

March 27, 2019

KITSUMKALUM LNG COASTAL FUND AGREEMENT



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This Agreement is dated for reference March 27, 2019

BETWEEN:

**Her Majesty the Queen in right of the Province of British Columbia as
represented by the Minister of Indigenous Relations and Reconciliation**

(the "Province")

AND:

**KITSUMKALUM FIRST NATION, on behalf of itself and Kitsumkalum
Members, as represented by the Chief and Council of the Kitsumkalum
First Nation**

("Kitsumkalum")

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

RECITALS:

- A. The Province is committed to developing a liquefied natural gas (LNG) industry in British Columbia.
- B. Kitsumkalum has indicated that it is supportive of the development of the LNG industry provided that its interests are met, including addressing issues related to Aboriginal Rights, impacts on natural and cultural resources, socio-economic impacts, and the cumulative impacts of LNG development.
- C. Kitsumkalum and the Province wish to enter into this Agreement to confirm Kitsumkalum's support for an LNG industry.

NOW THEREFORE the Parties agree as follows:

PART 1 – DEFINITIONS, INTERPRETATION AND SCHEDULES

Definitions

- 1.1 In addition to the terms defined elsewhere in this Agreement:

"Aboriginal Rights" means asserted or determined aboriginal rights, including aboriginal title, which are or may be recognized and affirmed by section 35 of the *Constitution Act, 1982*;

“Annual Payment Date” means the date in each BC Fiscal Year that is 60 days after Kitsumkalum has provided an Annual Report, provided that if that date falls on a weekend or statutory holiday in British Columbia it means the next day that is not on a weekend or statutory holiday in British Columbia;

“Annual Report” means the report to be provided by Kitsumkalum to the Province in each BC Fiscal Year in accordance with 3.31;

“Associated Infrastructure” means any transmission infrastructure project reasonably necessary for electricity, natural gas and transportation and other utility corridor rights of way, including related facilities, power generation facilities, plant, equipment and other infrastructure easements and rights of way as well as matters related to the construction, operation and maintenance of an LNG Project including lay down areas and work camps, that relate to an LNG Project, but does not include any natural gas transmission line or the BC Hydro Terrace to Kitimat hydro-electric transmission line;

“Base Funding” mean Initial Base Funding and Ongoing Base Funding;

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

“Commencement of Construction” means the date on which an LNG proponent issues a notice or notices to proceed to its EPC Contractor in respect of all material engineering, procurement and construction contracts for:

- a) an LNG Project, or
- b) the expansion of LNG production at an existing LNG Project by the construction of additional LNG trains,

excluding other site assessment or exploration work;

“Effective Date” means the date on which this Agreement is executed and delivered by the Parties;

“EPC Contractor” means the engineering, procurement and construction contractor for an LNG Project;

“FID Date” means the date on which the proponent of an LNG Project makes a public announcement of a FID;

“FID Payments” means the payments set out in 3.7;

“Final Investment Decision” or **“FID”** means a final and unconditional decision of an LNG Project proponent to proceed with the construction of an LNG Project that, for certainty, includes that proponent having obtained:

- a) an environmental assessment certificate issued by the provincial Minister of Environment under section 17(3) of the *Environmental Assessment Act*, and a decision statement by the federal Minister of Environment under section 54 of the *Canadian Environmental Assessment Act*;
- b) a National Energy Board natural gas export licence that remains valid and effective for the project;
- c) the financial resources and a funding plan in place for the project; and
- d) all necessary internal and shareholder and investor approvals;

“Funding” means Base Funding and Incremental Project Funding;

“Governmental Action” means any provincial or federal approval, decision, consultation process, agreement, authorization or action of any kind whatsoever, including approvals, decisions, consultation processes, agreements, authorizations or actions of a provincial or federal agency or Crown corporation, relating to the planning, approval, construction, development, operation, reclamation or closure of an LNG Project and its Associated Infrastructure;

“Incremental Project Funding” means the FID Payments, In-Service Payments and LNG Expansion Payments;

