

REGIONAL DISTRICT OF NANAIMO

**COMMITTEE OF THE WHOLE
TUESDAY, MAY 10, 2011**

**CIRCULATED REPORT
FOR AGENDA**

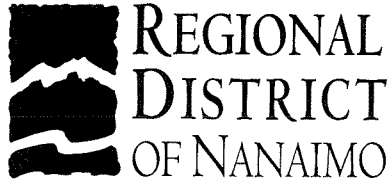
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RECREATION AND PARKS SERVICES

PARKS

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Regional Parks & Trails – Island Corridor Foundation License of Occupation.



RDN REPORT	
CAO APPROVAL	
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RHD	
BOARD	

MEMORANDUM

TO: Carol Mason
Chief Administrative Offices

DATE: May 5, 2011

FROM: Tom Osborne,
General Manager, Recreation and Parks

FILE:

SUBJECT: Island Corridor Foundation – Licence of Occupation

PURPOSE

To obtain Board approval on entering into a Licence of Occupation Agreement with the Island Corridor Foundation.

BACKGROUND

The E&N corridor was identified in the 2005 – 2015 Regional Parks and Trails Plan as a priority for trail development. In June 2008, the RDN and member municipalities began discussion with the Island Corridor Foundation on obtaining a Licence of Occupation that would provide the access to the corridor for a Trail by Rail System and other public utility works.

The Island Corridor Foundation (ICF), a non-profit society representing communities along the corridor, owns the rail corridor. There are two parts of the right-of-way within the Region: a portion of the Victoria subdivision from Cassidy to Cook Creek; and a portion of the Port Alberni subdivision from Parksville to Cathedral Grove. In total, there is about 118 km of rail corridor through the Region, of which 38 km lies within the four municipalities and 80 km lies in the electoral areas.

The base of the Agreement was built upon one developed between the Capital Regional District and ICF. In the CRD Agreement, permissive tax exemptions were granted in exchange for access to the rail corridor for trail use. In the event the tax exemption was not granted by a municipality, the equivalent value of the tax was charged by ICF by way of a fee. For sections of the rail corridor outside municipal boundaries, ICF has received from the Province tax exemption for their lands in the rural areas.

Parallel to the discussions with ICF, the RDN partnered with the Capital Regional District, Cowichan Valley Regional District, Comox Valley Regional District and Alberni Clayoquot Regional District on developing the *Vancouver Island Rail Corridor Rail-with-Trail Design Guidelines*. The purpose of the guidelines was to have a standardization of trail construction along the corridor in urban, suburban and rural settings. In June 2009 the guidelines were completed and agreed to by ICF. These Guidelines have now been included in the Agreement that is under consideration for approval.

After many months of negotiation on the Licence of Occupation Agreement, the parties have now reached agreement on the terms and conditions of the Licence. Attached as Appendix I is the Licence of Occupation. A summary of the key sections included in the Agreement is provided below.

Licence of Occupation

Section 2.0 - Right to Use states the RDN, City of Nanaimo, District of Lantzville, City of Parksville and the Town of Qualicum Beach (Grantees) will be able to construct a trail four metre wide within a five – eight metre corridor for pedestrian, horseback or bicycle use. The Corridor can also be used for fibreoptic cables supporting administrative services of local government.

The Agreement also provides for ICF to consider granting a statutory right of way for physical utility works associated with the local government utilities of water, storm drainage and sewer. There is a file opening fee of \$2,000 that will provide ICF funding to review such requests.

This section also provides language to deal with relocation of constructed trail. Should the trail need to be relocated to accommodate operational need of the ICF, and the section was built per the *Vancouver Island Rail Corridor Rail-with-Trail Design Guidelines*, the relocation cost will be at the sole expense and cost of ICF.

Section 6.1 – Consideration states within seven days of the date of signing the Agreement, a one-time non-refundable administrative charge of \$5,000 is to be paid. This fee will be paid by the Regional District through the Regional Parks and Trails Function.

