

**CONTRIBUTION AGREEMENT
FUNDS FOR EXTENSION AND DISTRICT RECREATION COMMISSION**

This Agreement effective as of the ____ day of _____, _____,

BETWEEN:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo BC
V9T 6N2

(hereinafter called **RDN**)

AND:

EXTENSION AND DISTRICT RECREATION COMMISSION

670 Muzwell Hill,
Nanaimo, BC
V9X 1G2

(hereinafter called **Extension Recreation**)

WHEREAS the Government of Canada, the Province of British Columbia, and the Union of British Columbia Municipalities ("**UBCM**") entered the *Administrative Agreement*, dated the 1st day of April, 2014, for the purpose of the administration of the Federal Gas Tax Fund, hereinafter called the **Administrative Agreement**;

AND WHEREAS Separately the UBCM and each of the Local government Partners entered the *2014-2024 Community Works Fund Agreement* under the Administrative Agreement, dated the 14th of July, 2014, for the purpose of setting out the roles and responsibilities related to any Community Works Funds ("**CWF**") that may be delivered, hereinafter called the **CWF Agreement**;

AND WHEREAS the Administrative Agreement contemplates that an "Ultimate Recipient", as defined by the Administrative Agreement, may be a non-municipal entity on the condition that the relevant Local Government has indicated support for an Eligible Project through a formal resolution of its Board;

AND WHEREAS the CWF Agreement contemplates that Local Governments will enter into contracts with third parties for the supply of Eligible Projects in return for financial consideration provided that all requirements of the CWF Agreement are met;

AND WHEREAS through formal resolution dated the [date] of [month], [year], as attached to and forming part of this Agreement as Schedule 'A', the Local Government Partners separately and jointly support the contribution of CWF to the Grantee for the purposes of the Project as defined within this Agreement;

AND WHEREAS the **EXTENSION RECREATION** and **RDN** have agreed to cooperate in the capital funding in the amount shown in Section 4 Contribution of the Agreement for the projects listed in Schedule B.

NOW THEREFORE, in accordance with the Administrative Agreement, the CWF Agreement, and the terms and conditions within this Agreement, the Parties do agree each with the other as follows:

1. DEFINITIONS

The following terms, words and phrases when used in this Agreement shall have the meanings set forth in this section:

- (1) “this Agreement” means the current Agreement for the purpose of the contribution of CWF to the Grantee. This Agreement constitutes a “Contract” as defined in the CWF Agreement;
- (2) “Eligible Expenditures” has the same meaning as defined in the CWF Agreement;
- (3) “Eligible Projects” has the same meaning as defined in the CWF Agreement;
- (4) “the Grantee” means the non-municipal entity of the second part of this Agreement. The Grantee constitutes a “Third Party” as defined in the CWF Agreement;
- (5) “Ineligible Expenditures” has the same meaning as defined in the CWF Agreement, and additionally includes expenditures incurred prior to the date of the Board resolution, as attached to and forming part of this Agreement as Schedule ‘A’;
- (6) “Party”, when capitalized, means the RDN or the Grantee when referred to individually and collectively referred to as “Parties”;
- (7) “the Project” means the Eligible Project defined in Schedule ‘B’ of this Agreement.

2. PROJECT REQUIREMENTS

(1) Project alteration

Alteration to the Project is not allowed without the written consent of all Parties. Each Party reserves the right to accept or reject any or all proposed alterations to the Project. Pursuant to sections 4(6) and 5 of this Agreement, the RDN are under no obligation to make any payment or Contribution in relation to the Project where the Project has been altered or otherwise varied from that agreed upon without the written consent of the RDN.

(2) Project execution

The Grantee, at its own cost:

- (a) shall be responsible for and shall over see any and all contractors and consultants for the Project;

- (b) must obtain and maintain in force all approvals, certifications, registrations and permits required by any government authority in connection with the Project;
- (c) shall comply with all statutes, regulations and bylaws applicable to the Project, any requirements of the Grantee's insurers and underwriters and all other applicable orders, codes and requirements related to or arising from the Project;
- (d) shall, where applicable, comply with all relevant policies and procedures of the RDN with respect to use of the Contribution for the award of contracts and any other agreements for the purposes of the Project;
- (e) 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;
- (f) must ensure that all components of the Project are constructed, installed and 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; and,
- (g) shall assume all costs related to the operation and maintenance of all aspects of the Project upon completion of the Project except as identified within this Agreement.

(3) Project insurance

- (a) The Grantee must, at its own cost and for the duration of the Project, obtain and maintain in force general liability insurance in an amount not less than five million (\$5,000,000) inclusive per occurrence covering losses for bodily injury and death, property damage, unlicensed vehicle and attached equipment operations; and,
- (b) The Grantee shall furnish certificates of the insurance described in section 2(3)(a) to the RDN prior to the payment of Contribution by the RDN.