“Incremental Project Funding Notice” means, in relation to an LNG Project, a notice provided by Kitsumkalum to the Province in accordance with 3.6;

“Initial Base Funding” means the payments set out in 3.2;

“In-Service Date” means June 1st of the year following which an LNG Project first begins exporting LNG;

“In-Service Payments” means the payments set out in 3.8;

“Kitsumkalum” means the “band”, as that term is defined in the *Indian Act*, named the “Kitsumkalum Band”;

“Kitsumkalum Members” means all those persons who are collectively entitled to exercise the Aboriginal Rights of Kitsumkalum and includes any person who is a “member of the band”, as that phrase is defined in the *Indian Act*, of Kitsumkalum;

“LNG” means natural gas in a liquid state or at a temperature below its boiling point;

“LNG Benefits Agreement” means the Kitsumkalum LNG Benefits Agreement entered into by the Parties concurrently with this Agreement and any other benefits agreement entered into by the Parties with respect to an LNG Project that is identified in that benefits agreement as an LNG Benefits Agreement for the purposes of this Agreement;

“LNG Expansion Payments” means the payments set out in 3.12;

“LNG Project” means any proposed or commissioned LNG project within the Map Area, any “LNG facility” within the meaning of the *Liquefied Natural Gas Income Tax Act (British Columbia)* within the Map Area, all LNG related marine shipping in the Map Area, and, for certainty, includes the following LNG projects:

- Aurora LNG;
- Cedar LNG;
- Kitimat LNG;
- LNG Canada;
- Prince Rupert LNG;
- Triton LNG;
- WCC LNG; and
- Woodside Energy.

“LNG Project Expansion Date” means June 1st of the year following which an additional LNG production train at an existing LNG Project first begins producing LNG;

“Map Area” means the area shown as “Map Area” on the map attached as Schedule “A”;

“Ongoing Base Funding” means the payments set out in 3.3;

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

“Provincial Official” means:

- a) any minister, public official, employee, contractor or agent of the Province;
- b) any government corporation or any director, officer, employee, contractor or agent of a government corporation; or

- c) any person acting as a decision maker under any enactment of the Province;

“Specified Date” means, in relation to an LNG Project, the date on which Kitsumkalum provides the Province an Incremental Project Funding Notice in respect of that LNG Project; and

“Term” means the term of this Agreement as set out in 7.2.

Interpretation

1.2 For purposes of this Agreement:

- a) “this Agreement” means this Kitsumkalum LNG Coastal Fund, including the Schedules and any agreement, document or instrument executed or delivered pursuant thereto;
- b) “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
- c) the headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- d) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- e) any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity;
- f) a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it; and
- g) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

Schedules

1.3 Schedule A – Map Area is a schedule to and forms part of this Agreement.

1.4 Schedule B – Reporting Template is a schedule to and forms part of this Agreement.

PART 2 - PURPOSE AND SCOPE

Purpose

2.1 The purpose of this Agreement is:

- a) to enable the Parties to share in the benefits associated with the development of an LNG industry on the north coast of British Columbia and reflect Kitsumkalum's support for that LNG industry, subject to the terms and conditions of this Agreement; and
- b) facilitate the Parties working together to establish an LNG industry in the Map Area that is environmentally and socially responsible and respectful of Kitsumkalum's Aboriginal Rights.

Scope

2.2 For certainty, this Agreement applies to all LNG Projects.

PART 3 - FINANCIAL BENEFITS

3.1 Subject to the terms and conditions of this Agreement, the Province will make payments to Kitsumkalum as set out in this Part.

Base Funding

3.2 **Initial Base Funding.** The Province will provide Kitsumkalum with Initial Base Funding in the amount of \$1,500,000, as follows:

- a) \$500,000 within 60 days of the Effective Date;
- b) \$500,000 on the Annual Payment Date within the BC Fiscal Year immediately following the payment made in accordance with a); and
- c) \$500,000 on the Annual Payment Date within the BC Fiscal Year immediately following the payment made in accordance with b).

