

KITSUMKALUM FIRST NATION
INCREMENTAL TREATY AGREEMENT

KITSUMKALUM FIRST NATION



BRITISH
COLUMBIA

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INCREMENTAL TREATY AGREEMENT

This Agreement is dated for reference the ____ day of _____, 2013.

BETWEEN:

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

AND:

Kitsumkalum First Nation, on behalf of itself and its Members, as represented by its Chief and Council

(Collectively referred to as the "Parties" and individually referred to as a "Party")

WHEREAS:

- A. Kitsumkalum asserts that it has used, occupied, governed and exercised exclusive ownership of its traditional territory from time immemorial.
- B. Kitsumkalum is engaged with the Province and Canada in negotiating an Agreement-in-Principle in accordance with Stage 4 of the British Columbia Treaty Commission process.
- C. The Parties are desirous of creating momentum in their treaty negotiations and wish to conclude an Agreement-in-Principle and Final Agreement.
- D. This Agreement will provide Kitsumkalum with incremental treaty benefits in advance of a Final Agreement and is in the spirit and vision of the New Relationship.

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 **Definitions.** In this Agreement and the Recitals to this Agreement, unless the context requires otherwise:

"AIP" means the Kitsumkalum First Nation Agreement-in-Principle currently being negotiated by the Parties and Canada in accordance with Stage 4 of the British Columbia Treaty Commission process;

"AIP Date" means the date on which the Kitsumkalum community approval process is complete and through that process the Kitsumkalum community have approved the AIP as initialed by the respective Chief Negotiators as part of completing Stage 4 of the British Columbia Treaty Commission process;

"Chief" means, in respect of Kitsumkalum, "chief" within the meaning of the Indian Act;

"Closing" means the completion of those land transfers, deliveries and other matters contemplated by this Agreement in relation to a transfer of the Lands by the Province to a Designated Corporation on a Closing Date;

"Closing Date" means the date or dates when the Lands are to be transferred to a Designated Corporation and shall be either the thirtieth (30th) day following the satisfaction or waiver of the last of the conditions to be either satisfied or waived in accordance with section 5.12 or such other date or dates that the Parties may agree, provided that if the Land Title Office is closed on any such day the transfer will be closed on the next day that office is open;

"Community Expansion Parcel" means, those fee simple lands legally described as Parcel Identification Number 90111233, Block A, District Lot 8122, Range 5 Coast District as shown in Part 1 of Schedule "1b" ;

"Council" and "Band Council" mean, in respect of Kitsumkalum, the elected "council" within the meaning of the *Indian Act*;

"Crown Corridor" means a highway (as defined in the *Transportation Act*) and the area of any other road, right-of-way, easement or licence over Crown land that is used for transportation or public utility purposes and that is identified in Schedule "4";

"Crown grant" means a Crown grant as defined in the Land Act;

"Designated Corporation" means an entity having the attributes set out in subsection 4.1(f) which Kitsumkalum has designated to take registered fee simple to any of the Lands;

"Economic Development Parcel" means those fee simple lands legally described as Parcel Identification Number 90111231, Block A, District Lot 8123, Range 5 Coast District as shown in Part 1 of Schedule "1c";

"Final Agreement" means the Kitsumkalum First Nation Final Agreement to be concluded by Canada, the Province and Kitsumkalum at the conclusion of Stage 5 of the British Columbia Treaty Commission process;

"Government Action" means all processes, decisions, authorizations, permits, licenses, approvals, Crown land dispositions, agreements, and other actions whatsoever, issued, granted, entered into or otherwise taken by a Provincial Official either before or after the date of this Agreement;

"Indian Act" means the *Indian Act*, R.S.C. 1985, c.1-5;

"ITA" means this Incremental Treaty Agreement;

"Kitsumkalum" means the "band", as that term is defined in the Indian Act, named the "Kitsumkalum First Nation" and includes all Members;

"Kitsumkalum Traditional Territory" means the area as shown in Schedule "5"

"Lands" means:

Community Expansion Parcel - Block A, District Lot 8122 Range 5, Coast District as shown in Part 1b of Schedule "1" and, for further clarity, excludes any land below the natural boundary (as defined in the *Land Act*) and excludes the area of any Crown Corridor; and

Economic Development Parcel – Block A, District Lot 8123, Range 5, Coast District as shown in Part 1c of Schedule "1" and, for further clarity, excludes any land below the natural boundary (as defined in the *Land Act*) and excludes the area of any Crown Corridor;

"Member" means any person who is:

- (i) a "member of the band", as that phrase is defined in the Indian Act, of the Kitsumkalum First Nation band,

or

- (ii) enrolled or entitled to be enrolled as a beneficiary under the Final Agreement;

and their heirs, descendants, legal representatives, successors and assigns;

"New Relationship" means the vision developed in March 2005 by the Province and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and Union of BC Indian Chiefs, that resulted in a new relationship founded on principles of mutual respect, recognition and reconciliation of Aboriginal rights;

"Permitted Encumbrances" means the reservations, exceptions, liens, charges, and interests as described in Part 2 of Schedule "1" for each of the Lands;

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

"Provincial Official" means

- (i) the Province,
- (ii) any minister, public official, employee, or agent of the Province,
- (iii) any government corporation,
- (iv) any director, officer, employee, or contractor acting on behalf of a government corporation, the Province or an agent of the Province, or
- (v) any person acting as a decision maker under any enactment of the Province.

