

REGIONAL DISTRICT OF NANAIMO

**ELECTORAL AREA 'A' PARKS, RECREATION AND CULTURE COMMISSION
REGULAR MEETING
WEDNESDAY, May 18th, 2016
7:00 PM**

(Cedar Heritage Centre)

A G E N D A

PAGES

CALL TO ORDER

DELEGATIONS

Motion to receive late delegations

MINUTES

2-4 Minutes of the Regular Electoral Area 'A' Parks, Recreation and Culture Commission meeting held April 20th, 2016

Motion to adopt the Minutes

BUSINESS ARISING FROM THE MINUTES

COMMUNICATIONS/CORRESPONDENCE

REPORTS

5-25 Community Works Funds for Snuneymuxw Sport Court Report

Motion to receive Report

BUSINESS ARISING FROM DELEGATIONS OR COMMUNICATIONS

NEW BUSINESS

COMMISSIONER ROUND TABLE

ADJOURNMENT

Motion to adjourn.

NEXT MEETING

June 15, 2016
Cedar Heritage Centre

REGIONAL DISTRICT OF NANAIMO

**MINUTES OF THE ELECTORAL AREA 'A' PARKS, RECREATION AND
CULTURE COMMISSION REGULAR MEETING
HELD WEDNESDAY, APRIL 20, 2016
7:00PM**

(CEDAR HERITAGE CENTRE)

Attendance: Alec McPherson, RDN Director, Chair
Jim Fiddick
John O'Connor
Angela Davies
Graham Gidden
Andrew Thornton

Staff: Hannah King, Superintendent of Recreation Program Services
Ann-Marie Harvey, Recording Secretary

Regrets: Kerri-Lynne Wilson
Bernard White
Patti Grand

CALL TO ORDER

Chair McPherson called the meeting to order at 7:07pm.

DELEGATIONS/PRESENTATION

None

MINUTES

MOVED Commissioner O'Connor, SECONDED Commissioner Fiddick that the Minutes of the Regular Electoral Area 'A' Parks, Recreation and Culture Commission meeting held February 17, 2016 be adopted.

CARRIED

BUSINESS ARISING FROM THE MINUTES

Grants Sub-Committee Guidelines

The Commissioners discussed the recommended changes to the Grant in Aid guidelines by the Grants Sub-Committee. Commissioners agreed to the main changes of

1. not limiting the maximum funding of \$1500. That \$10,000 total is available for the year.
2. that remaining funding may be carried over to the next budget year at the Board's discretion
3. that applications can be submitted at any time during the year, however there are two deadlines to allow for the timely review of the applications.
4. that as a general guideline, the amount requested cannot be greater than 50% of the total budget for the program, event or project and larger disbursements may be considered at the Commissions discretion.

The Commissioners also discussed the changing of the language where it indicated that applicants must be from EA 'A', that it was clear that the organization can be from outside EA 'A' but must benefit the communities in EA 'A'. Also the wording of having 'up to' three Commission representatives on the committee be added.

MOVED Commissioner Davies, SECONDED Commissioner Gidden that the EA 'A' Recreation and Culture Grants Sub-Committee Guideline recommendations be approved with the amended changes.

CARRIED

Canada 150 Recommendations

Commissioners discussed the recommendations made by the sub-committee.

MOVED Commissioner Gidden, SECONDED Commissioner Davies that the following Electoral Area 'A' Parks, Recreation and Culture Canada 150 Sub-Committee recommendations be approved:

1. That the Electoral Area 'A' PRCC grants in aid sub-committee give consideration to grant applications submitted on behalf of groups celebrating the 2017 sesquicentennial events during the fall 2016 and spring 2017 in take periods.
2. That each member of the Electoral Area 'A' PRCC inform community groups regarding the availability of grant funds for events celebrating the sesquicentennial prior to the June 2016 Commission meeting.
3. That the Electoral Area 'A' PRC Canada 150 sub-committee continue to research, notify, and make application or, support community group applications when suitable, to funding opportunities (grants) related to the Canadian sesquicentennial. Secured funds will be directed to the grants in aid budget and will in turn be distributed to successful grant in aid applicants.
4. That the Electoral Area 'A' PRCC Canada 150 sub-committee meet on an ad hoc basis and report back to the Commission as needed.
5. That the members of the Electoral Area 'A' PRCC Canada 150 subcommittee be the point of contact for media inquiries regarding the availability of funding for sesquicentennial groups in the Electoral Area 'A'.

CARRIED

COMMUNICATIONS/CORRESPONDENCE

MOVED Commissioner O'Connor, SECONDED Commissioner Thornton that the following Communications/Correspondence be received:

J. Fiddick, Cedar Community Association to H. King, RDN RE: Grant Thank You

CARRIED

REPORTS

PARKS

Monthly Update of Regional and Community Parks and Trail Projects—Feb -Mar 2016

Commissioners discussed a couple of points on the report.

MOVED Commissioner O'Connor, SECONDED Commissioner Fiddick that the Monthly Update Report be received.