3.3 **Ongoing Base Funding.** The Province will provide Kitsumkalum with Ongoing Base Funding payments, as follows:

- a) a one-time payment of \$250,000, payable within 60 days of the Effective Date; and
- b) ongoing annual payments of \$500,000 each on the Annual Payment Date in each BC Fiscal Year following the Initial Base Funding payment made in accordance with 3.2 c).

- 3.4 Ongoing Base Funding payments provided in accordance with 3.3 b) made after the initial payment will be adjusted annually for inflation equivalent to changes in the annual BC Final Domestic Demand Implicit Price Index published by Statistics Canada.
- 3.5 For certainty the obligation to provide Base Funding is only triggered on a one-time basis and Base Funding is not provided for each LNG Project.

Incremental Project Funding

- 3.6 After a FID Date for an LNG Project has occurred, Kitsumkalum will determine whether it wishes to receive Incremental Project Funding and provide the assurances set out in sections 4.2 and 4.6 in respect of that Project and, if so, will send the Province a written notice confirming that it wishes to trigger Incremental Project Funding in relation to that LNG Project.

FID Payments

- 3.7 For each LNG Project in respect of which a FID Date has occurred and Kitsumkalum has provided the Province with an Incremental Project Funding Notice, the Province will, within 60 days of the Specified Date, and annually thereafter on the Annual Payment Date until the In-Service Date is reached, provide FID Payments to Kitsumkalum in an amount equal to:

$$\$0.0033 \times \text{Estimated LNG Production}$$

where "Estimated LNG Production" means the volume of LNG expressed in tonnes per annum to be produced at that LNG Project as of the In-Service Date. For certainty, where the volume of LNG to be produced at an LNG Project will be phased in over time, "Estimated LNG Production" means the volume of LNG in tonnes per annum to be produced by the number of LNG trains to be licenced and in production at the In-Service Date and not at full build out of the LNG Project.

In-Service Payments

- 3.8 For each LNG Project that is commissioned and begins producing LNG and in respect of which Kitsumkalum has provided the Province with an Incremental Project Funding Notice, the Province will, within 60 days of the In-Service Date and annually thereafter on the Annual Payment Date, provide In-Service Payments to Kitsumkalum in an amount equal to:

$$\$0.02 \times \text{Actual LNG Production}$$

where "Actual LNG Production" means the volume of LNG expressed in tonnes that was reported to the Province in accordance with applicable provincial legislation as having been produced at that LNG Project in the preceding calendar year.

- 3.9 Notwithstanding 3.8, the Province may adjust the amount of the first In-Service Payment to account for any FID Payment made in relation to the Actual LNG Production for the initial In-Service Payment period, such that the first In-Service Payment will be an amount equal to $(\$0.02 - \$0.0033) \times \text{Actual LNG Production}$.
- 3.10 For certainty, In-Service Payments replace FID Payments and the Province will not continue to make FID Payments in respect of an LNG Project once an In-Service Date in respect of that LNG Project is reached.
- 3.11 In-Service Payments made after the initial In-Service Payment will be adjusted annually for inflation equivalent to changes in the annual BC Final Domestic Demand Implicit Price Index published by Statistics Canada.

LNG Expansion Payments

- 3.12 If an LNG Project in respect of which Kitsumkalum is receiving In-Service Payments expands its LNG production capacity, the Province will add to each annual In-Service Payment to be provided during the period from the Commencement of Construction of each additional LNG train to the LNG Project Expansion Date, an amount equal to:

$$\$0.0033 \times \text{Estimated Additional LNG Production}$$

where "Estimated Additional LNG Production" means the volume of LNG expressed in tonnes per annum to be produced by each additional LNG train under construction to be licenced and in production at the LNG Project Expansion Date.

- 3.13 Notwithstanding 3.12, the Province may adjust the amount of the first In-Service Payment made after the LNG Project Expansion Date to account for any LNG Expansion Payment made in relation to the Actual LNG Production for that In-Service Payment period, such that the In-Service Payment will be an amount equal to $(\$0.02 - \$0.0033) \times \text{Actual LNG Production}$.
- 3.14 For certainty, the Province will not continue to provide LNG Expansion Payments in respect of an LNG Project once the LNG Project Expansion Date in respect of that LNG Project is reached.

