

CONTRIBUTION AGREEMENT

TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS.....	1
Section 1.01 Definitions.....	1
ARTICLE 2 – TERM	3
Section 2.01 Term of Agreement	3
ARTICLE 3 – CONTRIBUTION.....	3
Section 3.01 Contribution	3
ARTICLE 4 – ELIGIBLE EXPENDITURES	4
Section 4.01 Eligible Expenditures	4
Section 4.03 Unused Portion of Contribution	5
ARTICLE 5 – REQUIREMENT TO NOTIFY OF OTHER ASSISTANCE	6
Section 5.01 Requirement to Notify of Other Assistance	6
ARTICLE 6 – FEDERAL RECOGNITION.....	6
Section 6.01 Federal Recognition	6
ARTICLE 7 – ACCOUNTING RECORDS, FINANCIAL REPORTS & AUDIT	7
Section 7.01 Contribution Kept in Separate Account	7
Section 7.02 Accounting Records	8
Section 7.03 Audit and Inspection	8
ARTICLE 8 – ANNUAL VERIFICATION	8
Section 8.01 Annual Verification.....	8
ARTICLE 9 – PARLIAMENTARY APPROPRIATION.....	9
Section 9.01 Contribution Subject to Appropriation.....	9
ARTICLE 10 – SETTLEMENT.....	9
Section 10.01 Early Termination	9
Section 10.02 Final Settlement.....	9
ARTICLE 11 – DEFAULT	9
Section 11.01 Default.....	9
Section 12.01 Debt Due to Her Majesty	11
Section 12.02 Interest Due on Debt Due to Her Majesty.....	11
Section 12.03 Set-Off.....	12
ARTICLE 13 – NO PARTNERSHIP, JOINT VENTURE OR AGENCY.....	12
Section 13.01 No Partnership, Joint Venture or Agency	12
ARTICLE 14 – INDEMNITY AND CONDUCT OF ACTIONS.....	12
Section 14.01 Indemnity	12
ARTICLE 15 – ARBITRATION.....	13
Section 15 .01 Arbitration	13
ARTICLE 16 – GENERAL PROVISIONS.....	16
Section 16.01 Entire Agreement	16
Section 16.02 Subdivisions	16
Section 16.03 Headings.....	16
Section 16.04 Number and Gender	16
Section 16.05 Accounting Terms and Principles	16
Section 16.06 Business Day.....	17
Section 16.07 Schedules.....	17
Section 16.08 Statutes, Regulations and Rules	17

Section 16.09	Governing Law.....	17
Section 16.10	Construed Covenants.....	17
Section 16.11	House of Commons.....	17
Section 16.12	Conflict of Interest	18
Section 16.13	No Bribe	18
Section 16.14	Time of Essence	18
Section 16.15	Notice	18
Section 16.16	Amendment	19
Section 16.17	Waiver	19
Section 16.18	Severability.....	19
Section 16.19	Assignment, Successors and Assigns.....	19
Section 16.20	Survival	20
SCHEDULE "A" – ELIGIBLE EXPENDITURES.....		21

CONTRIBUTION AGREEMENT

THIS AGREEMENT made in duplicate as of the 14th day of November, 2014.

BETWEEN: **HER MAJESTY THE QUEEN IN RIGHT OF CANADA (“Her Majesty”)** represented by the Minister of Transport (“**Minister**”)

OF THE FIRST PART

AND: **STRATHCONA REGIONAL DISTRICT (“SRD”) (“Port Operator”)**

OF THE SECOND PART

WHEREAS the parties have entered into an Agreement to Transfer (“Agreement to Transfer”) as of the 28th day of October, 2014, which relates to the Ports located at Owen Bay located at Sonora Island, British Columbia; Port Neville located at Johnstone Strait, British Columbia; and Surge Narrows located at Read Island, British Columbia.

AND WHEREAS under the Agreement to Transfer, the parties have agreed to enter into this Agreement;

AND WHEREAS in recognition of the Port Operator agreeing under the Operating Agreement, to Operate the Ports, Her Majesty is prepared to make a Contribution under the terms and conditions of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements herein and subject to the terms and conditions hereinafter set out, the parties agree as follows:

ARTICLE 1 – DEFINITIONS

Section 1.01 Definitions

1.01.01 In this Agreement:

“**Agreement**” means this Contribution Agreement and includes the document attached as Schedule “A”, which forms an integral part of this Agreement as fully as if it was set forth in its entirety;

“**Agreement to Transfer**” means the Agreement entered into between the parties as of the 14th day of November, 2014, with respect to the following ports, Owen Bay, located at Sonora Island, British Columbia; Port Neville located at Johnstone Strait, British Columbia; and Surge Narrows located at Read Island, British Columbia;

“**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia;

“**Closing**” means the execution and delivery of the Instruments listed in Article 2 of the Agreement to Transfer;

“**Closing Date**” means a date on or before the 14th day of the month of November, 2014.