CARRIED

BUSINESS ARISING FROM DELEGATIONS OR COMMUNICATIONS

NONE

NEW BUSINESS

Roadside Trails

Chair McPherson gave a handout of an email with pricing of different types of trails around the Regional District as a perspective to what the cost of certain trail could cost to construct. He would like Commissioners to come back the June meeting with some suggestions to certain areas that could benefit with a roadside trail for safety and connecting parks around Electoral Area 'A'. There is potential to work with MOTI and use EA 'A' Community Works Funds to contribute to these kinds of projects.

COMMISSIONER ROUND TABLE

Commissioner O'Connor – Looking forward to the BCRPA Symposium in Whistler.

Commissioner Thornton – Looking forward to the BCRPA Symposium in Whistler.

Commissioner Fiddick – Backcountry Horse group doing work up at Spruston Rd, cleaning up garbage, reseeding it, for horse trailer parking. And noted the shooting out that way seems to have minimized.

Commissioner Davies – She's been taking some walks lately and discovered the trail down to Cedar Village via Morden Colliery Trail and has been passing the word along about it. She noted the importance of looking at the roadside trails in the community and their safety and accessibility.

Chair McPherson – There will be a venue for items like the roadside trails as the RDN Directors will be having their Electoral Area Planning meetings in the Electoral Area's and tacking on a Town hall meeting to the end of them and they are all open to the public.

ADJOURNMENT

MOVED Commissioner O'Connor that the meeting be adjourned at 8:15pm.

CARRIED

Chair

TO: Tom Osborne
General Manager of Recreation and Parks

DATE: May 11, 2016

MEETING: Special Meeting Electoral Area 'A'
PRC Commission, May 18, 2016

FROM: Dean Banman
Manager of Recreation Services

FILE:

SUBJECT: Contribution Agreement- Community Works Funds for Snuneymuxw Sport Court

RECOMMENDATION

That the Regional District of Nanaimo enter into the Contribution Agreement as provided in Attachment I that provides up to \$300,000 in Electoral Area 'A' Community Works Funds to Snuneymuxw First Nation for use in the capital upgrade of the lacrosse box (sport court) located on Nanaimo River I.R. #4 in exchange for community use access as per the terms of the Agreement.

PURPOSE

To review providing funds through an agreement to upgrade and replace an existing lacrosse box (sport court) that is owned and managed by Snuneymuxw First Nation (SFN) to then be made available to the Electoral Area 'A' for community use.

BACKGROUND

Since 2010 the non-profit organization Cedar Ballhockey Challenge Association has organized a very successful fundraising event known as the Cedar Ballhockey Challenge. The Association was formed with the purpose of fundraising for recreation facilities in Electoral Area 'A'. One of the larger fundraising events hosted by the Association is the July annual ballhockey tournament. The tournament consists of four divisions which include a children's division and attracts over 200 players. Up to 2013 this event was held at North Cedar Intermediate School. Upon closure of the school the Association was forced to find an alternative site. SFN council very generously offered the use of their lacrosse box on reserve #4.

During the same time period elected officials from both the RDN and SFN realized an opportunity to collaborate on enhancing recreation facilities for both SFN and Electoral Area 'A' residents. The results of discussions have materialized into the attached proposed agreement that would see the RDN fund the majority of this project and SFN over a ten year term allowing and enhancing the ability of the larger community to access the sport court.

In January 2015, the RDN Board approved up to \$120,000 from EA 'A' CWF funding subject to a long term community use agreement be established. Since that time the design and costing of the project has been refined in collaboration with SFN's project engineer, Chief Wesley, and Electoral Area 'A' Director McPherson. Through this process it was determined that funding assistance in the amount of \$300,000 through the Electoral Area 'A' Community Works funds would be required in order to advance the project.

A Contribution Agreement (Attachment I) has now been developed and is ready for SFN Council and RDN Board approval. The Agreement will provide funding for the majority of capital funding for the sport court upgrade and in exchange the facility is accessible to the entire community under the terms provided in the Agreement. As provided for in the Agreement, SFN is responsible for the project's construction and long term management of the facility.

ALTERNATIVES

1. That the Regional District of Nanaimo enter into the Contribution Agreement as provided in Attachment I that provides up to \$300,000 in Electoral Area 'A' Community Works Funds to Snuneymuxw First Nation for use in the capital upgrade of the lacrosse box (sport court) located on Nanaimo River I.R. #4 in exchange for community use access as per the terms of the Agreement.
2. That the Agreement not be approved as attached and alternative direction be provided.

FINANCIAL IMPLICATIONS

Both the project funding and partnership with Snuneymuxw are authorized under the Community Works Funds eligibility criteria. The entire amount would be provided solely through Electoral Area 'A' Community Works funds which has a projected 2016 yearend balance of \$1,462,176. Any expenses related to annual and/or ongoing maintenance would continue to be the responsibility of SFN.

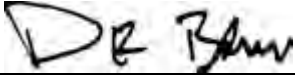
STRATEGIC PLAN IMPLICATIONS

Establishing a community partnership and enhancing recreation facilities is consistent with the strategic priorities of service and organizational effectiveness as well as relationship building. By developing more compact, complete communities and a neighbourhood form that provides opportunities for a gathering place for community relationships to develop and strengthen.