Suspension and Adjustment of Funding

- 3.15 The Province may suspend providing Ongoing Base Funding if:
- a) within six months after the FID Date, active site assessment, exploratory work or other preliminary construction activity is not occurring in relation to any LNG Project and the Province reasonably determines that it is unlikely that the Commencement of Construction in relation to any LNG Project will occur within one year from the FID Date;

- b) after the Commencement of Construction of any LNG Project, the actual construction of all LNG Projects is delayed or suspended for six months or longer during any applicable payment period; or
- c) within five years after the Commencement of Construction of any LNG Project, no LNG Project is commissioned and producing LNG.

3.16 If the Province suspends the Ongoing Base Funding in accordance with:

- a) 3.15 a) and Commencement of Construction of any LNG Project subsequently occurs;
- b) 3.15 b) and the actual construction of any LNG Project resumes; or
- c) 3.15 c) and any LNG Project is subsequently commissioned and begins producing LNG;

the Province will resume providing Ongoing Base Funding.

3.17 The Province may suspend FID Payments in respect of an LNG Project if:

- a) within six months after the FID Date, active site assessment, exploratory work or other preliminary construction activity is not occurring in relation to any LNG Project and the Province reasonably determines that it is unlikely that the Commencement of Construction in relation to any LNG Project will occur within one year from the FID Date; or
- b) after the Commencement of Construction of that LNG Project, the actual construction of that LNG Project is delayed or suspended for six months or longer during any applicable payment period.

3.18 If the Province suspends the FID Payments in accordance with:

- a) 3.17 a) and Commencement of Construction of that LNG Project subsequently occurs; or
- b) 3.17 b) and the actual construction of that LNG Project resumes;

the Province will resume providing FID Payments.

3.19 The Province may suspend LNG Expansion Payments in respect of an LNG Project if after the Commencement of Construction of an additional LNG train the actual construction of that additional LNG train is delayed or suspended for six months or longer during any applicable payment period.

3.20 If the Province suspends LNG Expansion Payments in accordance with 3.19 and the actual construction of that additional LNG train resumes, the Province will resume providing the LNG Expansion Payments.

- 3.21 If the Province resumes Ongoing Base Funding in accordance with 3.16, FID Payments in accordance with 3.18, or LNG Expansion Payments in accordance with 3.20, it may adjust the first Ongoing Base Funding payment, FID Payment or LNG Expansion Payment to be provided after the resumption on a pro rata basis equal to the number of months in the applicable annual payment period in which the payment was not suspended divided by 12 months.
- 3.22 If there is only one LNG Project producing LNG and that LNG Project suspends its operations for any reason and does not report the production of any LNG to the Province in accordance with applicable provincial legislation for a total of six months or more during a calendar year, the Province may reduce the amount of any Ongoing Base Funding payment on a pro rata basis equal to the number of months in the calendar year that no LNG production is reported divided by 12 months.
- 3.23 The Province may suspend providing Funding to Kitsumkalum if:
- a) Kitsumkalum fails to perform or is in breach of any of its material obligations under this Agreement or any LNG Benefits Agreement;
 - b) any representation or warranty made by Kitsumkalum in this Agreement or any LNG Benefits Agreement is untrue or incorrect;
 - c) Kitsumkalum initiates or supports any legal action that challenges, directly or indirectly, any LNG Project, its Associated Infrastructure or any related Governmental Action; or
 - d) Kitsumkalum supports or participates in any act that frustrates, delays, stops or otherwise physically impedes the right of the Province or an LNG Project proponent, or any of their respective employees, contractors, agents, representatives, or invitees, to gain access to any part of an LNG Project or its Associated Infrastructure to carry out any activities associated with that LNG Project.
- 3.24 Notwithstanding 3.23, the Province may not suspend providing Incremental Project Funding to Kitsumkalum in respect of an LNG Project for which it has provided an Incremental Project Funding Notice:
- a) under 3.23 c), if Kitsumkalum does not initiate or support any legal action that challenges, directly or indirectly, that LNG Project, its Associated Infrastructure or any related Governmental Action; or
 - b) under 3.23 d), if Kitsumkalum does not support or participate in any act that frustrates, delays, stops or otherwise physically impedes the right of the Province or that LNG Project proponent, or any of their respective employees, contractors, agents, representatives, or invitees, to gain access to any part of that LNG Project or its Associated Infrastructure to carry out any activities associated with that LNG Project.

