

SCHEDULE "E"
CONTRIBUTION AGREEMENT

THIS AGREEMENT dated for reference this 26 day of February, 2008.

BETWEEN:

CITY OF NANAIMO

455 Wallace Street
Nanaimo, BC V9R 5J6

(the "City")

OF THE FIRST PART

AND:

DOWNTOWN NANAIMO PARTNERSHIP SOCIETY

150 Commercial Street
Nanaimo, BC V9R 5G6

(the "Society")

OF THE SECOND PART

AND:

NANAIMO CITY CENTRE ASSOCIATION

(Inc. No. S0009660)

150 Commercial Street
Nanaimo, B.C. V9R 5G6

(the "NCCA")

OF THE THIRD PART

AND:

THE OLD CITY QUARTER ASSOCIATION

(Inc. No. S0030521)

418 Fitzwilliam Street
P.O. Box 99
Nanaimo, B.C. V9R 5K4

(the "OCQA")

OF THE FOURTH PART

WHEREAS:

- A. The Society has been established for the purpose of promoting and advancing the development of the downtown of the City of Nanaimo;

- B. The Society is a cooperative effort between the City, the Nanaimo City Centre Association and the Old City Quarter Association, each of which have contributed assets to the Society;
- C. The City wishes to contribute financial assistance to the Society to enable it to carry out its purposes;
- D. The Parties wish to provide for the distribution of assets contributed by the City and members of NCCA and OCQA in the event of dissolution of the Society in a manner that recognizes the contribution of each.

NOW THIS AGREEMENT WITNESSES that in consideration of the premises and the payment of the Contribution by the City to the Society and the terms and conditions hereinafter contained, the parties covenant and agree each with the other as follows:

1.0 DEFINITIONS

1.1 For the purpose of this Agreement:

"**Contribution**" means the amount to be provided by the City to the Society under this Agreement for operating expenses of the Society; and

"**Eligible Expenditures**" means an expense relating to the operation of the Society as referred to in section 4.2.

"**Ineligible Expenditures**" means a capital expense referred to in section 5.2.

2.0 CONTRIBUTION

2.1 Subject to the terms and conditions of this Agreement, the City agrees to pay to the Society a Contribution in each year of the Agreement.

2.2 The amount of the Contribution will be equal to the amounts contributed to the Society by the Nanaimo City Centre Association and The Old City Quarter Association, to the maximum of the annual applicable Business Improvement Area levies for each of the Nanaimo City Centre Business Improvement Area and the Old City Quarter Business Improvement Area.

2.3 The Contribution will be paid in equal installments on a quarterly basis on January 1, April 1, June 1, and September 1 in each year of the Term.

3.0 TERM OF THIS AGREEMENT

3.1 The Term of this Agreement shall be five (5) years.

4.0 ELIGIBLE EXPENDITURES

4.1 The Contribution may only be used by the Society in respect of an Eligible Expenditure.

4.2 For the purposes of section 4.1, Eligible Expenditures means reasonable operating expenses including but not limited to: salaries and wages; overtime; reimbursement of employee expenses; employee benefits; travel; relocation costs; postage and freight costs; telephone; facsimile and internet service provider costs; advertising; publication; costs of accounting, auditing, engineering, legal and other professional advisors; training costs; health services; insurance; real property taxes; minor maintenance and repair costs for lands and buildings; computer services; security; office supplies; rental of land and buildings; purchase or lease of office equipment and includes the cost of operational services or support provided to the Society by contractors.

5.0 INELIGIBLE EXPENDITURES

5.1 Ineligible Expenditures are capital expenses.

5.2 Without limiting the generality of section 5.1, Eligible Expenditures do not include the following capital expenses:

- (i) an expense on account of depreciation with respect to any facilities, equipment or other assets of the Society; or
- (ii) an expense relating to the purchase of land, buildings or other structures.

6.0 SOCIETY DIRECTORS MAY APPROVE EXPENDITURES

6.1 The Directors may determine whether the Contribution may be used for an expense that is not an Ineligible Expenditure under section 5.0 but is not listed as an Eligible Expenditure under section 4.2.

7.0 MONTHLY FINANCIAL STATEMENTS

7.1 The Society shall provide to the City on or before the 21st day of each month a financial statement respecting the immediately preceding month.

8.0 ACCOUNTING RECORDS

8.1 The Society shall, during the Term of this Agreement, keep records of costs and revenues for the Society in accordance with the generally accepted accounting principles.

9.0 AUDIT AND INSPECTION

9.1 The books and accounts and other records of the Society with respect to the Society's operations and anything directly related to this Agreement shall be open for audit and inspection by the City, during business hours, and the City may take copies and extracts from such records.

9.2 The Society shall provide to the City upon request information that may be required in connection with an audit or inspection referred to in subsection 9.1.

9.3 The requirements referred to in subsection 9.2 shall be met for one (1) year after the date of termination of this Agreement.

10.0 CESSATION OF OPERATION AND RETURN OF UNUSED CONTRIBUTION

10.1 If at any time during the Term of this Agreement the Society ceases to operate or commences proceedings for dissolution, or is advised by the Corporate Registry that proceedings for dissolution will be commenced for failure to file annual reports or otherwise comply with the provisions of the *Society Act*, then the Society shall immediately contact the City and make arrangements to remit to the City all amounts of the Contribution that may have been paid by the City and which will not be reasonably required by the Society for the purpose of paying Eligible Expenditures of the Society prior to the time of its dissolution. The City shall not be liable for the payment of any debt or liability of any nature of the Society arising from any period of time after the dissolution of the Society.