SUMMARY

In January 2015, the RDN Board approved up to \$120,000 from EA 'A' CWF funding subject to a long term community use agreement be established. Since that time the design and costing of the project has been refined in collaboration with SFN's project engineer, Chief Wesley, and Electoral Area 'A' Director McPherson. Through this process it was determined that funding assistance in the amount of \$300,000 through the Electoral Area 'A' Community Works funds would be required in order to advance the project.

A Contribution Agreement (Attachment I) has now been developed and is ready for SFN Council and RDN Board approval. The Agreement will provide funding for the majority of capital funding for the sport court upgrade and in exchange the facility will be accessible to the entire community under the terms provided in the Agreement. As provided for in the Agreement, SFN will be responsible for the project's construction and long term management of the facility.



Report Writer



General Manager Concurrence



A/CAO Concurrence

ATTACHMENT I

Contribution Agreement re Use of Community Works Funds

This Agreement dated effective the _____ day of _____, 2016.

BETWEEN:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

(herein called the "RDN")

OF THE FIRST PART

AND:

SNUNEYMUXW FIRST NATION

668 Centre Street
Nanaimo, BC V9R 4Z4

(herein called "SFN")

OF THE SECOND PART

WHEREAS:

- A. The Regional Board of the RDN has entered into a Community Works Fund ("**CWF**") Agreement (the "**CWF Agreement**") with the Union of British Columbia Municipalities ("**UBCM**") to enable the RDN to build and revitalize public infrastructure that supports productivity, economic growth, a clean environment and strong cities and communities, and to benefit from the CWF in accordance with the terms and conditions of the Administrative Agreement on the Federal Gas Tax Fund in British Columbia dated April 1, 2014 between Canada, British Columbia, and the UBCM (the "**Administrative Agreement**");
- B. The CWF Agreement contemplates that Local Governments will enter into Contracts with Third Parties for the implementation of Eligible Projects;
- C. The RDN has been advised by UBCM that an entity such as SFN may be considered a Third Party pursuant to the CWF Agreement, and the RDN may enter into Contracts with Third Parties to supply Eligible Projects, provided that all requirements of the CWF Agreement are met;
- D. If CWF funding is used for an Eligible Project that results in the development of Infrastructure on lands owned by SFN, the RDN remains the Ultimate Recipient of the CWF funding and must fulfill its commitments to the UBCM under the CWF Agreement in relation to the Eligible Project;
- E. There is an existing recreational facility in the form of a lacrosse box and sport court (the "**Sport Court**") located on Nanaimo River IR #4 (the "**Reserve**").

- F. SFN and the RDN agree that upgrades to the Sport Court are needed in order that both the SFN community and the residents of Electoral "A" may use and benefit from the Sport Court.
- G. The RDN has indicated support for the upgrade of the Sport Court by SFN as an Eligible Project through a formal resolution of its Board of Directors, and wishes to enter into an agreement (the "**Contribution Agreement**") between the RDN and SFN stipulating the contribution amount and defining the work and content of the Eligible Project;
- H. The RDN and SFN must comply at all times with the terms and conditions of the CWF Agreement in respect of the use of the CWF for the Eligible Project;
- I. The RDN respectfully recognizes that the Sport Court is located on SFN's Reserve within SFN's traditional territory, and the RDN commits to working with SFN and ensuring the entire RDN Electoral Area 'A' recognizes and respects the Reserve and SFN's traditional territory and opportunity to use the Sport Court upon completion.

NOW THEREFORE THIS AGREEMENT WITNESSES that the parties hereto in consideration of the monies to be paid by the RDN to SFN as hereinafter set forth and of the premises and the mutual covenants hereinafter contained the parties hereto agree as follows:

1. The following Schedules, originating in whole or part from the Administrative Agreement, and appended to the CWF Agreement, are attached to and form part of this Contribution Agreement:

Schedule A – Definitions
 Schedule B – Eligible Project Categories
 Schedule C – Eligible and Ineligible Expenditures

Capitalized terms not otherwise defined in this Contribution Agreement have the meanings as defined in the above Schedule A.

2. (a) Subject to the terms and conditions of this Contribution Agreement, the RDN shall provide up to \$300,000 of the funds received through the CWF Agreement (the "**Contribution**") to SFN for the purpose of renewing and/or enhancing the Sport Court, including without limitation:
- (i) removal and replacement of the existing asphalt playing surface, perimeter boards, perimeter screening, penalty boxes and players benches;
 - (ii) the addition of fixtures and hardware, including but not limited to, site signage, tennis post sleeves, basketball hoops and additional "bounce" or play surfaces attached or immediately adjacent to the sport court; and
 - (iii) other sport court Infrastructure, including but not limited to, underground utilities, footings, conduit, etc. that includes or allows for the future addition of sport court lighting, sport court covering or other Infrastructure that will increase the utilization of the Sport Court by the communities and increasing and improving its capacity to offer cultural, recreational and tourism related events and activities in the community.

(together the “**Project**”).

