

ATTACHMENT A



ATTACHMENT B



ATTACHMENT C



September 13, 2018

CITY OF NANAIMO
455 Wallace St, Nanaimo BC V9R 5J6 ("City")

and:

SEASpan FERRIES CORPORATION
7700 Hopcott Road, Delta, B.C., V4G 1B6 ("Seaspan")

and:

SOUTHERN RAILWAY OF VANCOUVER ISLAND LIMITED
2102 River Drive, New Westminster, B.C., V3M 6S3 ("SVI")

Re: Letter of Intent to Discharge Right-of-Way

The City, Seaspan and SVI entered into a Memorandum of Understanding (MOU) on April 20, 2015. The MOU identified the process by which the City, Seaspan and SVI would work together to reduce a perpetual Right of Way in favour of Seaspan on lands owned by the City of Nanaimo at 1 Port Drive, Nanaimo, B.C.

The three parties have completed the work set out within the MOU and through further discussions have reached an agreement whereby the perpetual Right of Way will be discharged from title to the City's lands. As compensation for the discharge, the City will provide a cash payment and a transfer of a portion of the property in fee simple to a Seaspan/SVI affiliate.

The purpose of this Letter of Intent is to document the understanding of each party privy to the agreement and to set out a process for formal closure of the discharge and land transfer. This Letter of Intent does not constitute an agreement, nor is it legally binding on either the City, Seaspan or SVI.

City Transfer

The City intends to subdivide roughly 5.7 acres of upland and 3.6 acres of water lot from the City land legally described as:

PID: 029-036-500

Lot A, Section 1, and part of the Bed of the Public Harbour of Nanaimo, Nanaimo District, Plan EPP27507 (the "Lands")

Attachment A illustrates the lands owned by the City.
Attachment B illustrates the proposed subdivision of the Lands to create the parcel that is referred to herein as the "Seaspan/SVI Parcel". This is a proposed subdivision which is subject to surveying and approval by the City's Approving Officer.

Title to the Seaspan/SVI Parcel will be transferred to a Seaspan/SVI affiliate, and the City will act reasonably to accommodate any structuring of the exchange transaction that may be reasonably required by Seaspan and SVI, provided that such structuring does not materially adversely affect the City's interests in the transaction.

The City acknowledges that Seaspan may require that the Seaspan/SVI Parcel be subdivided into a different configuration of three lots, prior to transfer. The actual layout of the lots comprising the Seaspan/SVI Parcel will be agreed between Seaspan and the City on or before October 15, 2018, in satisfaction of the condition precedent described below.

Seaspan Right of Way Discharge

Seaspan intends to discharge the perpetual Right of Way from the City Lands. The Right of Way is legally described as:

Statutory Right of Way EM109875 modified by ET1322 and EW7033

The areas shown as "Seaspan Land Right of way = 9.7 acres" and "Seaspan Water Right of Way = 5.7 acres" on Attachment A comprise the Right of Way area to be discharged by Seaspan.

1. Purchase Price

- a) \$991,465 Dollars (Canadian), payable by the City to Seaspan, in addition to the transfer of the Seaspan/SVI Parcel, all in exchange for the discharge of the perpetual Right of Way. Based on the valuation completed on July 27, 2018 by the City and Seaspan and informed by appraisal work completed by Grover Elliot on July 9, 2015 and Dec 20, 2017 and based on the sketch plan prepared by McElhanney Associates Land Survey Ltd (Attachment B).
- b) Adjustments – no adjustments to the final purchase price with regard to final parcel size.
- c) Deposit – no deposit required.
- d) Statement of Adjustments – The closing documents will not include adjustments for municipal property taxes, water or sewer. Seaspan will be responsible for Property Transfer Tax and GST.
- e) Encumbrances – Save as otherwise agreed between the parties in the course of the negotiation of the Transfer Agreement, the Seaspan/SVI parcel will be transferred free and clear of all encumbrances and charges save and except those described on page 6 of this letter, and title to the remaining City Parcel will be encumbered by the permitted encumbrances described on that page, granted in registrable form and on terms to be negotiated and settled to the satisfaction of all parties, concurrently with settling the Transfer Agreement.