Under Section 6.2 required the Grantees in each year of this Agreement, either:

- a) Grant to the Grantor, exemption from any and all real property taxes payable by the Grantor to each of the Grantees with respect to the Lands; or
- b) Pay to the Grantor an amount equivalent to the real property taxes payable by the Grantor to each of the Grantees.

ICF also agrees to waive any and all fees, rentals or other charges under Section 6.4 related to the trail or trail crossings provided always that the maintenance of the trail and crossings are the specific responsibility of the Grantees.

The Term of the Agreement as provided under Section 7.1 is for Twenty Five years from 2011 – 2035 with the option to renew for an additional Twenty Five Years.

ALTERNATIVES

1. That the Licence of Occupation Agreement with the Island Corridor Foundation be approved.
2. That the Licence of Occupation Agreement not be approved and alternative direction be provided.

FINANCIAL IMPLICATIONS

If the Board approves the Agreement, there will be a one-time fee of \$5,000 payable to the ICF. As the Regional District does not collect taxes on ICF lands in the electoral areas (they have been waived by the Province), the exemption of property taxes in return for a waiving of annual charge is not a factor. However, the ICF is not exempt from paying property taxes within municipal boundaries. Consequently, all four member municipalities have provided tax exemptions for the 2011 tax year in anticipation of the finalization of this Agreement.

With respect to the future costs of developing the ICF Trail, in 2008 and 2009 the Regional District, District of Lantzville, Town of Qualicum Beach and the City of Parksville received a grant from the UBCM Community Tourism Program to conduct a feasibility study for a trail along the E&N rail corridor. Using the methodology and construction cost formula from the study, the estimated cost for the rail trail throughout the whole Regional District would be approximately \$36 million dollars. These costs are a rough estimate as final costs will depend on the detailed plans for each site and the year that each subsection is constructed. Given the significant cost, it is expected that trail development will occur gradually over time within the scope of local government budget resources.

CONCLUSIONS

Senior staff at the RDN, City of Nanaimo, City of Parksville, District of Lantzville and the Town of Qualicum Beach (the Grantees) have concluded discussions with the Island Corridor Foundation (The Grantor) on the attached Licence of Occupation Agreement. This Agreement provides access to the Island's rail corridor for a Trail by Rail System and other public utility works.

In consideration of the rights to use the rail corridor, each of the Grantees shall, in each year of this Agreement, either:

- a) Grant to the Grantor, exemption from any and all real property taxes payable by the Grantor to each of the Grantees with respect to the Lands; or
- b) Pay to the Grantor an amount equivalent to the real property taxes payable by the Grantor to each of the Grantees.

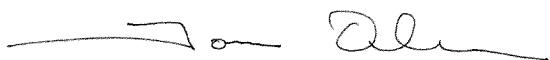
As the ICF has been granted a permission tax exemption in the electoral areas, the exemption of property taxes and payment of annual fees is not a factor. However, the ICF is not exempt from paying taxes within municipalities. All four member municipalities have provided property tax exemptions for the 2011 tax year in anticipation of the finalization of this Agreement.

With the conclusion and execution of the Agreement, the Grantees will be able to access and use the Corridor as envisioned in the 2005 – 2015 Regional Parks and Trails Plan in addition, ICF will consider other publicly owned utility works being located along the corridor.

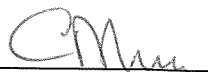
As the document has achieved the primary objectives of all the parties, it is recommended that the Licence of Occupation Agreement with the Island Corridor Foundation be approved by the Regional District of Nanaimo Board. Each municipality will also be considering the Agreement separately for approval at upcoming Council meetings.

RECOMMENDATION

That the Licence of Occupation Agreement between the Regional District of Nanaimo, City of Nanaimo, District of Lantzville, City of Parksville, Town of Qualicum Beach and the Island Corridor Foundation be approved for the Term of 25 Years from 2011 to 2035.



