

# KITSELAS RECONCILIATION AGREEMENT



## FOREWORD

### Kitselas People

The Kitselas people approach this new relationship with the people of British Columbia, represented by the Province of British Columbia (BC), as partners with shared objectives – healthy, working communities, the celebration of and respect for Kitselas culture, the recognition of our respective jurisdictions and a reconciliation based on our shared history that can move us forward in a way that benefits this and future generations.

The Gitselasu (Kitselas) means “People of the Canyon”. The language of the Kitselas people is Sm’algyax, the language of the great Tsimshian Nation. Tsimshian culture is grounded in the adawx the narratives that tell its history. Adawx tell about the origins of the world from a Tsimshian perspective, one that has been passed on from generation to generation. They are defined as “true tellings” or “sacred history.”

One such history tells of a great migration of peoples from Temlaxam an ancient village at the headwaters of the Skeena. Men of Medeek, a Kitselas history narrated by Walter Wright tells of the settling on the Kitselas people at Tsunyaw, the first of the five Canyon cities. Archaeological and ethnographic evidence suggests that Kitselas people have occupied the Canyon area for at least 5,000 years.

While the Canyon is home, Kitselas extensively used the resources of the north coast and the lower Nass River systems to sustain their economy. Kitselas thrived in the period prior to contact. Our society was healthy and strong, a rich culture with deep spiritual connection to the lands and resources. Contact brought with it many of the ills that plagued indigenous societies throughout Canada – foreign diseases, residential schools, the imposition of the *Indian Act* and the alienation of our lands and resources.

Against this backdrop, Kitselas continued to exercise our rights. We maintained control of the traffic through the Canyon including tariffs for travel, through the Canyon by sternwheelers carrying goods between the coast and the interior. The construction of the Grand Trunk Railway put an end to that part of the Kitselas economy. Yet still we maintained our connection with our territories.

Kitselas entered the treaty process as a part of the Tsimshian Tribal Council when the BC Treaty Commission process began in 1993. We have continued the treaty engagement through the Tsimshian Treaty Society, a successor to the Tribal Council process. Kitselas has ratified an Agreement-in-Principle and continues in Final Agreement negotiations. Early in the treaty process, Kitselas began a community development process as a parallel to treaty negotiations to ensure that community objectives – cultural, economic, governance, health and education, could be achieved

regardless of success in the treaty process. This Integrated Community Development Strategy utilizes the partnership potential in the Kitselas traditional territory to Kitselas' unique value to each enterprise and create a greater result that can be shared by the partners.

This has resulted in a number of firsts. Forestry agreements with BC and the private sector to share revenues and manage and harvest timber, local government agreements to locate regional services on reserve and to develop and share property taxes on major industrial land development. Kitselas has completed a number of Impact Management and Benefit Agreements for major projects. Through these agreements and our own business enterprises, Kitselas has developed significant capacity in natural resource projects. Kitselas corporations have successfully undertaken major civil construction contracts on pipelines and utilities.

Kitselas was among the first BC First Nations to develop, publish and implement a Lands and Resources Stewardship Policy to guide proponents and governments on the processes and values that represent effective consultation and land and resource decision making in Kitselas territories. Kitselas has assumed authority for its reserve land management and taxation under its own laws and participates with other First Nations.

Kitselas is a progressive community, proud of our heritage, our achievements – both historic and contemporary, and confident in our future. We wish to organize our relationship with the Province of British Columbia in a manner that enables us both to grow in terms of the breadth of our partnerships, maintains an effective and positive relationship and fosters a flexible and collaborative approach to the future. We recognise that treaty negotiations are complex and that the conclusion of Stage 5 negotiations and the parties' ratification processes may take years to complete. BC and Kitselas wish to enter into this Reconciliation Agreement as a bridge to the treaty effective date.

Kitselas recognises that the successful implementation of this Agreement and the continue building of cooperative working relations will depend upon the parties' willingness to recognise, explore and resolve differences which arise between them. We intend this agreement to foster a more collaborative and efficient comprehensive natural resource agreement that is intended to include any and all resource agreements reached between Kitselas and BC.

## **KITSELAS RECONCILIATION AGREEMENT**

This Reconciliation Agreement is dated for reference the \_\_\_\_ day of \_\_\_\_\_, 2017.

### **BETWEEN:**

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

(the "Province")

### **AND:**

**KITSELAS FIRST NATION**, on behalf of itself and Kitselas Citizens, as  
represented by the Chief and Council of the Kitselas Indian Band

("Kitselas")

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

### **WHEREAS:**

- A. Kitselas has Aboriginal Rights within the Kitselas territory;
- B. Kitselas has enacted a Lands and Resources Stewardship Policy through which it assesses proposed land and resource decisions in the Kitselas territory;
- C. The Parties are engaged in Final Agreement negotiations and in those negotiations Kitselas has stated its interest in achieving a greater role in the regional economy and in receiving a share of the revenues derived from the use of resources within the Kitselas territory to support self-government;
- D. The Parties, in the spirit of the New Relationship vision and the Transformative Change Accord, share commitments to strengthen their government-to-government relationship and to close the socio-economic gaps between aboriginal and non-aboriginal peoples; and

- E. The Parties recognize that the successful implementation of this Reconciliation Agreement is an incremental step towards the fuller implementation of a government-to-government relationship through a Final Agreement with Kitselas or other processes and provides opportunities to build the necessary cooperative working relations that will enhance Kitselas' efforts towards self-government.