1.2 **Interpretation.** For purposes of this Agreement, except as otherwise expressly provided:

- a) "this Agreement" means this Incremental Treaty Agreement, including the Schedules hereto, and any agreement, document or instrument entered into, made or delivered pursuant to the terms hereof, as any of them may from time to time be supplemented or amended and in effect;
- b) all references in this Agreement to a designated "Article", "section", "subsection" or other subdivision or to a Schedule are to the designated Article, section, subsection or other subdivision of, or Schedule to, this Agreement;

- c) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, section, subsection or other subdivision or Schedule;
- d) the headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision thereof;
- e) a reference in this Agreement to any particular enactment or other statute or regulation or any particular section or portion thereof shall be deemed to be a reference to any enactment, statute, regulation or to any particular section or portion thereof, as the case may be, which is enacted in substitution therefore or in replacement thereof;
- f) 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;
- g) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural and vice versa;
- h) the use of "including" is to be read as not limiting the generality of the preceding term or phrase;
- i) there shall be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of any Party;
- j) any reference to the delivery on Closing of an agreement or document "in the form" of an attached schedule means an agreement or document substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Province and Kitsumkalum authorized for that purpose; and
- k) each and every release, covenant and other agreement given, and action to be taken, by Kitsumkalum in this Agreement means Kitsumkalum acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by Kitsumkalum on its own behalf, and for and on behalf of its Members.

1.3 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

1.4 **Schedules.** The following are the Schedules to this Agreement:

- Schedule "1" – Map of Lands for Illustrative Purposes and Permitted Encumbrances

- Schedule "2" – Additions to Reserve Restrictive Covenant
- Schedule "3" – Release and Waiver of Designated Corporation
- Schedule "4" – Crown Corridors
- Schedule "5" – Kitsumkalum Traditional Territory

ARTICLE 2 **PURPOSES**

2.1 Purposes. The purposes of this Agreement are to:

- a) demonstrate the commitment of the Parties to concluding a Final Agreement;
- b) provide Kitsumkalum with incremental treaty benefits in advance of a Final Agreement, in the spirit of the New Relationship. The Lands to be transferred in accordance with this Agreement will become an element of the Final Agreement;
- c) assist in developing capacity within Kitsumkalum to enable it to more effectively negotiate and implement a Final Agreement and pursue economic development initiatives; and
- d) establish additional certainty on the land base in the Kitsumkalum Traditional Territory.

ARTICLE 3 **COMING INTO EFFECT AND TERM**

3.1 Effective Date. This Agreement comes into effect when it has been executed and delivered by both Parties.

3.2 Term. The transfer of the Lands under this Agreement is subject to the satisfaction or waiver of the conditions set out in section 5.12 on or before the dates provided therein and subject to the Closing conditions set out in section 5.13. Subject to section 3.3 the covenants of the parties will survive until the effective date of the Final Agreement or for such other period that may be expressly provided in relation to any particular covenant, whichever is first to occur. If no survival period is expressly provided for any particular covenant that covenant shall continue indefinitely or until the effective date of the Final Agreement.

- 3.3 **Termination and Extension.** Despite any other provision of this Agreement the parties may by mutual written agreement terminate this Agreement or extend or abridge any time period or date specified in this Agreement.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

- 4.1 **Kitsumkalum Representations.** Kitsumkalum represents and warrants to the Province, with the intent and understanding that the Province will rely thereon in entering into this Agreement, that:
- a) it enters into this Agreement for, and on behalf of, its Members;
 - b) its Members have provided it with a mandate to negotiate an AIP and Final Agreement and it is committed to attempt to conclude such negotiations;
 - c) it, as represented by its Chief and Council, has the legal power, capacity and authority to accept, execute and deliver this Agreement and to carry out its obligations under this Agreement on behalf of Kitsumkalum and its Members;
 - d) this Agreement is binding upon and enforceable against Kitsumkalum and its Members in accordance with its terms;
 - e) this Agreement has been duly authorized, executed and delivered by and on behalf of Kitsumkalum and its Members;
 - f) any corporation designated by Kitsumkalum as a Designated Corporation for the purposes of this Agreement will be, at the time of such designation and on the Closing Date, incorporated or registered under the laws of British Columbia all of the issued and outstanding shares of which are owned:
 - (i) legally and beneficially, by Kitsumkalum; or
 - (ii) legally by one or more Members, each of whom is acting as a bare trustee on behalf of Kitsumkalum as sole beneficial owner; and
 - g) any Designated Corporation has the power and capacity to enter into each transaction and agreement to which it is a Party in accordance with this Agreement and to carry out its obligations in connection with such transactions and agreements.
- 4.2 **Provincial Representations.** The Province represents and warrants that on the Closing Date each of the representations and warranties set out below will be

true and complete and acknowledges that Kitsumkalum has entered into this Agreement in reliance on the truthfulness of each of these representations and warranties:

- a) it has the power and authority to enter into this Agreement;
- b) on satisfaction of the conditions set out in section 5.12 it will have the power and authority to cause fee simple title to the Lands to be transferred to a Designated Corporation as contemplated by this Agreement; and
- c) it is supportive of accelerating efforts to negotiate an AIP and a Final Agreement.

ARTICLE 5

LAND TRANSFERS

5.1 Transfers of the Lands. Subject to the Permitted Encumbrances and the terms and conditions of this Agreement, the Province will, as soon as practicable after the AIP Date, transfer to a Designated Corporation in fee simple:

- a) the Community Expansion Parcel; and
- b) the Economic Development Parcel.

5.2 Subsurface Resources. Kitsumkalum acknowledges that the subsurface resources located on or under the Lands will not form part of the Lands transferred to Kitsumkalum and nothing in this Agreement limits the Province from collecting and receiving fees or other payments for administering under Provincial Law the exploration, development, extraction and production of subsurface resources from the Lands. Notwithstanding the foregoing provisions of this section 5.2, the Parties agree that a Final Agreement will include a transfer to Kitsumkalum of the subsurface resources under the Lands and owned by the Province as of the date of the Province's ratification of the Final Agreement.

