

**NISGA'A NATION – BRITISH COLUMBIA  
KITSALT ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT**

This Agreement is dated the 31<sup>st</sup> day of July, 2014

BETWEEN

HER MAJESTY THE QUEEN  
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,  
as represented by the Minister of Aboriginal Relations and Reconciliation

and

THE NISGA'A NATION,  
as represented by the Nisga'a Lisims Government Executive

**Whereas:**

- A. Avanti Kitsault Mine Ltd proposes to construct and operate the Mine; and
- B. British Columbia intends to share a percentage of the Net Mineral Tax Revenue collected from the Mine in accordance with the terms and conditions of this Economic and Community Development Agreement with the Nisga'a Nation.

NOW THEREFORE the Parties agree as follows:

**1. Definitions**

“Act” means the *Mineral Tax Act*, R.S.B.C. 1996, c.291, as amended from time to time, and legislation in addition to or in substitution for the *Mineral Tax Act* which assesses a tax on minerals or mining in favour of British Columbia similar to the tax presently assessed under the *Mineral Tax Act*;

“Agreement” means this Economic and Community Development Agreement;

“Audit Amount” means the *Mineral Tax Act* payment amount that an Operator has overpaid or underpaid for a BC Fiscal Year, as confirmed following the appeal period of a provincial audit of the Operator's *Mineral Tax Act* payments for that BC Fiscal Year;

“Annual Payments” means the payments to be made by British Columbia to the Nisga'a Nation during the Term pursuant to section 4;

“BC Fiscal Year” means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year;

“British Columbia” means Her Majesty the Queen in Right of the Province of British Columbia;

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“Consultation Process” means the consultation process for Government Decisions as set out in section 14;

“Dispute” means any disagreement which relates to the interpretation of this Agreement and about which written notice of a dispute is given in accordance with section 20, and for greater certainty “Dispute” does not include any disagreement about Government Decisions or Annual Payments;

“Dispute Resolution” means the resolution of a Dispute in accordance with the process set out in section 20;

“Effective Date” means the last date this Agreement has been fully executed by the Parties;

“*Environmental Assessment Act*” means the *Environmental Assessment Act*, S.B.C. 2002, c.43, as amended from time to time;

“Environmental Assessment Certificate” means an “environmental assessment certificate” as defined in the *Environmental Assessment Act*;

“Government Decision” means any authorization, permit, licence, approval, land disposition and any other action granted or otherwise taken by a Provincial Decision Maker that relates directly or indirectly to the Mine, or to any activity within the Mine Area that relates directly or indirectly to the Mine, that may potentially impact Nisga’a section 35 rights;

“Mine” means:

- a. the Kitsault Mine Project, which is located in the area shown on the map in Appendix 1, and which is the subject of an Environmental Assessment Certificate issued to Avanti Kitsault Mine Ltd., and which includes its associated infrastructure, access roads, power facilities, and other physical works and facilities;
- b. any changes, modifications, or expansions to the physical works and facilities and/or the elements described in paragraph a above which are situated within the Mine Area, but specifically does not include changes to such works, facilities and/or elements in respect of which an amendment to an Environmental Assessment Certificate must be obtained; and
- c. all matters relating to the exploration, planning, permitting, construction, maintenance, repair, operation, and reclamation of the Kitsault Mine Project and the elements described in paragraph b above;

“Mine Area” means, for purposes of this Agreement, the areas in red and yellow shown in Appendix 1;

“Mine Fiscal Year” means the “fiscal year of the mine” as defined in the Act;

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“Net Mineral Tax Revenue” means the total amount of tax, penalty and interest paid by an Operator under the *Mineral Tax Act* for a BC Fiscal Year in respect of the Mine) minus the total amount of tax, penalty and interest refunded and interest paid to the Operator under the *Mineral Tax Act* for that BC Fiscal Year in respect of Mine. For greater certainty the calculation of the Net Mineral Tax Revenue does not include the Post-Closure Reclamation Tax Credit;

“Nisga’a Final Agreement” means the Nisga’a Final Agreement entered into among the Nisga’a Nation, Her Majesty the Queen in right of British Columbia, and Her Majesty the Queen in right of Canada, which came into effect on May 11, 2000;

“Nisga’a section 35 rights” means Nisga’a section 35 rights as defined in the Nisga’a Final Agreement;

