

I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL OF WHICH IT PURPORTS TO BE A COPY.

DATED THIS 2 DAY OF June 20 17


Clerk of the Provincial Court of Alberta

Docket No. 160956397P1

IN THE PROVINCIAL COURT OF ALBERTA
CRIMINAL DIVISION



BETWEEN:

HER MAJESTY THE QUEEN

-and-

CANADIAN NATIONAL RAILWAY COMPANY also known as COMPAGNIE
DES CHEMINS DE FER NATIONAUX DU CANADA

BEFORE THE HONOURABLE)
JUDGE M.C. Doyle)
AT EDMONTON,)
ALBERTA)
)

Friday
On Thursday, the 2nd day
of June, 2017.

ORDER PURSUANT TO SECTION 234(1) THE
ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT

WHEREAS Canadian National Railway Company also known as Compagnie des chemins de fer nationaux du Canada ("CN") stands convicted of the following offences contrary to the *Environmental Protection and Enhancement Act*, to wit:

Count 1: On or about the 9th day of April 2015, at or near Edmonton, in the Province of Alberta, did release or permit the release into the environment of a substance in an amount, concentration or level or at a rate of release that causes or may cause a significant adverse effect contrary to section 109(2) of the *Environmental Protection and Enhancement Act* and did thereby commit an offence contrary to s. 227(j) of the *Environmental Protection and Enhancement Act*.

Count 4: On or about the 9th day of April 2015, at or near Edmonton, in the Province of Alberta, being a person responsible for a substance that is released into the environment and that may cause, is causing or has caused an adverse effect, did fail, as soon as that person became aware or ought to have become aware of the release, to take all reasonable measures to remediate, manage, remove or otherwise dispose of the substance in such a manner as to prevent an adverse effect or further adverse effect contrary to section 112(1)(a)(ii) of the *Environmental Protection and Enhancement Act* and did thereby commit an offence contrary to s. 227(j) of the *Environmental Protection and Enhancement Act*.

AND WHEREAS this Honourable Court has reviewed a proposal for a creative sentence project to fund land conservation and stewardship activities within the Edmonton Region, hereinafter referred to as the "Edmonton and Area Land Trust Stewardship Project".

AND WHEREAS the total cost of development and maintenance of the Edmonton and Area Land Trust Stewardship Project is projected to be \$110,000.00;

AND WHEREAS having regard to the nature of the offence and circumstance surrounding its commission, in addition to fines of \$7,500 on Count 1 and \$7,500 on Count 4, both inclusive of the victim fine surcharge, imposed on CN under the *Environmental Protection and Enhancement Act*;

IT IS HEREBY ORDERED THAT, pursuant to the provisions of section 234(1) of the *Environmental Protection and Enhancement Act*, CN will comply with the following conditions:

1. That CN shall pay \$110,000 to the Edmonton and Area Land Trust on or before June 30, 2017 for the sole purpose of funding the Edmonton and Area Land Trust Stewardship Project as detailed and described in Schedule "B" hereto. The specific address to which the funds shall be forwarded is: Edmonton and Area Land Trust, Attention: Pam Wight, Executive Director, 9910 – 103 Street, Edmonton, Alberta, T5K 2V7.
2. CN shall only forward the funds as ordered in paragraph 1 to the Edmonton and Area Land Trust upon receiving confirmation from counsel for the Crown that the Edmonton and Area Land Trust and Her Majesty the Queen, in Right of the Province of Alberta, as Represented by the Minister of Environment and Parks, have fully executed Schedule "B". Should Schedule "B" not be fully executed by June 12, 2017, the funds referred to in paragraph 1 will be forthwith sent to the Clerk of the Court along with a copy of this Order. The Clerk of the Court will then deal with those funds as though they were payment of an additional fine ordered by the Court with respect to Count 1, inclusive of any applicable surcharge.
3. All of the reports produced in accordance with the project described in paragraph 1 shall be available to the public and may be posted on the website of Alberta Environment and Parks or elsewhere.
4. If any conditions or requirements of this Order cannot be met, counsel for the Alberta Crown Prosecution Service, Alberta Environment and Parks, Edmonton and Area Land Trust, and CN may resolve any resulting issues by agreement, failing which the parties hereto shall appear before this Honourable court for further direction.
5. The term of this Order shall be three years from the date hereof to allow sufficient time for completion of the project described herein.

