

Project No: BikeBC – 0670A108555

CONDITIONAL GRANT AGREEMENT

THIS AGREEMENT made the 17 day of August, 2018.

BETWEEN:

Ministry of Transportation & Infrastructure

("the Ministry")

OF THE FIRST PART

AND:

The Corporation of the City of Victoria

(the "Recipient")

OF THE SECOND PART

WHEREAS:

The Ministry wishes to provide through the BikeBC Program to the Recipient on the terms and conditions below, to a maximum of \$895,000 or 50% of the total eligible project costs, whichever is less, towards construction of the **Wharf Street Protected Bike Lanes**.

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) "Event of Default" means any of the events described in paragraph 13.01;
- (c) "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;
- (d) "Project" means the project described in Schedule "A" attached to this Agreement;
- (e) "Term" means the period in paragraph 3.01;
- (f) "Eligible Costs" means all capital construction expenses incurred as defined by the program's guidelines, 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 as per section 6.01(j). Costs must be incurred during the period of **February 9, 2018 to June 13, 2019**;

- (g) "Project Costs" means all amounts paid or incurred in respect of the Project; and
- (h) "Project Completion" means when all construction as necessary to facilitate the safe, uninterrupted, and unobstructed public use of infrastructure, shared roadway, bike lanes, and separated bike paths has been satisfactorily completed by June 13, 2019.

PAYMENT

- 2.01 Subject to the provisions of this Agreement, the Ministry will provide the Recipient with payment, 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 13, 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:
- (a) all information statements, documents and reports furnished or submitted by the Recipient to the Ministry in connection with 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 Program;
 - (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 contractor 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 anyone.

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 Ministry or branch or agency thereof directly or indirectly applicable to the Recipient or 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 see 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 met; and,

- (l) maintain any facilities developed, constructed or otherwise created by this Project in good condition.

RECORDS

7.01 The Recipient will:

- (a) establish and maintain accurate books of account and records 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;
- (c) provide to the Ministry a statement of all work done and expenditures made on the Project during the period; and

STATEMENTS AND ACCOUNTING

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

- (a) a written certification, 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
- (b) a detailed claim form, in form and content satisfactory to the Ministry, an accounting for all of the funds provided to the Recipient pursuant to paragraph 2.01, such statement to be certified true and correct by the Authorized Representative.

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 and prepared by a person acceptable to the Ministry, as the Ministry may from time to time request concerning either the progress under this Agreement or the financial condition of the Recipient.**
- 10.02 Within one year after project completion, the Recipient will deliver to the Ministry a written report which outlines the expectations the Recipient had for the project in the initial request (in terms of ridership levels, safety, other objectives) and compares those**

expectations to what has actually materialized in the one year period since the project was completed.

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 to or obtained 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 or warranty made by the Recipient in accepting this Agreement is untrue or incorrect;
 - (c) any information, statement, certificate, report or other document furnished or submitted by or on behalf of the Recipient pursuant to or as a result of 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;
 - (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 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 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, whether directly or indirectly, this Agreement or any right or rights of the Recipient under this Agreement.
- 16.02 The Recipient will ensure that any Contracts it awards to any Third Party 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 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.

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 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 & Infrastructure
ATTN: Alan Callander, Manager, Active Transportation
PO Box 9850 Stn Prov Govt
5D - 940 Blanshard Street
Victoria, BC V8W 9T5

and if to the Recipient:

The Corporation of the City of Victoria
ATTN: Sarah Webb, Manager, Sustainable Transportation Planning & Development
1 Centennial Square
Victoria, BC V8W 1P6

- 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.
- 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.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

Signed on behalf of Her Majesty the Queen
in the right of the Province of British
Columbia, as represented by the Minister
of Transportation and Infrastructure on

Aug 28, 20 18



Signature of Authorized Representative of
the Ministry

Deborah Bowman

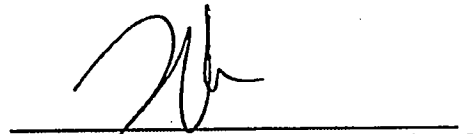
Printed Name

Assistant Deputy Minister, Transportation Policy and Programs

Title

Signed on behalf of the Corporation of the City of Victoria on

August 17, 20 18



Signature of Authorized Representative of
the Corporation of the City of Victoria

Printed Name



Title

MAYOR LISA HELPS
#1 Centennial Square
Victoria BC V8W 1P6

CHRISTOPHER D. COATES
City Clerk
Corporation of the City of Victoria
#1 Centennial Square
Victoria, BC V8W1P6

SCHEDULE “A”

DESCRIPTION OF PROJECT

1. The project will construct a 0.8km long and 3m wide asphalt bike lane.

The project scope includes:

- physically separated two-way protected bike lane
- road reconfiguration (that is necessary to enable the construction of the new bike lane)
- signalized intersection and design modification
- enhanced pedestrian and bike road crossings
- bike parking and benches

2. The Recipient will carry out the following in accordance with the instructions given by the Ministry:

- (a) Project completion as of **June 13, 2019**.
- (b) Provide a final report within one year of project completion including aspects of the project such as bike counts, photos, and if any safety issues or further development or extension on the project.
- (c) Provide a quarterly progress report on the project including photos, and any concerns or issues that have occurred.

SCHEDULE "B"

PAYMENT

1. The Ministry will provide to the Recipient for the Project in the amount, and in accordance with the schedule, set out below:

The total approved amount or **50%** of the total eligible project costs, whichever is less, will be issued to the Recipient upon receipt by the Ministry of:

- a written certification, executed by an Authorized Representative, of all work undertaken on the Project;
- a claim form; and
- a summary of expenditures supported by invoices.

End of trip facilities/amenities will be capped at **15%** of the total eligible project costs.

All documentation associated with the Project that are deemed eligible for cost-sharing must be submitted within 90 days after project completion as per section 8.01 for payment of the Contribution by the Ministry to the following address:

Ministry of Transportation & Infrastructure
ATTN: Alan Callander, Manager, Active Transportation
PO Box 9850 Stn Prov Govt
5D - 940 Blanshard Street
Victoria, BC V8W 9T5

2. Notwithstanding paragraph 1 of this Schedule, in no event will the payable to the Recipient in accordance with this Schedule exceed, in the aggregate, the lesser of:
 - (a) **\$895,000** or
 - (b) **50%** of the actual Eligible Costs of completing the Project, as defined in Schedule "A".