PROTOCOL AGREEMENT

BETWEEN:

THE CITY OF NANAIMO, a Municipality in the Province of British Columbia, as represented by its Mayor and Council, having an administrative office at 455 Wallace Street, Nanaimo, British Columbia, V9R 5J6

(the "City")

AND:

SNUNEYMUXW FIRST NATION, a “Band” as that term is defined in the Indian Act (Canada), as represented by the Snuneymuxw Band Council, having an administrative office at 668 Centre Street, Nanaimo, British Columbia, V9R 4Z4

(“Snuneymuxw”)

RECITALS

A. The City and Snuneymuxw signed a Memorandum of Understanding on April 20, 2005 (the “MOU”) with the goal of establishing a government-to-government relationship of mutual respect and cooperation.

B. Under the terms of the MOU, the City and Snuneymuxw agreed to develop a number of agreements, including a Protocol Agreement to provide a more detailed outline of issues arising from the MOU.

C. Since signing the MOU, the City and Snuneymuxw have been engaged in positive and productive discussions on matters contemplated in the MOU, including servicing agreements, matters of cultural importance such as the return of totem poles and protection of culturally sensitive sites, the mutual benefits of enhancing the economic, recreational and environmental status of the Nanaimo area, and the development of this Protocol Agreement.
1. ENTRY INTO PROTOCOL AGREEMENT
(a) The City and Snuneymuxw are approaching this Protocol Agreement:

- In furtherance of their government-to-government relationship;
- With a view to building that relationship based on the principles of trust and goodwill toward each other, rather than obligations to meet minimum legal requirements toward each other;
- With a view also to guiding principles of mutual recognition and respect for each other, for Snuneymuxw connections to land in the Nanaimo region, and for matters of cultural and historic importance to each other; and a desire for and in recognition of the need for reconciliation, which may be achieved in many different ways;
- In particular with respect for each other’s rights, obligations, responsibilities, mandates, policies, and areas of jurisdiction in the Nanaimo region;
- In a spirit of cooperation and compromise where necessary and beneficial; and
- With the common vision of greater prosperity and well-being for all residents of the Nanaimo area as a result of their relationship.

(b) This Protocol Agreement fulfils the key requirement of the MOU and upon signing will become the principal working document which the City and Snuneymuxw will use as the basis for developing further process arrangements and other agreements between them.

2. PURPOSE OF PROTOCOL AGREEMENT
The purpose of this Protocol Agreement is to provide a framework and timelines for reaching agreements on issues raised in the MOU, to set out policies, procedures, and processes for the way in which the City and Snuneymuxw will interact from time to time, and to identify areas in which the parties wish to develop further agreements.

3. NATURE OF PROTOCOL AGREEMENT
It is intended by the City and Snuneymuxw that this agreement will form the basis for a continuing relationship between them. As such, it is intended that the parties will act upon and implement its provisions on an ongoing basis until such time as those provisions are reviewed, amended, or terminated under clause 9, or the parties enter into a more detailed agreement replacing any specific provision of this Protocol Agreement.

4. ECONOMIC OPPORTUNITIES
(a) Pursuant to clause 2 of the MOU, the City and Snuneymuxw wish from time to time to identify and foster economic opportunities in the Nanaimo region to improve the quality of life for all its residents, and to collaborate on the development and implementation of projects of mutual interest and benefit.

(b) Without limiting the scope of paragraph (a), the parties have to date identified the areas of tourism, recreation and commercial development as having potential economic opportunities of the kind contemplated in paragraph (a) above.
(c) The protocol agreement working group established under clause 8 below will discuss options for specific projects identified in the areas set out in paragraph (b), and establish an agreed priority, timelines, and processes for development and implementation of those projects.

(d) The protocol agreement working group will discuss and establish an agreed priority, timelines, and processes for development and implementation of any other specific projects of the kind contemplated in paragraph (a) and identified from time to time during the term of this agreement by either the City or Snuneymuxw through their respective representatives on the working group.

5. PROVISION OF SERVICES
   (a) Under clause 3 of the MOU, the City and Snuneymuxw have committed to develop an agreement on the provision of efficient and affordable services to residents and businesses of the region.

   (b) The parties are committed to continuing the discussions that have begun regarding the provision of municipal water services by the City to Snuneymuxw’s IR#2 with a view to completion of an agreement as soon as reasonably practicable.

   (c) The protocol agreement working group established under clause 8 will discuss processes and timelines for the development of any other agreements related to servicing that the parties consider will support the objective of paragraph (a) of this clause 5.

6. LAND USE PLANNING AND DEVELOPMENT
   (a) Under clause 4 of the MOU, the City and Snuneymuxw have committed to develop an agreement to coordinate land use planning and development in the Nanaimo area in an integrated fashion to the benefit of all.

   (b) The protocol agreement working group established under clause 8 below will discuss processes and timelines for the development of the agreement referred to in paragraph (a) above, as well as the prospective content of the agreement.

   (c) Without limiting any other content, the agreement may address matters such as consultation and information exchange on the development of community plans, zoning and land use by-laws, planning processes, land servicing issues generally, heritage site and cultural protection policies, as well as information exchange on statutory processes governing either party’s approach to land use planning, public information and consultation processes, and related matters.