5.3 Designation and Notice by Kitsumkalum. As soon as reasonably possible but in any event not later than 45 days after the Province gives notice to Kitsumkalum that the surveys for the Lands have been accepted and approved by the Surveyor General as provided in subsection 5.12(d) Kitsumkalum will deliver to the Province a direction identifying the Designated Corporation that will take registered title to the applicable Lands and notice confirming that it wants to proceed with the transfer of the applicable lands in accordance with this Agreement.

5.4 Pre-Closing Deliveries by Kitsumkalum. As soon as reasonably possible but in any event not less than three (3) days prior to a Closing Date Kitsumkalum

shall execute and deliver, or deliver, or cause to be executed and delivered, as the case may be, to the Province:

- a) a restrictive covenant granted by the Designated Corporation in the form attached as Schedule 2 in relation to the applicable Lands;
- b) an agreement and waiver by the Designated Corporation in the form attached as Schedule 3 in relation to the applicable Lands;
- c) a certificate signed by an officer of the Designated Corporation confirming the Designated Corporation's HST registration number and registered status; and
- d) all such other documents that may be necessary or advisable for Kitsumkalum or a Designated Corporation to provide to complete the transactions contemplated by this Agreement.

5.5 **Closing Deliveries by the Province.** At Closing the Province shall execute and deliver, or cause to be executed and delivered, as the case may be, to Kitsumkalum a Crown grant for the applicable Lands.

5.6 **Closing Procedure.** The transactions contemplated by this Agreement will be in accordance with procedures to be agreed to by the respective legal counsel of Kitsumkalum and the Province such that all deliveries and the lodging for registration of any documents at the Land Title Office for which registration is necessary or advisable may be completed concurrently.

5.7 **Environmental Matters.** Kitsumkalum acknowledges and agrees that any of the Lands acquired by the Designated Corporation under this Agreement are acquired "as is". Kitsumkalum waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* for any of the Lands and except as otherwise specifically set forth herein, the Province has not given any warranty or representation concerning:

- a) the fitness of the Lands for any particular use, including the intended use of it by Kitsumkalum or by a Designated Corporation;
- b) the condition of the Lands (including surface and groundwater), environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and on or under any surrounding or neighbouring land and the current and past uses of the Land and any surrounding or neighbouring land;
- c) the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands; and

- d) the economic feasibility of the development of the Lands;

5.8 Environmental Remediation. Kitsumkalum will from and after the Closing:

- a) assume all environmental liabilities relating to the Lands including, but not limited to, all liability for the clean-up of any toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater);
- b) indemnify and save harmless the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs or expenses suffered or incurred by them after the Closing arising out of or in connection with all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands; and
- c) release the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs, actions, causes of action, suits and proceedings by Kitsumkalum with respect to all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands.

5.9 Permitted Encumbrances. Kitsumkalum acknowledges that it is familiar with the Permitted Encumbrances and accepts title to the Lands subject to the same and covenants not to do, or allow to be done, anything that would constitute a default under any of the Permitted Encumbrances or that would otherwise result in any claim against the Province by anyone claiming by, through or under a Permitted Encumbrance.

5.10 Indemnity for Permitted Encumbrances. Kitsumkalum will indemnify and save harmless the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs, or expenses suffered or incurred by the Provincial Officials after the Closing arising out of or in connection with any Permitted Encumbrances.

5.11 Property Transfer Tax and Other Costs. The Province is responsible for the following costs in connection with the transfer of the Lands:

- a) the cost of the initial survey of the Lands and any Crown Corridors;
- b) any other costs or fees associated with the preparation of Crown grants or any other Crown grant; and
- c) property transfer tax (and for certainty the Province agrees to either pay or waive the requirement to pay any property transfer tax payable under the

Property Transfer Tax Act in connection with the transfer of the Lands under this Agreement).

Kitsumkalum is responsible for any federal or provincial sales tax and any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.

5.12 Conditions Precedent in Favour of the Province. The obligation of the Province to transfer any of the Lands under this Agreement is subject to the satisfaction or waiver of the following conditions:

- a) the Province has given notice to Kitsumkalum that the Province and Canada have reached an agreement on cost sharing the value of the Lands for treaty settlement purposes;
- b) the Province has given notice to Kitsumkalum that any right to harvest timber under Provincial legislation that applies to the Lands has ceased to be valid and that to the extent required, the Lands have been removed from the Provincial forest in accordance with the *Forest Act*;
- c) the Province has given notice to Kitsumkalum that to the extent required the Province has received any approval required in accordance with the *Guarantees and Indemnities Regulation* made under the *Financial Administration Act*;
- d) the Province has given notice to Kitsumkalum that surveys for the Lands have been completed to its reasonable satisfaction and the Surveyor General has accepted and confirmed those surveys in accordance with s. 72 of the *Land Act*;
- e) the Province has given notice to Kitsumkalum that the Minister of Forests Lands and Natural Resource Operations has authorized the disposition of the Lands in accordance with Provincial law; and

5.13 Additional Closing Conditions. The obligation of the Province to transfer any of the Lands under this Agreement is also subject to the representations and warranties of Kitsumkalum herein being true and correct on the applicable Closing Date and Kitsumkalum having complied with all covenants of Kitsumkalum herein that are to be performed on or before the applicable Closing Date.

5.14 Waiver of Conditions. The conditions set out in section 5.12 and 5.13 are for the sole benefit of the Province and may be waived by the Province delivering written notice to Kitsumkalum prior to the applicable date. If any one or more of the conditions are not satisfied or waived on or before the applicable date, this

Agreement will terminate and neither party will have any further obligations to the other under this Agreement.