2. Commitments from the City – The City will be responsible at its own cost for:

- a) Preparation of the subdivision plan and explanatory plans related to the permitted encumbrances, and obtaining subdivision approval.
- b) Obtaining Certificate(s) of Compliance from the Ministry of Environment for the new Seaspan/SVI Parcel, using a Risk Based Approach for Industrial Land Use
- c) Issuance of a Development Variance Permit to waive the requirement to provide the works and services that would otherwise be associated with the subdivision.
- d) Filing a Notice of Disposition in the local newspaper to satisfy Section 26 of the *Community Charter*.
- e) Preparation of a Rail Crossing Agreement with SVI for the Front Street Extension Project.
- f) Electrical:
 - (i) The relocation/installation of overhead lights within the Seaspan/SVI operations yard.
 - (ii) The provision of a separate BC Hydro meter for the SVI building.
 - (iii) Ensuring the marine barge ramp remains serviced with electricity along with a meter.
- g) Rail crossing infrastructure, defined in the Private Rail Crossing Agreement as “Applicant’s Works” and “Railway Works”, and including
 - (i) An automated gate system to block the Front Street Extension during barge load/unload movements.
 - (ii) A gate across the barge ramp entrance to prohibit the general public from gaining access to the barge ramp during periods of inactivity.
 - (iii) Upgrades to “Railway Works”, as defined in the Private Rail Crossing Agreement.
 - (iv) Lights/signage required under the Private Rail Crossing Agreement.
- h) Fencing
 - (i) Relocation/installation of fencing along the Front Street Extension between the Rail Crossing and wooden trestle on the new property line.
 - (ii) A vehicle access gate in the fencing for truck movements into SVI operations yard immediately south of the Private Rail Crossing.

Save and except to the extent otherwise agreed between the parties in the course of negotiating the Transfer Agreement, the installation of the improvements and utilities contemplated by sections 2(f), (g) and (h) are to be completed by the City prior to the closing date under the Transfer Agreement.

3. Commitments from Seaspan – Seaspan will be responsible at its own cost for:

- a) Its own legal and closing costs

4. Commitments from SVI – SVI will be responsible at its own cost for:

- a) Its own legal and closing costs
- b) Additional fencing for the Seaspan/SVI Parcel, other than that provided by the City along the Front Street Extension.

5. Conditions Precedent

- a) The City must be satisfied with the following conditions prior to the transfer of the Seaspans/SVI Parcel:
 - (i) Council approval to dispose of the lands no later than October 15, 2018.
 - (ii) Council approval for a Development Variance Permit to waive the required works and services as part of the subdivision no later than October 15, 2018.
 - (iii) Approval of the Private Rail Crossing Agreement by SVI and the Regulator by December 15, 2018.
- b) Seaspans and SVI each must be satisfied with the following conditions prior to the discharge of the Right of Way and transfer of the Seaspans/SVI Parcel:
 - (i) Approval of the final subdivision plan for the Seaspans/SVI Parcel no later than October 15, 2018
 - (ii) Council approval for a Development Variance Permit to waive the required works and services as part of the subdivision no later than October 15, 2018.
 - (iii) Receipt of one or more satisfactory Certificates of Compliance using a risk based approach for the new Seaspans/SVI Parcel to an Industrial Standard no later than April 15, 2019, provided that if this condition is waived by Seaspans and SVI then the City will, pursuant to the Transfer Agreement, obtain the Certificate(s) of Compliance as promptly as reasonably possible after the closing.
 - (iv) Approval of the Private Rail Crossing Agreement by SVI and the Regulator by December 15, 2018.
 - (v) Approval by the respective Boards of Seaspans and SVI.

6. Preparation of Closing Documents

- a) Seaspans will cause its lawyers to prepare a draft form of Transfer Agreement, for delivery to the City and its lawyers, on or before the date that is five business days after the date that this Letter of Intent is executed by all of the parties, reflecting the terms and conditions contained in this Letter of Intent, including the permitted encumbrances contemplated on page 6 hereof, which will be attached as schedules to the Transfer Agreement. The parties will negotiate the Transfer Agreement and schedules in good faith, with the intent that they be settled and the Transfer Agreement executed on or before October 8, 2018, subject to the conditions precedent set forth above.
- b) The City (or Seaspans/SVI) will prepare a Form C to discharge the Right of Way from the City's Lands.
- c) Each party will be responsible for the legal fees and expenses of their own advisors in connection with the preparation and negotiation of the Transfer Agreement and schedules.

7. Closing Date

The intention of both parties is for the parties to use commercial best efforts to complete the land transfer on or before the earlier of April 30, 2019 and 5 business days after receipt of the Certificate(s) of Compliance referred to in paragraph 2(b) above.

The Discharge and the Transfer of the Seaspan/SVI Parcel will be filed concurrently on an all or nothing basis on the closing date.

8. Front Street Extension Capital Project

Seaspan will provide consent to the City to issue tender and advance work on the Front Street Extension project prior to the transfer of lands. Physical work on the property will not commence without Seaspan approval.

9. Letter of Intent Only

The City, Seaspan and SVI agree that this letter does not constitute an agreement for the partial discharge of the Right of Way, nor is it legally binding on any of the City, Seaspan or SVI. This letter is not intended to be relied upon by the parties as constituting a binding agreement for such partial discharge of the Right of Way and no legal obligations shall arise between the City, Seaspan and SVI as a result of this letter until negotiations have been concluded and the parties have executed and delivered a formal Transfer Agreement or one party delivers to the other parties notice that it no longer wishes to pursue the Agreement contemplated herein.