- 3.25 Prior to the Province suspending Funding in accordance with 3.23, the Province will notify Kitsumkalum of the proposed suspension and the Parties will meet within 30 days of such notification to discuss and attempt to resolve the matter.
- 3.26 For certainty, nothing in 3.25 limits the ability of the Province to suspend Funding if Kitsumkalum does not meet with the Province, or the Parties are not able to resolve the matter, in accordance with 3.25.

Delivery of Funding by the Province

- 3.27 Kitsumkalum will establish and maintain in its name an account at a Canadian Chartered Bank for the purposes of receiving Funding payments into which direct deposits may be made by the Province and it will provide the Province with the address and applicable account information to enable the Province to make such deposits.
- 3.28 The Province will deposit Funding payments into the account established under 3.27 on the dates set out in this Agreement.

Use of Funding

- 3.29 Kitsumkalum will use the Funding to pursue initiatives consistent with Kitsumkalum's socio-economic objective of enhancing the well-being of Kitsumkalum Members.
- 3.30 For certainty, Kitsumkalum may use all or any portion of the Funding it receives in any given year for the purposes set out in 3.29, or hold such payments for use for those purposes in future years.

Reporting

- 3.31 For the purposes of this Agreement, Kitsumkalum will, on or before July 31st of each year, make available to Kitsumkalum Members and provide to the Province an Annual Report, substantially in the form attached as Schedule B, containing the following information:
- a) expenditures made in the previous year from the Funding; and
 - b) how those expenditures are consistent with the purposes set out in 3.29.

Consolidation of Base Funding and Incremental Funding Payments

- 3.32 The Parties may agree to consolidate the Base Funding and Incremental Project Funding payments into one annual payment.

Review of Incremental Project Funding Amounts for LNG Projects after 10 years

- 3.33 As soon as practicable after Kitsumkalum provides an Incremental Project Funding Notice for each LNG Project that makes a FID after the 10th anniversary of the Effective Date, the Parties will meet and discuss amending this Agreement to adjust the Incremental Project Funding in respect of that LNG Project to an amount equal to what that payment would have been if that payment had been adjusted annually for inflation equivalent to changes in the annual BC Final Domestic Demand Implicit Price Index published by Statistics Canada for each of the five years preceding the year in which the Incremental Payment Funding Notice was provided.
- 3.34 For certainty, nothing in 3.33 requires the Parties to reach an agreement on any amendment to this Agreement or the Province having to adjust the amount of Incremental Project Funding.

Changes to Base Funding and Incremental Funding Payments

- 3.35 If, after the Effective Date, the Province provides additional financial benefits to another First Nation in the Map Area by changing the methodology used to calculate the equivalent of Base Funding and Incremental Funding in that First Nation's Coastal Fund Agreement, the Province will notify Kitsumkalum and the Parties will discuss the changes in the calculation methodology, and may agree to amend this agreement to reflect the revised methodology.

PART 4 – KITSUMKALUM ASSURANCES FOR LNG PROJECTS AND OTHER COVENANTS

LNG Assurances

- 4.1 As long as the Province is not in default of its material obligations under this Agreement Kitsumkalum will:
- a) support the development of LNG Projects generally, provided that they are developed in a manner that is environmentally and socially responsible and respectful of Kitsumkalum's Aboriginal Rights;
 - b) participate in good faith in applicable environmental assessment and regulatory processes related to all LNG Projects; and
 - c) not oppose the planning, approval, construction, development and operation of all LNG Projects including making any public pronouncements opposing all LNG Projects.