“**Contracted Operator**” has the meaning set out in Article 3 of the Operating Agreement.

“**Contribution**” means a payment for the purpose specified in Subsection 4.01.01 which Contribution is subject to being accounted for and audited pursuant to this Agreement;

“**Eligible Expenditure**” has the meaning set out in Section 4.01;

“**Existing Facilities**” means any wharf, dock, pier, float, dolphin, berthing or mooring facility, breakwater, building, structure, improvement, infrastructure, facility and utility located on, in, over, under or through the Port Lands which is owned by Her Majesty immediately prior to the Transfer Date, and all pavement, landscaping and fixtures associated therewith.

“**Independent External Accredited Accountant**” means a person who is a licensed public accountant and is independent of either party to this Agreement;

“**Minister**” means the Minister of Transport or any person authorized in writing to act on the Minister’s behalf;

“**Operate (Operation)**” means to carry out or cause to be carried out in an active, diligent and continual basis and at minimum, the activities described in Schedule “A” to the Operating Agreement;

“**Operating Agreement**” means the document referred to in Article 2 of the Agreement to Transfer when executed and delivered;

“**Operating Period**” means the period during which the Port Operator agrees to Operate the Ports as more particularly described in Subsection 3.01.01 of the Operating Agreement;

“**Person**” means any individual, company, corporation, partnership, firm, trust, sole proprietorship, government or government agency, authority or entity, however designated or constituted;

“Port” means the Port Lands, including the Port Facilities;

“Port Facilities” means Existing Facilities and includes those facilities described in Schedule “C” to the Operating Agreement;

“Port Lands” means all and singular those certain parcels or tracts of lands and premises situate, lying and being at Owen Bay, Port Neville, and Surge Narrows, British Columbia as more particularly described in Schedule “B” to the Operating Agreement;

“Subcontractor” has the meaning set out in Article 3 of the Operating Agreement;

“Transfer Date” means the day immediately following the Closing Date commencing at 00:00 hours; and

“Year” means a period of twelve consecutive months commencing on January 1st, unless there is something in the subject matter or context inconsistent therewith.

ARTICLE 2 – TERM

Section 2.01 Term of Agreement

2.01.01 This Agreement shall come into effect on the Transfer Date and shall terminate on the 14th day of November, 2024 unless terminated earlier in accordance with the provisions hereof.

ARTICLE 3 – CONTRIBUTION

Section 3.01 Contribution

3.01.01 Subject to the terms and conditions of this Agreement, Her Majesty agrees to pay, to the Port Operator on the Closing Date, a Contribution for each port site as follows:

- (a) Owen Bay \$855,000.00;
- (b) Port Neville \$875,000.00; and
- (c) Surge Narrows \$1,164,500.00.

The total amount of the Contribution being Two Million Eight Hundred and Ninety-four Thousand and Five Hundred Dollars (\$2,894,500.00) in Canadian currency.

ARTICLE 4 – ELIGIBLE EXPENDITURES**Section 4.01 Eligible Expenditures**

4.01.01 The Contribution shall be applied only in respect of reasonable and substantiated expenditures directly related to the Operation of the Ports, which are in the Minister's opinion properly and reasonably incurred and is limited to:

- (a) those items listed in Schedule "A";
- (b) expenditures relating to the purchase of operating, maintenance or construction equipment and related facilities that:
 - (i) bring the Ports up to a minimum safety standard; or
 - (ii) render the Ports in compliance with regulatory or insurance requirements;
- (c) expenditures for replacement or improvement of facilities for the purpose of:
 - (i) bringing the Ports up to a minimum safety standard; or
 - (ii) rendering the Ports in compliance with regulatory or insurance requirements;
- (d) expenditures relating to environmental land clean-up;
- (e) expenditures related to the purchase of real property upon which Port Facilities are encroaching;
- (f) expenses related to the Federal Goods and Services Tax (GST) and/or the Provincial Sales Tax (PST), net of any input tax credits or rebates that may be claimed by the Port Operator, at any time whatsoever.

For the purpose of this Subsection, a "reasonable expenditure" means the price paid for an item or service is one that would be paid in a competitive and open market, in the area serviced by the port, under conditions where there is a willing buyer and a willing seller, each acting prudently, knowledgeably, and under no undue influence.