- 5.15 **Province to use Reasonable Efforts to Satisfy Conditions.** The Province shall use reasonable efforts to satisfy the conditions set out in section 5.14 and will keep Kitsumkalum reasonably advised with respect to the progress of the same.
- 5.16 **Appropriation.** Notwithstanding any other provision of this Agreement the payment of any money or the incurrence of any obligation by the Province 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 when any such payment or expenditure in respect of an obligation may be required, to make that payment or expenditure; and
 - b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited, any payment or expenditure that is necessary or desirable under any required appropriation.
- 5.17 **Forest Service Road 7817.** Kitsumkalum acknowledges that the Forest Service Road 7817 intersects the Community Expansion Parcel, the Economic Development Parcel, and Kitsumkalum Indian Reserve 1. Kitsumkalum acknowledges that the Lands will not include Forest Service Road 7817 and that Forest Service Road 7817 is excluded from this Agreement as identified in Schedule 4 of this Agreement.

ARTICLE 6

TREATY NEGOTIATIONS MATTERS

- 6.0 **Status of Lands.** The Parties intend that the Lands transferred under this Agreement will become "Kitsumkalum First Nation Lands" in accordance with the terms and definitions contained in the Final Agreement.
- 6.1 **Registration of Lands in Land Title Office.** The Parties further intend that the Lands will remain registered in the Land Title Office on the effective date of the Final Agreement.
- 6.2 **Registration of Interests in Land Title Office.** Any Permitted Encumbrances or other interests set out in this Agreement, which are to continue on the effective

date of the Final Agreement, will be registered in the order set out in the Final Agreement.

6.3 **Land Protection Measures.** As soon as practicable after the AIP Date, the Province will enter into negotiations with Kitsumkalum and Canada to conclude an agreement whereby the appropriate Provincial Officials will, subject to the terms of such agreement, take the necessary statutory and administrative steps to implement the following measures under appropriate provincial legislation:

- a) specify the negotiated AIP land selections as a "designated area" under Part 13 of the *Forest Act*;
- b) withdraw the negotiated AIP land selections from disposition under the *Land Act*; and
- c) prohibit the staking of mineral claims on the negotiated AIP land selections under the *Mineral Tenure Act* and establish, to the extent permissible under other applicable legislation, reserves to preclude the exploration, development or production of other subsurface resources within those areas.

ARTICLE 7
RECONCILIATION

- 7.1 **Reconciliation.** Kitsumkalum acknowledges and agree that in the spirit of the New Relationship and to advance Final Agreement negotiations the Lands transferred to Kitsumkalum in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province's and Kitsumkalum's interests in the Final Agreement and , as such, the benefits provided to Kitsumkalum under this Agreement will be counted as a portion of the Province's and Canada's contribution towards the Final Agreement settlement.

ARTICLE 8
OTHER ACKNOWLEDGEMENTS AND COVENANTS

- 8.1 **Other Kitsumkalum Covenants.** Kitsumkalum further acknowledges and covenants that:
- a) during the term of this Agreement, it will not initiate any court action or proceed to challenge any Governmental Action associated with the Lands to be transferred to Kitsumkalum as a part of this Agreement, on the basis that the Province has failed to fulfill any duty to consult or accommodate in respect of such matter or that any such matter constitutes an unjustifiable infringement of any aboriginal rights or title of Kitsumkalum.
 - b) any of the Lands that may be transferred to a Designated Corporation in accordance with this Agreement will not be "lands reserved for the Indians" within the meaning of section 91(24) of the *Constitution Act, 1867* or a reserve within the meaning of the *Indian Act* and after Closing Kitsumkalum will not at any time seek to add any of the Lands to its reserve lands; and
 - c) the Lands are to be transferred as fee simple land, and are subject to Provincial laws, including applicable zoning, land use, land development and property tax laws, and after Closing Kitsumkalum will not at any time challenge the applicability of Provincial laws to the Lands on the basis described in Recital A of this Agreement; and
 - d) following Closing and for a period ending on the later of the end of the period during which the parties are actively pursuing the negotiation and implementation of the Final Agreement and the 10th anniversary of the Closing Date:
 - (i) it will not dispose of its fee simple estate in all or any of the Lands in order to preserve the possibility of the Lands becoming

"Kitsumkalum First Nation Lands" in accordance with the Final Agreement, but subject to applicable laws and compliance with its obligations under paragraph 8.1d) (ii) it may dispose of any lesser interest in the Lands; and

- (ii) if it intends to charge or encumber the Lands or grant any interest less than fee simple in the lands or otherwise give or grant to any person any right with respect to the lands prior the effective date of the Final Agreement, it will, prior to doing so, advise the intended charge or encumbrance holder, transferee or other applicable person, in writing, that the lands will become "Kitsumkalum First Nation Lands", on the effective date of the Final Agreement.

For greater certainty, and in accordance with section 3.2, the obligations of Kitsumkalum under this section 8.1 come to an end upon the effective date of the Final Agreement even if that date is prior to the end of any period specified in subsection (a) through (d) above.

ARTICLE 9

DISPUTE RESOLUTION

- 9.1 If a dispute arises between the Province and Kitsumkalum regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 9.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Province and Kitsumkalum.
- 9.3 The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

ARTICLE 10

NOTICES

- 10.1 Any notice, document, statement, report, demand or grant that any Party may be required or may desire to give to any other Party under this Agreement must be in writing, unless otherwise specified herein, and will be deemed validly given to and received by the addressee, if served personally, on the date of personal service or, if delivered by mail, email or facsimile copier, when received as follows

if to the Province:

Ministry of Aboriginal Relations and Reconciliation
P.O. Box 9100 Stn. Prov. Govt.
Victoria, B.C. V8W 9B1
Attention: Mark Lofthouse, Chief Negotiator

Fax: (250) 387-0887
Email: Mark.Lofthouse@gov.bc.ca

and if to the Kitsumkalum First Nation:

Kitsumkalum First Nation
P.O. Box 544
Terrace, B.C. V8G 4B5
Attention: Donald Roberts, Chief Councillor

Email: droberts@kitsumkalum.bc.ca
Fax: (250) 635-4622

- 10.2 Either Party may, from time to time, give written 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.