“Operator” means “operator”, as defined in the Act, of the Mine and, at the Effective Date, is Avanti Kitsalt Mine Ltd.;

“Ore Production” means the volume of ore mined and produced within the Mine Area for a given BC Fiscal Year;

“Overpayment Amount” means for a BC Fiscal Year, a negative Net Mineral Tax Revenue amount;

“Parties” means both of the parties to this Agreement;

“Payment Statement” means the financial statement containing the tax information referred to in paragraph 4.1 that British Columbia will provide to the Nisga’a Nation;

“Post-Closure Reclamation Tax Credit” means the amount paid or refunded in relation to reclamation tax credit in respect of a Mine for a Mine Fiscal Year commencing after production at the Mine has ceased;

“Provincial Agency” means British Columbia including:

- a. any minister, public official, employee or person acting on behalf of, or as an agent of British Columbia, and
- b. any government corporation;

“Provincial Decision Maker” means

- c. British Columbia,
  - d. any minister, public official, employee, or agent of British Columbia,
  - e. any provincial corporation,
  - f. any director, officer, employee or contractor acting on behalf of a government corporation, British Columbia or an agent of British Columbia, or
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- g. any person acting as a decision maker under any enactment of British Columbia;

“Settlement Agreement” means the dispute resolution settlement agreement in respect of the Mine executed by the Parties on July 31<sup>st</sup>, 2014; and

“Term” has the meaning set out in section 6.

## **2. Purpose**

2.1 The purpose of this Agreement is to:

- a. set out the basis by which British Columbia will share mineral tax revenue associated with Ore Production with the Nisga'a Nation by way of Annual Payments; and
- b. set out a consultation process in relation to Government Decisions after the Effective Date, which will satisfy the Parties' obligations under the Nisga'a Final Agreement or otherwise.

## **3. Payment Objectives**

- 3.1 The Nisga'a Nation will use the monies received pursuant to this Agreement in pursuit of matters over which they have jurisdiction and control as provided for under the Nisga'a Final Agreement, including, among other things, the delivery of programs and services.
- 3.2 The Nisga'a Nation will, as part of its normal course annual reporting and auditing process, provide to British Columbia, copies of the relevant sections of such annual reports which generally set out how the funds from the Annual Payment have been utilized by the Nisga'a Nation in the preceding year (the “Annual Reporting Letter”).
- 3.3 If the Nisga'a Nation does not provide the Annual Reporting Letter to British Columbia as required by paragraph 3.2, British Columbia will not be required to make an Annual Payment until that Annual Reporting Letter is provided to British Columbia.

## **4. Annual Payments**

- 4.1 Within 90 days after the end of each BC Fiscal Year that ends while this Agreement is in effect, British Columbia will provide a Payment Statement to the Nisga'a Nation for the BC Fiscal Year setting out:
    - a. total amount of tax, penalty and interest paid by an Operator under the *Mineral Tax Act*;
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- b. the results of any provincial audit of the accuracy of the Operator's payments under the *Mineral Tax Act*, the outcome of any appeal by the Operator of an audit, and any Audit Amount applicable to a BC Fiscal Year;
  - c. the total amount of tax, penalty and interest refunded and interest paid to the Operator under the *Mineral Tax Act*; and
  - d. any Overpayment Amount from the previous BC Fiscal Year.
- 4.2 If, in a BC Fiscal Year, the Net Mineral Tax Revenue under the Act attributable to Ore Production is greater than zero, then British Columbia will, within 150 days after the end of that BC Fiscal Year, and provided that the Nisga'a Nation has delivered to British Columbia the Annual Reporting Letter pursuant to paragraph 3.2, pay to the Nisga'a Nation 35 percent of the Net Mineral Tax Revenue amount, less any Overpayment Amount.
- 4.3 If, in a BC Fiscal Year, the Net Mineral Tax Revenue calculation results in an Overpayment Amount, then 35 percent of the absolute value of the Overpayment Amount will be deducted from future payments to the Nisga'a Nation made under this Agreement.
- 4.4 If, in a BC Fiscal Year, the Net Mineral Tax Revenue under the Act attributable to Ore Production is zero, no payment will to be made to the Nisga'a Nation under this Agreement for that BC Fiscal Year.