Report Writer



CAO Concurrence

Appendix I

LICENCE OF OCCUPATION

THIS AGREEMENT dated for reference the ____ day of _____, 2011,

BETWEEN:

**ISLAND CORRIDOR FOUNDATION
(Inc. No. 419938-3)**

320 - 256 Wallace Drive
Nanaimo, B.C. V9R 5B3

(the "**Grantor**")

OF THE FIRST PART

AND:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo, B.C.
V9T 6N2

(the "**RDN**")

CITY OF NANAIMO

455 Wallace Street
Nanaimo, B.C.
V9R 5J6

(the "**City of Nanaimo**")

DISTRICT OF LANTZVILLE

7192 Lantzville Road
Lantzville, B.C.
V0R 2H0

(the "**District of Lantzville**")

CITY OF PARKSVILLE

100 East Jensen Avenue
Parksville, B.C.
V9P 2H3

(the "**City of Parksville**")

TOWN OF QUALICUM BEACH

#201 – 660 Primrose Street

Qualicum Beach, B.C.

V9K 1S7

(the “**Town of Qualicum Beach**”)

(collectively the “**Grantees**” and
individually the “**Grantee**”)

OF THE SECOND PART

WHEREAS :

A. The Grantor is the owner of lands legally described as set out in **Schedule "A"** attached to and forming part of this Agreement and containing the historical E&N Rail Line;

(the "**Lands**");

B. The Grantees have requested that the Grantor grant a licence to use and occupy a portion of the Lands for the purposes of constructing, operating and maintaining a multi-purpose regional park trail for public use;

C. The Grantor has agreed to grant to the Grantees a Licence of Occupation over a portion of the Lands on the terms hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and covenants contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree with each other as follows:

1.0 DEFINITIONS

1.1 In this Agreement the following terms mean as follows:

(a) "**Motor Assisted Cycle**" means a motor assisted cycle that meets the requirements of the Motor Assisted Cycle Regulation, B.C. Reg. 151/2002 made pursuant to the *Motor Vehicle Act*, except that it may have four wheels that come in contact with the ground;

(b) "**Multi-purpose Use**" means uses of the Trail by members of the public on foot, horseback, bicycle or by way of other non-motorized vehicle or Motor Assisted Cycle.;

(c) "Trail" means the trail for Multi-purpose Use constructed, operated and maintained by the Grantees on a portion of the Lands existing on either side of the central rail corridor and within which the typical trail surface will be four metres in width within a typical five to eight metres (5 - 8m) wide Trail corridor and for fibre optic cables supporting the administrative services of local government.

1.2 For the purposes of this Agreement, the local government boundaries of the Regional District of Nanaimo will be considered to include only that part of the Regional District of Nanaimo within the boundaries of an electoral area.

2.0 RIGHT TO USE

2.1 For the purposes of this section, the rights granted to the Grantees shall be interpreted as the right of each Grantee on that portion of the Lands contained within the local government boundaries of each of the Grantees' local government.

2.2 The Grantor grants to the Grantees, subject to the performance and observance by the Grantees of the terms, conditions, covenants and agreements contained in this Agreement, a non-exclusive right by way of licence allowing the Grantees to enter on the Lands and to install, construct, operate, maintain and repair the Trail.

2.3 The Grantor grants to the Grantees, their officers, servants, agents, employees, contractors and subcontractors the right to do all acts, things and matters necessary for or incidental to the installation, construction, operation, replacement, maintenance and repair of the Trail.

2.4 The Grantor grants to the Grantees and the Grantees' elected officials, officers, agents, employees, contractors, subcontractors and licencees, the right to pass and repass, with or without motorized vehicles, along and upon portions of the Lands necessary to access the Trail, and along and upon the Trail for the purposes of installation, construction, operation, replacement, maintenance and repair of the Trail.