ARTICLE 11

GENERAL

- 11.1 **Non-waiver.** No term or condition of this Agreement and no breach by one Party of any such term or condition will be deemed to have been waived unless such waiver is in writing signed by the other Party.
- 11.2 **Written Waiver.** The written waiver by one Party of any breach by the other Party of any term or condition of this Agreement will not be deemed a waiver of such term or condition or of any subsequent breach by the other Party of the same or any other term or condition of this Agreement.
- 11.3 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement.
- 11.4 **Further Acts and Assurances.** 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.

11.5 Not a Treaty. This Agreement does not:

- a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the Constitution Act, 1982 (Canada);
- b) recognize, affirm, define, deny, limit or amend the aboriginal rights or title of the Kitsumkalum First Nation;
- c) or create any responsibilities of the Parties except as set out in this Agreement.

11.6 Successors and Assigns. This Agreement will endure to the benefit of and be binding upon Kitsumkalum and its successors and permitted assigns and the Province and its assigns.

11.7 Band Council Resolution. Prior to the execution of this Agreement, Kitsumkalum will deliver to the Province a Resolution made by its elected Council authorizing Kitsumkalum's representatives named in the resolution to execute this Agreement on behalf of Kitsumkalum.

11.8 Execution in Counterpart. This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.

11.9 Time. Time will be of essence.

11.10 No Admissions. Nothing in this Agreement will be construed as:

- a) an admission by any of the Parties the validity or lack of validity of any claim by Kitsumkalum to a specific aboriginal right or title within the meaning of section 35 of the *Constitution Act, 1982*; or
- b) an acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to Kitsumkalum; or
- c) except as provided for in section 7.1 or subsection 8.1(a), an acknowledgment by Kitsumkalum that any obligations to provide financial or economic accommodation have been fulfilled.

11.10 No Fetter. Nothing in this Agreement shall be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment

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

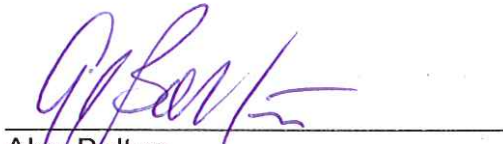
Signed on behalf of the Kitsumkalum First Nation by



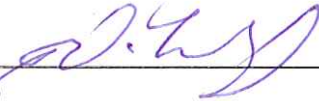
Donald Roberts
Chief Councillor



Witness



Alex Bolton
Hereditary Chief



Witness

Signed on behalf of Her Majesty the Queen In Right of the Province of British Columbia by the Minister of Aboriginal Relations and Reconciliation



