

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding made the _____ day of _____, 2019.

AMONG:

Regional District of Nanaimo

6300 Hammond Bay Road

Nanaimo, BC V9T 6N2 (“**RDN**”)

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

As represented by the Ministry of Transportation and Infrastructure,

PO Box 9850, Stn. Prov. Govt.

Victoria, BC VAW 9T5

(the “**MoTI**”)

WHEREAS:

- a. The Parties value active transportation, the health and wellness of the community and linking communities;
- b. The Parties recognize that the Ministry is vested with the administration and operation of the highways;
- c. MoTI recognizes and acknowledges that the RDN is a public body with an interest in providing for public uses of lands comprising provincial public highway provided that such uses comply with applicable policies respecting the operation of provincial public highways including that such uses do not interfere with the integrity of the provincial public highway infrastructure and the primary operation of the provincial public highways as safe and efficiently functioning public highways;
- d. MoTI acknowledges that it can stream line and expedite its permitting process for use of highways under its jurisdiction when dealing with a public body such as the RDN;
- e. The RDN has requested the ability to place ATI adjacent to the roadway and within the provincial public highway; and Parties recognize the need to work cooperatively to achieve safe active transportation but that the intent of this MOU is establish a cooperative set of principles to allow for placement of ATI by the RDN to be permitted under future specific agreements in a manner that is consistent with the shared values and desire to cooperate, that is set out herein;

NOW THEREFORE,

DEFINITIONS:

1. In this MOU:

“ATI” – means Active Transportation Infrastructure as described in this MOU.

“provincial public highway” – means the lands and infrastructure administered by the MoTI and comprising a “highway” as defined in the *Transportation Act*, including rural highway, arterial highways or highways referred to in section 35(2)(f) of the Community Charter, and for greater certainty includes without limitation lands whether or not improved in part or at all for public passage.

“roadway” – means the parts of the provincial public highway that are comprised of constructed road infrastructure including without limitation, those parts of the provincial public highway required for purposes of maintaining and facilitating the integrity of and the safe and efficient functioning of the road infrastructure whether or not used for vehicular traffic.

PURPOSE:

2. This Memorandum of Understanding (“**MOU**”) sets out the general understandings and processes of the RDN and the MoTI as of the date of this MOU, regarding the implementation of ATI, which generally includes:
 - (a) Gravel Pathways/Trails adjacent to the roadway
 - (b) Multi Use Pathways adjacent to the roadway
 - (c) Sidewalks adjacent to the roadway
 - (d) Widened shoulders in support of ATI connections
3. This MOU is non – binding and is subject to any and all applicable laws. Nothing in this MOU is intended to or does fetter the exercise of statutory discretions or statutory authorities applicable to the matters contemplated in this MOU.

KEY PRINCIPLES:

4. The MoTI and the RDN have been working collaboratively in unincorporated areas to consider and where reasonably appropriate permit and construct regional trails, pathways and other ATI within provincial public highway with the intent being that this will be implemented through project specific agreements for ATI projects under the guidelines described herein, which are to be developed in a mutually cooperative manner.

5. The RDN wishes to develop a framework to support where reasonably appropriate, the implementation of consistent processes to guide the planning, design, approval, construction and ongoing responsibility for ATI adjacent to roadways.
6. The RDN will work with other Regional Districts that comprise Vancouver Island Coastal Communities to promote consistency in liaising with the MoTI in its consideration of ATI proposals and administration and implementation of provincial review processes.
7. The MoTI will work, subject to and in conformance with applicable laws, with the RDN and other Regional Districts to review proposed ATI within provincial public highway.

