

CONDITIONAL GRANT AGREEMENT

THIS AGREEMENT dated for reference the ____ day of _____, 2019 (the "Reference Date")

BETWEEN:

**Province of British Columbia, as represented by the Minister
of Transportation and Infrastructure**

("the Ministry")

OF THE FIRST PART

AND:

Capital Regional District

(the "Recipient")

OF THE SECOND PART

WHEREAS:

The Ministry wishes to make available through the BikeBC Program to the Recipient on the terms and conditions in this Agreement, monies to a maximum of the lesser of **\$1,000,000** or **50%** of the Total Eligible Costs paid or incurred in relation to the **E&N Trail - Atkins Avenue to Savory School**.

NOW THEREFORE, in consideration of these promises, 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 all capital construction expenses incurred during the period commencing **April 1, 2019** and ending **March 31, 2020**, which are directly related to the construction of the Project, including labour, materials, applicable taxes, equipment and regulatory, directional and warning signs, and erection of project signage in accordance with section 6.01(j), and excludes Ineligible Project Costs as listed in Schedule "C";
- (c) "Event of Default" means any of the events described in paragraph 13.01;
- (d) "Ineligible Project Costs" means the costs and expenses described or listed, as applicable, in Schedule "C";
- (e) "Material" means all findings, data, specifications, drawings, spread sheets, evaluations, working papers, reports, surveys documents (both printed and electronic including but not limited to hard disk or diskettes), material, databases, procedures manuals whether complete or otherwise that have been produced, received or acquired by, or provided by or on behalf of the Ministry to the Recipient as a result of this Agreement;

- (f) "Project" means the project described in Schedule "A" attached to this Agreement;
- (g) "Project Completion" means when all construction as necessary to facilitate the safe, uninterrupted, and unobstructed public use of the infrastructure described in Schedule "A" has been completed; and
- (h) "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 up to a maximum of, the lesser of, **\$1,000,000** or **50%** of the total Eligible Costs, which will be paid to the Recipient in the amount and manner, and at the times set out in Schedule "B" attached to this Agreement.

TERM OF AGREEMENT

- 3.01 The term of this Agreement will commence on the date of execution and delivery of the Agreement and will end on **June 30, 2020** unless sooner terminated by the Ministry.

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 statements, 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, or so far as it can foresee might materially adversely affect, the Recipient's properties, assets, financial condition, business or operations, or 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 the Project;
 - (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 certificate, application or other 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) carry out the Project in accordance with the terms of this Agreement;
 - (b) at the request of the Ministry, fully inform the Ministry of the work done and to be done by the Recipient in connection with the Project;
 - (c) at the request of the Ministry, permit the Ministry at all reasonable times to examine and copy the Material;
 - (d) expend funds received as under this Agreement in accordance with the terms of this Agreement and only for the purpose of carrying out the Project;
 - (e) obtain the prior written consent of the Ministry for any changes to the scope of the Project;
 - (f) 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 of this Agreement;
 - (g) if requested by the Ministry, provide evidence satisfactory to the Ministry that the representations and warranties set forth in paragraph 4.01 are true and correct;
 - (h) 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;
 - (i) co-operate with the Ministry in making such public announcements regarding the Project and the details of this Agreement as the Ministry sees fit;
 - (j) if requested, to erect and maintain, for the duration of the project, signs as specified by the Ministry at a prominent location on the project site, (signs on the property of the Recipient to be maintained by the Recipient) with costs of the sign paid for by the Ministry and costs of erection paid for by the Recipient, with 50% of said erection costs being invoiced to the Province upon Project Completion;

- (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.
- (l) maintain any facilities developed, constructed or otherwise created by this Project in accordance with all applicable standards and law.

RECORDS

7.01 The Recipient will:

- (a) establish and maintain accurate books of account and records, including the invoices, documents, statements and reports referenced in this Agreement, in relation to the Project in a manner acceptable to the Ministry (including supporting documentation of all expenditures related to the Project);
- (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; and
- (c) provide to the Ministry a statement of all work done and expenditures made on or in connection with the Project.

STATEMENTS AND ACCOUNTING

8.01 Within 90 days of project completion, the Recipient will submit to the Ministry:

- (a) a written certification (project close out report), executed by an Authorized Representative, of all work undertaken on the Project, clearly indicating any variation between the work in Schedule "A" and the work done; and all expenditures, together with supporting invoices, documents, statements, reports, certifications and explanations sufficient to enable the Ministry to consider whether the submitted expenditure items constitute Eligible Costs; and
- (b) a detailed **Claim** statement and **Summary of Expenditures**, in form and content satisfactory to the Ministry, together with itemized summaries of expenditures supported by invoices and verifying documentation, information, statements, reports, and explanations, as applicable, substantiating that such items constitute Eligible Costs, such statement to be certified true and correct by the Authorized Representative.