2.5 The Grantor grants to the Grantees and the Grantees' invitees and licencees, including members of the public, the right to pass and repass on foot, horseback, bicycle or by way of any other wheeled non-motorized device or Motor Assisted Cycle, along and upon that portion of the Lands necessary to access the Trail and along and upon the Trail upon terms and conditions set by the Grantees.

2.6 The Grantor shall consider granting to the Grantees, upon request by the Grantees, a statutory right of way for physical utility works associated with the local government utilities of water, storm drainage and sewer and all fixtures, fittings, pumps, valves, electrical lines and appurtenances thereto.

2.7 The Grantor and Grantee agree that the Grantee will submit to the Grantor all plans for

the construction of segments of the Trail for approval by the Grantor, which will not be unreasonably withheld. The Grantor and Grantee also agree that any trails constructed at the time this agreement is signed are deemed approved only if they have been approved in writing by the Grantor.

The Grantor and Grantee further agree that if at any time during the Term or any Renewal term, if it is necessary for the Grantor to use any of the Lands upon which an approved Trail or other trail improvements are located for railway operations, the Grantor, at its sole discretion shall have the right to relocate the Trail or any portion thereof and any other Trail improvements to another section of the Lands.

Any relocation of the Trail constructed in accordance with the trail setback and separation guidelines as outlined in Section 6 of the *Vancouver Island Rail Corridor Rail-with-Trail Design Guidelines – June 2009* will be at the sole expense and cost of the Grantor. Any relocation of the Trail that is not constructed in accordance with the trail setback and separation guidelines as outlined in Section 6 of the *Vancouver Island Rail Corridor Rail-with-Trail Design Guidelines – June 2009* will be at the sole expense and cost of the Grantee.

3.0 QUIET ENJOYMENT

3.1 The Grantor covenants and agrees to and with the Grantees that the Grantees may peaceably hold and enjoy the rights granted in this Agreement.

4.0 THIRD PARTY INTERESTS

4.1 The Grantor reserves to itself from the grant and covenants made by it to the Grantees under section 1.0, the right for the Grantor, its agents, employees, lessees, contractors, subcontractors and licencees to have full and complete access to the Trail to carry out any operations associated with the Grantor's or other Licencees' use of the Trail during the Term or Renewal Term of this Agreement, provided that such access and use does not damage, or unreasonably disrupt or interfere with the Grantees' Trail.

5.0 PLANS AND DRAWINGS

5.1 The Grantees shall provide to the Grantor, at no cost to the Grantor, copies of any drawings, plans or surveys produced, commissioned or otherwise acquired by the Grantees in the course of the Grantees' exercise of their rights under this Agreement, that show the extent and location of the portion of the Lands being used by the Grantees for the purpose of the Trail, as well as any improvements installed or constructed by the Grantees. A reduced copy of such drawings, plans or surveys shall be deemed to form part of this Agreement upon written agreement of the parties. Upon the completion of the trail or fibre optic works by the Grantee as authorized by this agreement the Grantee shall provide as-built drawings at no cost to the Grantor.

5.2 Any and all plans, drawings, trail designs and construction of the Grantee's shall comply with any and all applicable laws, statutes, regulations, regulatory directives, by-laws, licenses and permits, including without limitation, Transport Canada's most current draft of RTD-10 Regulation relating to public railway crossings.

6.0 CONSIDERATION

6.1 Within seven (7) days of the date of this Agreement a one-time non-refundable administrative charge of FIVE THOUSAND (\$5,000.00) DOLLARS;

6.2 In consideration of the rights of the Grantees under this Agreement and to offset the Grantor's annual administrative costs in administering the Licence each of the Grantees shall, in each year of this Agreement, either:

(a) Grant to the Grantor, exemption from any and all real property taxes payable by the Grantor to each of the Grantees with respect to the Lands; or

(b) Pay to the Grantor an amount equivalent to the real property taxes payable by the Grantor to each of the Grantees, upon receipt from the Grantor a copy of the Real Property Tax Notice(s) confirming the amount of real property taxes owing with respect to the Lands which are not tax exempt.