**5. Post-Closure Payments**

- 5.1 In the event that the Operator is no longer responsible for making payments under the Act in relation to the Mine, such that there will be no subsequent payment to the Nisga'a Nation under this Agreement, British Columbia will send to the Nisga'a Nation a notice of any Overpayment Amount that remains outstanding, and British Columbia may deduct the Overpayment Amount from any monies owing to the Nisga'a Nation pursuant to this Agreement or another agreement between the Parties dealing with the sharing of mineral tax revenue.

**6. Payment General Provisions**

- 6.1 The Parties acknowledge that *Mineral Tax Act* revenues fluctuate and that Annual Payments will vary over time.
- 6.2 British Columbia is entitled to rely upon information provided by the Operator, including the Operator's report of Ore Production for a Mine Fiscal Year, in determining Ore Production and in calculating Annual Payments under section 4.
- 6.3 British Columbia will make reasonable efforts to ensure the accuracy of information that is used to determine Ore Production and to calculate Annual Payments, but
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British Columbia makes no warranty or representation as to the accuracy of such information and no action or proceeding lies against it in relation to any claim that information or the determination of Ore Production was inaccurate.

- 6.4 The Nisga'a Nation will keep confidential information that British Columbia marks as "confidential", including Payment Statements and any information that relates to tax payments under the *Mineral Tax Act*, and will not disclose such information to any other person, unless compelled to do otherwise by law.
- 6.5 Notwithstanding paragraph 6.4, the Nisga'a Nation may disclose confidential information to their advisors, including legal, financial, tax and other professional advisors, provided that those advisors agree in writing to keep the information confidential.
- 6.6 British Columbia will keep confidential information that the Nisga'a Nation marks as "confidential", and will not disclose such information to any other person, except as necessary to support a consultation or decision making process regarding any Government Action or in accordance with the Nass Stewardship Protocol, as contemplated by the Settlement Agreement, the *Freedom of Information and Protection of Privacy Act*, or as otherwise required by law.
- 6.7 Notwithstanding any other provision of this Agreement, British Columbia's obligation to provide a Payment Statement and other information that is confidential under the *Mineral Tax Act* is subject to British Columbia obtaining written consent from the Operator for sharing such information, and is also subject to any additional confidentiality provisions that the Operator may require.
- 6.8 Notwithstanding any other provision of this Agreement, the Nisga'a Nation will have the right to disclose the amount of a Project Payment to Nisga'a citizens each year.
- 6.9 The Nisga'a Nation acknowledges that British Columbia has informed it of the confidentiality requirements under the *Mineral Tax Act*.

**7. Nisga'a Nation Representations and Warranties**

- 7.1 The Nisga'a Nation represents and warrants to British Columbia, on which British Columbia has relied on in entering into this Agreement, that:
  - a. it has the legal authority, as represented by the Nisga'a Lisims Government, to enter into this Agreement and to make the covenants, acknowledgments and representations in, and carry out its obligations under, this Agreement; and
  - b. this Agreement is valid and binding upon the Nisga'a Nation.

**8. British Columbia Representations and Warranties**

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- 8.1 British Columbia represents and warrants to the Nisga'a Nation, on which the Nisga'a Nation has relied in entering into this Agreement, that it has the legal authority to enter into this Agreement and to carry out its obligations in accordance with the terms of this Agreement.

**9. British Columbia Acknowledgements and Covenants**

- 9.1 British Columbia acknowledges and covenants that:
- a. the Annual Payments received under this Agreement are not considered as own source revenue for any purpose related to the Nisga'a Final Agreement;
  - b. this Agreement does not prohibit the Nisga'a Nation from participating in government programs for which it may be eligible; and
  - c. this Agreement does not prohibit the Nisga'a Nation from entering into agreements with other parties, including agreements with the Operator, for financial and other considerations from the Mine.