- (b) The RDN shall pay the Contribution, or portions thereof, to the SFN within 30 days of receipt from the SFN of a quote or an invoice for an Eligible Expenditure, prepared by a licensed contractor or qualified professional, and delivered to the RDN before the date referred to in paragraph 2(f).
 - (c) The SFN shall ensure that the entirety of the Contribution amount provided pursuant to section 2(b) is paid or disbursed in respect of the Eligible Expenditure within 120 days of receipt of the Contribution or any portion thereof.
 - (d) In the event that the SFN does not spend the Contribution or any portion thereof on an Eligible Expenditure for the Project within 120 days of receipt of such amount from the RDN, as required under section 2(c), the SFN shall immediately return the Unspent Funds to the RDN.
 - (e) The RDN shall be not obliged to make any payment under this Contribution Agreement more than one year after Project Completion, after which date the payment obligations of the RDN in respect of the Contribution shall be terminated.
3. The term of this Contribution Agreement shall be from the date of execution until the day that is 10 years after Project Completion (the “Term”).
 4. Subject to this Contribution Agreement, SFN may spend the Contribution for the purposes of the Project only on those expenditures that constitute Eligible Expenditures, as described at Schedule C.
 5. The SFN shall:
 - (a) ensure that the Project is conducted in a safe and efficient manner to a standard that is equal to or higher than if the Project were to be conducted by RDN directly;
 - (b) implement effective improvements with sufficient capacity to meet the anticipated needs of the SFN and RDN Electoral Area ‘A’ communities individually and collectively;
 - (c) obtain and maintain in force all approvals, certificates and permits required by any government authority in connection with the construction and operation of the Project;
 - (d) where applicable comply with all relevant policies and procedures of the Government of Canada – Indigenous and Northern Affairs’ *Tendering Policy on Federally Funded Capital Projects for First Nations on Reserve*;
 - (e) ensure that all components of the Project are operated in accordance with any and all instructions provided by the Project designer, installer, manufacturer or other qualified professional, and maintained in good working condition;

- (f) assume all responsibility related to the proper operation and routine maintenance of all aspects of the Sport Court upon completion of the Project;
 - (g) maintain and operate the Sport Court in a manner equal to or greater than the operation and maintenance standards reasonably expected of facilities of a similar nature within the RDN; and
 - (h) provide advance notice to RDN and the community when the Sport Court will not be available to the general public due to cultural or ceremonial reasons.
6. Notwithstanding sections 4(e), 4(f) and 4(g), SFN shall not be responsible for any repairs, maintenance, upgrades or other work arising directly or indirectly as a result of the negligence or wilful misconduct of the RDN, its elected and appointed officers and employees, servants or agents.
 7. SFN shall take out and maintain at its own cost, for the Term of this Contribution Agreement, general liability insurance in an amount not less than \$5,000,000.00 dollars inclusive per occurrence covering losses for bodily injury and death, property damage and unlicensed vehicle and attached equipment operations and SFN shall furnish certificates of the insurance to the RDN prior to payment of the Contribution by the RDN.
 8. SFN shall indemnify, release and save harmless the RDN, its elected and appointed officers and employees, and the Government of Canada, British Columbia and UBCM and any of its officers, servants, employees or agents, from and against any and all claims, suits, demands, actions, causes of action, damages, costs, fees, fines, and penalties whatsoever, including legal fees and liability, that SFN has or may have or that a Third Party or any person has or may have, caused by or arising from the Contribution or the implementation of the Project by SFN, including liability arising out of any claim, allegation or determination that the RDN has breached the CWF Agreement by transferring the Contribution to SFN pursuant to this Contribution Agreement, including without limitation any obligation to repay funds to UBCM or Canada pursuant to the CWF Agreement or the Administrative Agreement, except to the extent to which such claims or losses relate to the negligence or wilful misconduct of an officer, servant, employee, or agent of the RDN, Canada, British Columbia or the UBCM in the performance of his or her duties.
 9. Nothing in this Contribution Agreement shall be interpreted as creating an agency, joint venture, principal-agent, or partnership relationship between the RDN, UBCM or Canada and SFN, nor an employment relationship between RDN, UBCM or Canada and SFN and its employees or volunteers.
 10. Nothing in this Contribution Agreement shall be deemed to convey or confer on the RDN any title, fee, estate or other right "in rem" on the Reserve.
 11. SFN warrants and represents to the RDN that it has sufficient legal authority to carry out the Project as contemplated by this Contribution Agreement, with the intention that the RDN will rely upon such warranty and representation.
 12. SFN acknowledges and agrees that it has been provided with copies of the Administrative Agreement and the CWF Agreement and that SFN has reviewed those agreements and is aware of the terms and conditions contained therein.