Ida Chong
Minister of Aboriginal Relations
and Reconciliation

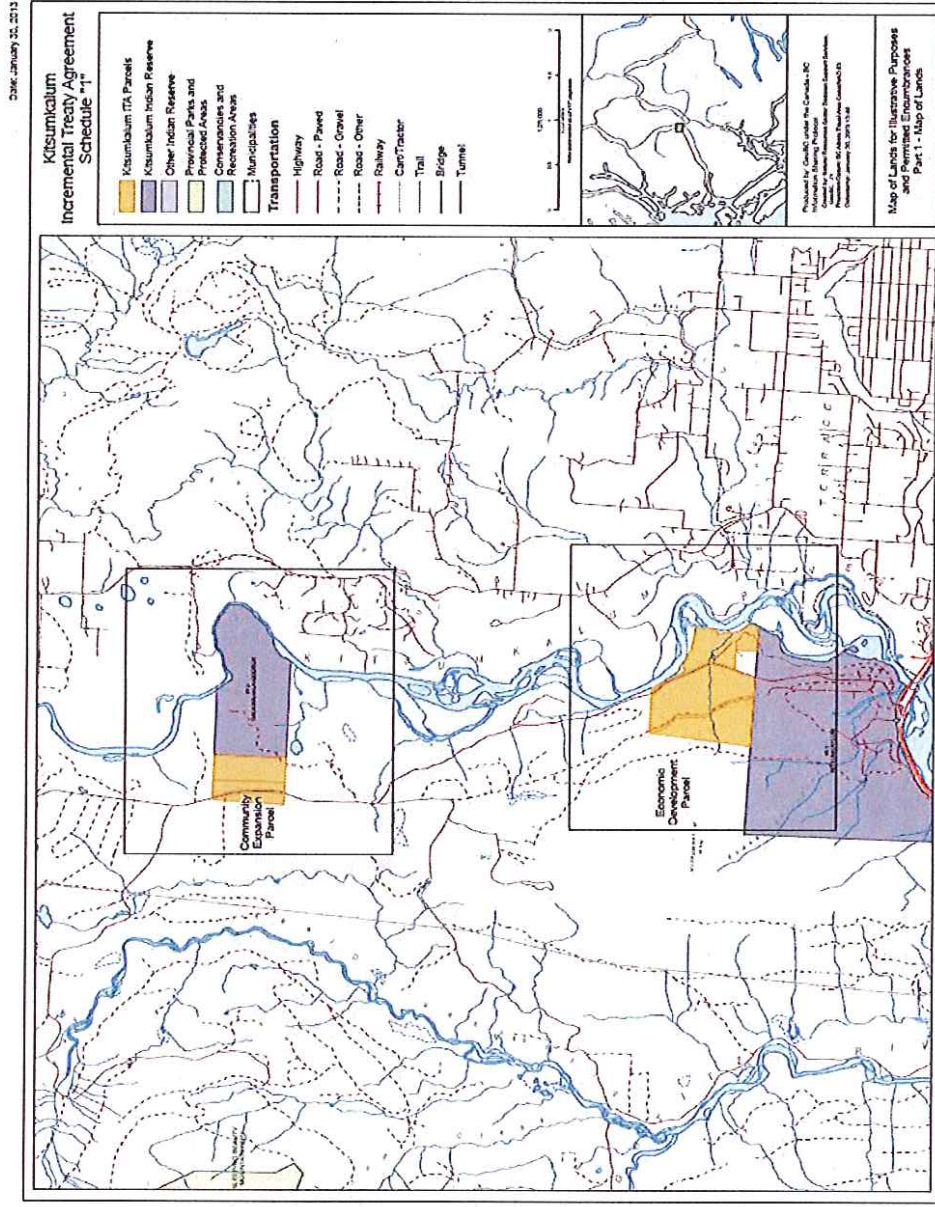


Witnessed by Mark Lofthouse
Chief Negotiator
Ministry of Aboriginal Relations
and Reconciliation

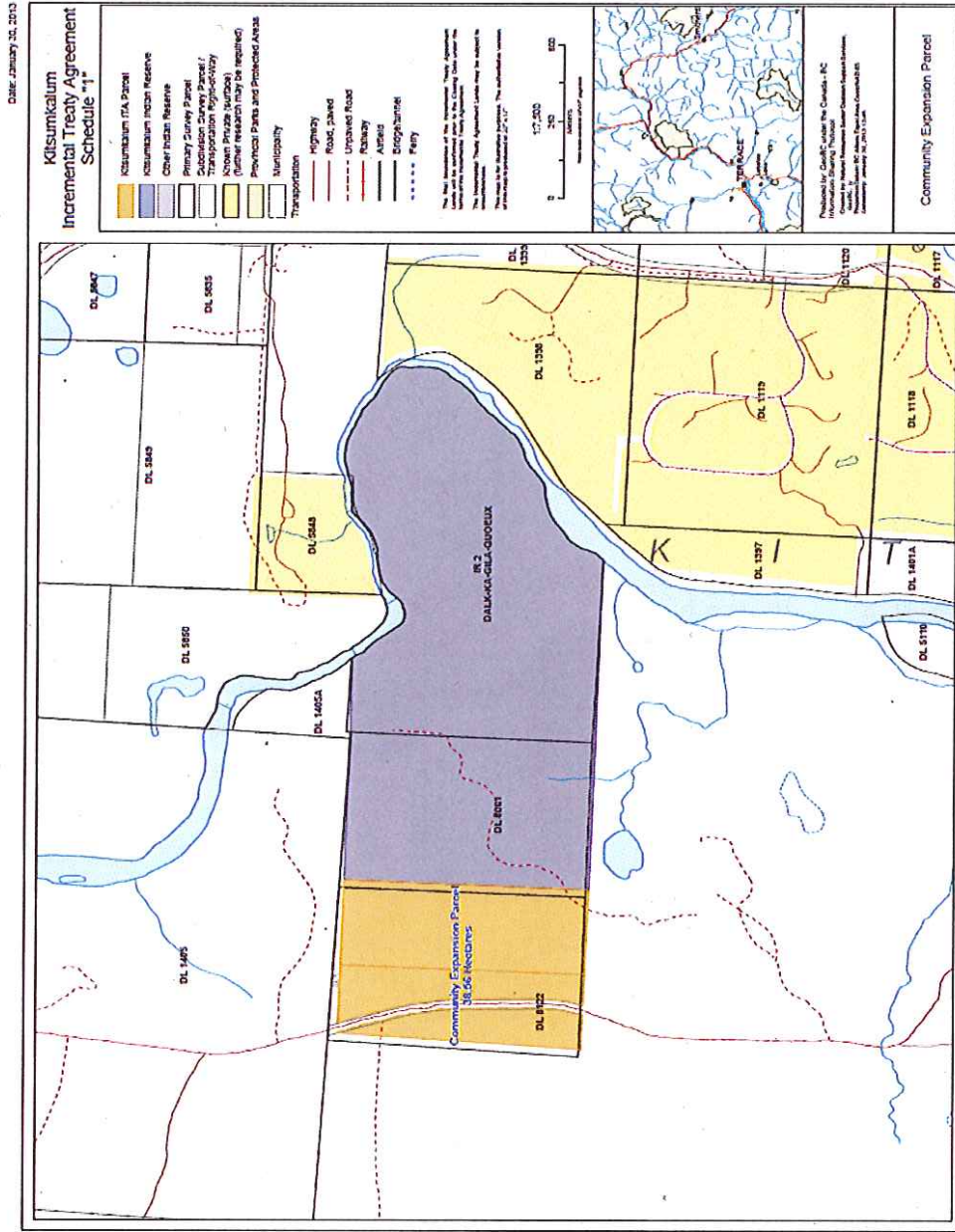
Schedule "1"

Map of Lands for Illustrative Purposes and Permitted Encumbrances

Part 1a - Overview Map of Community Expansion Parcel and Economic Development Parcel



Schedule "1" **Map of Lands for Illustrative Purposes and Permitted Encumbrances** **Part 1b - Map of Community Expansion Parcel**



Part 2 – Permitted Encumbrances

In respect of all of the Lands:

1. All subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the Lands.
2. All the interests, rights, privileges and titles contained in section 50 of the *Land Act*.
3. Any conditional or final water licence or substituted water licence issued or given under the *Water Act*, or any prior or subsequent enactment of the Province of British Columbia of like effect, and to the rights of the holder of it to enter on the Lands and to maintain, repair and operate any works permitted on the Lands under the licence at the date of the Crown Grant.
4. All subsisting grants to, or subsisting rights of any person made or acquired under the *Mineral Tenure Act*, *Coal Act* or *Petroleum and Natural Gas Act* or under any prior or subsequent enactment of the Province of British Columbia of like effect.
5. All notations and endorsements noted as "Legal Notations" on the title, if any, to the Land or any parcel from which the Land may be created.