8.02 Within 15 days of the delivery of a written demand from the Ministry, the Recipient will provide the Ministry with such information and documents with respect to the Recipient or the Project, including the invoices, documents, statements and reports referenced in paragraph 8.01 of this Agreement, sufficient to enable the Ministry to consider whether the claimed items or any of them, constitute Eligible Costs.

APPROPRIATION

9.01 Notwithstanding any other provision of this Agreement, the payment of money by the Ministry to the Recipient pursuant to this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the B.C. Financial Administration Act (the "FAA"), to enable the Ministry in any fiscal year when any payment of money by the Ministry falls due pursuant to this Agreement, to make that payment; and

- (b) Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in subparagraph (a) of this paragraph.

REPORTS

- 10.01 The Recipient will deliver to the Ministry such written reports, in form and content satisfactory to and prepared by a person acceptable to the Ministry, as the Ministry may from time to time request concerning one or both of the progress of the Project under this Agreement and the financial condition of the Recipient.

CONFLICT OF INTEREST

- 11.01 The Recipient will not, during the Term, perform a service for or provide advice to any person, or entity where the performance of such service or the provision of the advice may or does in the reasonable opinion of the Ministry, give rise to a conflict of interest between the obligations of the Recipient to the Ministry under this Agreement and the obligations of the Recipient to such other person, or entity.

CONFIDENTIALITY

- 12.01 Subject to the laws of the Province and Canada, the Recipient will treat as confidential all information or material supplied by the Recipient as a result of this Agreement and will not permit the publication, release or disclosure of the same without the prior written consent of the Ministry or except if such disclosure is necessary to enable the Recipient to fulfill its obligations under this Agreement.

DEFAULT

- 13.01 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
- 13.02 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 to be due and payable by the Recipient to the Ministry and such monies will immediately become due and payable without presentment, demand, protest or any other notice of any kind to the Recipient, all of which are hereby expressly waived; and,
 - (b) terminate this Agreement.
- 13.03 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.
- 13.04 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

- 14.01 The Recipient will refer all matters pertaining to the Agreement to the Ministry.

INDEMNITY

- 15.01 The Recipient will at all times indemnify and save harmless Her Majesty the Queen in Right of the Province of British Columbia ("the Province"), as represented by the Minister of Transportation and Infrastructure ("the Minister"), and the employees, servants, and agents of the Minister and the Province, 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 sustained in any way in connection with, pursuant to or as a result of this Agreement, which indemnity will survive the expiration or sooner termination of this Agreement.

ASSIGNMENT AND SUBCONTRACTING

- 16.01 The Recipient will not, without the prior written consent of the Ministry, assign or in any way transfer, whether directly or indirectly, this Agreement or any part of this Agreement including any right or rights of the Recipient under this Agreement.
- 16.02 The Recipient will ensure that any contracts it awards in relation to the Project will be awarded in a way that is transparent, competitive, and consistent with value for money principles. No tendering clauses are to be used that allows the Recipient to not accept a tender from a bidder who has engaged, directly or indirectly, in a contract dispute

whether through contract dispute resolution procedures or a legal proceeding in relation to any other contract with the Recipient.

OTHER FUNDING

- 17.01 If the Recipient receives, or has received, for or in respect of the Project, funding from any person, firm, corporation or other government or governmental body, then the Recipient will forthwith provide the Ministry with full and complete particulars thereof.
- 17.02 The Ministry reserves the right to recalculate the maximum BikeBC contribution to the Project under this Agreement as a result of funding identified in 17.01.

NOTICES

- 18.01 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, if delivered personally on the date of delivery, if delivered electronically through a means previously agreed to in writing by the Parties, through their respective duly authorized representatives, on the date of delivery, or, if mailed, on the fifth business day after the mailing of the same in Canada by prepaid post addressed, if to the Ministry:

Ministry of Transportation and Infrastructure
Attn: BikeBC Program
PO Box 9850 Stn Prov Govt
5D - 940 Blanshard Street
Victoria BC V8W 9T5

and if to the Recipient:

Capital Regional District
Attn: Carolyn Stewart
Regional Park/Trail Planner
PO Box 1000
Victoria BC V8W 2S6

- 18.02 Either Party must give written notice to the other party of any change of address of the party giving such notice, and after the giving of such notice the address therein specified will, for purposes of paragraph 18.01, be conclusively deemed to be the address of the party giving such notice.
- 18.03 Any notice, report, direction or other document transmitted by facsimile transmission from either party will be conclusively deemed validly given to and received by the intended recipient when so transmitted to the facsimile numbers the parties so advise.