3. **PROJECT OWNERSHIP**

The Grantee 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 the Grantee retains ownership of the athletics track and improvements benefitting from the Project. In the event that the Grantee disposes of the Project or any interest in the Project through the sale, lease, encumbrance or other disposition of the athletics track or by any other means (the "**Disposition**") within five (5) years after the Project completion, the Grantee shall immediately pay all money and revenue generated or arising from such Disposition of the Project to the RDN to be invested by the RDN into other Eligible Projects, in the complete discretion of the RDN as required in accordance with section 6.1(H) of the CWF Agreement.

4. **CONTRIBUTION**

(1) Contribution amount

Subject to the terms and conditions of this Agreement, the RDN shall provide funds up to \$117,200 in the amounts identified here to the Grantee for the purpose of the Project.

- (2) Contribution payment
The RDN shall pay the Contribution, or portions thereof, within 30 days of receipt from the Grantee of a quote or an invoice (the “**Quote**”) for an Eligible Expenditure for the Project, prepared by a licensed contractor or qualified professional, and delivered to the RDN before the date referred to in section 4(5) of this Agreement.
- (3) Contribution expenditure
The Grantee shall ensure that the entirety of the Contribution amount provided pursuant to section 4(2) is paid or disbursed in respect of the Eligible Expenditure within two (2) years of receipt of the Contribution or any portion thereof.
- (4) Unspent amount
In the event that the Grantee does not spend the entirety of the Contribution or any portion thereof on an Eligible Expenditure for the Project within two (2) years of receipt of such amount from the RDN (the “**Unspent Amount**”), as required under section 4(3), the Grantee shall immediately return the Unspent Amount to the RDN.
- (5) No obligation
The RDN shall not be obliged to make any payment under this Agreement more than two (2) years after the effective date of this Agreement first written above, after which date the obligations of the RDN under this Agreement shall be terminated.
- (6) Contribution use
The Grantee 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.

5. ELIGIBLE EXPENDITURES

Subject to this Agreement, the Grantee may only spend the Contribution for the purposes of the Project, and only for purposes that constitute Eligible Expenditures under the CWF Agreement, which may include:

- (1) a contract with a person or business to plan, design, construct, install and commission the Project,
- (2) procurement of materials, components, devices and equipment necessary for the Project,
- (3) costs of equipment engaged directly in respect of the work required of the Project, and/or
- (4) expenditures directly associated with joint communication activities and signage required for Federal Gas Tax Fund funded projects.

6. INELIGIBLE EXPENDITURES

- (1) For certainty, the Grantee must not spend any portion of the Contribution on Ineligible Expenditures.
- (2) In the event that the Grantee spends any portion of the Contribution on Ineligible Expenditures, the Grantee shall immediately return the amount spent on Ineligible Expenditures to the RDN.

7. RELATION TO ADMINISTRATIVE AND CWF AGREEMENTS

- (1) The Grantee acknowledges and agrees that it has been provided with copies of the Administrative Agreement and the CWF Agreement and that the Grantee has reviewed those agreements and is aware of the terms and conditions contained therein.
- (2) The Grantee 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. The Grantee therefore, as the owner of the funded assets acquired with the Contribution, shall, at its own 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 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) ensure that any contract or agreement with a third party in relation to the Project shall:
 - (i) ensure that the Grantee remains in compliance with all requirements of this Agreement; and
 - (ii) contain terms that oblige such third party to comply with the terms and conditions of this Agreement; and
 - (iii) ensure that the RDN shall remain in compliance with the CWF Agreement;
 - (d) 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
 - (e) provide further information, documentation and reports upon request by RDN, acting reasonably.

- (3) The Grantee acknowledges that the RDN will rely upon information provided to RDN under section 7(2) of this Agreement to fulfill its commitments to UBCM pursuant to the CWF Agreement, including to complete reporting in relation to the Project and Eligible Expenditures.
- (4) The Grantee shall provide full and complete cooperation to the RDN to ensure that RDN remains at all times in compliance with all terms and conditions of the CWF Agreement, and, without limiting the foregoing, the Grantee 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) take all required actions and execute all documents to give effect to section 10 of the CWF Agreement.

