors and consultants to co-operate with

the Regional District or its representatives so as to allow them to conduct such inspections;

- (c) cause to be promptly corrected all defects or variations in construction as reported by the Regional District or its representatives;
- (d) keep the Regional District advised in a timely manner of the progress of construction of the Transit Exchange and any delays;
- (e) pay as and when due all accounts for labour, services and materials associated with construction of the Transit Exchange;
- (f) comply will all applicable laws with respect to the construction of the Transit Exchange on the University Site including without limitation the requirements under the *Workers Compensation Act*.

3.5 Without limiting the generality of sections 3.1 and 3.2, the University shall ensure that the Transit Exchange can accommodate all types of transit vehicles currently in use by the Regional District including double-decker buses and have a capacity of not less than six (6) such transit vehicles at any one time.

#### **4.0 REGIONAL DISTRICT'S CONTRIBUTION**

4.1 In consideration of the construction of the Transit Exchange, the Regional District shall pay all reasonable construction and engineering costs directly associated with the construction of the Transit Exchange to a maximum of \$595,000.00 (the "**Regional District's Contribution**"), from monies provided to the Regional District under the Federal Gas Tax Fund Transfer Payment Program.

4.2 The Regional District agrees to pay the amount under section 4.1 within thirty (30) days of the later of:

- (a) the Regional District issuing a certificate of completion for the construction of the Transit Exchange; and
- (b) the University providing the Regional District with valid receipts showing the actual construction and engineering costs directly associated with the construction of the Transit Exchange.

4.3 Notwithstanding section 4.2, the University may request interim advances of the Regional District's Contribution by submitting a statement of actual construction and engineering costs incurred, together with receipts, in a form to be agreed upon between the Regional District and the University. The Regional District will reimburse the University on the basis of claims submitted within five (5) business days of receiving said statement of costs and receipts, up to a maximum amount of \$595,000.00 as setout in section 4.1.

## 5.0 RELOCATION OF TRANSIT EXCHANGE

- 5.1 The parties agree that, if the University wishes or it is otherwise necessary to relocate the Transit Exchange to another location on the Lands from the University Site (the “Relocation Site”):
- (a) the University shall notify the Regional District in writing of its intention or desire to relocate not less than 1 year prior to the commencement of any proposed relocation of the Transit Exchange;
  - (b) the parties shall work together with respect to planning and the location of the Relocation Site taking into account any transportation issues that are important to the parties including the convenience and appropriateness of the new location for the purposes of a Transit Exchange;
  - (c) the University shall be responsible, at its sole cost, for and for all costs of the relocation of the Transit Exchange to the Relocation Site including dismantling and reconstruction;
  - (d) the Transit Exchange on the Relocation Site shall be constructed in accordance with Part 3.0 of this Agreement;
  - (e) the Regional District will retain ownership of any bus shelter structures and other related improvements that are relocated to and/or constructed or installed on the Relocation Site; and
  - (f) All terms and conditions of this Agreement shall apply in respect of the Relocation Site and a new Schedule “A” showing the Relocation Site area shall be attached to and form part of this Agreement.
- 5.2 For certainty, the Regional District shall not be responsible for the relocation of the Transit Exchange from the University Site to the Relocation Site nor any costs associated therewith.

## 6.0 INDEMNITY

- 6.1 Except for the negligence or other wrongful act of the Regional District or its elected officials, appointed officers, employees, agents or contractors, the University releases and will indemnify and save harmless the Regional District, its elected officials, appointed officers, employees and agents from and against all actions, causes of action, claims, losses, damages, costs, expenses, fees or liabilities in connection with or arising from:

- (a) any breach by the University in observing or performing any of its obligations under this Agreement; and
- (b) any personal injury, death or property damage or loss or third party or public liability claims arising from any defect in the construction of the Transit Exchange by the University.