NON-WAIVER

- 19.01 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 by the Ministry on behalf of the Ministry by a duly authorized representative of the Ministry.
- 19.02 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.

ENTIRE AGREEMENT

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

FURTHER ACTS AND ASSURANCES

- 21.01 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

- 22.01 Time will be of the essence of this Agreement.

SURVIVAL OF PROVISIONS

- 23.01 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

- 24.01 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 24.02 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.
- 24.03 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.
- 24.04 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.
- 24.05 The Schedules to this Agreement are an integral part of this Agreement as if set out at length in the body of this Agreement.
- 24.06 No amendment or modification to this Agreement will be effective unless it is in writing and duly executed by the parties.
- 24.07 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.
- 24.08 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.

24.09 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.

24.10 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 statute the Recipient is required to obtain unless it is expressly stated in this Agreement to be such a consent, permit, approval or authorization.

SUCCESSORS AND ASSIGNS

25.01 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

26.01 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 Her Majesty the Queen)
in the right of the Province of British Columbia,)
by a duly authorized representative of the)
Minister of Transportation and Infrastructure on)
)

For the Minister of Transportation and
Infrastructure

Name:

Title:

_____, 2019)
)

Signed on behalf of the **Capital Regional**
District on)
)

Signature of Authorized Representative
of the **Capital Regional District**

Name:

Title:

_____, 2019)
)

SCHEDULE “A”

DESCRIPTION OF PROJECT

The project will consist of construction of a 1 km multi-use trail from Atkins Ave to Savory School inclusive of crossing safety infrastructure at the Atkins Ave road/rail crossing.

1. The Recipient will carry out the following in accordance with this Agreement:
 - (a) Project Completion is to be achieved on or before **March 31, 2020**
 - (b) Provide quarterly progress reports on the Project which will include the percentage of construction completed to date, progress photos, and commentary on any concerns or issues that have occurred.

Quarterly Reports are due on the following dates: September 23, 2019, December 23, 2019 & March 18, 2020

SCHEDULE “B”

PAYMENT

1. The Ministry will, subject to compliance with the terms of this Agreement, pay to the Recipient for the Project amounts in accordance with the terms and timing, set out below:
 - (a) An initial payment upon signing of this Agreement equal to **\$137,500**.
 - (b) An interim payment of **\$250,000** upon receipt by the Ministry of a written certification in form and content satisfactory to the Ministry, executed by an Authorized Representative, that the following milestone has been reached:
 - **50% of construction**
 - (c) The final payment will be issued to the Recipient upon receipt by the Ministry of information and documentation as required by the terms of this Agreement including without limitation sections 8.01 and 8.02 of this Agreement.
 - (d) The final payment will be the total approved amount or **50%** of the total eligible costs, less the first two payments, whichever is less.
 - (e) The interim and final payment may be combined at the request of the Recipient.
 - (f) Unless otherwise previously agreed in writing by the Ministry, all documentation, information, statements, reports, and explanations contemplated in sections 8.01 and 8.02 must be submitted to the Ministry, by electronic mail addressed to:

MoTCYCLING@gov.bc.ca

2. Despite any other term of this Agreement, in no event will the Ministry pay to the Recipient any amount or amounts that in the aggregate exceed, the lesser of:

- (a) **\$1,000,000** or
 - (b) **50%** of the actual Eligible Costs of completing the Project, as defined in Schedule "A" or
 - (c) Any recalculated BikeBC funding amount, as per section 17.02.
3. The Ministry may in its sole discretion, subject to paragraph 2 of this Schedule, and subject to required conditions being satisfied by the Recipient, on the request of the Recipient, make interim payments to the Recipient.

SCHEDULE "C"

INELIGIBLE PROJECT COSTS

- Property acquisition.
- Design costs.
- Landscaping.
- Applicant's (municipal or other operating authority) administration, such as overhead, staff and supervision expenses.
- Volunteer contributions – labour, materials, etc.
- Studies, such as engineering reports or business case development.
- Incremental costs associated with operation or maintenance.
- Educational or promotional signage.
- Project management costs more than 15% of total eligible costs
- End-of-trip facilities/amenities more than 15% of total eligible costs. (*Public use and benefits must be clearly demonstrated.*)
- Vehicle parking facilities
- Cycling facilities that contravene the *Motor Vehicle Act*