6. This Order may be consented to in counterpart, by facsimile or otherwise.

DATED this 2 day of June, 2017, in Edmonton, in the Province of Alberta.

"M. C. Doyle"

Judge of the Provincial Court of Alberta

APPROVED AS TO FORM AND CONTENT BY:

"Craig A. Kallal"

Craig A. Kallal
Solicitor for the Alberta Crown Prosecution Service,
Specialized Prosecutions Branch

"Nicholas R. Hughes"

Nicholas R. Hughes
Solicitor and Agent for Canadian National Railway
Company also known as Compagnie des chemins
de fer nationaux du Canada

3
Schedule "B"

RECIPIENT AGREEMENT

THIS AGREEMENT is to be effective commencing on the Effective Date,

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA
as Represented by the Minister of
Environment and Parks

(the "Province")

AND:

EDMONTON AND AREA LAND TRUST
Having an office located at
9910 103 Street NW, Edmonton AB T5K 2V7

(the "Recipient")

WHEREAS:

- A. The Province is the administrator of the Sentencing Fund;
- B. Pursuant to a court order issued by the Provincial Court of Alberta made on the Effective Date, Canadian National Railway Company also known as Compagnie Des Chemins De Fer Nationaux Du Canada was ordered to pay the Sentencing Fund under the creative sentencing provisions of the *Environmental Protection and Enhancement Act*;
- C. The Recipient manages the Project; and
- D. The Province and the Recipient desire to have the Recipient use the Sentencing Fund for the Project to meet the Objectives,

THEREFORE the parties agree as follows:

1. Definitions and Interpretations

1.1. In this Agreement:

- (a) "**Contract Year**" means, respectively, the periods of time described below:
 - (i) the first Contract Year is the period commencing on the Effective Date and ending May 31, 2018; and
 - (ii) each subsequent Contract Year is the period commencing on June 1 in the calendar year the previous Contract Year ended and ending on May 31 of the subsequent calendar year;
- (b) "**Edmonton Region**" means the Capital Region Conservation Area shown on the map in Schedule B;
- (c) "**Effective Date**" means the date June 2, 2017;
- (d) "**Eligible Expenses**" means an expense incurred for the Project that meets the Objectives, as further described and permitted by Schedule A;

- (e) **"Minister"** means the Minister of Environment and Parks and any duly authorized representative of the Minister;
- (f) **"Objectives"** means the Recipient's objectives of improving environmental outcomes on conservation lands within the Edmonton Region, as more fully described in Schedule A;
- (g) **"Project"** means the Recipient's stewardship, operations and related activities to be conducted within the Edmonton Region by the Recipient in accordance with the Objectives, as more fully described in Schedule B;
- (h) **"Sentencing Fund"** means the amount of \$110,000.00 and any additions to this amount in accordance with this Agreement; and
- (i) **"Term"** has the meaning as set out in Section 6.1.

1.2. The following Schedules are incorporated into and form a part of this Agreement:

Schedule A – The Objectives and Eligible Expenses; and

Schedule B – The Project.

1.3. In interpreting this Agreement

- (a) time is of the essence;
- (b) a reference to any Act
 - (i) unless otherwise stated, is to the Act of the Province of Alberta; and
 - (ii) includes all regulations made pursuant to such Act, as such Act and associated regulations may be amended or replaced from time to time;
- (c) words importing gender include all genders;
- (d) words in the singular include the plural and vice versa;
- (e) the word "include" and its inflected forms are not to be interpreted as limiting;
- (f) headings are for convenience only;
- (g) a waiver of any term or condition by one party is only effective if in writing, and any such waiver relates only to the specific breach and instance set out in the waiver;
- (h) any discretion to be exercised by the Province under this Agreement, including where the Province "may" do something, is at the Province's absolute discretion; and

- (i) where a time or date for doing something occurs on a Saturday or a day that is a holiday (as defined in the *Interpretation Act*), the time is deemed to be extended to the first following day that is not a Saturday or holiday.