6.3 The parties agree that, except as set out in this Section 6.0 no further fees or charges whatsoever shall be owing from the Grantees to the Grantor in consideration of the Grantees' rights under this Agreement.

6.4 Provided the charge pursuant to Section 6.1 above is paid when due, the Grantor agrees to waive any and all fees, rentals or other charges related to the trail or trail crossings provided always that the maintenance of the trail and crossings are the specific responsibility of the grantees.

6.5 Notwithstanding 6.4 above, any new application by the Grantees for use of the corridor as referred to in Section 2.6 will be accompanied by a \$2,000 file opening fee payable to the Grantor to allow the Grantor to complete due diligence on any such application for use of the corridor by the Grantees. Further increases in the file opening fee will be subject to the approval of the Island Corridor Foundation Board. Subsequent to the completion of this due diligence and the Grantor approving the use contemplated by the review, there will be no further fees, rentals or other charges levied by the Grantor on that use.

6.6 The Grantees will not be responsible to pay real property taxes related to future Third Party licences or lessees that may be granted rights by the Grantor to use the Lands, including rights granted under or over the Trail area of the Lands.

7.0 TERM

7.1 The term of the licence granted under this Agreement shall be from the 1st day of January 2011, to the 31st day of December 2035 (the "**Term**"), with a right by mutual consent to renew for a further twenty-five (25) year term (the "**Renewal Term**"), unless earlier terminated pursuant to this Agreement.

8.0 GRANTEES' COVENANTS

8.1 For the purposes of this paragraph:

- (a) "**Guidelines**" mean the construction guidelines for the Trail, including requirements as to its width, depth and materials attached here to as Schedule "B".
- (b) "**Plans**" mean the design drawings created for each phase of the Trail construction:
 - (i) containing the construction details of the Trail including its width, depth, and the material which will be used in its construction;
 - (ii) showing the location of the Trail on the Lands; and
 - (iii) containing any requirements of the Grantor reasonably required during the construction, maintenance, repair, relocation or removal of the Trail for the protection of its property or railway operation;

reduced copies of which shall be deemed to form part of this Licence and be attached hereto as Schedule "C" upon written agreement of the parties.

8.2 The Grantees covenant and agree to and with the Grantor that the Grantees:

- (a) may, in accordance with the Plans and Guidelines, approved by the Grantor in writing, and where such approval may permit the Trail to be constructed to higher standards than those contained in the Guidelines, construct a Trail within the physical boundaries of the Grantees' local government and if constructed, shall maintain or cause to be maintained, the Trail in a good and workmanlike manner in order to cause no unnecessary damage or disturbance to the Grantor or the Lands;
- (b) shall carry out construction of the Trail so as not to adversely affect the drainage of the Lands and to not redirect or increase the quality or velocity of surface water runoff or any streams into the Grantor's drainage system or upon the railway tracks or other lands and facilities of the Grantor;
- (c) shall keep and maintain at its cost and expense the Trail and all its parts in good

order and condition and in a structurally sound manner such that the existence and use of the Trail shall not interfere with the Grantor's use of its Lands and its railway operations on the Lands; and to do all repairs in all respects to a standard at least equal in quality of material and workmanship to the original material and work;

- (d) shall remove and discharge or cause to be removed or discharged promptly at its cost and expense any lien, encumbrance or charge upon the Lands which arises out of the use of the Lands under this Licence by the Grantees or by reason of labour or material furnished or claimed to have been furnished for any construction maintenance or repair of the Trail; and
- (e) shall repair, or cause to be repaired at its expense, any damage done to the track, the ballast or to any property of the Grantor by the construction, operation, maintenance, repair, relocation or removal of the Trail or any part thereof.

