

ATTACHMENT C
SHAREHOLDERS AGREEMENT

THIS AGREEMENT dated for reference the ___ day of _____, 2021 is

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, BC V9R 5J6

AND:

SNUNEYMUXW FIRST NATION
668 Centre Street
Nanaimo, BC V9R 4Z4

AND:

VANCOUVER ISLAND UNIVERSITY
900 Fifth Street
Nanaimo, BC V9R 5S5

AND:

NANAIMO PORT AUTHORITY
Box 131
Nanaimo, BC V9R 5K4

DRAFT

AND:

NANAIMO AIRPORT COMMISSION
3238 Mustang Road
Cassidy, BC V0R 1H0

AND:

NANAIMO CHAMBER OF COMMERCE
2133 Bowen Road
Nanaimo, BC V9S 1H8

WHEREAS:

- A. The Company was incorporated under the Act , 2021;
- B. The City of Nanaimo owns one Class A Equity Share;
- C. Nanaimo Chamber of Commerce, Nanaimo Airport Commission, Nanaimo Port Authority and Snuneymuxw First Nation each own one Class B Equity Share;
- D. Vancouver Island University owns one Class C Equity Share;
- E. The Shareholders wish for the Company to conduct the Business of the Company;
- F. The Shareholders are the registered and beneficial owners of all of the issued and outstanding shares in the capital of the Company, as set out below:
- G. The Shareholders wish to enter into this Agreement to provide for the management of the Company and to regulate dealings with their investments in it;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 - INTERPRETATION

- 1.1 Definitions.** In this Agreement, the following terms have the meaning set out below unless the context requires otherwise:
- (a) **“Act”** means the *Business Corporations Act* (British Columbia) as it may be amended or replaced from time to time;
 - (b) **“Agreement”** means this agreement, including the schedule to this agreement;
 - (c) **“Annual General Meeting Intervals”** means the time period between the date the Company holds an annual general meeting until the date the Company holds its next annual general meeting.
 - (d) **“Articles”** means the articles of the Company, as amended from time to time in accordance with the provisions of this Agreement and the Act;
 - (e) **“Auditor”** means the auditor of the Company, as appointed from time to time;
 - (f) **“Bank”** means the chartered bank or trust company where the Company maintains its accounts, as determined from time to time in accordance with the provisions of this Agreement;

- (g) **“Board”** means the board of Directors of the Company, as may be appointed from time to time in accordance with the provisions of this Agreement;
- (h) **“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in B.C.
- (i) **“Business of the Company”** means the business of:
- (i) implementing, maintaining, and updating, as required, the Economic Development Strategy;
 - (ii) developing and directly undertaking initiatives aimed at attracting businesses, employers, talent, and investment to the community of Nanaimo;
 - (iii) coordinating the sector-specific and other economic development activities undertaken by a range of stakeholder organizations; and
 - (iv) developing and undertaking initiatives aimed at retaining and expanding existing businesses in the City of Nanaimo.
- (j) **“Class A Shareholder”** means an owner of a Class A Equity Share.
- (k) **“Class B Shareholder”** means an owner of a Class B Equity Share.
- (l) **“Class C Shareholder”** means an owner of a Class C Equity Share.
- (m) **“Default”** has the meaning given in section 7.1;
- (n) **“Defaulting Shareholder”** has the meaning given in section 7.1;
- (o) **“Director”** means a person occupying the position of Director of the Company, and **“Directors”** means every Director;
- (p) **“Economic Development Strategy”** means the current economic development strategy published by the Nanaimo Economic Development section and published on the City of Nanaimo’s website;
- (q) **“Equity Shares”** means the common shares in the capital of the Company, and any other shares in the capital of the Company;
- (r) **“Financial Statements and Report”** has the meaning given in section 4.3(b);
- (s) **“Interest”** of a particular Shareholder means, collectively, all of the right, title and interest of the Shareholder in and to any Equity Shares;

- (t) **“GAAP”** means those accounting principles which are recognized as being generally accepted in Canada from time to time as set out in the *Handbook* published by the Canadian Institute of Chartered Accountants, consistently applied;
- (u) **“Memorandum”** means the memorandum of the Company as amended from time to time in accordance with the provisions of this Agreement and the Act;
- (v) **“Non-Defaulting Shareholder”** has the meaning given in section 7.1;
- (w) **“Obligations”** of a Shareholder means all of its covenants, agreements, obligations, representations and warranties under or imposed by or provided in this Agreement and in any other agreement related hereto or to the Company in its capacity as Shareholder (but not in its capacity as employee);
- (x) **“Party”** means a party to this Agreement and its successors and permitted assigns, and **“Parties”** means every Party;
- (y) **“Person”** includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators and other legal representatives of an individual in such capacity;
- (z) **“Shareholder”** means each owner of an Equity Share;