**10. Nisga'a Nation Acknowledgements and Covenants**

- 10.1 The Nisga'a Nation acknowledges and covenants that:
- a. British Columbia will, by complying with the Consultation Process during the Term of this Agreement, be deemed to have fulfilled any and all legal obligations set out in the Nisga'a Final Agreement or otherwise in relation to Government Decisions made during the Term of this Agreement, including, without limitation, all obligations with respect to Chapter 10 of the Nisga'a Final Agreement;
  - b. British Columbia has no obligation to provide any financial or economic benefit to the Nisga'a Nation in respect of the Mine, the Mine Area or Ore Production except as provided in this Agreement;
  - c. British Columbia has no obligation to provide capacity or other funding to the Nisga'a Nation in relation to the Consultation Process or a Government Decision, other than funding to be provided to Nisga'a Nation pursuant to the Settlement Agreement;
  - d. it will, within five days of the Effective Date of this Agreement, provide to British Columbia a copy of a Notice of Discontinuance filed with the court registry in respect of the petition by the Nisga'a Nation, put forward in British Columbia Supreme Court No. S-135773, Vancouver Registry;
  - e. it will not bring or continue any other action or other proceeding with respect to any Government Decision made or matter that occurred before the Effective Date or during the Term of this Agreement against British Columbia, at law or in equity, in its own name or by representative action, which is inconsistent with the covenants, acknowledgements, and releases set
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out in this Agreement, nor will it support any such action or proceeding initiated by any person;

- f. it will not challenge or impede the right of British Columbia or the Operator, or any of British Columbia's or the Operator's employees, contractors, agents, representatives or invitees, to gain access to the Mine Area or the Mine and to carry out activities associated directly or indirectly with the development and operations of the Mine; and
- g. it will, upon request by British Columbia, promptly cooperate with British Columbia and provide its assistance to British Columbia in seeking to resolve any action that might be taken by any Nisga'a citizen that is inconsistent with this section 10 and section 11.

**11. Releases**

11.1 The Nisga'a Nation hereby releases and forever discharges British Columbia from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind which it ever may have had, has or may ever have against British Columbia in respect of:

- a. any Government Decision taken by a Provincial Decision Maker before the Effective Date;
- b. any obligations of British Columbia owing to the Nisga'a Nation under the Nisga'a Final Agreement or otherwise, before the Effective Date in respect of the Kitsalt Project; and
- c. the petition put forward by the Nisga'a Nation in the British Columbia Supreme Court, No. S-135773, Vancouver Registry.

11.2 Unless the Nisga'a Nation gives notice to British Columbia on or before June 30th of each BC Fiscal Year that the provisions of this paragraph 11.2 do not apply to the Nisga'a Nation, the Nisga'a Nation will have deemed to have:

- a. agreed that British Columbia has fulfilled any and all legal obligations under the Nisga'a Final Agreement or otherwise in relation to the Government Decisions taken in the 12 months preceding June 30<sup>th</sup> of that BC Fiscal Year;
  - b. agreed that, subject to any audit adjustment pursuant to section 4, that the Annual Payment made is correct and will not be disputed; and
  - c. released and forever discharged British Columbia from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind which it ever may have had, has or may ever have against British Columbia with respect to any and all obligations under the Nisga'a Final Agreement or otherwise in relation to the Government Decisions taken in the 12 months preceding June 30<sup>th</sup> of that BC Fiscal Year.
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- 11.3 In the event that the Nisga'a Nation gives notice under paragraph 11.2 or otherwise challenges any Government Decision by any proceeding, British Columbia:
- a. will have representatives meet with Nisga'a Nation representatives to attempt to resolve the matter of concern as soon as practicable; and
  - b. may suspend making further Annual Payments following the meeting required under subparagraph 11.3 a.
- 11.4 If notice under paragraph 11.2 is not withdrawn within 60 days of its issuance, British Columbia:
- a. will give to the Nisga'a Nation 30 days advance written notice of its intent to terminate the Agreement;
  - b. will have representatives meet with Nisga'a Nation representatives to attempt to resolve the matter of concern as soon as practicable; and
  - c. may terminate this Agreement, and upon such termination British Columbia and the Nisga'a Nation will be fully released and discharged from the further performance of their respective obligations under this Agreement.
- 11.5 Termination under paragraph 11.4 is in addition to the Parties' rights of termination referred to in section 17.
- 11.6 If Annual Payments are suspended under subparagraph 11.3b and notice under paragraph 11.2 is withdrawn, then British Columbia will have 60 days from the date of withdrawal to make the payment that was suspended under subparagraph 11.3b.

**12. Continuing Obligations**

- 12.1 The Parties' respective acknowledgements, obligations, covenants and releases set out in paragraphs 6.4, 6.5 and 6.6, section 9, section 10 and paragraphs 11.1 and 11.2 are intended to remain fully binding and enforceable despite the expiration or termination of this Agreement and despite any matter whatsoever including the determination by a court or tribunal of competent jurisdiction.
- 12.2 Except as provided in this Agreement, the Parties' respective acknowledgements, obligations and covenants under this Agreement will cease to be binding or enforceable upon the expiration or termination of this Agreement.