9.0 RELEASE AND INDEMNITY

9.1 No Grantee shall make a claim or demand against the Grantor or any of the Grantor's employees, representatives or agents, for any injury, loss or damage, including injury resulting in death, loss of or damage to property suffered or sustained by the Grantees or the Grantees' employees, representatives, agents or invitees, caused by or arising out of the Grantees' failure to:

- (a) construct the Trail in accordance with the Guidelines; and
- (b) follow its maintenance and inspection policies in connection with the maintenance and operation of that portion of the Trail within the Grantee's local government boundaries.

unless such injury, loss or damage is caused by or arises out of the negligence or wrongful act or omission of the Grantor or the Grantor's employees, representatives licensees, tenants or agents or a railway operation malfunction or accident not caused by the Grantor's negligence;

9.2 Each Grantee shall indemnify and save harmless the Grantor from and against any and all claims, demands, awards, actions, proceedings and judgments by whomsoever made, brought or prosecuted (collectively "**Claims**"), and from and against any and all injury, loss, damage, costs or expense (collectively "**Damages**") suffered or incurred by the Grantor, the Grantor's employees, representatives, licensees, agents, tenants or invitees entering upon that portion of the Lands within the Grantee's local government boundaries, and which are based upon, arise out of or are connected directly or indirectly with this Agreement or anything done hereunder or anything not done as required hereunder, unless such Claims or Damages are caused by or arise out of the

negligence or the wrongful act or omission of the Grantor or the Grantor's employees, representatives, licensees, tenants, invitees or agents.

10.0 INSURANCE

10.1 The Grantees are public bodies and are insured by the Municipal Insurance Association. Each Grantee will maintain at its sole cost and expense, in good standing for the Term or Renewal Term (or any extension thereof), liability insurance against the third party claims arising from the operation and use of a portion of the Trail within the local government boundary of the Grantee with inclusive limits of not less than Five Million (\$5,000,000.00) Dollars for bodily injury, including death and property damage, and in that event, the Grantees will, on request from the Grantor, provide the Grantor with evidence that such insurance is, at all times during the Term or Renewal Term (or any extension thereof), enforceable and in effect.

11.0 TERMINATION

11.1 Except as hereinafter provided, upon breach by any one of the Grantees of any of the provisions herein contained which breach is not remedied by that Grantee within sixty (60) days from the date of registered notice thereof mailed by the Grantor to that Grantee (the "**Breach Notice**"), the Grantor may bring a claim for damages or avail itself of any other remedy which it may have without further notice against that Grantee; or terminate this Agreement in respect of that portion of the Trail within the local government boundaries of that Grantee, if the breach continues for one hundred and twenty (120) days after written notice from the Grantor to that Grantee of its intention to terminate this Agreement, provided always that if the Grantee commences to remedy the breach within sixty (60) days of receipt of notice aforesaid and thereafter diligently and continuously proceeds with the remedial action, the Grantor shall not bring any claim or exercise any other remedies which it may have in respect of such breach provided such breach is remedied within one hundred and twenty (120) days from the date the remedial action is begun.

11.2 If the Grantor notifies a Grantee of a breach of this Agreement and of its intention to terminate this Agreement under section 11.1 in respect of that portion of the Trail within the local government boundaries of that Grantee, the Grantor must also notify each of the other Grantees and any of the Grantees may, at their option, take steps to remedy the breach of which the Grantor has provided notice.

11.3 In the event that any of the other Grantees choose to take steps to remedy the breach of which the Grantor has provided notice in accordance to Article 11.1, the said Grantee must give further written notice by registered mail to the Grantor of the Grantee's intention to remedy the breach. If said breach continues for thirty [30] days after written notice from the Grantee to the Grantor of its intention to remedy the breach and the breach is not remedied then the Grantor's rights pursuant to Article 11.1 with respect to remedies and termination will apply, provided always that if the other

Grantee[s] that choose to remedy the initial breach commence to remedy the breach within the thirty [30] day period, the Grantor shall not bring any claim or exercise any other remedies which it may have in respect of such breach and provided that such breach is remedied within sixty [60] days from the date the remedial action began.