8. GENERAL

- (1) The Grantee 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 the Grantee 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 the Grantee, including liability arising out of any claim, allegation or determination that the RDN has breached the CWF Agreement by transferring the Contribution to the Grantee pursuant to this Agreement, including without limitation any obligation to repay funds to UBCM or Canada pursuant to the CWF Agreement or the Administrative Agreement.
- (2) Nothing in this Agreement shall be interpreted as creating an agency, joint venture, principal-agent, or partnership relationship between the RDN and the Grantee, nor an employment relationship between RDN and the Grantee and its employees or volunteers.
- (3) The Grantee warrants and represents to the RDN, with the intention that the RDN will rely upon such warranty and representation, that it has sufficient legal authority to carry out the Project as contemplated by this Agreement.
- (4) If, in the sole opinion of the RDN, the Grantee is in breach of any provision of this Agreement, the RDN, without limiting any other right it may have, shall not be obliged to make any further payment under this Agreement, and the obligations of the RDN under this Agreement shall be terminated.
- (5) This Agreement has been executed on behalf of the Grantee and the RDN by those officers indicated below and each person signing this Agreement represents and warrants that they are duly authorized and have the legal capacity to execute this Agreement.

- (6) 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 this Agreement.
- (7) 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 this 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 the Grantee shall restrict the general or other responsibilities or liabilities of the Grantee in any way.
- (8) 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.
- (9) The Grantee acknowledges that the RDN, in the supply of oral or written information to the Grantee or the carrying out of the RDN's responsibilities under this Agreement, does not owe a duty of care to the Grantee and the Grantee waives for itself and its successors, and waives the rights 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 the Grantee or the carrying out of the RDN's responsibilities under this Agreement.
- (10) 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.
- (11) All of the Grantee's obligations under this Agreement that are for the benefit of the RDN shall survive termination of this Agreement.
- (12) 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.
- (13) This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter of this 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.
- (14) This Agreement shall enure to the benefit of and be binding upon the Parties and their successors, executors, administrators, and permitted assigns.

- (15) The headings in this Agreement are inserted for convenience of reference only and in no way limit, expand, or alter the contents of this Agreement.
- (16) The Grantee shall not assign, pledge or otherwise transfer any entitlement to the Contribution under this Agreement to any person.
- (17) Time is of the essence in this Agreement.

9. DESIGNATED CONTACTS

- (1) The persons identified in Schedule 'C' are deemed the designated contacts for each Party for this Agreement and for the Project.
- (2) The RDN or the Grantee shall immediately notify the other if the person designated as the contact changes or if the designated contact's information changes.
- (3) Upon notification under section 9(2), the Party initiating the change shall provide to the other the name and contact information of a person who shall be deemed that Party's designated contact.

IN WITNESS WHEREOF this Agreement has been executed by the Parties here to:

**EXTENSION AND DISTRICT RECREATION
COMMISSION**

NAME, TITLE

DATE

NAME, TITLE

DATE

REGIONAL DISTRICT OF NANAIMO:

NAME, TITLE

DATE

JACQUIE HILL, CORPORATE OFFICER

DATE

SCHEDULE 'A'

Regional District of Nanaimo Resolutions Approval of Funding

1. Regional District of Nanaimo - Regular Board Meeting, July 26, 2022

EXTENSION AND DISTRICT RECREATION COMMISSION COMMUNITY WORKS FUNDING AGREEMENT

That upon execution of the attached Contribution Agreement up to \$117,200 Electoral Area C Community Works Funds be committed to Extension and District Recreation Commission

SCHEDULE 'B'

The Project is herein defined as follows:

(1) Project title

The Project may be cited for all purposes as "Extension and District Recreation Commission Community Hall and Sport Field Upgrades"

Purpose

The purpose of the Project is to provide local government funding to Extension and District Recreation Commission to assist in the repair of their community hall and sports fields

Project scope

The scope of the Project is as follows:

- iv) Major upgrades and replacement of; roof, gutters, heat pump, chairs, tables, hot water tank, painting, septic system repair.
- ii) Major upgrades and replacement of; sports field repair, playground surface fall protection, parking lot repair and landscaping equipment.

Project expenditures include but not limited to eligible expenses that constitute Eligible Expenditures under the CWF Agreement.

(2) Project location

The Project will occur at 2140 Ryder Road, Extension, BC

(3) Project ownership

Pursuant to Section 3 of this Agreement, Extension and District 69 Recreation Commission is deemed the owner of the Project.

(4) Commencement date

The Project must commence within two (2) years after the effective date of this Agreement first written above".

(5) Completion date

Pursuant to section 4(5) of this Agreement, the Project must be completed within two (2) years after the effective date of this Agreement first written above.

SCHEDULE 'C'

The persons below are identified as the designated contacts:

(1) **Regional District of Nanaimo:**

Tiffany Moore

Acting Director of Finance

Mailing Address: 6300 Hammond Bay Rd. Nanaimo B.C. V9T 6N2

Email: tmoore@rdn.bc.ca

Phone: 250-390-4111