1.2 Interpretation.

- (a) The division of this Agreement into articles and sections, the insertion of headings, and the provision of any table of contents are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (c) Reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated, or re-enacted from time to time.
- (d) Unless the context requires otherwise, reference in this Agreement to articles, sections or schedules are to articles, sections or schedules of this Agreement.
- (e) Unless the context requires otherwise, reference in this Agreement to a day, month or year is a reference to a calendar year, month or year.

- 1.3 Business Days** – If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.
- 1.4 Currency and Payment Obligations** – Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars and any payment contemplated by this Agreement shall be made by cash, certified cheque or any other method that provides immediately available funds.
- 1.5 Calculation of Interest** – In calculating interest payable under this Agreement for any period of time, the first day of such period shall be included and the last day of such period shall be excluded.

ARTICLE 2 - SCOPE AND NATURE OF SHAREHOLDERS' RELATIONSHIP

- 2.1 Scope of Agreement** – This Agreement governs and defines the respective rights, interests, powers and obligations of the Shareholders to each other and the Company as beneficial owners of Equity Shares.
- 2.2 Relationship** –
- (a) The Shareholders expressly disclaim any intention to create a partnership or joint venture and nothing in this Agreement shall constitute any Shareholder as the agent of any other Shareholder.
- (b) No Shareholder shall have or represent that it has the authority or power to act for or to undertake or create any obligation or responsibility, express or implied, on behalf of or in the name of any other Shareholder or shall be, or represent that it is, the agent or legal representative of any other Shareholder.
- (c) The Shareholders shall not, by virtue of the provisions of this Agreement or their ownership of Equity Shares, be deemed or construed to be carrying on business together.
- 2.3 Separate Activities** – Except as otherwise specifically provided in this Agreement or any other agreement executed by the Shareholders, each of the Shareholders shall have the absolute right to continue, expand, diminish or cease to carry on its existing undertaking and to engage in undertakings separate and apart from the Company. The provisions of this Agreement shall not in any way impose upon any Shareholder a fiduciary duty by reason of its carrying on its separate undertaking and a Shareholder shall not, by reason of this Agreement, have any interest in any other property owned by any other Shareholder or in any other undertaking of any other Shareholder.
- 2.4 Representations and Covenants** – Each Shareholder represents to the others that it now holds and shall continue to hold its Interest beneficially and free and clear of all

restrictions, liens, encumbrances, security agreements and agreements of any kind except as specifically permitted in this Agreement.

- 2.5 Operation and Management** – None of the Shareholders shall do anything or omit to do anything it is obliged to do which might interrupt or interfere in any way, directly or indirectly, with the operation and management of the Company or which could adversely affect or prejudice the interests of the other Shareholders in the Company or the relationship of the Shareholders hereunder. For clarity, a Shareholder’s exercise of their rights to provide or withhold consent for decisions related to a certain matter as outlined in Schedule A does not constitute an interruption or interference with the operation and management of the Company.
- 2.6 Compliance with Agreement** – Each Shareholder shall at all times keep, observe and perform all of its Obligations and do all acts and things and vote its Equity Shares and otherwise exercise its rights as a shareholder to cause such meetings to be held, resolutions to be passed, documents to be executed and, to the extent permitted by applicable law, to cause its nominees on the Board to act (or to remove such nominees for failing to act), so that at all times the provisions, conditions, restrictions and prohibitions in this Agreement are complied with.

ARTICLE 3 - CORPORATE AFFAIRS

3.1 Directors –

- (a) The number, eligibility requirements, and method of appointment and election of Directors are outlined in Schedule B hereto.
- (b) Aside from the first Directors, whose term is outlined in Schedule B, every Director will serve for two Annual General Meeting Intervals and will cease to hold office immediately prior to the annual general meeting marking the end of their term.
- (c) At the end of their term, Directors may be reappointed or re-elected for up to two additional terms. For clarity, Directors may serve a maximum of three terms.
- (d) At every annual general meeting of the company, the Shareholders must appoint or elect Directors in accordance with these Articles to fill vacancies created by preceding Directors whose terms have expired such that the board of Directors consists of the number of Directors as set under these articles.
- (e) In the event of any vacancy on the Board, such vacancy shall be filled by a Person designated by the Shareholder who appointed or elected the former Director whose loss of office created the vacancy, or by 3/5 resolution of the Shareholders if the former Director whose loss of office created the vacancy was appointed by a 3/5 resolution of the Shareholders.