ROLES:

8. The MoTI is vested with the administration and operation of provincial public highways and as part of this mandate reviews and may approve proposed ATI's within provincial public highways.
9. The RDN is representative of Electoral Areas A, B, C, E, F, G and H and as a part of its mandate wishes to develop ATI for the benefit of the residents in these rural areas.
10. RDN desires increased use and occupation of provincial public highway for ATI's and acknowledges that any such proposed use and occupation of provincial public highway must take into consideration and reflect provincial interests and requirements including interests and requirements relating to the preservation of the highway infrastructure and the safe and efficient functioning of the provincial public highway for ATI's.
11. RDN are prepared to be responsible for the planning, design, construction, operation, maintenance and repair of ATI's and the RDN shall contribute staff time, background studies and mapping to work cooperatively on same. The intention of the parties when dealing with future ATI projects proposed by RDN is to act reasonably and cooperatively to achieve an efficient and effective process, in accordance with the principles in this MOU.
12. RDN will maintain a list of ATI priority projects/program that will be shared with and reviewed annually with MoTI.
13. MoTI will share and annually discuss the district rehabilitation, safety and minor betterments program with the RDN.
14. The MoTI is mindful of the public interest in ensuring the provincial investments, financial and otherwise, in preserving the safe and efficient functioning of provincial

public highways while acknowledging the interest of the RDN to promote the location of ATI's within provincial public highways.

REGIONAL TRAIL PLANNING AND DESIGN:

15. MoTI and RDN acknowledge that ATI proposals must be consistent, among other things, with the applicable laws, policies and requirements including interests and requirements relating to the preservation of the highway infrastructure and the safe and efficient functioning of the provincial public highway.
16. RDN and MoTI acknowledge that among other factors that are to be taken into account in considering ATI's, there is a shared view that ATI's are generally to be located in locations sufficiently separated from roadways as to enable and where feasible maximize the integrity and the efficient functioning of the provincial public highway and the safety of person on and in the vicinity of provincial public highway and the ATI.
17. RDN acknowledge that ATI planning and design are to be consistent with and align with, amongst other things, Provincial highway corridor planning studies and goals and with the ATI Planning and Approvals Guidelines Document and are to be carried out in a manner and by adopting timelines that reasonably enable the meaningful involvement of MoTI staff.
18. MoTI and RDN acknowledge that numerous and varied factors including, without limitation, site specific circumstances and constraints, will apply to considering appropriate locations for ATI's and that as a result there may be an approach in considering and, if approved, approving proposed ATI's that is phased to allow for, amongst other things, incremental identification and resolution of issues including without limitation issues relating to the elaborate nature of ATI's and the distancing of ATI's from roadways. Without limiting MoTI's discretion, the parties agree that future guidelines will be developed by MoTI in consultation with the RDN, which may then be used in the design, operation and maintenance of ATI.
19. The MoTI retains the right to reject or refuse approval for any ATI proposal at its discretion.

PROCESS:

20. RDN and MoTI acknowledge that existing review and approval processes including without limitation, MoTI process for considering applications for permit and licence of occupation proposals, will apply and should be followed for ATI proposals, including submission of ATI proposals to the appropriate local MoTI Office Development Services department.

21. MoTI, at its discretion, and taking into account the relevant factors relating to each ATI proposal, may determine whether, if approved, a permit or licence of occupation is to apply to implementation of the ATI proposal.

MEETING:

22. RDN and MoTI intend that they will meet whenever a meeting is reasonably necessary or requested by the other party to deal with specific ATI projects and at least on an annual basis to discuss general matters and any upcoming highway and ATI plans, review operations on existing ATI on provincial public highway and review the terms of this MOU.
23. RDN and the MoTI intend to meet as may be reasonably required to discuss ATI and to cooperate in scheduling such meetings to achieve positive progress towards the objectives in this MOU.

CONTACTS:

24. The provincial lead contact with the RDN is the MoTI District Manager, [Lower Mainland District]
25. The provincial lead contact for RDN Regional District members is the local MoTI office
26. The RDN Regional District lead contact is General Manager of Recreation and Parks Services.

[Execution Page Follows]

This Memorandum of Understanding is signed on behalf of RDN and MoTI as follows.

Regional District of Nanaimo (RDN)

_____, 2019
Signature **Date**

Name

Title

Witness Signature

MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE

_____, 2019
Signature **Date**

Name

Title

Witness Signature