- 4.2 As long as the Province is not in default of its material obligations under this Agreement or an LNG Project Benefits Agreement in respect of the applicable LNG Project, effective as of the Specified Date for that LNG Project, Kitsumkalum will:
- a) not oppose the planning, approval, construction, development and operation of that LNG Project, including making any public pronouncements opposing that LNG Project;
 - b) acknowledge that it is being consulted and accommodated in relation to that LNG Project, its Associated Infrastructure and any related Governmental Action;
 - c) not support or participate in any act that frustrates, delays, stops or otherwise physically impedes the right of the Province or an LNG Project proponent, or any of their respective employees, contractors, agents, representatives, or invitees to gain access to any part of that LNG Project or its Associated Infrastructure to carry out any activities associated with that LNG Project, but this does not prevent Kitsumkalum from raising concerns about that LNG Project in any applicable federal or provincial environmental assessment process or with the Province if Kitsumkalum is not participating in any of those processes;
 - d) not seek any other financial contributions from the Province in respect of that LNG Project and, if requested by the Province, provide an acknowledgement that the Crown has fulfilled any obligation it may have to provide financial or economic accommodation, economic or other benefits including lands, capacity funding or compensation of any kind whatsoever in relation to that LNG Project, its Associated Infrastructure and any related Governmental Action, but this does not prevent Kitsumkalum from participating in provincial programs generally available to First Nations;
 - e) not support actions of any kind whatsoever by a Kitsumkalum Member that would interfere with, delay or otherwise oppose that LNG Project, and if requested take reasonable steps to assist the Province in dealing with such situations; and
 - f) not initiate or participate in, directly or indirectly, any legal actions or proceeding, for any reason whatsoever, that challenge, directly or indirectly, that LNG Project, its Associated Infrastructure or any related Governmental Action.
- 4.3 If, within six months after a FID Date, Kitsumkalum has not provided the Province with an Incremental Project Funding Notice in respect of that LNG Project, the Province may by written notice request that the Parties meet to discuss the matter.

- 4.4 The Parties will meet within 30 days of Kitsumkalum receiving a notice under 4.3 to discuss why Kitsumkalum has not provided an Incremental Project Funding Notice in respect of that LNG Project.

LNG Project Agreement - Releases and Discharges

- 4.5 If an LNG Benefits Agreement is in effect in relation to an LNG Project, that LNG Benefits Agreement will deal with the release and discharge of any claims by Kitsumkalum against the Crown in relation to:
- a) the potential infringement of that LNG Project on Kitsumkalum's Aboriginal Rights, and
 - b) the Crown's consultation and accommodation obligations in respect of that LNG Project.
- 4.6 If there is no LNG Benefits Agreement in effect in relation to an LNG Project, as long as the Province is not in default of any of its material obligations under this Agreement, effective as of the Specified Date for that LNG Project, Kitsumkalum:
- a) releases and discharges the Province and Provincial Officials from all claims of infringement of its Aboriginal Rights in relation to that LNG Project, its Associated Infrastructure and any related Governmental Action;
 - b) releases and discharges the Province and Provincial Officials from all claims with respect to the Crown's obligation to consult and accommodate in relation to that LNG Project, its Associated Infrastructure and any related Governmental Action; and
 - c) acknowledges that the Province has fulfilled all obligations it may have to provide Kitsumkalum with financial or economic accommodation, economic or other benefits including lands, capacity funding, and payments or compensation of any kind whatsoever that may be required in relation to that LNG Project, its Associated Infrastructure and any related Governmental Action, but this does not prevent Kitsumkalum from participating in provincial programs generally available to First Nations.

PART 5 - CONDITIONS PRECEDENT

Conditions Precedent to Funding

- 5.1 Notwithstanding any other provision in this Agreement, any payment of funds by the Province to Kitsumkalum under this Agreement is subject to:

- a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable the Province in any fiscal year or part thereof when such payment is required, to make such payment;
- 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;
- c) Kitsumkalum being in compliance with all of its material obligations under this Agreement;
- d) Kitsumkalum representations and warranties under this Agreement being true and correct; and
- e) the Province having received an Annual Report from Kitsumkalum in accordance with 3.31.