- (f) The quorum required for the transaction of business at a Board meeting shall be five Directors, and all resolutions of the Board require the favourable votes of a majority of the Directors.
- (g) In the event that a Director fails to vote and act as a Director to carry out the provisions of this Agreement, then the Shareholders agree to exercise their rights as Shareholders of the Company and in accordance with the Act to remove such Director from the Board and to appoint in his or her place an individual who will use his or her best efforts to carry out the provisions of this Agreement, and the vacancy created by the removal of such Director will be filled in accordance with subsection 3.1(e).
- (h) Without limiting section 3.1(g), a Director shall be deemed to have failed to act as a Director by not attending three consecutive meetings of the Board without cause.

3.2 Restriction on Certain Decisions – No action shall be taken by the Company in respect of or within the scope of the matters outlined in Schedule A except in accordance with the procedures outlined in Schedule A.

ARTICLE 4 - CORPORATE RECORDS AND REPORTING

- 4.1 Books and Records** – The Company shall at all times maintain proper books of account, which shall contain accurate and complete records of all transactions, receipts, expenses, assets and liabilities of the Company. The Company shall maintain a system of accounting and reporting established and administered in accordance with GAAP.
- 4.2 Financial Year** – The financial year of the Company shall end on December 31 in each year.
- 4.3 Budgets and Reporting** – The Company shall prepare and deliver to the Shareholders:
 - (a) at least 60 days before the commencement of each financial year of the Company, a budget in respect of the ensuing financial year, including the financial and cash flow forecast of the projected business activities and operations of the Company, including estimates of proposed and committed expenditures, the subject matter of each expenditure, all sources of revenue, cash and financing of the Company for the ensuing year and a statement of objectives and plans; and
 - (b) annually, within 90 days after the end of its last financial year, comparative financial statements relating separately to the last financial year and the financial year preceding the last financial year, including a balance sheet as at the date to which it is made up, an income statement, a statement of changes in financial position and a statement of changes in retained earnings, together with the report of the Auditor thereon prepared in accordance with generally accepted auditing standards (the “**Financial Statements and Report**”);

- (c) annually, at the Company's Annual General Meeting, a report, for the latest financial year of the Company, on the operation and performance of the Company that, without limitation:
- (i) details the Company's initiatives and efforts,
 - (ii) details the most recent Financial Statements and Report;
 - (iii) assesses the Company's past year performance using measures, tracking and reporting that are informed by the Economic Development Strategy, and
 - (iv) outlines important initiatives and events the Directors have planned for the upcoming year in accordance with the Economic Development Strategy.
- (d) such other information, accounts, data and projections reasonably practicably obtainable by the Company as any Shareholder may reasonably request from time to time.

All financial statement and other reporting made pursuant to this section shall be prepared in accordance with GAAP applied consistently with prior periods.

4.4 Semi-Annual Briefings – The Directors will provide semi-annual briefings to each of the Shareholders on the operation and performance of the Company.

4.5 Shareholders' Right of Inspection and Inquiry – The Company shall permit Persons designated by any Shareholder, including accountants or management consultants or others appointed by the Shareholder, to visit and inspect, at the Shareholder's expense, any properties of the Company, to examine the books and financial records of the Company and to discuss its affairs, finances and accounts with the financial officers of the Company, all at such reasonable times and as often as may reasonably be requested by the Shareholder. The Company agrees to answer any inquiries which such Persons may make fully and fairly and to the best of its ability, and agrees that such Persons may discuss the business and affairs of the Company with the officers, Directors and employees of the Company and with the auditors or accountants of the Company and others reasonably expected to have knowledge of the relevant matters.

4.6 Records Confidential – Each Shareholder acknowledges that all records, material and information pertaining to the Company and any copies thereof obtained by any Shareholder are and shall remain the exclusive property of the Company. For so long as the Company carries on business, each of the Shareholders and the Company shall keep in the strictest confidence, shall not disclose and shall not use, without the consent of the Company or such Shareholder to which the information relates, all non-public information pertaining to or concerning the Company and the Shareholders, including all budgets, forecasts, analyses, financial results, things described in section 4.3, costs, margins, wages and salaries, bids and other business activities, all supplier and customer

lists, all non-public intellectual property including trade secrets, unfiled patents, trademarks and technical expertise documentation (including standard terms and agreements).