Section 4.02 Ineligible Expenditures

4.02.01 Notwithstanding Subsection 4.01.01, an expenditure shall not qualify as an Eligible Expenditure if it is an expenditure:

- (a) incurred or paid prior to the commencement or incurred after the termination of this Agreement;
- (b) on account of depreciation with respect to any Port Facilities or equipment or other assets which were or will be paid for out of grants, contributions, subsidies or reimbursements from any federal or provincial department or agency;
- (c) relating to the purchase of real property other than as expressly stated in Section 4.01.01(e) of this Agreement;
- (d) relating to the purchase of operating, maintenance or construction equipment and related facilities, unless such expenditure is for the purpose of
 - (i) bringing the Ports up to a minimum safety or operating standard, or
 - (ii) rendering the Ports in compliance with regulatory or insurance requirements;
- (e) for land use planning or zoning studies;
- (f) in respect of a project which has been physically initiated or completed immediately prior to the Transfer Date and which has or will be paid for by Her Majesty;
- (g) for replacement or improvement of facilities, unless such expenditure is for the purpose of
 - (i) bringing the Ports up to a minimum safety standard, or
 - (ii) rendering the Ports in compliance with regulatory or insurance requirements; or
- (h) overhead expenses or administrative fees or surcharges not specifically set out in Schedule "A" hereto.

Section 4.03 Unused Portion of Contribution

- 4.03.01 Notwithstanding Sections 4.01 and 4.02, the unused portion of the Contribution not immediately required for Eligible Expenditures, shall be:
- (a) deposited in a separate Canadian interest-bearing bank account or credit union account, which account shall be dedicated exclusively for the Operation of the Ports; or

- (b) invested in debt obligations issued and guaranteed by Her Majesty in right of Canada or any province or municipality in Canada, or any member of the Canadian Payments Association.

ARTICLE 5 – REQUIREMENT TO NOTIFY OF OTHER ASSISTANCE

Section 5.01 Requirement to Notify of Other Assistance

- 5.01.01 Notwithstanding Subsection 3.01.01, prior to Her Majesty paying the Port Operator all or any part of the Contribution, the Port Operator shall provide to Her Majesty
 - (a) a statement declaring any and all other sources of funding and the amount of such funding received or to be received from either a federal, provincial, territorial or municipal source for expenditures which would qualify as Eligible Expenditures under this Agreement either before or after commencement of this Agreement as well as upon termination of this Agreement; and
 - (b) a statement declaring any amount owing to Her Majesty under legislation or contribution agreements.
- 5.01.02 Her Majesty shall have the right to reduce the Contribution by, or, request the return of the Contribution up to, an amount equal to all or any part of any funding received or to be received for expenditures which would qualify as Eligible Expenditures under this Agreement from either a federal, provincial, municipal, or private sector source.

ARTICLE 6 – FEDERAL RECOGNITION

Section 6.01 Federal Recognition

- 6.01.01 The form and content of any public announcement or signage respecting this Agreement shall be subject to prior written approval of the Minister.
- 6.01.02 The Port Operator shall ensure that all public announcements, public tender calls, newspaper advertisements or notices in respect of any Eligible Expenditures shall acknowledge the Contribution.
- 6.01.03 At the Minister's request, the Port Operator shall, at its cost, manufacture and install a bilingual sign with a minimum size of 1.2 m x 2.4 m acknowledging the Contribution in an appropriate public area visible to the travelling public and shall, subject to section 6.01.04, leave such sign in place for the Operating Period.

- 6.01.04 The Minister may, at the Minister's sole discretion, withdraw the requirement for recognition of the Contribution. Upon notification to the Port Operator of this requirement being withdrawn, the Port Operator shall forthwith, but no later than 30 days after such notice, remove the sign.
- 6.01.05 If the Port Operator desires to have an opening ceremony, such ceremony may not be proceeded with unless the Minister has been invited at least thirty (30) days prior to the opening ceremony to participate in person or through the Minister's representative.
- 6.01.06 The Minister may, at the Minister's option, have an opening ceremony or require the Port Operator to have an opening ceremony.
- 6.01.07 The Port Operator understands and agrees that the Port Operator's name, the amount awarded and the general nature of the activities supported may be made publicly available by the Government of Canada by any means at any time.

ARTICLE 7 – ACCOUNTING RECORDS, FINANCIAL REPORTS & AUDIT

Section 7.01 Contribution Kept in Separate Account

- 7.01.01 The Port Operator shall maintain the funds provided on account of the Contribution in a separate Canadian interest-bearing bank account or credit union account which account shall be exclusively dedicated for the Operation of the Ports. The Port Operator shall, at a minimum, maintain separate ledger accounts for all revenues and expenditures relating to the Operation of each Port.
- 7.01.02 The Port Operator shall ensure:
- (a) that funds provided on account of the Contribution or any portion thereof paid by the Port Operator to a Contracted Operator or any portion thereof further disbursed by a Contracted Operator to a Subcontractor shall be maintained by the Contracted Operator and Subcontractor in a separate Canadian interest-bearing bank account or credit union account. This separate account shall be exclusively dedicated for the Operation of the Ports; and
 - (b) that the Contracted Operator and Subcontractor shall, at a minimum, maintain separate ledger accounts for all revenues and expenditures relating to the Operation of the Ports.