And in addition, in respect of those particular portions of the Lands identified below:

Parcel	Permitted Encumbrances
Economic Development Parcel	
Water License, C050326, Point of Diversion 36037, Charles Creek, File No. 0341489, Precedence Date June 21, 1977, PCL # 11465	

Schedule "2"
Addition to Reserve Restrictive Covenant

LAND TITLE ACT

FORM C

(Section 233)

Province of
British Columbia

GENERAL INSTRUMENT-PART 1 (This area for Land Title Office Use)

Page 1 of 4 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

(Signature of Solicitor or Authorized Agent)

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)

(LEGAL DESCRIPTION)

3. NATURE OF INTEREST:*

Description

Document Reference

Person Entitled to Interest

(Page and paragraph)

Section 219 Covenant

Entire Document

Transferee (Grantee)

4. TERMS: Part 2 of this instrument consist of (select one only)

(a) Filed Standard Charge Terms

☐

D.F. No.

(b) Express Charge Terms

☒

Annexed as Part 2

(c) Release

☐

There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):* (Grantor)

6. TRANSFEREE(S): (Including postal address(es) and postal code(s))* (Grantee)

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Forests, Lands and Natural Resource Operations Parliament Buildings, PO Box 9043, STN PROV GOVT, Victoria, British Columbia, V8W 9E2

7. ADDITIONAL OR MODIFIED TERMS: *

N/A

8. **EXECUTION(S).**** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Y	M	D
---	---	---

Party(ies) Signature(s)

By _____
Its authorized signatory(ies):

Print Name: _____

Print Name: _____

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

*** If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT – PART 2

WHEREAS:

A. The Grantor is the registered _____ owner of:

(the "Land");

B. Under section 219 of the *Land Title Act*, there may be registered against title to any land, conditions or covenants in favour of the Grantee that the land, or any specified portion thereof, is not to be used other than in accordance with the terms of a covenant.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One (\$1.00) Dollar now paid by the Grantee to the Grantor, the receipt and sufficiency of which is hereby acknowledged, and pursuant to section 219 of the *Land Title Act*, the Grantor covenants and agrees with the Grantee as follows:

1. The Grantor covenants and agrees that the Grantor will not, in the absence of consent by the Grantee, transfer, alienate or deal with the Land in any manner which would see it incorporated into or become part of:
 - a. Reserves or special reserves as defined in the *Indian Act*; or
 - b. "Lands reserved for the Indians" under section 91(24) of the *Constitution Act, 1867*.
2. Wherever the singular or masculine are used in this Agreement, they shall be construed as meaning the plural or feminine or body corporate where the context or the parties so require.
3. This Agreement shall endure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
4. The Grantor will indemnify and save harmless the Grantee from all actions, causes of action, claims demands, suits, losses, damages, debts, accounts, liabilities, costs, expenses and compensation of any kind, including fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance by the Grantor of the covenants set out in section 1.
5. No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Grantee unless such waiver is expressed in writing by the Grantee and the waiver by the Grantee of any such term, condition, covenant or other provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of that or any other term, condition, covenant or other provision of this Agreement.
6. This Agreement will be interpreted according to the laws of the Province of British Columbia.

7. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
8. If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or section, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.
9. This Agreement will be registered as a charge against the Land pursuant to section 219 of the *Land Title Act*.

IN WITNESS WHEREOF the Grantor has executed this Agreement on Form C attached.

END OF DOCUMENT

Schedule "3"
Agreement and Waiver Of
[Name of Designated Corporation]
(the "Designated Corporation")

WHEREAS:

- A. Her Majesty the Queen in the Right of the Province of British Columbia as represented by The Minister of Aboriginal Relations and Reconciliation and the Kitsumkalum First Nation have entered into an Agreement date as of _____ (the "Agreement") whereby the Designated Corporation is acquiring fee simple title to those lands legally described as:

[Insert Legal Description of lands]
(the "Lands")

- B. As a condition of the Designated Corporation's acquisition of fee simple title to the Lands the Kitsumkalum First Nation and the Designated Corporation have agreed that the Designated Corporation grant and enter into this release and waiver on the terms set out below.

NOW THEREFORE in consideration of the premises, and the sum of ONE (\$1.00) DOLLAR and other valuable consideration paid by the Province to the Designated Corporation, the receipt of which is hereby acknowledged by the Designated Corporation, the Designated Corporation hereby release, waives, acknowledges and agrees as follows:

1. The terms "Province" and "Kitsumkalum" and any other capitalized terms used herein and defined in the Agreement have the meaning given to those terms in the Agreement.
2. The Designated Corporation waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* in connection with its acquisition of the Lands.
3. The Designated Corporation agrees with the Province that each covenant, representation, warranty, acknowledgement and every other term of the Agreement given by Kitsumkalum or otherwise set out in the Agreement which is for the benefit of the Province is legally binding on the Designated Corporation in relation to the Lands as fully and as effectively as if the Designated Corporation had entered into and executed the Agreement along with Kitsumkalum, including, without limitation, each of those representations and acknowledgements set out in section 5.6 and 5.7 of the Agreement.
4. By executing and delivering this instrument each of the parties intends to create both a contract and a deed executed and delivered under seal.