**13. Payment Disputes**

- 13.1 In the event of a disagreement in relation to the amount of an Annual Payment, the Nisga'a Nation may give notice to British Columbia and upon such notice the Parties' representatives will meet as soon as practicable to discuss the matter of
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concern, after which British Columbia will review the matter and take any remedial actions required in order to ensure that the proper amount was paid under section 4.

**14. Consultation Process**

- 14.1 Provincial Agencies will consult with the Nisga'a Nation in regard to Government Actions proposed after the Effective Date, which may adversely affect Nisga'a section 35 rights, in accordance with the Nisga'a Final Agreement, any agreement between the Nisga'a Nation and British Columbia in respect of consultation and any existing Provincial consultation policies or procedures.
- 14.2 The Parties acknowledge that they each have obligations with respect to consultation in regard to Government Actions.

**15. Assignment**

- 15.1 The Nisga'a Nation may not assign, either directly or indirectly, this Agreement or any right under this Agreement without the prior written consent of British Columbia.

**16. Term**

- 16.1 The term of this Agreement will commence on the Effective Date and will continue for as long as tax, interest and penalties payable by the Operator under the Act in relation to the Mine and the Mine Area are subject to reassessment under applicable legislation, unless this Agreement is terminated in accordance with this Agreement.

**17. Termination**

- 17.1 Either Party may terminate this Agreement prior to the end of the Term on the grounds set out in sections 17 or 18 by giving the other Party 120 days advance written notice of the intent to terminate the Agreement and the reasons for terminating the Agreement. During the 120 day period referred to in this paragraph 17.1, the Parties will meet in order to discuss the circumstances which gave rise to the written notice of termination to determine whether there is a basis for rescinding the notice and undertaking Dispute Resolution.
- 17.2 The Nisga'a Nation has the right to terminate this Agreement in accordance with paragraph 17.1 if:
- a. subject to paragraph 3.3, subparagraph 11.3b, paragraphs 11.4, 19.1 and 19.3 British Columbia fails to make an Annual Payment contemplated by paragraphs 4.2 or 18.2; or
  - b. any representation or warranty made by British Columbia in this Agreement is untrue or incorrect.
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- 17.3 British Columbia will have the right to terminate this Agreement in accordance with paragraph 17.1 if:
- a. in the event that amendments to or elimination of the *Mineral Tax Act* (and, for greater certainty, to regulations in force thereunder) remove the assessment of tax on minerals or mining and a similar tax is not enacted by the Province of British Columbia;
  - b. any representation or warranty made by the Nisga'a Nation in this Agreement is untrue or incorrect; or
  - c. the Nisga'a Nation commences or supports, directly or indirectly, any legal proceeding against British Columbia with respect to the Mine, the Mine Area or any Government Decision.

**18. Suspension of Payments**

- 18.1 Notwithstanding any other provision of this Agreement, if the Nisga'a Nation is in material breach of any of its obligations under this Agreement, or any representation or warranty made by the Nisga'a Nation is untrue or incorrect, British Columbia:
- a. may suspend making further Annual Payments;
  - b. will, if it suspends making further Annual Payments, promptly give notice to the Nisga'a Nation of the suspension and the specific material breach or untrue or incorrect warranty or representation relied on; and
  - c. will undertake Dispute Resolution with the Nisga'a Nation.
- 18.2 Where Annual Payments for the Mine are suspended under paragraph 18.1 and the material breach is remedied or the representation or warranty required by this Agreement is made true and correct in all material respects prior to the giving of a notice to terminate under paragraph 17.1, British Columbia will make any Annual Payments it would otherwise have been required to make with respect to the Mine within 60 days of the day the material breach is remedied or the representation or warranty is made true and correct in all material respects.
- 18.3 If Annual Payments British Columbia would otherwise have been required to make are suspended and this Agreement is terminated before the material breach has been remedied or the representation or warranty required by this Agreement is provided and confirmed, British Columbia is fully released and discharged from all of its obligations in respect of those Annual Payments that were suspended.

**19. Rule for End of Term**

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19.1 If the Term ends otherwise than on last day of a Mine Fiscal Year:

- a. no payment will be payable to the Nisga'a Nation under this Agreement in relation to that portion of the Mine Fiscal Year after the date on which the Term ends or in relation to any subsequent Mine Fiscal Year; and
- b. subject to subparagraph 19.1a, the obligations of British Columbia in relation to Annual Payments set out in section 4 will continue, but only to the extent that tax, penalty or interest is assessed or reassessed, or amounts are received from, or refunded or paid to, the Operator by British Columbia in relation to Mine Fiscal Years ending between the Effective Date and the date the Term ends.