2. The Grant

- 2.1. The Province will make arrangements to have the Sentencing Fund paid to the Recipient within a reasonable time of the Effective Date.
- 2.2. As consideration for the Province arranging for the payment of the Sentencing Fund to the Recipient, the Recipient will undertake and supervise the Project in accordance with the Objectives and the terms and conditions of this Agreement.
- 2.3. On receipt of the Sentencing Fund, the Recipient will promptly invest the amount into a separate, identifiable GIC or other account, acceptable to the Province, to be maintained exclusively for the Project, and any interest earned on the Sentencing Fund is to be added to, and becomes a part of, the Sentencing Fund and subject to this Agreement.

3. Eligible Expenses

- 3.1. The Recipient will only use the Sentencing Fund for Eligible Expenses.
- 3.2. The Recipient will monitor the expenditure of all amounts from the Sentencing Fund and will promptly notify the Province of any of the following:
 - (a) the improper use of any portion of the Sentencing Fund; or
 - (b) a breach of any environmental law or noncompliance with any permit, licence or approval that is related to any aspect of the Project or an expense incurred using the Sentencing Fund.
- 3.3. Without limiting the requirements under Section 3.4, if any of the events in Section 3.2 occurs, the Recipient will promptly take such actions as the Province may direct to correct or rectify such event.
- 3.4. If the Province believes an expense made using the Sentencing Fund is not an Eligible Expense, then
 - (a) the Province will, promptly on becoming aware of a questioned expense, inform the Recipient of its concern, and
 - (b) the Recipient will, within 30 days of receiving the notice from the Province,
 - (i) subject to Section 6.5, reimburse the Sentencing Fund by the amount of the questioned expense and provide evidence of such reimbursement to the Province, or
 - (ii) deliver to the Province any materials supporting why the questioned expense should be an Eligible Expense.

- 3.5. After receiving materials under Section 3.4(b)(ii), the Province will, acting reasonably and consistent with the intent of the Project and the Objectives, make a final determination regarding whether the questioned expense was an Eligible Expense.
- 3.6. If the Province determines an expense is not an Eligible Expense under Section 3.5, the Recipient agrees to be bound by the decision of the Province and, subject to Section 6.5, will within 30 days of receiving the decision from the Province reimburse the Sentencing Fund by the amount of the improper expense and provide evidence of such reimbursement to the Province.

4. Management of the Sentencing Fund and Reporting Obligations

- 4.1. When managing the Sentencing Fund and incurring Eligible Expense, the Recipient will adhere to investment and business practices, standards and procedures that are at least consistent with those followed by a reasonably prudent person who is acting to
 - (a) avoid undue risk of loss;
 - (b) obtain a reasonable return; and
 - (c) receive reasonable value for services, supplies and assets purchased.
- 4.2. The Recipient will deliver to the Province within 30 days of the end of each of August, November and February during the Term a report covering the previous three months setting out at least the following information:
 - (a) a brief description of all Eligible Expenses incurred;
 - (b) the amount of the Sentencing Fund remaining; and
 - (c) such other information the Province may reasonably request in advance.
- 4.3. Within 30 days of the end of each Contract Year, the Recipient will provide to the Province, in a form acceptable to the Province, a report covering the previous Contract Year that includes the following:
 - (a) all revenue accrued, including interest, from the Sentencing Fund;
 - (b) a description of all services, supplies, equipment and other assets purchased using the Sentencing Fund, including costs and a brief summary of the use to which they were put; and
 - (c) all operations and activities funded using the Sentencing Fund and a brief description of results obtained.
- 4.4. Within 90 days the end of the Term, the Recipient will provide to the Province a full summary detailing all Eligible Expenses made and results achieved with respect to the Project.
- 4.5. In carrying out this Agreement, the Recipient will comply with all applicable:

- (a) laws of the Province of Alberta and the federal laws of Canada applicable in the province;
 - (b) bylaws or resolutions of any municipal government; and
 - (c) permits, licenses and approvals.
- 4.6. The Recipient acknowledges that the *Freedom of Information and Protection of Privacy Act* applies to all information and records provided by the Recipient to the Province and to any information and records provided to the Province in connection with the subject matter of this Agreement, and which are in the custody or under the control of the Province.
- 4.7. The Recipient will not make any public announcement or issue any press release regarding the entering into of this Agreement or receiving the Sentencing Fund, except in consultation with and the approval of the Province as to the contents of the announcement or press release.
- 4.8. The Recipient acknowledges and agrees that the Province may, subject to Section 4.6, publish or otherwise make publicly available any of the reports provided to the Province under Sections 4.2, 4.3 and 4.4, including by posting such reports on the Province's website.
- 4.9. The Province is not responsible for the establishment and operation of the Project, and the Recipient agrees to indemnify and hold harmless the Province from any and all third party claims, demands or actions for which the Recipient is legally responsible, including those arising out of negligence or wilful acts by the Recipient or their respective employees, contractors or agents in carrying out the Project or using Sentencing Funds.
- 5. Conflict Of Interest And Ethical Conduct**
- 5.1. The Recipient will ensure there are no conflicts of interest or apparent conflicts of interest on the part of the Recipient and their respective employees in relation to
- (a) making any expenditure using the Sentencing Fund, and
 - (b) the performance of all work done in relation to the Project, including the selection of any third party contractors or consultants.
- 5.2. Without limiting Section 5.1:
- (a) the Recipient will not influence, or seek to influence, or otherwise take part in a decision of the Province, knowing that the decision might further the Recipient's private interests;
 - (b) where any work under the Agreement or for the Project involves providing advice, making recommendations to the Province or exercising discretionary authority regarding a right, permission, privilege, status, contract or benefit, the Recipient will provide or carry out such advice, recommendation or discretion impartially and without bias;

- (c) that except for payments as set out in this Agreement, the Recipient will not accept any collateral gift, payment, commission or other direct benefit arising from or connected to the carrying out of the obligations under this Agreement or performing the Project;
 - (d) the Recipient will not have any financial interest in any business of a third party that causes, or would appear to cause, a conflict of interest in connection with the selection of any Eligible Expense;
 - (e) that upon request by the Province, the Recipient will deliver copies of all written ethical standards, conflict of interest policies and codes of conduct established or observed by the Recipient in its business practices or in relation to its employees or subcontractors; and
 - (f) the Recipient will, and will ensure its employees and subcontractors, comply with the *Lobbyists Act*.
- 5.3. In the event the Recipient becomes aware of any matter that causes or is likely to cause a conflict of interest, the Recipient will immediately provide notice to the Province and the Recipient will immediately cease the performance of any work relating to this Agreement or the Project unless the Province notifies the Recipient that such work may continue, as the Province may determine.

6. Term and Termination

- 6.1. The term of this Agreement (the "Term") commences on the Effective Date and expires at the earliest of
- (a) the end of the third Contract Year;
 - (b) 60 days after one party provides notice to the other party of its intention to end this Agreement; or
 - (c) the date the amount remaining in the Sentencing Fund is zero.
- 6.2. The Recipient will pay to the Province any portion of the Sentencing Fund remaining after the end of the Term within 15 days without further demand by the Province.
- 6.3. Notwithstanding any other provision of this Agreement, the Province may immediately and without notice terminate this Agreement, and the Recipient will immediately pay to the Province without further demand, all undisbursed amounts of the Sentencing Fund to the Province if any of the following events occurs (or if the Province has a reasonable belief that any of the following may imminently occur):
- (a) the Recipient ceases to be a registered charity, as determined by the Canada Revenue Agency,
 - (b) the Recipient is petitioned into bankruptcy or makes an assignment for the benefit of creditors,

- 11
- (c) the Recipient is adjudicated bankrupt or insolvent,
 - (d) the Recipient files a petition or institutes any proceedings under any bankruptcy or insolvency legislation,
 - (e) the Recipient has its chattels, equipment or supplies seized under process of law for non-payment of debts, or
 - (f) the Recipient is the subject of an appointment of a receiver or trustee in bankruptcy.