7. COMMUNICATIONS AND CONFIDENTIALITY
As soon as practical and within 30 days after the signing of this Protocol Agreement, the protocol agreement working group established under clause 8 below will meet to discuss and establish procedures addressing:

   (a) Confidentiality issues from time to time on matters being dealt with under the Protocol Agreement and related agreements;

   (b) Joint and separate public communications on such matters;
(c) Processes for inter-party communication at various levels between the Chief of Snuneymuxw and the Mayor of the City, between elected officials, and between staff, with the goal of improving and increasing the efficiency of day-to-day operational and political communications between the parties;

(d) Timely notification to each other of matters of potential concern or impact to the other party, including initiatives undertaken by third parties that have come to the attention of either the City or Snuneymuxw;

(e) Regular and emergency information exchange processes, including information on institutional and operational process of both parties and staff or officials in each organization authorized to deal with specific issues;

(f) Regular updates to each other on organizational authorities and personnel information; and

(g) Such other matters relating to communications and confidentiality as the protocol agreement working group considers will support the objectives of this Protocol Agreement.

8. PROTOCOL AGREEMENT WORKING GROUP

(a) Immediately after the signing of this agreement a permanent protocol agreement working group will be formed, comprising:

(i) The Chief of Snuneymuxw;
(ii) The Mayor of the City;
(iii) Two Snuneymuxw Band Councillors nominated by the Chief of Snuneymuxw;
(iv) Two City Councillors nominated by the Mayor of the City;
(v) One staff member from each of Snuneymuxw and the City, nominated by the Chief and the Mayor respectively; and
(vi) Such other staff members as required by either party to support the work of the protocol agreement working group.

(b) The Chief or Mayor as the case may be may appoint alternate members to the protocol agreement working group as necessary to ensure that the work of the group continues during temporary absences of any member.

(c) The working group will meet to carry out its commitments under this Protocol Agreement, to review progress on the development of related agreements, and any other requisite matters falling under its responsibilities.

(d) The working group will:

(i) Develop procedures governing frequency, timing, location, and record-keeping of matters arising out of its meetings;
(ii) Meet as soon as is reasonably practicable after the signing of this agreement to discuss the process for implementation of matters included in this agreement; and
(iii) Establish a process to discuss reviews of, amendments to, or termination of this Protocol Agreement under clause 9 below.

(e) The working group will also use all reasonable efforts to:

(i) Meet at least six times each calendar year, and more frequently as it may consider necessary to carry out its responsibilities under this agreement;
(ii) Meet once a month for the first three months following the signing of this agreement.
(f) Except as agreed from time to time to accommodate unforeseen events or staff absences, the staff members supporting the working group will use reasonable efforts to meet in person at least once a month and will communicate at least twice a month in person or by telephone.

9. REVIEWS, AMENDMENTS, AND TERMINATION

(1) The City and Snuneymuxw agree that this Protocol Agreement:

(a) Shall take effect upon its adoption by resolution of each respective Council;

(b) Is for a term of three years from the date on which it comes into effect which may be renewed thereafter;

(c) Is a living document and may be subject to amendment from time to time by agreement in writing and as authorized by each respective Council.

(2) The protocol agreement working group established under clause 8 above will discuss and agree upon a process for monitoring and reviewing this Protocol Agreement from time to time with a view to determining whether any amendments may be required.

(3) Prior to the expiration of this Protocol Agreement the parties will review the agreement and will either:

(a) Negotiate a revised agreement;

(b) Extend the term of the agreement; or

(c) Allow the agreement to expire upon the completion of its full term.

(4) This Protocol Agreement may also be terminated by either party providing to the other party sixty days' notice in writing.

10. DISPUTE AVOIDANCE AND RESOLUTION

(a) The City and Snuneymuxw are committed to open, honest, and respectful interaction with each other in order to communicate effectively and to avoid disputes.

(b) In that spirit, the parties will seek to avoid disputes relating to this agreement and all other contexts by actively listening to each other's concerns, seeking clarification of issues and statements to avoid misunderstandings, understanding differing cultural approaches to communication, and adopting such other mechanisms and processes that will assist in achieving the avoidance of disputes.

(c) In the event of a dispute or disagreement arising out of this Protocol Agreement and the processes and commitments set out in it, the parties will set the issue aside temporarily until the protocol agreement working group next meets.

(d) At the next meeting of the protocol agreement working group, the members of the group will review the issue and discuss means to solve the disagreement to their mutual satisfaction.

(e) If the issue cannot be resolved at the working group level, the Chief of Snuneymuxw and the Mayor of the City will engage in informal discussions in an attempt to resolve the issue.

(f) The parties may agree in writing to adopt more formal dispute resolution processes with respect to a particular issue, and to share the costs of the agreed process.
11. GENERAL

(1) Timing: The parties are committed to the following guiding principles regarding the timelines for negotiating the agreements referred to in this Protocol Agreement:

(a) Discussion and negotiations will take place in a prompt and timely manner without undue or unreasonable delays on the part of either the City or Snuneymuxw;

(b) The parties acknowledge that the work required to discuss and complete the agreements will require not only commitment and cooperation, but the investment of considerable time and effort on the part of each of them and their respective representatives;

(c) The parties will therefore ensure that they discuss and attempt to establish mutually satisfactory priorities for the order of development of the various agreements referred to in this Protocol Agreement;

(d) The parties also recognize and respect each other’s commitments and obligations to other matters within their respective jurisdiction and will therefore approach timelines with flexibility and in a spirit of understanding and reasonable compromise where necessary or desirable to accommodate each other’s schedules and other commitments.

(2) Costs: Each party will bear their own costs for the preparation and implementation of this and all other agreements referred to in or resulting from this Protocol Agreement. The parties may also work together to apply for funding from external sources to support this agreement and projects being developed under this agreement, and may agree to share the costs of certain projects from time to time.

SIGNED AT Malaspina University-College on this 15th day of October, 2005.

SNUNEYMUXW FIRST NATION

Chief John Wesley
Witness

CITY OF NANAIMO

Mayor Gary Korpan
Witness

[Signatures]

Witness

[Signatures]