19.2 If the Term ends otherwise than on the last day of a BC Fiscal Year, the Annual Payment for that BC Fiscal Year will be prorated to the end of the Term based on the number of days in the BC Fiscal Year occurring before the end of the Term as a portion of the total days in the BC Fiscal Year, and for greater certainty, will not include payment for any portion of the BC Fiscal Year after the date of the end of the Term or in relation to any subsequent BC Fiscal Year.

19.3 Notwithstanding paragraphs 19.1 and 19.2, unless the Nisga'a Nation provide the covenants, agreements and releases described in section 19.4, upon termination of this Agreement:

- a. the obligations of British Columbia set out in section 4 will continue, but only to the extent that tax, penalty or interest is received from, or refunded or paid to, the Operator by British Columbia in BC Fiscal Years ending between the Effective Date and the termination date;
- b. British Columbia is fully released and discharged from all of its obligations in respect of any Annual Payments suspended under paragraph 18.1; and
- c. subject to section 12, the Parties are fully released and discharged from the further performance of their respective obligations under this Agreement.

19.4 If within 90 days after notice of termination under paragraph 17.1 or within 30 days after notice of termination under paragraph 11.4, the Nisga'a Nation, on its own behalf and on behalf of its members:

- a. covenants and agrees that British Columbia has complied with section 14 and has fulfilled any and all legal obligations set out in the Nisga'a Final Agreement or otherwise in relation to the Government Actions taken up to and including the termination date, including, without limitation, all obligations with respect to Chapter 10 of the Nisga'a Final Agreement; and
  - b. releases and forever discharges British Columbia from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind which it ever may have had, has or may ever have against British Columbia with respect to
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any and all legal obligations under the Nisga'a Final Agreement or otherwise, or to provide in respect of the Kitsault Project capacity funding under this Agreement, revenue generation, revenue-sharing and economic benefits, third party studies or payments or disbursements of any kind, related to the Government Decisions taken, up to and including the termination date;

then paragraph 19.1 will apply and British Columbia will:

- c. within 60 days after the last date on which the Nisga'a Nation provides British Columbia with the covenant, agreement and release described above, make any suspended Annual Payment; and
- d. within the 150 days after the end of the BC Fiscal Year in which the termination occurs, provide the Annual Payment for that BC Fiscal Year prorated to the termination date in accordance with paragraph 19.2.

**20. Dispute Resolution**

- 20.1 The Parties will endeavour to resolve any Disputes in a co-operative, effective and timely manner.
- 20.2 Section 20 does not apply to Government Decisions, decisions or matters relating to the Consultation Process, payment disagreements under section 13 or to termination of this Agreement pursuant to paragraph 11.4, sections 17, 18, or 19.
- 20.3 Any Party may give written notice ("Notice of Dispute") to the other Party, which must include a summary of the particulars of the Dispute.
- 20.4 Where the Parties issue a Notice of Dispute, the Parties will meet within 10 working days of the receipt of the Notice of Dispute by the receiving Party and will attempt to resolve the Dispute through unassisted collaborative negotiation.
- 20.5 The Parties may agree to vary a procedural requirement contained in this section 20 as it applies to a particular Dispute.
- 20.6 The Parties may also choose other appropriate approaches to assist in reaching resolution of the dispute.

**21. Notice and Delivery**

- 21.1 Where in this Agreement any notice or other communication is required to be given by any of the Parties, it will be made in writing. It will be effectively given:
    - a. by personal delivery to the address of the Party set out in paragraph 21.2, on the date of delivery;
    - b. by pre-paid registered mail to the address of the Party mentioned in this Agreement, on the date the registered mail is delivered; or
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- c. by facsimile, to the facsimile number of the Party set out in this Agreement, on the date the facsimile is received.