13. The RDN represents and warrants that UBCM considers SFN to be a Third Party pursuant to the CWF Agreement, and the parties acknowledge and agree that this Contribution Agreement constitutes a Contract between SFN and the RDN pursuant to the CWF Agreement.
14. SFN acknowledges that the RDN retains responsibility for the use of the Contribution under the CWF Agreement and reporting on the use of funds received under the CWF Agreement. SFN therefore, as the owner of the funded assets acquired with the Contribution, shall during the Term of this Contribution Agreement and at its cost:
 - (a) maintain all administrative, corporate and accounting records related to the receipt and expenditure of all the Contribution (the "**Records**") in accordance with generally accepted accounting principles, and retain these records for at least six (6) years following completion of the Project;
 - (b) provide access to all Records to RDN, UBCM or Canada auditors upon request by the RDN;
 - (c) spend the Contribution only on Eligible Expenditures of Eligible Projects as defined in the CWF Agreement;
 - (d) ensure that any Contract or agreement with a Third Party in relation to the Project shall:
 - (i) ensure that SFN remains in compliance with all requirements of this Contribution Agreement;
 - (ii) contain terms that oblige such Third Party to comply with the terms and conditions of this Contribution Agreement; and
 - (iii) not cause the RDN to be out of compliance with the CWF Agreement;
 - (e) where the RDN has contributed funds for the Project in the previous calendar year, report to the RDN and provide to the RDN on or before March 31 of each year all other information necessary or useful to permit the RDN to fulfill its reporting requirements to UBCM required under section 6 of the CWF Agreement and section 9 of Schedule A of the Administrative Agreement; and
 - (f) provide further information, documentation and reports upon request by RDN, acting reasonably.
15. SFN acknowledges that the RDN will rely upon information provided to RDN under section 11 of this Contribution Agreement to fulfill its commitments to UBCM pursuant to the CWF Agreement, including to complete reporting in relation to the Project and Eligible Expenditures.
16. SFN will not alter the agreed use of the Contribution for the Project without the written agreement of the RDN, which may be withheld in the sole and complete discretion of the RDN.

17. SFN shall retain ownership of and title to the Project, including all materials, components, devices and equipment acquired with the use of the Contribution, as long as SFN retains ownership of the improvements benefitting from the Project.
18. If SFN disposes of the Project or any interest in the Project through the sale, lease, encumbrance or other disposal of an asset resulting from the Project (the “**Disposition**”) within five (5) years of the date of completion and the Disposition is made to, or granted in favour of, a person or entity other than the RDN or a person or entity approved in writing by the RDN, acting reasonably, SFN shall pay any revenue generated or arising from such Disposition to the RDN to be invested by the RDN into other Eligible Projects in accordance with section 6.1(H) of the CWF Agreement.
19. Notwithstanding the preceding, if the Disposition is made for the purpose of obtaining a mortgage for further improvements and enhancements or work otherwise related to the Sport Court or related Infrastructure, SFN shall not be required to pay any of the proceeds of the mortgage to the RDN.
20. Access to the Sport Court
- (a) During the Term of this Contribution Agreement, SFN shall permit reasonable access to the general public to use the **Sport Court** during such hours and at such rates as are available to the general public at similar facilities within the RDN that are used for similar purposes, except that SFN may, at its sole discretion, restrict access to the Sport Court and related area for cultural or ceremonial purposes and where such restrictions are necessary, SFN shall provide reasonable advance written notice to the RDN and the public of the closure.
- (b) SFN may at its sole discretion set the policies for use of and access to the Sport Court, including charging and collection of user fees.
- (c) After the expiry of the Term of this Contribution Agreement, SFN may continue to permit access to the Sport Court by the general public at its sole discretion.
- (d) If, during the Term, the RDN receives complaints from the general public that reasonable access is not permitted (the “Complaint”), contrary to section 20(a) of this Contribution Agreement, the RDN shall provide written notice to SFN of the Complaint. SFN must, within five (5) business days of receiving such written notice of the Complaint, provide access to the general public in accordance with this Contribution Agreement.
21. Default

If either Party is in default of any of its obligations under this Contribution Agreement and, upon receiving written notice of the default from the other Party, fails to correct the default or to take steps to correct the default within ten (10) business days of having received the notice, or such other time as the Parties may agree in writing, the other Party may provide ninety (90) days written notice to the defaulting Party to terminate the Contribution Agreement.

- 22. If this Contribution Agreement is terminated within the first five (5) years of the Term due to an uncorrected default of SFN, then SFN will reimburse the RDN for the full amount of the Contribution, to be invested by the RDN into other Eligible Projects in the complete discretion of the RDN.
- 23. If the Contribution Agreement is terminated within the second five (5) years of the Term due to an uncorrected default of SFN, then SFN will reimburse the RDN a prorated amount of the Contribution calculated as 1/10th of the Contribution amount for each year remaining in the Term.
- 24. If the Contribution Agreement is terminated at any time during the Term due to an uncorrected default of the RDN, then SFN will not be required to reimburse the RDN for any amount of the Contribution that has been paid by the RDN to SFN up to and including the date of early termination of this Contribution Agreement and SFN will be released from all other of its obligations under this Contribution Agreement.