Conditions Precedent to Province's Other Obligations

5.2 In addition to 5.1, the Province's obligations under this Agreement are subject to:

- a) Kitsumkalum delivering to the Province a Band Council Resolution approving this Agreement and authorizing the Chief and Council to sign this Agreement;
- b) the Province having obtained all required approvals, including Cabinet and Treasury Board approval; and
- c) Kitsumkalum representations and warranties under this Agreement being true and correct on the Effective Date.

5.3 For certainty, the provision by the Province to Kitsumkalum of any annual payment under this Agreement is dependent on receipt of the Annual Reports in accordance with 3.31 on or before the applicable date.

PART 6 - REPRESENTATIONS AND WARRANTIES

Kitsumkalum Representations

6.1 Kitsumkalum represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province 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 Kitsumkalum Members;

- b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement for and on behalf of Kitsumkalum Members; and,
- c) this Agreement is a valid and binding obligation upon it.

Provincial Representations

6.2 The Province represents and warrants to Kitsumkalum, with the intent and understanding that they will be relied on by Kitsumkalum in entering into this Agreement, that:

- a) it has the legal power, capacity and authority to enter into this Agreement;
- b) It has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement; and
- c) this Agreement is a valid and binding obligation upon it.

PART 7 - COMMENCEMENT, TERM AND TERMINATION

Commencement

7.1 This Agreement will commence and the Parties' obligations under this Agreement will take effect on the Effective Date.

Term

7.2 This Agreement will continue until the earlier of the following events:

- a) termination by the Province in accordance with 7.4; or
- b) no LNG Project is continuing to operate and produce LNG.

7.3 In this Part, an "Event of Default" means any of the following:

- a) Kitsumkalum failing to perform or being in breach of any of its material obligations under this Agreement;
- b) any representation or warranty made by Kitsumkalum is untrue or incorrect; and
- c) Kitsumkalum initiating or supporting any legal action that challenges, directly or indirectly, any LNG Project, its Associated Infrastructure or any related Governmental Action in respect of which Kitsumkalum has issued an Incremental Project Funding Notice, or supporting or participating in

any act that frustrates, delays, stops or otherwise physically impedes the right of the Province or an LNG Project proponent, or any of their respective employees, contractors, agents, representatives, or invitees to gain access to any part of an LNG Project or its Associated Infrastructure to carry out any activities associated with that LNG Project.

Province's options on default

7.4 Notwithstanding any other provision in this Agreement, on the happening of an Event of Default, or at any time thereafter, the Province may, at its option, elect to do any one or more of the following:

- a) by written notice to Kitsumkalum, require that the Event of Default be remedied within a time period identified in the notice; or
- b) by written notice to Kitsumkalum, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to expiration of any time period specified under 7.4 a).

Delay not a waiver

7.5 No failure or delay on the part of the Province to exercise its rights in relation to an Event of Default will constitute a waiver by the Province of such rights.

Survival

7.6 Notwithstanding 7.2, sections 4.6, 10.1 and 10.2 survive the termination of this Agreement.

PART 8 - DISPUTE RESOLUTION

Dispute Resolution

8.1 Where a dispute arises regarding the interpretation of the Agreement, the Parties' representatives will meet within 30 days to attempt to resolve the dispute and where the Parties are unable to resolve the dispute within 30 days, the Parties may agree to utilize other dispute resolution mechanisms, including mediation.

PART 9 – NOTICE AND DELIVERY

Notices

9.1 Any notice, document, statement or report under this Agreement must be in writing, and will be deemed validly given to and received by the other Party, if served personally, on the date of personal service or, if delivered by mail, e-mail or facsimile copier, when received as follows:

if to the Province:

Ministry of Indigenous Relations and Reconciliation
P.O. Box 9100 Stn Prov Govt
Victoria, BC V9W 9B1
Fax: 250-387-6073
Attention: Assistant Deputy Minister, Negotiations and Regional
Operations Division

and if to Kitsumkalum:

Kitsumkalum First Nation
P.O. Box 544
Terrace, BC V8G 4B5
Fax: (250) 635-4622
Attention: Chief Councillor and Band Manager

Change of Address

- 9.2 Either Party may, from time to time, give written or e-mail notice to the other Party of any change of address or facsimile number of the Party giving such notice and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the Party giving such notice.