21.2 The address and facsimile numbers of the Parties are:

- a. Nisga'a Nation  
Nisga'a Lisims Government  
PO Box 231  
New Aiyansh, BC V0J 1A0  
Fax: (250) 633-2367  
Attention: Chief Executive Officer
- b. British Columbia:  
Ministry of Aboriginal Relations and Reconciliation  
2927 Jutland Road  
Victoria, BC V8T 5J9  
Fax: (250) 387-6073  
Attention: Assistant Deputy Minister, Strategic Initiatives Division

21.3 Either Party may amend its address and facsimile information set out in paragraph 21.2 by providing notice of such amendment to the other Party in accordance with paragraph 21.1.

**22. General Provisions**

- 22.1 Nothing in this Agreement limits or prohibits British Columbia from entering into agreements with other parties to share mineral tax revenue associated with, or other financial or economic benefits related to the Mine, the Mine Area and specifically Ore Production.
  - 22.2 The Parties do not intend anything in this Agreement to constitute, or be interpreted or construed as, an amendment to the Nisga'a Treaty or any provision set out therein.
  - 22.3 This Agreement is not intended to be interpreted in a manner that would affect or interfere with any legislative authority of British Columbia or fetter the discretion of any statutory decision-maker.
  - 22.4 This Agreement is not a treaty or land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
  - 22.5 No partnership, joint venture, agency, fiduciary or employment relationship will be deemed to be created by this Agreement or by any actions of the Parties under this Agreement.
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- 22.6 Except as contemplated herein, this Agreement does not limit the position either Party may take in any legal or administrative proceedings or in any discussions or negotiations between the Parties.
- 22.7 This Agreement does not constitute an admission that any Government Decision or any government action of any kind whatsoever in regard to the Mine or the Mine Area, including decisions under the *Environmental Assessment Act* in regard to the Mine, has resulted or will result in any unjustified infringement of any Nisga'a section 35 rights, or has resulted or will result in any breach of any obligation of British Columbia to the Nisga'a Nation under the Nisga'a Final Agreement or otherwise.
- 22.8 Nothing in this Agreement is to be construed as an acceptance of or admission by a Party of the position of the other Party or as an admission of liability and without limiting the foregoing, this Agreement is not to be construed as an admission of an obligation to provide financial or economic benefits or compensation, including those provided in this Agreement, as part of British Columbia's obligations under the Nisga'a Final Agreement or under common law in relation to the Project.
- 22.9 This Agreement is to be governed by the applicable laws of Canada and British Columbia.
- 22.10 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 22.11 This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.
- 22.12 If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.
- 22.13 If any part of this Agreement is void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement, to the extent reasonably possible and as their respective interests may require, on a replacement for the severed part with a view to achieving the intent of the Parties as expressed in this Agreement.
- 22.14 All headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions.
- 22.15 In this Agreement, words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition otherwise requires.
- 22.16 The use of the word "including" is to be read as not limiting the generality of the preceding term or phrase.
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KITSALT ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT**

22.17 In this Agreement, any reference made to a statute includes all regulations made under that statute and any amendments or replacements.

22.18 No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Parties unless such waiver is expressed in writing by the Parties.

22.19 The following appendix is attached to and form part of this Agreement:

Appendix 1: Mine Area

22.20 This Agreement may be executed in counterparts and by facsimile or email, and such counterparts, when executed and delivered, will constitute an original and all such counterparts together will constitute one and the same agreement.

22.21 Any amendment of this Agreement agreed to by the Parties must be in writing and signed by the Parties.

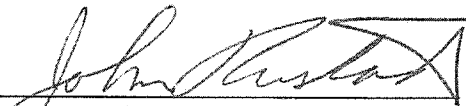
22.22 Notwithstanding any other provision of this Agreement, the Annual Payments to be provided by British Columbia under this Agreement are subject to:

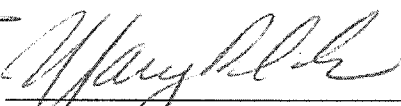
- a. There being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any Fiscal Year or part thereof when such payment is required, to make such payment; and
  - b. Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.
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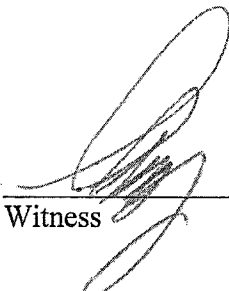
HER MAJESTY THE QUEEN IN  
RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA, as represented by  
the Minister of Aboriginal Relations and  
Reconciliation

  
Honourable Minister John Rustad

  
Witness

THE NISGA'A NATION, as represented by

  
President H. Mitchell Stevens

  
Witness

## APPENDIX 1: MINE AREA