6.4. The Recipient will immediately advise the Province if it has reason to believe any of the events in Section 6.3 may occur, in which case the Province is deemed to have a reasonable belief that such event may imminently occur.

6.5. If Sections 3.4(b)(i) or 3.6 apply after the expiry of the Term or the termination of this Agreement, then instead of reimbursing the Sentencing Fund, the Recipient will pay the amount of the improper expenses to the Province without further demand.

6.6. Any amount that the Recipient is required to pay to the Province under this Agreement is a debt due to the Crown and may be recovered from the Recipient by an action in debt.

7. General

7.1. This Agreement

- (a) constitutes the entire Agreement between the parties,
- (b) enures to the benefit of and is binding on the parties and their respective representatives, successors and permitted assigns,
- (c) is not to be interpreted or construed as creating a relationship of principal and agent, employer and employee, partnership or joint venture between the parties,
- (d) is to be construed and interpreted in accordance with the laws applicable in the Province of Alberta and the federal laws of Canada applicable therein,
- (e) may only be amended in writing, and
- (f) may not be assigned by the Recipient without the prior written consent of the Province.

7.2. Sections 3.4, 3.5, 3.6, 4.3, 4.4, 4.6, 4.7, 4.9, 5.3, 6.2, 6.5, 6.6 and 7.3 survive the expiry of the Term or the earlier termination of this Agreement

7.3. Any notices or communication to be given by one party to the other under this Agreement are to be given in writing and may be delivered to the other party at the following addresses, email addresses or facsimile numbers, or to such other person and contact information as a party may provide by notice:

12

To the Province

Environment and Parks
15th Floor, Oxbridge Place
9820 106 Street
Edmonton, AB T5K 2J6

Attn: Hanneke Brooymans,
Justice Liaison
Tele: 780-644-8355
Fax: 780-422-4252
Email: Hanneke.brooymans@gov.ab.ca

To the Recipient

Edmonton and Area Land Trust
9910 – 103 Street,
Edmonton AB
T5K 2V7

Attn: Pam Wight,
Executive Director
Tele: 780 483-7578
Fax: 780 483-7627
Email: pamwight@ealt.ca

IN WITNESS WHEREOF the Parties have executed this Agreement effective the date first written above.

**HER MAJESTY THE QUEEN, in Right of
the Province of Alberta, as Represented by
the Minister of Environment and Parks**

Hanneke Brooymans
Justice Liaison
Provincial Programs Branch

EDMONTON AND AREA LAND TRUST

Per: _____
Pam Wight,
Executive Director

Schedule A**The Objectives and Eligible Expenses**The Objectives:

The Recipient is a registered Canadian charity working to conserve, preserve and restore natural areas and rural landscapes. The Recipient's Objectives for the Sentencing Fund are to fund the Project by:

- providing benefits to wildlife and their habitat,
- maintaining the economic, health and community benefits of the natural areas,
- conserving water quality and water supplies,
- protecting against flooding and drought,
- supporting biodiversity,
- providing important places for communities and their residents for recreation, health, well-being, and quality of life, and
- conducting, as appropriate, any of the activities specifically described in Schedule B as part of the Project.

These Objectives improve environmental outcomes on conservation lands through the implementation of conservation and stewarding work focused on properties with aquatic and riparian habitat.

Eligible Expenses:

When utilizing the Sentencing Fund, the Recipient agrees an Eligible Expense is an expense actually incurred by the Recipient for the Project and in accordance with the Objectives.