CITY OF NANAIMO

By: _____
Mayor

By: _____
Corporate Officer

SEASPAN FERRIES CORPORATION

By: _____

By: _____

SOUTHERN RAILWAY OF VANCOUVER ISLAND LIMITED

By: _____

By: _____

Permitted Encumbrances

Permitted Encumbrances on Proposed Seaspan/SVI Parcel in Favour of City/Third Parties:

- Right of Way in Favour of Existing Regional District of Nanaimo Sanitary Sewer Main
- Right of Way in Favour of City of Nanaimo for sanitary sewer force main
- Rights of Way in favour of utilities such as Hydro and Telus, as may be requested or approved by Seaspan

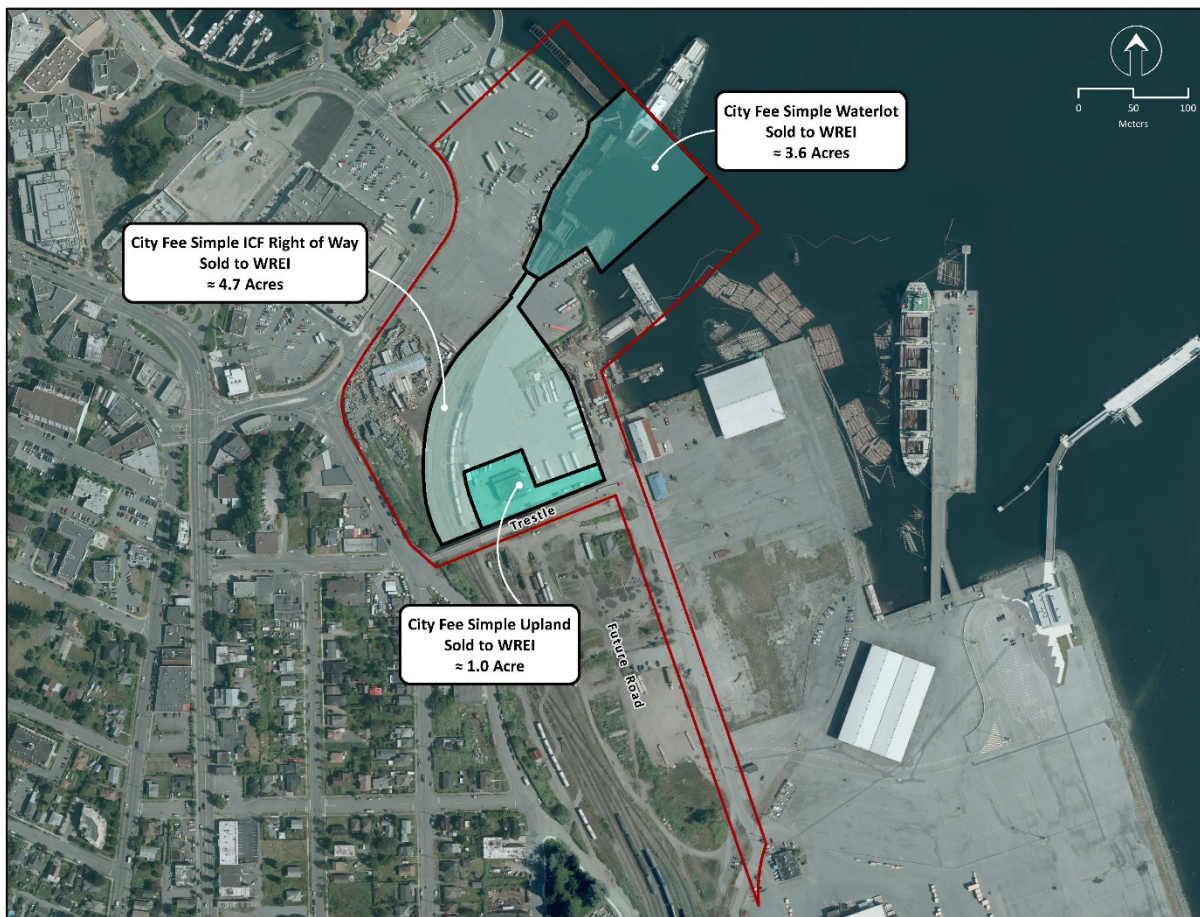
Permitted Encumbrances on Proposed City Parcel in Favour of Seaspan/SVI:

- Easement for Seaspan/SVI to access Pup Point and the gate system for oil spill response kit and boat
- Easement for Seaspan/SVI to access northern side of berth structure and turning dolphin on City waterfront walkway
- Licence to Seaspan for outbuilding to house oil response kit at Pup Point
- Easement agreement for Seaspan/SVI to access the barge ramp for truck and trailer movements.

Attachment A



Attachment B



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