Signed, Sealed and Delivered as of _____, 2013 by:

[Name of Designated Corporation]
Per: Authorized Signatory

Kitsumkalum Indian Reserve

Incremental Treaty Agreement Schedule "4"

Legend:

- Kitsumkalum ITA Parcel
- Excluded Crown Corridor
- Kitsumkalum Indian Reserve
- Other Indian Reserve
- Primary Survey Parcel
- Subdivision Survey Parcel / Transportation Right-of-Way
- Known Private Surface (further research may be required)
- Provincial Parks and Protected Areas
- Municipality
- Transportation
 - Highway
 - Road, paved
 - Unpaved Road
 - Railway
 - Airfield
 - Bridge/Tunnel
 - Ferry

The Red boundaries of the Incremental Treaty Agreement Lands are as described prior to the Casing Date under the terms of the Incremental Treaty Agreement.

The Incremental Treaty Agreement Lands may be subject to ground services.

This map is for illustrative purposes. The authoritative version of this map is published at G-7-17.

Scale: 0 100 200 METERS
Not scale to north of 1:25,000

Community Expansion Parcel
38.56 Hectares

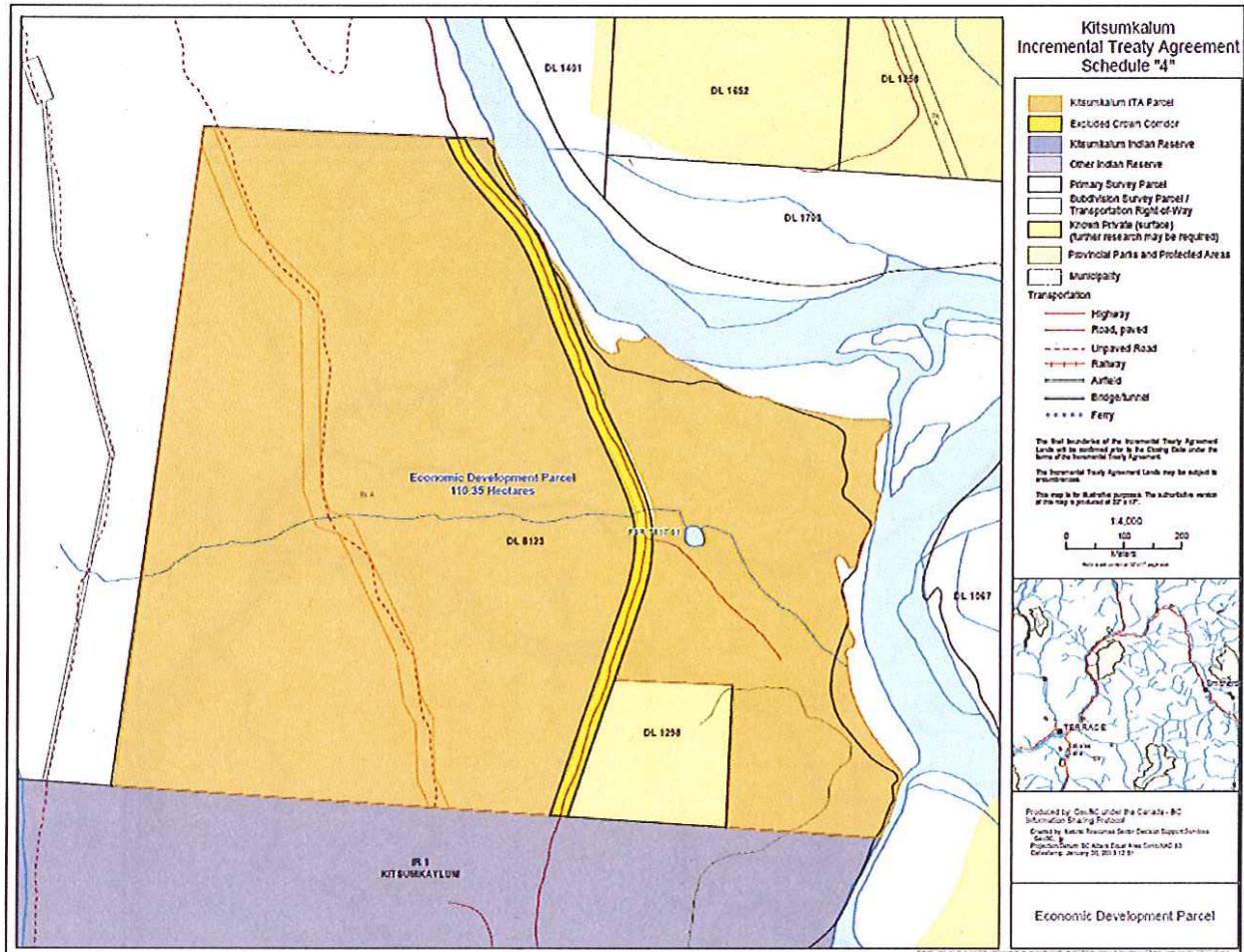
TERRACE

Produced by GeoBC under the Canada - BC Information Sharing Protocol.
Created by Natural Resources Canada Data Support Services.
GeBC
Population Density BC Atlas Edition Area Project MAP 03
Date: May 2010

Community Expansion Parcel

Schedule "4"
Crown Corridors Excluded from this Agreement
Part 1b: Forest Service Road 7817 excluded from Economic Development Parcel

Date: January 30, 2013



Schedule "5" Map of Kitsumkalum Traditional Territory