Section 7.02 Accounting Records

- 7.02.01 The Port Operator shall keep records, and shall ensure that any Contracted Operator and Subcontractor keep records, for the Operation of the Ports in accordance with generally accepted accounting principles and the Port Operator shall keep such records and shall ensure that any Contracted Operator and Subcontractor keep such records separately from any other records.

Section 7.03 Audit and Inspection

- 7.03.01 The Port Operator shall keep open for audit and inspection by the Minister and shall ensure that any Contracted Operator and Subcontractor keep open for audit and inspection by the Minister, during business hours, the records with respect to the Ports and anything directly related to the Agreement and the Minister may take copies and extracts therefrom.
- 7.03.02 The Port Operator shall furnish, and shall ensure that the Contracted Operator and Subcontractor furnish to the Minister such other information as the Minister considers relevant in connection with the audit and inspection referred to in Subsection 7.03.01.
- 7.03.03 The requirements referred to in Sections 7.02 and 7.03 shall remain in effect for six (6) years after the date of the termination of this Agreement.
- 7.03.04 The Port Operator understands and agrees that any audit carried out by or on behalf of the Minister may be disclosed to the public by any means.

ARTICLE 8 – ANNUAL VERIFICATION**Section 8.01 Annual Verification**

- 8.01.01 For each Year of the term of this Agreement, the Port Operator shall, on or before ninety (90) days after the end of the Year, deliver to the Minister evidence, in a form and content satisfactory to the Minister, which may include a certificate of an Independent External Accredited Accountant, certifying that the Contribution paid to the Port Operator and, where applicable, that the Contribution or any part thereof paid to the Contracted Operator or to the Subcontractor has been applied solely towards Eligible Expenditures in that Year.

ARTICLE 9 – PARLIAMENTARY APPROPRIATION

Section 9.01 Contribution Subject to Appropriation

- 9.01.01 Nothing herein contained shall obligate Her Majesty to make any payment under this Agreement unless and until the necessary funds have been voted by Parliament in that behalf.

ARTICLE 10 – SETTLEMENT

Section 10.01 Early Termination

- 10.01.01 If this Agreement is terminated by the mutual agreement of the parties prior to the end of the term specified in Article 2 of this Agreement, the Port Operator shall remit to Her Majesty forthwith on the date of termination of this Agreement any amount paid on account of an expenditure which is not an Eligible Expenditure, any unexpended amount of the Contribution, any amount which Her Majesty has determined must be returned pursuant to Subsection 5.01.02 and any amount of the Contribution repayable to Her Majesty pursuant to any other agreement between the parties hereto, including the Operating Agreement.

Section 10.02 Final Settlement

- 10.02.01 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 Port Operator shall remit to Her Majesty any amount paid on account of an expenditure which is not an Eligible Expenditure, any unexpended amount of the Contribution, any amount which Her Majesty has determined must be returned pursuant to Subsection 5.01.02 and any amount of the Contribution repayable to Her Majesty pursuant to any other agreement between the parties hereto, including the Operating Agreement.

ARTICLE 11 – DEFAULT

Section 11.01 Default

- 11.01.01 If, during the term of this Agreement,
- (a) the Port Operator ceases to Operate the Ports in accordance with the Operating Agreement and such default continues for a period of fifteen (15) days after notice by Her Majesty to the Port Operator specifying the nature of the default and requiring the default to be remedied;

- (b) the Port Operator is in default of Article 7 and such default continues for a period of fifteen (15) days after notice by Her Majesty to the Port Operator specifying the nature of the default and requiring the default to be remedied;
- (c) the Contracted Operator or the Subcontractor:
 - (i) does not maintain the Contribution in a separate account exclusively dedicated to the Operation of the Ports;
 - (ii) does not maintain separate ledger accounts for all revenues and expenditures relating to the Operation of the Ports;
 - (iii) does not keep records in accordance with generally accepted accounting principles and does not keep such records separately from any other records;
 - (iv) does not keep open for audit and inspection by the Minister, during business hours, the records with respect to the Port and anything directly related to the Agreement; or
 - (v) does not furnish to the Minister such other information as the Minister considers relevant in connection with an audit and inspection referred to in Subsection 7.03.01;

and such default continues for a period of fifteen (15) days after notice by Her Majesty to the Port Operator specifying the nature of the default and requiring the default to be remedied;