4.7 Auditor – The Shareholders shall appoint [REDACTED] as Auditor. In any financial year, the Company shall direct the Auditor to audit the financial statements of the Company. The Company and the Shareholders shall afford the Auditor access to all books of account, records, vouchers, cheques, papers and documents of or which may relate to the Company, including those of the Shareholders to the extent that the books, records, vouchers, cheques, papers and documents relate to the Company. The Shareholders may from time to time, by unanimous written consent, appoint a new or further Auditor.

4.8 Public Meeting Reporting –

- (a) Annually, immediately following the Company’s annual general meeting, the Company will hold a public information meeting to inform the public about the activities and achievements of the Company and to provide the public with an opportunity to meet and ask questions of Directors and senior officers of the Company regarding the Company.
- (b) At each public information meeting of the Company, the Directors will provide and present a report, for the latest financial year of the Company, on the operation and performance of the Company that, without limitation:
 - (i) details the Company's initiatives and efforts,
 - (ii) assesses the Company's past year performance using progress measures that are informed by the Economic Development Strategy, and
 - (iii) outlines important initiatives and events the Directors have planned for the upcoming year in accordance with the Economic Development Strategy.

ARTICLE 5 - TRANSFER AND DISPOSITION OF INTEREST

5.1 General Prohibition – No Interest or any part thereof shall be sold, exchanged, transferred, disposed of, encumbered, given, devised, or bequeathed, whether directly or indirectly, and no agreement or commitment shall be made to do any of those things except to transfer such Interest to the Company in accordance with requirements of this Article 5. The Company shall not register or permit the registration of any transfer of any Interest or part thereof made otherwise than in compliance with the provisions of this Agreement.

5.2 Commitment –

- (a) A Shareholder is prohibited from withdrawing from this Agreement and transferring, surrendering, giving, devising or bequeathing, whether directly or indirectly, its Interest, until December 31, 2024 (the “**Initial Commitment Date**”).
- (b) Any time prior to the Initial Commitment Date, a Shareholder may provide the Company with written notice indicating that the Shareholder intends to withdraw from this Agreement and transfer its Interest on the day that immediately precedes the date of the Company’s sixth anniversary of incorporation.
- (c) Each Shareholder acknowledges and agrees that:
 - (i) if it provides notice in accordance with subsection 5.2(b), its withdrawal from this Agreement and transfer of Interest will become effective on the day that immediately precedes the date of the Company’s sixth anniversary of incorporation; and
 - (ii) it will continue to honour any financial commitment made by the Shareholder to a project or initiative of the Company that continues past its withdrawal from this Agreement and transfer of its Interest.
- (d) After the deadline to withdraw from this Agreement and transfer their Interest specified in section 5.2(b) has passed, the Shareholders that have not given notice under section 5.2(b) are prohibited from withdrawing from this Agreement and transferring, surrendering, giving, devising or bequeathing, whether directly or indirectly, their Interest, from the Initial Commitment date until the sixth anniversary of incorporation.
- (e) After the date of the Company’s 6th anniversary of incorporation, the Shareholder’s may withdraw from this Agreement and transfer their shares in accordance with section 5.3 and 5.4 of this Agreement.

Section 5.2 (c)(ii) will survive the termination of this Agreement or any Shareholder’s withdrawal therefrom.

5.3 Withdrawal and Transfer of Interest – Each Shareholder agrees that it may only withdraw from this Agreement by:

- (a) giving notice of withdrawal in writing to the other Shareholders, and
- (b) transferring any Interest it holds to the Company.

A Shareholder’s withdrawal will become effective when it has completed (a) and (b) above.

5.4 Rights of Shareholder on Withdrawal and Transfer – When a Shareholder withdraws from this Agreement and transfers its Interest:

- (a) the Shareholder will not be entitled to any compensation in exchange for transferring its Interest to the Company, and
- (b) the Company shall retain all rights to land, buildings, assets and other personal or real property owned or held by the Company or held in trust for the Company, and a withdrawing shareholder will absolutely transfer to the other remaining shareholder's (or the Company), without any compensation whatsoever, all its right, title and interest in and to its Interest and shall execute such documents as may be necessary to give effect to this transfer.

ARTICLE 6 - FUNDING MODEL AND REVIEW

6.1 Base Funding – Annually, the Shareholder's will base funding to the Company that is intended to cover the expenses outlined in Schedule C to this Agreement.