25. Notices

- (a) Each notice sent pursuant to this Contribution Agreement ("**Notice**") shall be in writing and shall be sent to the relevant Party at the relevant address, facsimile number or e-mail address set out below. Each such Notice may be sent by registered mail, by commercial courier, by facsimile transmission, or by electronic mail.
- (b) The Contact Information for the parties is:

RDN	SFN
<i>[incl. email address – ensure long-standing address for contracts of long duration]</i>	

- (c) Each Notice sent by electronic mail ("**E-Mail Notice**") must show the e-mail address of the sender, the name or e-mail address of the recipient, and the date and time of transmission, must be fully accessible by the recipient, and unless receipt is acknowledged, must be followed within twenty-four (24) hours by a true copy of such Notice, including all addressing and transmission details, delivered (including by commercial courier) or sent by facsimile transmission.
- (d) Subject to sections 24(a) through 24(c) each Notice shall be deemed to have been given or made at the following times:

- (i) if delivered to the address (including by commercial courier), on the day the Notice is delivered;
 - (ii) if sent by registered mail, seven (7) days following the date of such mailing by sender;
 - (iii) if sent by facsimile transmission, on the date the Notice is sent by facsimile transmission;; or
 - (iv) if sent by electronic mail, on the date the E-Mail Notice is sent electronically by e-mail by the sender.
- (e) If a Notice is delivered, sent by facsimile transmission or sent by electronic mail after 4:00 p.m., or if the date of deemed receipt of a Notice falls upon a day that is not a Business Day, then the Notice shall be deemed to have been given or made on the next Business Day following.
- (f) Notice given by facsimile transmission in accordance with the terms of this section 24 will only be deemed to be received by the recipient if the sender's facsimile machine generates written confirmation indicating that the facsimile transmission was sent.
- (g) If normal mail service, facsimile or electronic mail is interrupted by strike, slow down, force majeure or other cause beyond the control of the parties, then a Notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the Notice shall utilize any other such services which have not been so interrupted or shall personally deliver such Notice in order to ensure prompt receipt thereof.
- (h) Each Party shall provide Notice to the other Party of any change of address, facsimile number, or e-mail address of such Party within a reasonable time of such change.
26. SFN shall take all reasonable steps to ensure that no act or omission of SFN causes the RDN not to be in compliance with all terms and conditions of the CWF Agreement, and, without limiting the foregoing, SFN shall:
- (a) take no action that would place the RDN in breach of any provision of the CWF Agreement;;
 - (b) comply, where applicable, with all requirements of the Local Government contained at section 6.1 of the CWF Agreement;; and
 - (c) upon receiving written notice from the RDN of an amendment to the CWF Agreement made under section 10 of the CWF Agreement, take all required actions and execute all documents as may be applicable and reasonably required to comply with SFN's obligations under this section.
27. This Agreement has been executed on behalf of SFN and the RDN by those officers indicated below and each person signing the agreement represents and warrants that they are duly authorized and have the legal capacity to execute the Agreement.

28. Compliance with Laws

The SFN shall comply with all statutes, regulations and bylaws applicable to the Project, any requirements of the SFN's insurers and underwriters and all other applicable orders, codes and requirements related to or arising from the Project.

29. Taxes and Charges

SFN shall pay all taxes, charges, levies, duties, licenses, permits and assessments of every nature due and payable with respect to or arising as a result of this Agreement and the Project.

30. Oral Agreements

No oral instruction, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a waiver or modification in writing and agreed to by the parties to the Agreement.

31. Non-Waiver

Any failure by the RDN at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of the Agreement will not constitute a waiver of such terms or conditions and will not affect or impair such terms or conditions in any way or the right of the RDN at any time to avail itself of such remedies as it may have for any breach of such terms or conditions. No provision in this Agreement, which imposes or may be deemed to impose extra or specific responsibilities or liabilities on SFN shall restrict the general or other responsibilities or liabilities of SFN in any way.

32. No Derogation from Statutory Powers

Nothing contained or implied herein shall prejudice or affect the rights and powers of the RDN in the exercise of its functions under any public or private statute, bylaw, order or regulation, all of which may be fully and effectively exercised in relation to this Agreement as if this Agreement had not been executed and this Agreement shall be subject to and consistent with the statutory restrictions imposed on the RDN under the *Local Government Act*, R.S.B.C., 1996, c. 323 and the *Community Charter*, S.B.C., 2003, c. 26.

33. Liability

SFN shall not, at any time, hold the RDN responsible for any claims or losses of any kind that SFN or its successors may suffer in relation to any matter related to the RDN's supply of oral or written information to SFN or the carrying out of the RDN's responsibilities under this Agreement and SFN waives for itself and its successors the right to sue the RDN in tort for any loss, including economic loss, damage, cost or expense arising from or connected with any error, omission or misrepresentation occurring in the supply of oral or written information to SFN or the carrying out of the

RDN's responsibilities under this Contribution Agreement, except to the extent to which such claims or losses relate to the negligence or willful misconduct of an officer, employee, or agent of the RDN in the performance of his or her duties.

34. Further Assurances

The parties hereto shall execute such further and other documents and do such further and other things as might be necessary to carry out and give effect to this Agreement.

35. Survival

Except as otherwise provided under this Contribution Agreement, all of SFN's obligations under this Agreement that are for the benefit of the RDN, Canada or UBCM shall survive early termination of this Agreement.

36. Severance

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

37. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and contains all of the representations, warranties, covenants and agreements of the respective parties and may not be amended or modified except by an instrument in writing executed by all parties. This Agreement supersedes all prior agreements, memoranda and negotiations between the parties.

38. Binding Effect

The Agreement shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators, and permitted assigns.