- (d) the Port Operator is in default of any provision of this Agreement, other than a default under Paragraphs (a) and (b), or, of any provision of any other Agreement referred to in the Agreement to Transfer and such default continues for a period of fifteen (15) days after notice by Her Majesty to the Port Operator specifying the nature of the default and requiring the default to be remedied;
- (e) the Port Operator becomes bankrupt or insolvent, 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
- (f) the Port Operator is convicted of any offence against the law, order or regulation of Canada or duly constituted authority thereof or the conditions of any licence, or of being an accessory to any such offence, and if such offence is committed in connection with the Operation of the Ports;

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

- (i) terminate this Agreement; and
- (ii) A. with respect to a default under Paragraphs 11.01.01 (a), (b) or (c), require the Port Operator to repay Her Majesty forthwith, on demand for payment issued by the Minister, all the Contribution;
- B. with respect to a default under Paragraphs 11.01.01 (d), (e) or (f), require the Port Operator to pay Her Majesty forthwith, on demand for payment issued by the Minister, any amount paid on account of an expenditure which is not an Eligible Expenditure, any unexpended amount of the Contribution, any amount which Her Majesty has determined must be returned pursuant to Subsection 5.01.02 and any amount of the Contribution repayable to Her Majesty pursuant to any other agreement between the parties hereto, including the Operating Agreement.
- (iii) carry out or cause to be carried out an audit of the books and accounts and other records of the Port Operator and the Port Operator shall at all times comply with Section 7.03 of this Agreement and the cost of such audit shall be borne by the Port Operator.

ARTICLE 12 – DEBT DUE TO HER MAJESTY

Section 12.01 Debt Due to Her Majesty

- 12.01.01 Any amount owed to Her Majesty under this Agreement shall constitute a debt due to Her Majesty and the Port Operator shall, on demand for payment issued by the Minister, pay all such amount forthwith to Her Majesty.

Section 12.02 Interest Due on Debt Due to Her Majesty

- 12.02.01 In accordance with the *Interest and Administrative Charges Regulations*, SOR/96-188, in all cases where there is a debt due to Her Majesty, interest calculated and compounded monthly at the average bank rate plus three per cent is payable on that amount and accrues during the period beginning on the due date and ending on the day on which payment is received by Her Majesty or a duly authorized agent of Her Majesty.

Section 12.03 Set-Off

- 12.03.01 If there is a debt due to Her Majesty by the Port Operator, Her Majesty may, in Her sole discretion and in addition to any other remedies available to Her Majesty, retain the amount of the indebtedness by way of deduction from or set-off against any sum of money that may be due or payable by Her Majesty to the Port Operator.

ARTICLE 13 – NO PARTNERSHIP, JOINT VENTURE OR AGENCY**Section 13.01 No Partnership, Joint Venture or Agency**

- 13.01.01 Her Majesty and the Port Operator expressly disclaim any intention to create a partnership, joint venture or agency. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of Her Majesty or the Port Operator shall constitute or be deemed to constitute Her Majesty and the Port Operator as partners, joint venturers or principal and agent in any way or for any purpose. The Port Operator shall not represent or hold itself out to be an agent of Her Majesty. No party shall have any authority to act for or to assume any obligations or responsibility on behalf of the other party.
- 13.01.02 The Port Operator agrees to be liable to Her Majesty for any liability that Her Majesty incurs by virtue of being found to be liable with the Port Operator as a partner of, joint venturer with, or principal of the Port Operator. For greater certainty, the Port Operator assumes no responsibility for any liability arising to Her Majesty as a result of the act or omission of Her Majesty or Her agent which are the basis for the finding that Her Majesty or Her agent is a partner of, joint venturer with, or principal of the Port Operator.

ARTICLE 14 – INDEMNITY AND CONDUCT OF ACTIONS**Section 14.01 Indemnity**

- 14.01.01 The Port Operator agrees, at all times, to indemnify and save harmless, Her Majesty or any of Her officers, servants, employees or agents from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the execution of this Agreement or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder, except claims for damage resulting from the negligence of any officers, servants, employees, or agents of Her Majesty while acting within the scope of their duties or employment.

- 14.01.02 If Her Majesty is made a party to any action, suit or proceeding in respect of a matter for which the Port Operator is obligated to indemnify Her Majesty, the Port Operator shall defend such action, suit or proceeding in the name of Her Majesty at the Port Operator's expense. The foregoing obligation of indemnification is subject to the requirement that the Port Operator, in respect of any claim made by a third party, be notified by Her Majesty of all material particulars thereof and be afforded an opportunity at the Port Operator's sole expense to resist, defend and compromise the same, provided that the Port Operator is not obligated to do so; and further provided that if the Port Operator does not assume the defense of such claim, Her Majesty may defend against the claim in any manner She deems appropriate and may take such action as may be reasonably prudent in the circumstances to settle the claim.