12.0 NO ASSIGNMENT

12.1 The Grantees covenant and agree to and with the Grantor that the Grantees shall not assign or sublet the right granted herein without the written consent of the Grantor.

13.0 COMPLIANCE WITH LAW

13.1 The Grantees shall abide by and comply with all the lawful bylaws, rules and regulations of the Province of British Columbia, every municipality or other lawful authority which in any manner relate to or affect the Lands and the right hereby granted insofar as the Grantees is subject hereto.

14.0 OWNERSHIP OF IMPROVEMENTS

14.1 Any and all Trail improvements brought onto, laid or erected upon or buried under the Lands by the Grantees shall immediately be and become the Grantor's property without compensation to the Grantees. Except to the extent otherwise expressly agreed by the Grantor in writing, no such Trail improvements shall be removed by the Grantees from the Lands either during or at the expiration or sooner termination of the Term or Renewal Term of this Agreement, except that:

- (a) The Grantees shall at the end of the Term or Renewal Term of this Agreement remove such of the Trail improvements as the Grantor requires to be removed and any such removal shall be completed in accordance with sub-section 16.2 below.

15.0 REGISTERED INSTRUMENT

15.1 In the event that the Grantor intends to transfer or lease its Lands, the Grantor agrees to advise the prospective purchaser or Leasee of this Licence of Occupation and the Grantor agrees to register against title to the Lands a Lease in substantially the same terms as this Agreement for the remainder of the Term or Renewal Term for the purpose of a Trail in favour of the Grantees in advance of the transfer or the leasing occurring. Further, the Grantor agrees to notify the Grantees in the event that the Grantor learns of any proceedings against it which may result in the Grantor losing its interest in the Lands and will, where possible, grant to the Grantees a Lease in substantially the same terms as this Agreement for the remainder of the Term or Renewal Term over its Lands for the purposes of the Trail.

16.0 GENERAL PROVISIONS

16.1 Notices: It is hereby mutually agreed:

Any notice required to be given under this Agreement shall be deemed to be sufficiently given:

- (a) to be delivered at the time of delivery and
- (b) if mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

- (i) if to the Grantor:

Island Corridor Foundation
320 - 256 Wallace Drive
Nanaimo, B.C. V9R 5B3

- (ii) if to the Grantees:

Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, B.C.
V9R 6N2

City of Nanaimo
455 Wallace Street
Nanaimo, B.C.
V9R 5J6

District of Lantzville
P.O. Box 100
Lantzville, B.C.
V0R 2H0

City of Parksville
P.O. Box 1390
Parksville, B.C.
V9P 2H3

Town of Qualicum Beach
P.O. Box 130
Qualicum Beach, B.C.
V9K 1S7

and any such notice shall be deemed to have been given to and received by the addressee on the date of personal delivery or three (3) days after the mailing thereof, postage prepaid and registered, as the case may be. Any party may at any time and from time to time notify the other in writing as to a change of address and the new address to which notices shall be given to it until further changed.