6.2 Amount and Payment of Base Funding

- (a) The total amount of base funding required by the Company each year will be determined by the Directors and presented to the Shareholder's by the Directors as part of the Company's annual budget.
- (b) The share of base funding payable by each Shareholder is outlined in Schedule C to this Agreement.
- (c) The Shareholder's will pay their share of annual base funding to the Company after receiving the annual budget for the upcoming financial year of the Company and at least 30 days before the commencement of the financial year of the Company.

6.3 Three Year Review –

- (a) After the Initial Commitment Date, the City of Nanaimo will undertake a review of the Company that will include:
 - (i) an examination of the Company's mandate, structure, funding, and performance, along with other factors that the Shareholders may identify;
 - (ii) assesses the level of community and Shareholder support for the Company;
 - (iii) examines the potential to expand the Company's service area to include the broader mid-Vancouver Island economic region; and

- (iv) identifies possible changes to the Company's corporate model for consideration by the Shareholders.
- (b) After completing its review under subsection 6.4 (a), the City of Nanaimo will provide its findings to the Company and the Shareholder's prior to the Company's fourth anniversary of incorporation.

ARTICLE 7 - DEFAULT

7.1 Event of Default – It is an event of default ("**Default**") if a Shareholder ("**Defaulting Shareholder**"):

- (a) fails to observe, perform or carry out any of its obligations hereunder and such failure continues for 30 days after any of the Shareholders not in default (individually "**Non-Defaulting Shareholder**" and collectively "**Non-Defaulting Shareholders**") has in writing demanding that such failure be cured;
- (b) fails to take reasonable actions to prevent or defend assiduously any action or proceeding in relation to any of its Interest for seizure, execution, or attachment or which claims:
 - (i) possession of its Interest;
 - (ii) sale of its Interest;
 - (iii) foreclosure in respect of its Interest;
 - (iv) the appointment of a receiver or a receiver-manager of the Defaulting Shareholder's assets; or
 - (v) forfeiture or termination, of or against, any of the Interest of the Defaulting Shareholder,

and such failure continues for 30 days after a Non-Defaulting Shareholder has in writing demanded that the same be taken or the Defaulting Shareholder fails to defend successfully any such action or proceeding; or

- (c) becomes bankrupt or commits an act of bankruptcy or if a receiver or receiver-manager of its assets is appointed or makes an assignment for the benefit of creditors or otherwise.

7.2 Consequences of Default – In the event of a Default under section 7.1, the Non-Defaulting Shareholders may do one or more of the following:

- (a) pursue any remedy available to them in law or equity, it being acknowledged by each of the Shareholders that specific performance, injunctive relief or other equitable relief may be the only adequate remedy for a Default;

- (b) take all actions in their own names or in the names of the Defaulting Shareholder, the Shareholders or the Company, as may be reasonably required to cure the Default, in which event all payments, costs and expenses incurred therefore shall be paid by the Defaulting Shareholder to the Non-Defaulting Shareholders on demand with interest at the rate of 5% per year; and
- (c) waive the Default, provided however that any waiver of a particular Default shall not operate as a waiver of any subsequent or continuing Default.

ARTICLE 8 - DISPUTE RESOLUTION

- 8.1** The parties hereto agree to attempt to resolve all disputes arising out of or in connection with this Agreement through discussion between the Shareholders.
- 8.2** If a dispute cannot be settled within a period of thirty (30) days after the mediator is appointed, or such longer period agreed to by the parties, all disputes arising out of, or in connection with, this Agreement shall be referred to and finally resolved by a single arbitrator (the "Arbitrator") pursuant to the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55, as amended.

ARTICLE 9 - General

- 9.1 Issue of Additional Equity Shares.** The Company shall not allot or issue Equity Shares to any Person not a signatory to this Agreement except in accordance with the procedure outlined in Schedule "D".
- 9.2 Advisory Committees –**
 - (a) The Directors may appoint advisory committees to engage the broader community in the economic development of the City of Nanaimo; assist in implementing the Economic Development Strategy; provide advice on new and ongoing Company initiatives; and to attend to the business of the Directors. In determining the type of advisory committees that it wishes to appoint, the directors will consider the Economic Development Strategy, requests from the community in Nanaimo, and its own needs.
 - (b) In connection with section 9.2(a), the first Directors will, within a reasonable time after their election, appoint and maintain the following advisory committees:
 - (i) a governance committee that creates and implements policies and procedures governing the procedure of the board, including in relation to meeting frequency and procedure; and

- (ii) a finance committee that creates and implements policies and procedures governing financial activities of the board, including expenditure approval and expense reimbursement.

