

TSESHAHT-BC CONTRIBUTION AGREEMENT

THIS AGREEMENT dated effective the 31st day of March, 2023 (the "**Effective Date**").

BETWEEN:

Tseshah First Nation, on behalf of itself and its members, as represented by Tseshah Chief and Council

("Tseshah")

And:

Government of British Columbia, as represented by the Minister of Indigenous Relations and Reconciliation and the Minister of Forests and the Minister of Housing

(the "**Province**")

(collectively the "Parties" and individually a "Party")

WHEREAS:

- A. On September 13, 2017, the Province committed to working in partnership with Indigenous peoples to embrace and implement the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") and has enacted the Declaration on the Rights of Indigenous Peoples Act (the "Declaration Act") which provides a framework for the implementation of UNDRIP in British Columbia;
- B. The Parties have worked closely in a spirit of reconciliation to support proactive and innovative collaboration moving forward;
- C. Tseshah has requested a certain contribution from the Province to assist with funding the Project;
- D. The Province has agreed to contribute an aggregate amount for the Project; and
- E. The Province and Tseshah wish to set out the terms and conditions respecting the Province's contribution in this Agreement.

NOW THEREFORE in consideration of the premises and covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Parties), the Parties agree as follows:

DEFINITIONS

1.01 In this Agreement:

- (a) "Agreement" means this contribution agreement, including the schedules attached to it and forming part of it, all as may be amended, restated, replaced or supplemented from time to time;
- (b) "Business Day" means a day, other than a Saturday or Sunday, on which Provincial government offices are open for normal business in British Columbia;
- (c) "Contribution" means the funds paid or payable by the Province to Tseshaht pursuant to this Agreement;
- (d) "Effective Date" means the date indicated on the first page of this Agreement;
- (e) "FAA" means the *Financial Administration Act*, R.S.B.C. 1996, c.138;
- (f) "Government of British Columbia" has the same meaning as in section 29 of the *Interpretation Act*, RSBC 1996, c 238;
- (g) "Project" means the housing development project in Port Alberni proposed by Tseshaht, as further described in **Schedule A**;
- (h) "Reports" means the reports provided by Tseshaht to the Province in accordance with section 7.01 and 7.02;
- (i) "Term" means the term of this Agreement described in section 3.01; and
- (j) "Termination Date" has the meaning set out in section 3.01.

1.02 Capitalized terms defined in the recitals to this Agreement and used in this Agreement have the definitions given in the recitals.

PURPOSE

2.01 The purpose of the Agreement is to provide funds to support meaningful steps towards reconciliation between Tseshaht and the Province and to support Tseshaht in pursuing the Project as described in Schedule A.

TERM

3.01 The term of this Agreement commences on the Effective Date and ends on the earlier of six months after the Contribution is fully spent by Tseshaht or the date on which this agreement is terminated in accordance with section 11.01 (the "**Termination Date**").

CONTRIBUTION

- 4.01 The Contribution consists of an aggregate \$5,150,000 to be used by Tseshaht for the Project in accordance with this Agreement, comprised as follows:
- a. \$5,000,000 (the "Land Purchase Funds") for the purpose of land acquisition in relation to the Project; and
 - b. \$150,000 (the "Capacity Funds") for the purpose of funding Tseshaht's capacity to refine the Project proposal.
- 4.02 The Province will provide the Contribution to Tseshaht as soon as practicable after the Effective Date of this Agreement.

STIPULATIONS

- 5.01 Tseshaht must apply the Contribution solely for the purposes of the Project and in accordance with the specifications and other requirements set out in section 4.01.
- 5.02 Tseshaht must repay to the Province within 60 days of the Termination Date any portion of the Contribution that has not been expended by Tseshaht for the Project on the Termination Date, unless otherwise agreed in writing by the Province.

ACKNOWLEDGEMENTS

- 6.01 Tseshaht acknowledges and agrees that the Land Purchase Funds in this Agreement are a contribution towards any advance settlement payment by the Province in respect of the Tseshaht's Section 35 Rights and will be offset against any amount that the Province agrees to pay under a treaty, comprehensive reconciliation agreement, or similar agreement.
- 6.02 This Agreement does not preclude Tseshaht from participating in any government funding, program, or initiative for which Tseshaht or its members may be eligible.
- 6.03 The Parties acknowledge and agree that all or part of the Funds that may be invested or applied to the Project carry an inherent risk and may be lost, decline in value or fail to achieve the desired value.
- 6.04 The Parties acknowledge and agree that the Province is not guaranteeing or providing any assurance in connection with, and is not liable for, any investment or use by Tseshaht of any of the Funds.