- 16.2 Removal Upon Termination of Agreement: The Trail placed, erected or built on the Lands at the expense of the Grantees will if required by the Grantor, be removed from the Lands by the Grantees within sixty (60) days after termination or surrender of this Agreement and the Grantees will leave the Lands neat, clean, level, free and clear of all waste material, debris and rubbish all to the satisfaction of the Grantor. The Grantees covenant that if they are required to remove the Trail they will make good all damage caused to the property of the Grantor by reason of such removal and if such Trail is not so removed by the Grantees and the Lands not left neat, clean, level, free and clear of all waste material, including landscaping and trees, debris and rubbish as aforesaid within the said period of sixty (60) days, the Grantor may carry out such work and the Grantees will pay to the Grantor all costs and expenses reasonably incurred in so doing. In the event that the Grantor determines that the continued presence of the Trail does not constitute a hazard of interference with the rail operations of the Grantor, then the Grantees may abandon the Trail in place, in which case it will become the Grantor's unencumbered property.
- 16.3 Grantees' Right Non-Exclusive: The Grantees agree that their right to use the Lands pursuant to this Agreement is non-exclusive and acknowledges that the Grantor has in the past, and may in the future, enter into agreements with other persons ("**Third Parties**") to occupy and use the Lands for any and all additional purposes, for communication purposes, for the installation of utilities and cables (below and above ground), for landscaping, and for vehicular use and driveways, and that such Third Parties may be permitted to occupy portions of the Lands provided that all such uses shall not create hazards or unreasonably interfere with or prohibit the use of the Lands by the Grantees, their elected official officers, employees, contractors, licensees, agents and members of the public as contemplated under this Agreement and the Grantor shall provide as built drawings of the Third Party works to the Grantees affected.
- 16.4 Temporary or Permanent Relocation to Accommodate Third-Party Uses: If the Grantor enters into agreements with Third Parties to occupy and use the Lands and requests that the Grantees relocate temporarily or permanently all or part of the Trail, such temporary or permanent relocation will be at the cost of the Grantor, and only if the design requirements of the Trail can be met and the continuity of the Trail preserved.
- 16.5 Third Party Indemnity: If the Grantor enters into agreements with Third Parties to occupy and use the Trail or a portion of the Trail, the Grantor agrees to require that the Third Parties indemnify the Grantees in the Agreements from claims, demands, suits, actions, awards, proceedings and judgments arising from the Third Parties' use of the

Trail.

- 16.6 Gender and Construction: Wherever the singular or masculine is used in this Agreement the same shall be deemed to include the plural or the feminine, or the body politic or corporate, also the heirs, executors, administrators, successors and assigns of the parties hereto and each of them (where the context or the parties so require).
- 16.7 Time of Essence: Time is to be the essence of this Agreement.
- 16.8 Enurement: This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.
- 16.9 Waiver: 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.
- 16.10 Headings: 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.
- 16.11 Remedies Cumulative: No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
- 16.12 Applicable Law: This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 16.13 No Partnership, Etc.: No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant, or a principal-agent relationship.
- 16.14 Amendments: This Agreement may not be modified or amended except by the written agreement of the parties.
- 16.15 Entire Agreement: This Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.
- 16.16 Survival of Representations: All representations and warranties set forth in this Agreement and all provisions of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.
- 16.17 Notification of Violation: Each party shall promptly notify the other party of any matter which is likely to continue or give rise to a violation of its obligations under this Agreement.

16.18 Whole Agreement: The whole agreement between the parties is set forth in this document and no representations, warranties or conditions, express or implied, have been made other than those expressed.

16.19 Severability: Each article of this Agreement shall be severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of this Agreement.

16.20 Counterparts: This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

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

ISLAND CORRIDOR FOUNDATION)
by its authorized signatories:)
)
_____)
Name:)
)
_____)
Name:)
)

CITY OF NANAIMO)
by its authorized signatories:)
)
_____)
Name:)
)
_____)
Name:)
)

REGIONAL DISTRICT OF NANAIMO by its)
authorized signatories:)

_____)
Name:)

_____)
Name:)

DISTRICT OF LANTZVILLE)
by its authorized signatories:)

_____)
Name:)

_____)
Name:)

CITY OF PARKSVILLE)
by its authorized signatories:)

_____)
Name:)

_____)
Name:)

TOWN OF QUALICUM BEACH)
by its authorized signatories:)

_____)
Name:)

_____)
Name:)

Schedule "A"
E&N Rail Trail Lands

Schedule "B"

Trail Guidelines

Schedule "C"

Plans