- 9.3 Conflict of Memorandum or Articles.** In the event of inconsistency between this Agreement and either or both of the Memorandum or Articles, this Agreement shall apply and prevail, and the Parties shall immediately make all changes to the Memorandum and Articles as are necessary and lawful to render them consistent with this Agreement.
- 9.4 Termination of Agreement.** This Agreement shall come into force and be effective as of and from the date of this Agreement and will continue in full force until this Agreement is terminated by the written agreement of the Shareholders or the Company is dissolved pursuant to the Act. Notwithstanding the foregoing, the obligation to pay all instalments for Equity Shares purchased pursuant to this Agreement shall survive any termination of this Agreement.
- 9.5 Remedies.** The Parties acknowledge and agree that all restrictions contained in this Agreement are reasonable and valid and that all defences to the strict enforcement thereof are hereby waived, and that the rights, privileges, restrictions and conditions set forth in this Agreement are special and unique such that a breach thereof cannot be adequately compensated through an award of damages. Accordingly, any Party shall be entitled to temporary and permanent injunctive relief or for an order for specific performance, as the case may be, against every other Party who is in breach of this Agreement without the necessity of having to prove damages. Any remedy set forth in or contemplated by this Agreement shall be in addition to and not in substitution for or dependent upon any other remedy.
- 9.6 Entire Agreement.** This Agreement, together with any schedules attached to this Agreement and any agreements and documents to be delivered pursuant to the terms of this Agreement, constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the Parties in connection with the subject matter of this Agreement, whether oral or written, express or implied, statutory or otherwise, except as specifically set out in this Agreement.
- 9.7 Amendment.** No amendment to this Agreement will be effective unless made in writing and signed by the Parties.

9.8 Waiver. A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach, non-observance or by anything done or omitted to be done by the other Party. The waiver of a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-compliance (whether of the same or any other nature).

9.9 Governing Law. This Agreement shall be construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in the Province of British Columbia and shall be treated in all respects as a British Columbia contract. Each of the parties irrevocably attorns to the jurisdiction of the courts of the Province of British Columbia.

9.10 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

9.11 Time of Essence. Time is of the essence of this Agreement.

9.12 Further Assurances. Each Party shall promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things in connection with this Agreement that the other Party may reasonably require for the purposes of giving effect to this Agreement.

9.13 Notices.

(a) Any notice or other communication required or permitted to be given by this Agreement shall be in writing and shall be effectively given and made if delivered personally, sent by prepaid courier service, sent by registered mail, or sent by prepaid telecopier, telex or other similar means of electronic communication, in each case to the applicable address set out below:

(i) if to the City of Nanaimo

455 Wallace Street
Nanaimo, BC V9R 5J6

Attention: _____

Email: _____

Phone: _____

- (ii) if to Snuneymuxw First Nation

668 Centre Street
Nanaimo, BC V9R 4Z4

Attention:
Email:
Phone:

- (iii) if to Vancouver Island University

900 Fifth Street
Nanaimo, BC V9R 5S5

Attention:
Email:
Phone:

- (iv) if to the Nanaimo Port Authority

Box 131
Nanaimo, BC V9R 5K4

Attention:
Email:
Phone:

- (v) if to the Nanaimo Airport Commission

3238 Mustang Road
Cassidy, BC V0R 1H0

Attention:
Email:
Phone:

- (vi) if to the Nanaimo Chamber of Commerce

2133 Bowen Road
Nanaimo, BC V9S 1H8

Attention:
Email:
Phone:

Any notice or other communication so given shall be deemed to have been given and received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day is a Business Day

and such notice or other communication is so delivered, faxed or sent prior to 4:30 p.m. on such day. Otherwise, such notice or communication shall be deemed to have been given and received on the next following Business Day. Any notice or other communication sent by registered mail shall be deemed to have been given and received on the fifth Business Day following the mailing thereof; provided however that no such notice or other communication shall be mailed during any actual or apprehended disruption of postal services. Any such notice or other communication given in any other manner shall be deemed to have been given and received only upon actual receipt.

- (b) Any Party may from time to time change its address under this section 9.13 by notice to the other Party given in the manner provided by this Section.

9.14 Tender. Any tender of documents pursuant to this Agreement may be made upon the Parties or their respective solicitors.

9.15 Successors and Assigns. This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective heirs, executors, administrators, successor and permitted assigns. No Shareholder may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement, without the prior consent of the other Shareholders.