REPORTS

- 7.01 Within the earlier of 90 days of the end of each BC Fiscal Year, or six months of the Land Purchase Funds being fully exhausted, Tseshaht will provide a written report to the Province confirming use of the Land Purchase Funds in accordance with this Agreement.
- 7.02 Within the earlier of 90 days of the end of each BC Fiscal Year, or six months of the Capacity Funds being fully exhausted, Tseshaht will provide the Province with a report that summarizes the Project scope, describes the results achieved, explains any discrepancies between the results and the planned or expected results and contains such other information as the Province may specify in writing to Tseshaht.
- 7.03 The Parties agree to convene a working group and may invite other participants as mutually agreed to support the successful implementation of the Project by Tseshaht.
- 7.04 Tseshaht will not include any information in the Reports which constitutes "personal information" within the meaning of the *Freedom of Information and Protection of Privacy Act* (British Columbia).

AUDIT

- 8.01 Tseshaht will establish and maintain accurate books of accounts and records, including supporting documents, of all costs incurred and monies paid in connection with the Contribution and of the application of funds contributed by the Province, and will permit the Province at any time or times during normal business hours to copy or audit, or both, any or all of such books or account and records, including supporting documents.

INDEMNITY

- 9.01 Tseshaht agrees to indemnify and save harmless the Province and its employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the Province or any of its employees or agents may sustain, incur, suffer or be put to at any time during or following the Term which are based upon, arise out of or occur, directly or indirectly, by reason of, (a) any breach or inaccuracy of any representation or warranty made by Tseshaht in this Agreement; or (b) any breach or failure by Tseshaht to perform or fulfil any covenant, condition, or obligation of Tseshaht contained in this Agreement; or (c) any act or omission by Tseshaht or by any of Tseshaht's agents, employees, officers, directors or subcontractors in connection with this Agreement, including any act or omission that results in a third party intellectual property infringement claim against the Province.

REPRESENTATIONS AND WARRANTIES

- 10.01 Tseshaht represents and warrants to the Province, with the intent that the Province will rely on such representations and warranties in entering into this Agreement, that:

- (a) it has the legal power, capacity, and authority to enter into this Agreement on its own behalf and on behalf of Tseshaht members;
- (b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement for and on behalf of Tseshaht members; and
- (c) this Agreement is binding upon, and enforceable against, Tseshaht in accordance with its terms.

10.02 The Province represents and warrants to Tseshaht, with the intent and that they will rely on such representations and warranties in entering into this Agreement, that:

- (a) it has the legal power, capacity, and authority to enter into this Agreement; and
- (b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement.

TERMINATION

11.01 Any Party may terminate this Agreement by providing 60 days advance written notice to the other Party setting out the reasons for the termination and the date on which termination takes effect.

NOTICES

12.01 Any notice, document, statement, report or demand desired or required to be given or made pursuant to this Agreement must be in writing and may be delivered by mail or electronically from either party as follows:

- (a) if to the Province:

Christie Harvie, Regional Executive Director – Coast Region
Ministry of Indigenous Relations and Reconciliation
2957 Jutland Rd
Victoria, British Columbia V8T 5J9
Email: christie.harvie@gov.bc.ca
Attention: Christie Harvie

- (b) and if to the Recipient:

Chief Councillor Wameesh Ken Watts
5091 Tsuma-as Drive
Port Alberni, BC V9Y 8X9
Email: kenwatts@tseshaht.com
Attention: Chief Councillor

Any such communication will be conclusively deemed validly given to and received by the intended recipient on the day on which it was so delivered or transmitted unless received after 5:00 pm (local time in the place of receipt) in which case it will be deemed to be given on the next business day.

- 12.02 Either party may, from time to time, give written notice to the other party of any change of address or email of the party giving such notice and after the giving of such notice, the address or email therein specified will, for purposes of this Agreement be conclusively deemed to be the address of the party giving such notice.

APPROPRIATION

- 13.01 Notwithstanding any other provision of this Agreement, the payment of money by the Province to Tseshaht pursuant to this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the FAA, to enable the Province in any fiscal year or part thereof when any such payment may be required, to make that payment; and
- (b) Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in section 13.01(a).

RELATIONSHIP

- 14.01 No partnership, joint venture, agency or other legal entity will be created by or will be deemed to be created by this Agreement or any actions of the parties pursuant to this Agreement.
- 14.02 Tseshaht will not be a dependant contractor or employee of the Province under this Agreement.