**NOW THEREFORE**, the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS AND APPENDICES**

**1.1** In this Reconciliation 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 Report”** has the same meaning as in the Kitselas Coastal Fund Agreement;

**“Appendix”** means an agreement relating to an element of the relationship between the Parties that the Parties have reached and agreed to list in section 1.2 and append to this Reconciliation Agreement from time to time;

**“BC Fiscal Year”** has the same meaning as in the Kitselas Coastal Fund Agreement;

**“Commencement of Construction”** has the same meaning as in the Kitselas LNG Benefits Agreement;

**“Dispute”** means any disagreement arising out of the interpretation or implementation of this Reconciliation Agreement;

**“Effective Date”** means the last date upon which this Reconciliation Agreement is signed by the Parties;

**“Final Investment Decision”** or **“FID”** has the same meaning as in the Kitselas Coastal Fund Agreement;

**“Final Agreement”** means a final agreement that may be concluded by Kitselas, the Province and Her Majesty the Queen in Right of Canada in accordance with stage 5 of the British Columbia Treaty Commission process;

**“Kitimat LNG Project”** has the same meaning as in the Kitselas LNG Benefits Agreement;

**“Kitselas”** means the “band”, as that term is defined in the *Indian Act* named the “Kitselas First Nation” and includes all Kitselas Citizens;

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

**“Kitselas Coastal Fund Agreement”** means the agreement to be entered into by the Parties concurrently with this Reconciliation Agreement appended to this Agreement as Appendix B;

**“Kitselas LNG Benefits Agreement”** means the agreement to be entered into by the Parties concurrently with this Reconciliation Agreement appended to this Agreement as Appendix A;

**“Lands and Resources Stewardship Policy”** means the Kitselas “Lands and Resources Stewardship Policy” as approved by the Kitselas Chief and Council and Kitselas Citizens as amended from time to time in accordance with its terms;

**“LNG Canada Project”** has the same meaning as in the Kitselas LNG Benefits Agreement;

**“LNG Project”** has the same meaning as in the Kitselas Coastal Fund Agreement;

**“PNW LNG Project”** has the same meaning as in the Kitselas LNG Benefits Agreement;

**“Principals”** means the Minister of Aboriginal Relations and Reconciliation and the Kitselas Chief Councillor or their respective delegates;

**“Reconciliation Agreement”** means this “Kitselas Reconciliation Agreement” as amended from time to time in accordance with its terms, and, for certainty, does not include any Appendix;

**“Senior Official”** means an individual who is employed or appointed:

- a) by the Province as a Deputy Minister, Assistant Deputy Minister or Chief Negotiator within the Ministry of Aboriginal Relations and Reconciliation; or
- b) by Kitselas as a Chief Administrative Officer, Director or Negotiator;

**“Subsequent Agreement”** means any agreement that the Parties may enter into after the Effective Date that is designed to support the purposes of this Reconciliation Agreement that the Parties agree to append to this Reconciliation Agreement;

1.2 The following Appendices are appended to this Reconciliation Agreement as of the Effective Date:

- Appendix A – Kitselas LNG Benefits Agreement
- Appendix B – Kitselas Coastal Fund Agreement
- Appendix C – Natural Gas Pipeline Benefits Umbrella Agreement
- Appendix D – Kitselas Indian Band Forest & Range Consultation and Revenue Sharing Agreement

## **ARTICLE 2 INTERPRETATION**

2.1 In this Reconciliation Agreement:

- a) words in the singular include the plural and words in the plural include the singular, unless the context otherwise requires;
- b) “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
- c) words incorporating gender include the masculine, feminine or neuter gender;
- d) any reference to a statute include 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;
- e) no term, condition, covenant or other provision will be deemed to have been waived unless such waiver is expressed in writing and signed by the Party giving the waiver;
- 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) all headings are for convenience only and do not form a part of this Reconciliation Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Reconciliation Agreement or any of its provisions;
- h) the foreword to this Reconciliation Agreement does not form part of this Reconciliation Agreement;
- i) there will be no presumption that any ambiguity in any of the provisions of this Reconciliation Agreement should be interpreted in favour of any Party; and
- j) each of the Appendices are stand-alone agreements that are appended to this Reconciliation Agreement for information and convenience purposes and the Parties do not intend that any of the Appendices and the Reconciliation Agreement interpret, define, limit, enlarge, modify or explain the scope or intent of the other or their respective provisions.