9.16 Counterparts. This Agreement may be executed in counterparts, which together shall be deemed to constitute one agreement.

9.17 Snuneymuxw First Nation. One of the Class B Shareholders is the Snuneymuxw First Nation, and this Agreement and any communications or negotiations between the Parties with respect to this Agreement, and Snuneymuxw's interest in the Company and participation in its mind and management shall not be interpreted in a manner that extinguishes, abrogates or diminishes the rights of Snuneymuxw, including Aboriginal or treaty rights or title which are protected under section 35 of the Constitution Act, 1982 and the Snuneymuxw Treaty 1854. For greater certainty nothing in this Agreement and Snuneymuxw's interest in the Company and participation in its management constitutes consultation or consent of Snuneymuxw for the purpose of discharging the Crown's honour and fiduciary duty in relation to developments that impact upon Snuneymuxw's indigenous interests.

IN WITNESS WHEREOF this Agreement has been duly executed on the dates set out below, and is effective from and after the last date signed.

NANAIMO PORT AUTHORITY by its
authorized signatories:)

) C/S

_____))
Name:)

_____))
Name:)

Date: _____))

NANAIMO AIRPORT COMMISSION by its
authorized signatories:)

) C/S

_____))
Name:)

_____))
Name:)

Date: _____))

DRAFT

NANAIMO CHAMBER OF COMMERCE by
its authorized signatories:)

) C/S

_____))
Name:)

_____))
Name:)

Date: _____))

SCHEDULE "A"**SPECIAL MATTERS REQUIRING SHAREHOLDERS' APPROVAL AND METHOD OF APPROVAL**

1. No action shall be taken by the Company in respect of or within the scope of the following matters unless such action receives unanimous consent of the Class A Shareholders of the Company:
 - a. the incurrence, whether absolutely or contingently, of indebtedness for borrowed money whether directly or by capital or financing lease or other indirect financing arrangements; and
 - b. the authorization, creation, issuance or transfer of any Class A Shares.
2. No action shall be taken by the Company in respect of or within the scope of the following matters unless such action receives consent of the 2/3 of the Shareholders of the Company:
 - a. the authorization, creation, issuance or transfer of any Class B or C Shares;
 - b. any material change to or within the Business of the Company;
 - c. the composition and authority of, and method of appointment to, the Agency's Board of Directors
3. No action shall be taken by the Company in respect of or within the scope of the following matters unless such action receives consent by a three-fifths resolution of the Board and has been first authorized by a unanimous resolution of the Shareholders:
 - a. The Budgets of the Company required by section 4.3. The approval of any Budget which includes and specifically identifies transactions of the types described in this Schedule (whether or not this Schedule is referred to) shall be considered approval of such transactions as required by this section;
 - b. Any direct or indirect participation by the Company in any business other than the Business of the Company;
 - c. The acquisition of assets not normally used in the conduct of the Business of the Company;
 - d. Any material contract, agreement, obligation, liability or other transaction which is not in the ordinary course of the Business of the Company, or with a value in excess of \$100,000.00;
 - e. Any material discontinuance of the Business of the Company;

- f. The lending of money by the Company or the incurrence of any guarantee or indemnity obligations;
- g. Any contract, agreement or other transaction which directly or indirectly provides or could provide to any Shareholder or any Person not at arm's length with a Shareholder any direct or collateral benefit or advantage whether or not greater than fair market value;
- h. The appointment or dismissal of officers and other senior employees of the Company, or their compensation, prerequisites and severance payments;
- i. Any declaration or payment of dividends or commitment to make or the making of a distribution of surplus or earnings or return of capital or Equity Share;
- j. Any acquisition or agreement to acquire any business or capital asset, any capital or financing lease (or agreement to enter into such a lease) of real or personal property or any acquisition or agreement to acquire property by way of conditional sale agreement or purchase money security interest having a value in excess of \$100,000.00 in respect of any one transaction or series of transactions in respect of any one fiscal year, provided that the foregoing limit shall not apply to those acquisitions or agreements to acquire contemplated by an approved and current annual budget for the Company;
- k. Any sale, lease, exchange, mortgage or other disposition of substantially all of the property or assets of the Company or of a part of the property or assets of the Company;
- l. Any amalgamation or merger of the Company with any other body corporate, or any corporate reorganization of the Company of any kind including a continuance, re-incorporation or arrangement, or a dissolution, liquidation or winding-up of the Company;
- m. Any fundamental change of the types referred to in the Act; and
- n. Any change of the Auditors, other than a change for overall cost reduction purposes to a reputable national firm of auditors.