39. Extended Meanings

Words importing the singular number include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders.

40. Headings

Headings have been inserted for ease of reference and shall not be used in interpreting this Agreement.

41. No Assignment

(a) Neither party may assign any right or entitlement granted under this Contribution Agreement to any person.

(b) For greater clarity, any access rights granted to the general public in respect of the Sport Court as contemplated by this Contribution Agreement will not be considered or deemed an assignment hereunder.

42. Time

Time is of the essence in this Agreement.

43. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a party may send a copy of its original signature on the execution page hereof to the other party by fax transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving party.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto:

SNUNEYMUXW FIRST NATION, by its)
authorized signatories:)

_____))
Name)

_____))
Name)

REGIONAL DISTRICT OF NANAIMO, by its)
authorized signatories:)

_____))
Chief Administrative Officer)

_____))
Jacqueline R. Hill, Manager, Administrative)
Services)

SCHEDULE A - DEFINITIONS

"Administrative Agreement" means the Administrative Agreement on the Federal Gas Tax Fund in British Columbia.

"Annual Report" means the duly completed annual report to be prepared and delivered by UBCM to Canada and British Columbia, as described in Schedule D (Reporting and Audits).

"Asset Management" (AM) includes planning processes, approaches or plans that support integrated, lifecycle approaches to effective stewardship of infrastructure assets in order to maximize benefits and manage risk. AM is further described in Schedule F (Asset Management) of the Agreement, and can include:

- an inventory of assets;
- the condition of assets;
- level of service;
- risk assessment;
- a cost analysis;
- community priority setting;
- long-term financial planning.

"Base Amount" means an amount established over a time-period, reflecting non-federal investments in Infrastructure and against which GTF investments will be measured to ensure that GTF investments are incremental.

"Chief Financial Officer" means in the case of a municipality, the officer assigned financial administration responsibility under S. 149 of the *Community Charter*, and in the case of a Regional District, the officer assigned financial administration responsibility under S. 199 of the *Local Government Act*, R.S.B.C. 1996, c.323.

"Communications Protocol" means the protocol by which all communications activities related to GTF funding will be delivered as described in Schedule E (Communications Protocol).

"Community Works Fund" means the fund provided from the Federal gas tax revenues to be dispersed to local governments based on a percentage of the per capita allocation for local spending priorities in accordance with the terms and conditions set out in the Agreement.

"Community Works Fund Agreement" means this Agreement made between UBCM and Local Government.

"Contract" means an agreement between an Ultimate Recipient and a Third Party whereby the latter agrees to supply a product or service to an Eligible Project in return for financial consideration.

"Eligible Expenditures" means those expenditures described as eligible in Schedule C (Eligible and Ineligible Expenditures).

"Eligible Projects" means projects as described in Schedule B (Eligible Project Categories).

"First Agreement" means the agreement for the transfer of federal gas tax revenues entered into on September 19, 2005 by the Government of Canada, British Columbia and UBCM, with an expiry date of March 31, 2019, as amended.

"First Community Works Fund Agreement" means the agreement entered between UBCM and Local Government in order to administer the Community Works Fund under the First Agreement.

"Funding Agreement" means an agreement between UBCM and an Ultimate Recipient setting out the terms and conditions of the GTF funding to be provided to the Ultimate Recipient as entered under the First Agreement or the Agreement.

"GTF" means the Gas Tax Fund, a program established by the Government of Canada setting out the terms and conditions for the administration of funding that may be provided by Canada to recipients under section 161 of the *Keeping Canada's Economy and Jobs Growing Act*, S.C. 2011, c. 24 as amended by section 233 of the *Economic Action Plan 2013 Act*, No. 1, S.C. 2013, c. 33, or any other source of funding as determined by Canada.

"Ineligible Expenditures" means those expenditures described as ineligible in Schedule C (Eligible and Ineligible Expenditures).

"Infrastructure" means municipal or regional, publicly or privately owned tangible capital assets in British Columbia primarily for public use or benefit.

"Local Government" means a municipality as defined in the *Community Charter* [S.B.C. 2003] Chapter 26, a regional district as defined in the *Local Government Act* [R.S.B.C. 1996] Chapter 323, and the City of Vancouver as continued under the *Vancouver Charter* [SBC 1953] Chapter 55.

"Outcomes Report" means the report to be delivered by March 31, 2018 and again by March 31, 2023 by UBCM to Canada and British Columbia which reports on how GTF investments are supporting progress towards achieving the program benefits, more specifically described in Schedule D (Reporting and Audits).

"Partnership Committee" means the Committee required to be established by the Agreement to govern the implementation of the Agreement and further described in Annex C of the Agreement.

"Party" means Canada, British Columbia or UBCM when referred to individually and collectively referred to as "Parties".

“Project Completion” means the date on which the parties confirm in writing that the work described in section 2(a) has been completed to the reasonable satisfaction of both parties.

"Third Party" means any person or legal entity, other than Canada, British Columbia, UBCM or an Ultimate Recipient, who participates in the implementation of an Eligible Project by means of a Contract.

"Ultimate Recipient" means a Local Government.