NON-WAIVER

- 15.01 Any waiver of a provision of this Agreement must be made in writing by the Party who benefits from the obligation waived and will not be a waiver of any other provision, obligation, or subsequent default of that provision.

ENTIRE AGREEMENT

- 16.01 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement.

FURTHER ACTS AND ASSURANCES

- 17.01 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things,

devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.

TIME OF ESSENCE

18.01 Time will be of the essence of this Agreement.

SURVIVAL OF PROVISIONS

19.01 Sections 5.01, 5.02, 6.01, 6.02, 6.03, 6.04, 9.01, and 19.01 will survive any expiration or sooner termination of this Agreement.

INTERPRETATION

20.01 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

20.02 The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of this Agreement.

20.03 Any reference to a statute in this Agreement, whether or not that statute has been defined, includes all regulations at any time made under or pursuant to that statute and amendments to that statute.

20.04 This Agreement will be interpreted and construed with such changes in number and gender as the context so requires.

20.05 If any provision in this Agreement is determined to be invalid, illegal or unenforceable, in whole or in part, it will be severable from this Agreement and the remaining provisions will not be affected and will continue in full force and effect to the extent permitted by law.

20.06 Any reference to the Province's "discretion" means the Province's sole, absolute and unfettered discretion.

20.07 The terms "section" and "schedule" refer to sections and schedules within this Agreement.

20.08 Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province of any statutory power or duty.

20.09 This Agreement does not constitute a treaty or land claim agreement with the meaning of section 25 and section 35 of the *Constitution Act, 1982*.

20.10 In this Agreement, there will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of any Party.

20.11 Nothing in this Agreement will be construed as:

- (a) an admission by any Party of the scope, nature, content, or geographical extent of any Aboriginal right, including title;
- (b) establishing, defining, limiting, denying, abrogating or derogating any Aboriginal right, including title;
- (c) an acknowledgement or admission that the Province has an obligation to provide financial or economic accommodation or compensation to Tseshaht;
- (d) in any way limiting the position any Party may take in any process or proceeding except as expressly set out in this Agreement.

ASSIGNMENT

22.01 Tseshaht will not, without the prior written consent of the Province assign, either directly or indirectly, this Agreement or any right of Tseshaht under this Agreement.

22.02 This Agreement will enure to the benefit of and be binding upon Tseshaht and its successors and permitted assigns and the Province and its assigns.

DISPUTE RESOLUTION

23.01 If a Party serves written notice of a dispute regarding the interpretation or implementation of this Agreement or written notice to terminate this Agreement, the Parties will meet to discuss and attempt to resolve the dispute with direction from their respective principals and will utilize any dispute resolution mechanism agree to by the Parties.

COUNTERPARTS AND ELECTRONIC DELIVERY

24.01 This Agreement may be entered into by each party signing a separate copy of this Agreement and delivering it to the other party by electronic means. When taken together, they will be treated as one and the same agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as set out below.

SIGNED on behalf of the Government of)

British Columbia by a duly authorized)

representative of the)

Minister of Indigenous Relations and Reconciliation)

this 30 March, 2023)



) For the Minister of Indigenous Relations and Reconciliation

The Honourable Murray Rankin

SIGNED on behalf of Tseshaht First Nation.)

by a duly authorized representative)

this 30* March, 2023:)



) For Tseshaht First Nation

Ken Watts, Elected Chief Councillor

Schedule A

PROJECT

This project seeks to develop rental housing in Port Alberni for Tseshaht members and residents of Port Alberni through a Tseshaht First Nation-led housing development. Tseshaht will collaborate with the City of Port Alberni and the Province of BC (MIRR, BC Housing, Ministry of Housing) to work through five phases of the project, including:

Phase 1: Partnership development with the City and the Province, including detailed development of Terms of Reference for a housing working group to provide technical backstopping and oversight to Tseshaht. This will include detailed discussion of the structure of the development's management and residential parameters/requirements, including mix of housing. Within the partnership structure, Tseshaht will retain control over the funds provided in this contribution agreement.

Phase 2: Site assessment of parcels proposed for development, develop terms for land purchase from the City or alternate, site survey, archaeological and environmental assessments, geotechnical, traffic and topographical study. RFP for architectural services and launch of housing authority.

Phase 3: Pre-design/charette for community and subsequent detailed costing estimates and planning approvals.

Phase 4: Further refined design and energy efficiency revisions and construction schematics.

Phase 5: Tendering and construction.

The funding provided by the Province under this Agreement is the Province's contribution towards the financing required for Tseshaht to undertake portions of the initial phases of this project.