ARTICLE 15 – ARBITRATION

Section 15 .01 Arbitration

- 15.01.01 In the event that a dispute, conflict, claim or controversy ("Dispute") arises out of or in connection with this Agreement, and the parties are not able to resolve the Dispute through discussions, then with the written agreement of the parties ("Arbitration Agreement"), the Dispute will be referred to binding arbitration in accordance with the *Commercial Arbitration Act* (R.S. 1985, c. 17 2nd Supp.).

For the purposes of this Article, a Dispute includes, without limitation, a dispute, conflict, claim or controversy, not involving the interpretation or application of the public law of Canada, and concerning:

- (a) the formation, validity, interpretation, application or enforceability of this Agreement;
 - (b) the performance, breach, termination or other discharge of the Agreement;
 - (c) the duties, rights, obligations or remedies of the parties pursuant to the Agreement.
- 15.01.02 For the purpose of each arbitration under this Agreement, the Port Operator shall constitute one party to the arbitration and Her Majesty shall constitute the other party to the arbitration.
- 15.01.03 If a Dispute arises and the parties do not resolve some or all of the Dispute through discussions, then, either party may give written notice, in accordance with Section 16.15, to the other party of its intent to enter into an Arbitration Agreement ("Notice of Intent"). If the parties have not entered into an Arbitration Agreement within fifteen (15) Business Days of receipt of the

Notice of Intent, the parties are not obligated to enter into such an Arbitration Agreement.

- 15.01.04 The parties shall, in the Arbitration Agreement, concisely describe the matter submitted for arbitration. The parties further agree that the arbitral proceedings will consist of oral hearings for the presentation of evidence (either oral, written or both) and for oral argument and that such hearings are to be held within sixty (60) Business Days of the date of the Arbitration Agreement.
- 15.01.05 (a) An arbitration under this Agreement shall be conducted by one arbitrator chosen by agreement of the parties.
- (b) If the parties are unable to agree on the choice of an arbitrator within ten (10) Business Days from the date of execution of the Arbitration Agreement there shall be three (3) arbitrators (the "Arbitral Panel").
- (c) Either party may nominate one arbitrator and upon doing so shall in writing notify the other party of that nomination. Within ten (10) Business Days after receiving such notice, the other party shall nominate a second arbitrator. The two arbitrators shall within ten (10) Business Days after selection of the second arbitrator select a third arbitrator to be chairperson of the Arbitral Panel and to act jointly with them. If the two arbitrators fail to agree on the selection of the third arbitrator, the third arbitrator shall be designated by the ADR Institute of Canada upon application by either party.
- (d) A person eligible for appointment as an arbitrator:
- (i) will be an experienced arbitrator or counsel having training in arbitration;
- (ii) will be independent and impartial; and
- (iii) preferably, will have knowledge of, or experience in the subject matter in dispute.
- 15.01.06 The sole arbitrator or Arbitral Panel, as the case may be, ("Arbitrator") shall have the right to grant legal and equitable relief and to award costs (including legal fees and the costs of the arbitration) and interest. The Arbitrator shall not be authorized to decide ex aequo et bono or as amiable compositeur. Nothing contained herein shall be construed to permit the Arbitrator to award punitive, exemplary or any similar damages.
- 15.01.07 Except to the extent that it may be inconsistent with the procedure set out in this Article, the *Commercial Arbitration Code (Commercial Arbitration Act*

(R.S. 1985, c. 17 2nd Supp.)) shall govern the arbitration of a Dispute under this Agreement.

- 15.01.08 The arbitration shall take place in the City of Vancouver at such place and time as the Arbitrator may fix for the purpose of hearing the evidence and representations that the parties may present. The arbitration proceedings shall be conducted in either French or English, with the agreement of the parties. No later than twenty (20) Business Days after hearing the representations and evidence of the parties, the Arbitrator shall make its determination in writing and deliver one copy to each of the parties.
- 15.01.09 The arbitration proceedings shall be open to the public.
- 15.01.10 The parties agree to an exchange of all information upon which they intend to rely in any oral or written presentation during the arbitration. This exchange shall be completed no later than ten (10) Business Days prior to the date set for the arbitration hearing.
- 15.01.11 All information exchanged during this entire procedure shall be regarded as “without prejudice” communications. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the arbitration.
- 15.01.12 Subject to the *Commercial Arbitration Code (Commercial Arbitration Act (R.S. 1985, c. 17 2nd Supp.))*, the decision of the Arbitrator, or a majority of its members, shall be final and binding upon the parties in respect of all matters relating to the arbitration, the conduct of the parties during the proceedings, and the final determination of the issues in the arbitration. The decision shall be in writing and include reasons for the decision. Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.
- 15.01.13 The costs of any arbitration hereunder shall be borne by the parties in the manner specified by the Arbitrator in its determination.
- 15.01.14 The Arbitrator shall resolve the Dispute in accordance with the laws of British Columbia.
- 15.01.15 It is agreed that the sole arbitrator or any member of the Arbitral Panel will neither represent nor testify on behalf of any of the parties in any subsequent proceeding between the parties or where they are opposed in interest. It is further agreed that the personal notes and written opinions of the sole arbitrator or any member of the Arbitral Panel made in relation to this arbitration are confidential and may not be used in any subsequent proceeding between the parties, or where they are opposed in interest.