**7.0 NOTICES**

- 7.1 (a) Each notice sent pursuant to this Agreement ("**Notice**") shall be in writing and shall be sent to the relevant Party at the relevant address, facsimile number or e-mail address set out below. Each such Notice may be sent by registered mail, by commercial courier, by facsimile transmission, or by electronic mail.
- (b) The Contact Information for the parties is:

Regional District of Nanaimo	Vancouver Island University
Contact Name: _____ Address: 6300 Hammond Bay Road, Nanaimo, BC V9T 6N2	Contact Name: _____ Address: _____
Fax Number: 250-390-4163 Email: _____	Fax Number: _____ Email: _____

- (c) Each Notice sent by electronic mail ("E-Mail Notice") must show the e-mail address of the sender, the name or e-mail address of the recipient, and the date and time of transmission, must be fully accessible by the recipient, and unless receipt is acknowledged, must be followed within twenty-four (24) hours by a true copy of such Notice, including all addressing and transmission details, delivered (including by commercial courier) or sent by facsimile transmission.
- (d) Subject to S. 7.1(f) through (h) each Notice shall be deemed to have been given or made at the following times:
  - (i) if delivered to the address (including by commercial courier), on the day the Notice is delivered;

- (ii) if sent by registered mail, seven (7) days following the date of such mailing by sender;
  - (iii) if sent by facsimile transmission, on the date the Notice is sent by facsimile transmission; or
  - (iv) if sent by electronic mail, on the date the E-Mail Notice is sent electronically by e-mail by the sender.
- (e) If a Notice is delivered, sent by facsimile transmission or sent by electronic mail after 4:00 p.m., or if the date of deemed receipt of a Notice falls upon a day that is not a Business Day, then the Notice shall be deemed to have been given or made on the next Business Day following.
- (f) Notice given by facsimile transmission in accordance with the terms of this Section 7.1 will only be deemed to be received by the recipient if the sender's facsimile machine generates written confirmation indicating that the facsimile transmission was sent.
- (g) If normal mail service, facsimile or electronic mail is interrupted by strike, slow down, force majeure or other cause beyond the control of the parties, then a Notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the Notice shall utilize any other such services which have not been so interrupted or shall personally deliver such Notice in order to ensure prompt receipt thereof.
- (h) Each Party shall provide Notice to the other Party of any change of address, facsimile number, or e-mail address of such Party within a reasonable time of such change.

## **8.0 TERMINATION**

- 8.1 If either party is in breach of this Agreement and if the default continues thirty (30) days after the giving of notice by the non-defaulting party, then the non-defaulting party may terminate this Agreement without incurring any further liability to the defaulting party as a result of such termination.

## **9.0 ASSIGNMENT**

- 9.1 The University shall not assign this Agreement without the Regional District's prior written consent.

**10.0 GENERAL PROVISIONS**

- 10.1 The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 10.2 The parties shall do and cause to be done all things in execute and cause to be executed all documents which may be necessary or desirable to give proper effect to the intentions of this Agreement.
- 10.3 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, administrators and permitted assignees.
- 10.4 Any amendments to this Agreement must be in writing and be executed in the same manner as was this Agreement.
- 10.5 Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
- 10.6 The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- 10.7 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

**IN WITNESS WHEREOF** the parties hereto have set their hands and seals as of the day and year first above written.

Executed by the Vancouver Island University at Nanaimo, this \_\_\_\_\_ day of \_\_\_\_\_, 2010

**VANCOUVER ISLAND UNIVERSITY** )  
 by its authorized signatory(ies) )  
 )  
 \_\_\_\_\_ )  
 Name )  
 )  
 \_\_\_\_\_ )  
 Name )

Executed by the Regional District of Nanaimo at Nanaimo, this \_\_\_\_\_ day of \_\_\_\_\_, 2010

**REGIONAL DISTRICT OF NANAIMO** )  
by its authorized signatory(ies) )  
 )  
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\_\_\_\_\_)  
Name: )  
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\_\_\_\_\_)  
Name: )

**SCHEDULE "A"**

**University Site and Transit Exchange**



**SCHEDULE "B"**

**Timing Schedule**