SCHEDULE B**NUMBER AND METHOD OF ELECTION AND APPOINTMENT OF DIRECTORS**

1. The Board shall be comprised of nine Voting Directors and one Non-Voting Director.
2. The Board shall be appointed and elected as follows:
 - (a) the City of Nanaimo shall appoint:
 - (i) one City of Nanaimo senior staff member to serve as a voting Director, and
 - (ii) one elected official of the City of Nanaimo as a non-voting Director;
 - (b) the Snuneymuxw First Nation shall appoint one Director to serve as a voting Director;
 - (c) Vancouver Island University shall appoint one Director to serve as a voting Director;
 - (d) the Nanaimo Port Authority shall appoint one Director to serve as a voting Director;
 - (e) the Nanaimo Airport Commission shall appoint one Director to serve as a voting Director; and
 - (f) the Nanaimo Chamber of Commerce shall appoint one Director to serve as a voting Director;
 - (g) the Shareholders will mutually elect, via a 3/5 resolution, three Directors, including at least one Director employed by a not-for-profit or charity organization that has mandate related to poverty alleviation and providing educational services and other resources for children, who apply to be Directors through a public call by the Company for applicants.
3. The initial term of appointment of the first Directors of the Company will be as follows:
 - (a) the first Directors appointed by the City of Nanaimo (as to the voting Director and not the non-voting Director), Snuneymuxw First Nation, Vancouver Island University, Nanaimo Port Authority, Nanaimo Airport Commission and Nanaimo Chamber of Commerce, and will serve until the Company's third annual general meeting, immediately before which they will cease to hold office; and
 - (b) the remaining first Directors, including the non-voting Director appointed by the City of Nanaimo, will serve until the Company's second annual general meeting, immediately before which they will cease to hold office.

Schedule C

Determination and Responsibility for Base Funding

1. Expenses Covered by Base Funding

The following expenses will be covered by base funding:

- (a) staffing costs;
- (b) Board operating costs;
- (c) office expenses, including for renting or leasing space;
- (d) marketing, business development, talent development, and other initiatives aimed at attracting business and investment to Nanaimo;
- (e) community outreach and reporting; and
- (f) other costs identified by the Board and approved as "base funding" by a 3/5 resolution of the Shareholders.

2. Share of Base Funding –

The Shareholders will contribute the base funding to the Company as follows:

- (a) in 2021:
 - (i) Class B Shareholder's will contribute \$5,000.00;
 - (ii) Class A Shareholder's will contribute the balance between the Class B Shareholder contributions and the total base funding required by the Company as determined by the Directors in accordance with section 6.2; and
 - (iii) Class C Shareholder's will contribute the balance between the Class B Shareholder contributions and the total base funding required by the Company as determined by the Directors in accordance with section 6.2. The Class C Shareholder shall have the option, at its discretion, to make such contribution in cash or as an "in kind" contribution equivalent to the cash contribution. Such "in kind" contribution can be made by any means such as research by students, marketing promotion or such other activities or things as the Class C Shareholder determines in its discretion.
- (b) in each financial year after 2022:
 - (i) Class B Shareholder's will contribute \$10,000.00;

- (ii) Class A Shareholder's will contribute the balance between the Class B Shareholder contributions and the total base funding required by the Company as determined by the Directors in accordance with section 6.2; and
- (iii) Class C Shareholder's will contribute the balance between the Class B Shareholder contributions and the total base funding required by the Company as determined by the Directors in accordance with section 6.2. The Class C Shareholder shall have the option, at its discretion, to make such contribution in cash or as an "in kind" contribution equivalent to the cash contribution. Such "in kind" contribution can be made by any means such as research by students, marketing promotion or such other activities or things as the Class C Shareholder determines in its discretion.

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Schedule D

Restrictions on Share Issuance

1. Class A shares may only be issued or transferred to or held by a municipality incorporated under the *Community Charter or Local Government Act* or a regional district incorporated under the *Local Government Act*.
2. Class B shares may only be issued or transferred to or held by: a club, society, association or corporation that is organized and operated exclusively for social welfare, civic improvement, or for any other purpose except profit; a charity as defined under section 149.1(1)(l) of the *Income Tax Act* or an equivalent section outlining what constitutes a “charity” under that Act; or a first nation.
3. Class C shares may only be issued or transferred to or held by: a public university that is incorporated and operated under the *University Act*.

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