ARTICLE 16 – GENERAL PROVISIONS

Section 16.01 Entire Agreement

- 16.01.01 This Agreement and the other agreements referred to in the Agreement to Transfer set forth the entire agreement between the parties concerning the subject matter hereof and no representation or warranty expressed, implied or otherwise is made by Her Majesty to the Port Operator or by the Port Operator to Her Majesty except as expressly set out in this Agreement or in any other agreements referred to in the Agreement to Transfer.

Section 16.02 Subdivisions

- 16.02.01 Unless otherwise stated, a reference in this Agreement by numerical or alphabetical designation to an Article, Section, Subsection, Paragraph, Subparagraph, Appendix or Schedule shall refer to the Article, Section, Subsection, Paragraph, Subparagraph, Appendix or Schedule bearing that designation in this Agreement.

Section 16.03 Headings

- 16.03.01 The division of this Agreement into Articles, Sections, Subsections, Paragraphs, and Subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

Section 16.04 Number and Gender

- 16.04.01 Words importing the singular number shall include the plural and words denoting the masculine gender shall include the feminine, if the context so requires.

Section 16.05 Accounting Terms and Principles

- 16.05.01 All accounting and financial terms used in this Agreement shall, except where otherwise provided either expressly or by necessary implication in this Agreement, be interpreted and applied in accordance with generally accepted accounting principles and generally accepted auditing standards in Canada as they exist from time to time.
- 16.05.02 Where the Canadian Institute of Chartered Accountants or any successor thereto includes a statement in its Handbook or any successor thereto on a method or alternative methods of accounting, such statement shall be regarded as the only generally accepted accounting principle and generally accepted auditing standard applicable to the circumstances that it covers, and references

herein to generally accepted accounting principles and generally accepted auditing standards shall be interpreted accordingly.

Section 16.06 Business Day

- 16.06.01 If the day on which any act or payment is required to be done or made under this Agreement is a day which is not a Business Day, then such act or payment shall be duly performed or made if done on the next following Business Day.

Section 16.07 Schedules

- 16.07.01 All capitalized words and phrases used in the attached Schedule shall have the same meanings as defined in this Agreement.

Section 16.08 Statutes, Regulations and Rules

- 16.08.01 Any reference in this Agreement to all or any part of any statute, regulation or rule shall, unless otherwise stated, be a reference to that statute, regulation or rule or the relevant part thereof, as amended, substituted, replaced or re-enacted from time to time.

Section 16.09 Governing Law

- 16.09.01 The Agreement is subject to the federal *Financial Administration Act* (R.S. 1985, c. F-11).
- 16.09.02 This Agreement shall be interpreted in accordance with the laws in force in the Province of British Columbia, subject always to any paramount or applicable federal laws. Nothing in this Agreement is intended to or shall be construed as limiting, waiving or derogating from any federal Crown prerogative.

Section 16.10 Construed Covenants

- 16.10.01 All of the provisions and each obligation or agreement of this Agreement, even though not expressed as a covenant, are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate provision hereof.

Section 16.11 House of Commons

- 16.11.01 No member of the House of Commons or Senate shall be admitted to any share or part of this Agreement or to any benefit to arise from it that is not otherwise available to the general public.

Section 16.12 Conflict of Interest

- 16.12.01 No person governed by the post-employment terms and conditions set out in the *2003 Values and Ethics Code for the Public Service* shall derive a direct benefit from this Agreement unless that person complies with the applicable post-employment provisions.

Section 16.13 No Bribe

- 16.13.01 The Port Operator warrants that no bribe, gift, commission or other inducement has been paid, given, promised or offered to any Government official or employee for the obtaining of this Agreement, contrary to Section 121 of the *Criminal Code* (R.S. 1985, c. C-46).

Section 16.14 Time of Essence

- 16.14.01 Time is of the essence of this Agreement.