The Recipient acknowledges and agrees that expenditures that do not meet the definition of an Eligible Expense include:

- expenses that do not meet the Objectives;
- expenses that have no connection to the Edmonton Region;
- amounts incurred contrary to the conflict of interest and ethical conduct provisions in Section 5,
- expenses incurred conducting an activity
 - in violation of any environmental law, or
 - that is not compliant with any required permit, licence or approval;

1A

- amounts to pay any fine, penalty, restitution, clean up, or to correct a violation of any environmental law or noncompliance with any permit, licence or approval by the Recipient, its employees or any person acting on behalf of the Recipient;
- fees or honoraria paid to members of the Recipient unless in accordance with this Agreement and directly related to the Project, and
- out of province travel.

This list is not exhaustive and the Recipient is responsible to ensure all uses of the Sentencing Fund is only used for Eligible Expenses. If the Recipient is unsure whether a proposed expense is an Eligible Expense, it may contact the Province to discuss prior to incurring such expense.

Schedule B**The Project**

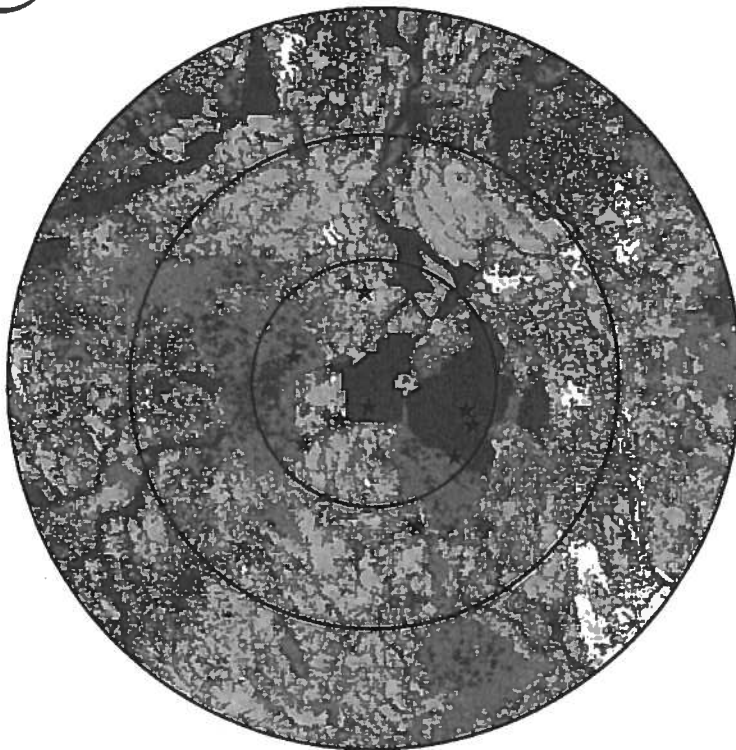
The Project is the Recipient's land conservation and stewardship activities conducted within the Edmonton Region. Land conservation and stewardship represents a significant portion of the Recipient's budget, and has significant costs. Natural areas do not simply take care of themselves, and need to be managed, particularly natural areas close to cities or which were previously used for other purposes. Management of natural areas is necessary in order that these lands continue to uphold their conservation values – the values they provide for people and wildlife, as well as for their intrinsic environmental values.

Project activities may be conducted by the Recipient's staff as well as by a variety of volunteers. Although the use of volunteers is cost effective, it is not cost free, as there are recruitment, coordination, training and safety expenses.

Stewardship can take many varied forms, depending on the property, its place in the securement cycle (new properties are generally more "needy"), their degree of previous human activity, or a number of other potential issues. Some of the more common stewardship activities often include: invasive plant removal and management, habitat restoration, creating safe habitats for wildlife, preventing illegal use and activities on the conservation lands, maintenance of trails and other access points, interpretive signage to encourage public compliance with good practices, nest box installation and maintenance, removal of old barbed wire, monitoring for ecosystem health, and maintaining lands for low impact recreation and enjoyment.



Capital Region Conservation Area



Legend

★ EALT Conservation Lands

Priority



Data Sources: Edmonton and Area Land Trust, Alberta Biodiversity Monitoring Institute, Alberta Environment and Parks, Beaver County, Camrose County, Canadian Parks and Wilderness Society Northern Chapter, City of Edmonton, Lac St. Anne County, Leduc County, Parkland County, Strathcona County

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