Electronic Notice

- 9.3 The Parties agree that they will utilize electronic and other methods of communication for the purposes of engagement whenever practicable and appropriate.

PART 10 - GENERAL PROVISION

Not a Treaty

- 10.1 The Agreement does not:
- a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982*; or
 - b) affirm, recognize, abrogate or derogate from any Kitsumkalum rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

No Admissions Provisions

10.2 Nothing in the Agreement:

- a) is an admission by the Province of the validity of the claims by Kitsumkalum to any Aboriginal Right, or that any LNG Project, Associated Infrastructure or Governmental Action has or will result in an unjustifiable infringement of any Aboriginal Right of Kitsumkalum;
- b) is an admission by the Province that it has an obligation to provide financial or economical accommodation to Kitsumkalum in relation to any LNG Project;
- c) precludes Kitsumkalum from bringing claims for breach of this Agreement;
- d) precludes Kitsumkalum from identifying, or seeking to resolve, concerns about potential impacts of LNG Projects in applicable environmental assessment or regulatory processes;
- e) limits any obligation that a proponent of an LNG Project may have in accordance with federal or provincial law to engage with Kitsumkalum in applicable environmental assessment or regulatory processes;
- f) precludes Kitsumkalum from taking steps in accordance with federal and provincial law with respect to concerns Kitsumkalum may have as a result of any LNG Project proponent being in breach of its obligations under any environmental or regulatory approvals;
- g) precludes or limits the Province from relying on the Funding payments made under this Agreement in any legal proceeding with respect to the adequacy of accommodation or compensation for any alleged infringement of Kitsumkalum's Aboriginal Rights in relation to any LNG Project; or
- h) precludes Kitsumkalum from identifying concerns about the enforcement of conditions attached to a Government Action with the relevant provincial agencies.

Entire Agreement

- 10.3 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.

Amendment

- 10.4 The Parties may agree to amend this Agreement in writing.

Validity of Agreement

10.5 If any part of this Agreement is void or unenforceable at law:

- a) the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and
- b) the Parties will negotiate and attempt to reach agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.

Further Acts and Assurances

10.6 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.

No Implied Waiver

10.7 Any waiver of:

- a) a provision of this Agreement;
- b) the performance by a Party of an obligation under this Agreement; or
- c) a default by a Party of an obligation under this Agreement will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.

Assignment

10.8 Neither Party will assign, either directly or indirectly, this Agreement or any right under this Agreement, without the prior written consent of the other Party.

Governing Law

10.9 This Agreement will be governed by and construed in accordance with the laws of British Columbia.

Execution in Counterpart


10.10 This Agreement may be executed in counterparts, each of which will be deemed to be an original and which taken together will be deemed to constitute one and the same instrument.

Electronic Delivery

10.11 Delivery of an executed signature page to this Agreement by a Party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such Party.

IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:

Signed on behalf of Kitsumkalum by its
authorized signatories



Chief Counsellor, Don Roberts
Sim'oogit Wiidildaldil Na'algyax Gaax



Alex Bolton, Sim'oogit Lagaax



Witness to Kitsumkalum authorized
signatories


Gerald Wesley

Printed name of witness

march 27, 2019

Date

**Signed on behalf of Her Majesty the
Queen In Right of the Province of
British Columbia by as represented by
the Minister of Indigenous Relations and
Reconciliation**



Minister Scott Fraser or authorized
representative

march 27, 2019

Date

Schedule A – Map of Other LNG Project Area

Schedule A: Map Area



Schedule B
Annual Report Template

Community Priority	Planned Expenditures	Actual Expenditures