Section 16.15 Notice

- 16.15.01 All notices or other communications necessary for the purposes of this Agreement shall be in writing and delivered personally or by courier, or shall be sent by registered mail or by prepaid post or by facsimile, addressed

- (a) in the case of Her Majesty, to:

Transport Canada, Pacific Region
Suite 620 800 Burrard Street
Vancouver, B. C. V6Z 2J8
Attention: Regional Director, Programs Branch
Telephone: 604-666-2387
Facsimile: 604-666-2961

or to such other address or facsimile number or addressed to such other Person as the Minister may, from time to time, designate in writing to the Port Operator; and

- (b) in the case of the Port Operator, to:

Strathcona Regional District
301-990 Cedar Street
Campbell River, B.C V9W 7Z8
Attention: Chief Administrative Officer
Telephone: 250-830-6700
Facsimile: 250-830-6710

or to such other address or facsimile number or addressed to such other Person as the Port Operator may, from time to time, designate in writing to the Minister.

16.15.02 Any notice or other communication is considered to have been received:

- (a) in the case of facsimile, on actual receipt, and
- (b) in all other cases, on the date of delivery.

If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any notice shall be delivered personally or by facsimile.

Section 16.16 Amendment

16.16.01 This Agreement may be amended only by a written agreement signed by the parties.

Section 16.17 Waiver

16.17.01 The failure by any party to insist in any one instance upon the strict performance by the other party of obligations under this Agreement does not constitute a waiver or relinquishment of any such obligations as to any other instances, and the same continues in full force and effect.

16.17.02 No covenant or condition of this Agreement may be waived by any party except by the written consent of that party, and forbearance or indulgence by that party in any regard whatsoever and no matter how long does not constitute a waiver of the covenant or condition, and until performed or waived in writing that party is entitled to invoke any remedy available to that party under this Agreement or by law, despite the forbearance or indulgence.

Section 16.18 Severability

16.18.01 If, for any reason, any provision of this Agreement, other than any provision which is of fundamental importance to the arrangement between the parties, is to any extent held or rendered invalid or unenforceable, then the particular provision is deemed to be independent of and severed from the remainder of this Agreement, and all the other provisions of this Agreement are nevertheless to continue in full force and effect.

Section 16.19 Assignment, Successors and Assigns

16.19.01 The Port Operator shall not transfer or assign its rights or obligations under this Agreement to any Person prior to the proposed assignee executing an agreement, satisfactory to the Minister, whereby the proposed assignee agrees

directly with Her Majesty to be bound by all of the terms, covenants and conditions contained in this Agreement as if such proposed assignee had executed this Agreement.

- 16.19.02 If the Port Operator assigns its rights and obligations contained in the Operating Agreement, in accordance with the provisions of the Operating Agreement, the Port Operator shall, subject to Subsection 16.19.01, at the same time assign to the same assignee its rights and obligations under this Agreement.
- 16.19.03 In the case of an assignment to or by a mortgagee, such assignment shall be on the same basis as such assignment under the Operating Agreement.
- 16.19.04 Notwithstanding any other provision of this Agreement, and notwithstanding any assignment, the Port Operator shall be and remain jointly and severally liable for all obligations to Her Majesty under this Agreement.
- 16.19.05 No rights shall enure to the benefit of any transferee or assignee of the Port Operator unless the transfer or assignment is consented to by Her Majesty in accordance with Subsection 16.19.01.
- 16.19.06 This Agreement shall be binding upon and shall enure to the benefit of Her Majesty and Her successors and assigns and the Port Operator and its successors and permitted assigns.
- 16.19.07 Nothing expressed or implied in this Agreement or in any other agreement referred to in the Agreement to Transfer, is intended to or shall be construed to confer on or to give any Person, other than the parties and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement or any other agreement referred to in the Agreement to Transfer.

Section 16.20 Survival

- 16.20.01 The rights and obligations of the parties contained in Articles 7, 8 12, 13 and 14 shall survive the expiration or early termination of this Agreement.

SCHEDULE "A" – ELIGIBLE EXPENDITURES

This is Schedule "A" to the **Contribution Agreement** made by Her Majesty the Queen in right of Canada and the Strathcona Regional District as of the 14th day of November, 2014.

Eligible Expenditures**Human Resources**

Salaries and Wages

Overtime

Allowances (Employee packages)

Employee Benefits (pension plan contributions, vacation pay, insurance plans relating to health, life, dental and income protection)

Training

Health Services

Management, Maintenance and Repair

Travel

Relocation

Postage and Freight

Telephone and Facsimile

Advertising

Publication

Insurance

Municipal Service Fees

Real Property Taxes

Public Utilities

Fuel

Materials and Supplies

Electronic Data Processing Supplies

Banking Fees

Investment Management Fees

Dredging

Professional Services

Security Services

Accounting Services

Architectural Services

Auditing Services

Engineering Services

Environmental Services

Informatic Services

Legal Services

Repair and Maintenance Services

Rental Expenditures

Rental - Land

Rental - Buildings

Rental - Machinery and Equipment

Rental - Watercraft

Rental - Motor Vehicle

Rental - Computer

Rental - Office Equipment

Rental - Telecommunication Equipment

Rental - Other