“Unspent Funds” means Funds (as defined by the First Agreement) that have not been spent towards an Eligible Project (as defined under the First Agreement) prior to the effective date of the Agreement.

SCHEDULE B – ELIGIBLE PROJECT CATEGORIES

Eligible Projects include investments in Infrastructure for its construction, renewal or material enhancement in each of the following categories:

- A. Local roads, bridges- roads, bridges and active transportation infrastructure (active transportation refers to investments that support active methods of travel. This can include: cycling lanes and paths, sidewalks, hiking and walking trails).
- B. Highways – highway infrastructure.
- C. Short-sea shipping – infrastructure related to the movement of cargo and passengers around the coast and on inland waterways, without directly crossing an ocean.
- D. Short-line rail – railway related infrastructure for carriage of passengers or freight.
- E. Regional and local airports – airport-related infrastructure (excludes the National Airport System).
- F. Broadband connectivity – infrastructure that provides internet access to residents, businesses, and/or institutions in Canadian communities.
- G. Public transit – infrastructure that supports a shared passenger transport system which is available for public use.
- H. Drinking water – infrastructure that supports drinking water conservation, collection, treatment and distribution systems.
- I. Wastewater – infrastructure that supports wastewater and storm water collection, treatment and management systems.
- J. Solid waste – infrastructure that supports solid waste management systems including the collection, diversion and disposal of recyclables, compostable materials and garbage.
- K. Community energy systems – infrastructure that generates or increases the efficient usage of energy.
- L. Brownfield Redevelopment – remediation or decontamination and redevelopment of a brownfield site within Local Governments boundaries, where the redevelopment includes:
 - the construction of public infrastructure as identified in the context of any other eligible project category under the GTF, and/or;
 - the construction of Local Government public parks and publicly-owned social housing.

- M. Sport Infrastructure – amateur sport infrastructure (excludes facilities, including arenas, which would be used as the home of professional sports teams or major junior hockey teams (e.g. Western Hockey League).
- N. Recreational infrastructure – recreational facilities or networks.
- O. Cultural infrastructure – infrastructure that supports arts, humanities, and heritage.
- P. Tourism infrastructure – infrastructure that attract travelers for recreation, leisure, business or other purposes.
- Q. Disaster mitigation – infrastructure that reduces or eliminates long-term impacts and risks associated with natural disasters.

Eligible Projects also include:

- R. Capacity building – includes investments related to strengthening the ability of Local Governments to develop long-term planning practices.

Note: Investments in health infrastructure (hospitals, convalescent and senior centres) are not eligible.

SCHEDULE C- ELIGIBLE AND INELIGIBLE EXPENDITURES

1. ELIGIBLE EXPENDITURES

1.1 Eligible Expenditures of Ultimate Recipients will be limited to the following:

- A. the expenditures associated with acquiring, planning, designing, constructing or renovating a tangible capital asset, as defined by Generally Accepted Accounting Principles (GAAP), and any related debt financing charges specifically identified with that asset;
- B. for capacity building category only, the expenditures related to strengthening the ability of Local Governments to improve local and regional planning including capital investment plans, integrated community sustainability plans, life-cycle cost assessments, and Asset Management Plans. The expenditures could include developing and implementing:
 - studies, strategies, or systems related to asset management, which may include software acquisition and implementation;;
 - training directly related to asset management planning;; and,
 - long-term infrastructure plans.
- C. the expenditures directly associated with joint communication activities and with federal project signage for GTF-funded projects.

1.2 Employee and Equipment Costs: The incremental costs of the Ultimate Recipient's employees or leasing of equipment may be included as Eligible Expenditures under the following conditions:

- the Ultimate Recipient is able to demonstrate that it is not economically feasible to tender a contract;;
- the employee or equipment is engaged directly in respect of the work that would have been the subject of the contract;; and
- the arrangement is approved in advance and in writing by UBCM.

1.3 Administration expenses of UBCM related to program delivery and implementation of this Agreement, in accordance with Section 9 (Use and Recording of Funds by UBCM) of Annex B (Terms and Conditions).

2. INELIGIBLE EXPENDITURES

The following are deemed Ineligible Expenditures:

- A. project expenditures incurred before April 1, 2005;;
- B. project expenditures incurred before April 1, 2014 for the following investment categories:

- highways;;
- regional and local airports;;
- short-line rail;;
- short-sea shipping;;
- disaster mitigation;;
- broadband connectivity;;
- brownfield redevelopment;;
- cultural infrastructure;;
- tourism infrastructure;;
- sport infrastructure;; and
- recreational infrastructure.

- C. the cost of leasing of equipment by the Ultimate Recipient, any overhead costs, including salaries and other employment benefits of any employees of the Ultimate Recipient, its direct or indirect operating or administrative costs of Ultimate Recipients, and more specifically its costs related to planning, engineering, architecture, supervision, management and other activities normally carried out by its staff, except in accordance with Eligible Expenditures above;;
- D. taxes for which the Ultimate Recipient is eligible for a tax rebate and all other costs eligible for rebates;;
- E. purchase of land or any interest therein, and related costs;;
- F. legal fees;; and
- G. routine repair and maintenance costs.