11.0 EARLY TERMINATION OR DEFAULT

11.1 Where this Agreement is terminated prior to the end of the Term set out in section 3.0 by the mutual agreement of the parties or is terminated for default under section 12.1 for reasons other than those referred to in section 12.1, the Society shall remit to the City any amount owed under section 10.1.

11.2 The final settlement of the Contribution shall be made no later than six (6) months after the date of termination of this Agreement. At that time, the Society shall remit to the City any amount paid on account of an expenditure which is not an Eligible Expenditure and any amount of the Contribution that has not been expended.

12.0 DEFAULT

12.1 If, during the Term of this Agreement, the Society:

- (a) is in default of this Agreement and such default shall continue for a period of ninety (90) days after notice from the City to the Society specifying the nature of the default and requiring the default to be remedied;
- (b) becomes bankrupt or insolvent, or goes into receivership or takes the benefit of any statute from time to time relating to bankrupt or insolvent debtors, or is required to wind up or dissolve by any order or resolution, or is unable to meet its liabilities as they become due; or
- (c) is convicted of any offence against the law, order or regulation of Canada, British Columbia or a local government, or the conditions of any licence or

being an accessory to any such offence, and if such offence is committed in connection with the operation of the Society;

this shall constitute default and the City may, in addition to any other remedies, take one or more of the following actions:

- (i) terminate any obligation of the City under this Agreement by giving thirty (30) days' notice in writing to the Society; and
- (ii) require the Society to repay to the City immediately on demand, all or any portion of the Contribution in accordance with section 10.1.

13.0 ASSETS OF THE SOCIETY

13.1 This section does not apply to any amount of the Contribution required to be remitted to the City under sections 10.1 or 12.1 of this Agreement.

13.2 If the City obtains title to any funds or real or personal property of the Society on a dissolution of the Society, and if the Directors of the Society, prior to the dissolution, have indicated how such funds or real or personal property should be distributed to a society or societies with purposes that are similar to the Society, then the City covenants and agrees with the NCCA and the OCQA that it shall transfer such Society assets to the society or societies in accordance with the direction of the Society Directors.

14.0 SURVIVAL

14.1 The rights and obligations of the parties under sections 9.0 to 13.0 shall survive the expiration of early termination of this Agreement.

15.0 NO PARTNERSHIP, JOINT VENTURE OR AGENCY

15.1 The parties acknowledge and agree that the Society and the City are not creating a partnership, joint venture or agency relationship. It is acknowledged and agreed that nothing in this Agreement shall constitute or be deemed to constitute the Society as a partner, joint venturer or agent of the City. Neither party shall have any authority to act for or to assume any obligations or responsibility on behalf of the other party.

16.0 INDEMNITY AND INSURANCE

16.1 The Society agrees, at all times, to indemnify and save harmless the City or any of its elected or appointed officers, employees or agents from and against all claims and demands, losses, costs, damages, actions, suits or other proceedings (collectively "**claims**") by whomsoever made, brought or prosecuted in any manner based upon, occasioned by or attributable to the execution of this Agreement, except claims resulting from the negligence of any officer, employee or agent of the City while acting within the scope of their duties or employment.

- 16.2 The City agrees, at all times, to indemnify and save harmless the Society and its officers, directors and members from and against all claims by whomsoever made, brought or prosecuted in any manner based upon, occasioned by or attributable to the negligence of any officer, employee or agent of the City while acting within the scope of their duties or employment.
- 16.3 The Society shall take out and maintain for the term of this Agreement the following insurance:
- (a) Directors' Liability Insurance insuring against wrongful acts of directors; and
 - (b) General Liability Insurance in an amount not less than Two Million (\$2,000,000.00) Dollars per occurrence. Such policy shall include the City as an additional insured and contain a waiver of subrogation in favour of the other party and shall contain a clause requiring the insurer not to cancel or alter the insurance without thirty (30) days' prior written notice to both parties.

17.0 DISPUTE RESOLUTION

- 17.1 In the event of a dispute between the parties arising out of this Agreement, the parties agree to use the following procedure prior to pursuing any other legal remedy:
- (a) attend a meeting of representatives of the parties to attend, in good faith, to negotiate a resolution; and
 - (b) if, within ten (10) days after this meeting the parties have failed to resolve the dispute, submit the dispute to mediation and to bear equally the cost of that mediation.
- 17.2 The parties will jointly select a mediator, if after ten (10) days the parties are unable to agree upon the choice of mediator, a mediator will be selected by the City, and the parties agree to participate, in good faith, in the mediation process for a period of not more than two (2) days.

18.0 ARBITRATION

- 18.1 If the parties do not resolve all the issues in dispute under section 17.0 within ten (10) days from the date of the mediator's report, the parties agree to submit any claim or dispute arising out of or in connection with the Agreement for resolution under the *Commercial Arbitration Act* (British Columbia). The cost of the arbitration (including fees of arbitrators) shall be borne equally by the parties. The arbitration shall take place in Nanaimo, British Columbia before a single arbitrator to be chosen jointly by the parties. If the parties cannot agree on the choice of arbitrator within ten (10) days of written notice to submit to arbitration,

21.0 BINDING EFFECT

21.1 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

22.0 WAIVER

22.1 The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

23.0 HEADINGS

23.1 The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.

24.0 LANGUAGE

24.1 Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

25.0 CUMULATIVE REMEDIES

25.1 No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

26.0 LAW APPLICABLE

26.1 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.


27.0 RELATIONSHIP OF PARTIES

27.1 No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant, or a principal-agent relationship.

28.0 AMENDMENT

28.1 This Agreement may not be modified or amended except by the written agreement of the parties.

**NANAIMO DOWNTOWN PARTNERSHIP
SOCIETY** by its authorized signatories:

ERIC MCLIGAN 
Name

BURKE MURPHY 
Name