### **ARTICLE 3 PURPOSE AND SCOPE**

3.1 The purpose of this Reconciliation Agreement is to provide a foundation to:

- a) further strengthen the government-to-government relationship between the Parties;
- b) create additional processes to address Kitselas' interest in achieving a greater role in the regional economy and in receiving a share of the benefits derived from the development of natural resource based projects;
- c) assist in achieving stability and greater certainty for resource development;
- d) initiate discussions on issues of common concern and interest;
- e) promote and enhance the community well-being of Kitselas and Kitselas Citizens; and
- f) create a process to negotiate and attempt to reach agreement on an efficient, effective and meaningful approach to government-to-government engagement and consultation associated with development in the Kitselas territory that may impact Kitselas Aboriginal Rights that:
  - (i) will facilitate the Province's fulfillment of its legal obligations to consult, and where appropriate, accommodate Kitselas;



- (ii) is systematic, transparent and adaptable to the needs of the Parties;
  - (iii) optimizes the use of Kitselas and provincial engagement resources; and
  - (iv) integrates and functions consistently with other agreements between the Parties.
- 3.2 As soon as practicable after Kitselas ratifies a Final Agreement and prior to that agreement coming into effect, the Parties will meet to discuss whether to amend or replace this Reconciliation Agreement to ensure that this Reconciliation Agreement complements and is consistent with the Final Agreement.

## **ARTICLE 4 SUBSEQUENT AGREEMENTS**

### **General**

- 4.1 The Parties acknowledge that the benefits to be provided to Kitselas under the agreements listed in 1.2, as amended from time to time, operate to assist the Parties in achieving the purposes of this Reconciliation Agreement.
- 4.2 The Parties may agree to append Subsequent Agreements to this Reconciliation Agreement.
- 4.3 In addition to the matters addressed in the agreements listed in 1.2 on the Effective Date, the Parties may agree to negotiate and attempt to reach agreement on Subsequent Agreements that deal with mutually agreed upon interests, including the sharing of benefits and other arrangements associated with natural resource developments.
- 4.4 The Senior Officials will meet annually or otherwise at the request of a Party to:
  - a) identify, prioritize and pursue socio-economic opportunities, including potential revenue sharing and benefits sharing opportunities respecting new major resource projects that may be applicable to Kitselas;
  - b) identify the objectives and interests of the Parties related to any opportunities that may be identified in accordance with 4.4 a) that may inform the development of each Party's respective negotiation mandates; and

- c) subject to securing such mandates as required by the parties, facilitate the negotiation of any revenue sharing and benefits sharing opportunities agreements that the Parties may have identified and agreed to undertake.
- 4.5 The Subsequent Agreements referred to in 4.3 may include agreements related to geothermal resource development.
- 4.6 The Province will provide Kitselas with project negotiation funding for the negotiation of each Subsequent Agreement that the Parties agree will be listed as an Appendix, based on a mutually developed and agreed to budget and work plan.

#### **Consultation Agreement**

- 4.7 The Parties will negotiate and attempt to reach agreement on a consultation agreement, with the intent of finalizing the agreement by June 30, 2017, that will:
  - a) establish a consultation process for agreed-to provincial government referrals to Kitselas consistent with the purposes of this Reconciliation Agreement;
  - b) provide agreed-to funding for processing referrals referenced in a); and
  - c) be reviewed prior to the effective date of the Final Agreement to determine whether it should be amended or terminated as a result of the Final Agreement.
- 4.8 A consultation agreement that may be concluded in accordance with 4.7 will be appended to this Reconciliation Agreement as an Appendix.

#### **The Great Bear Atmospheric Benefits Agreement**

- 4.9 The Parties will negotiate and attempt to reach agreement on a Great Bear Atmospheric Benefits Agreement, with the intent of finalizing the agreement by June 30, 2017.
- 4.10 A Great Bear Atmospheric Benefits Agreement that may be concluded in accordance with 4.9 will be appended to this Reconciliation Agreement as an Appendix.

### **ARTICLE 5 COMMUNITY WELLNESS**

- 5.1 The Parties acknowledge that they have developed a process (the "Community Wellness Process") to work collaboratively to support Kitselas in developing strategic, institutional and human capacity to:

- a) address and mitigate potential socio-economic effects on Kitselas Citizens and the Kitselas community related to industrial development in the region, including the development of the LNG industry;
- b) protect and enhance the Kitselas community and culture; and
- c) prepare Kitselas and Kitselas Citizens to participate and benefit from economic development.

5.2 The Community Wellness Process includes:

- a) the development of plans that prioritize actions to build on the existing strengths of the Kitselas community and enable Kitselas to make progress towards community defined social outcomes;
- b) collaboration to determine which existing or future provincial or other programs, services, funding opportunities or initiatives might be of assistance to Kitselas in making progress towards its community defined social outcomes; and
- c) the development of implementation strategies and developmental evaluation tools.

5.3 The Parties acknowledge that in implementing the Community Wellness Process they may explore opportunities to include neighbouring First Nations, the City of Terrace and LNG proponents.

5.4 To assist in the implementation of the Community Wellness Process, the Province has provided or will provide Kitselas with the following payments;

- a) \$75,000 payable on the Effective Date of this Agreement;
- b) \$150,000 payable as soon as practicable after receipt of the Annual Report required in accordance with the Kitselas Coastal Fund Agreement in the 2017/2018 BC Fiscal Year;
- c) \$150,000 payable as soon as practicable after receipt of the Annual Report required in accordance with the Kitselas Coastal Fund Agreement in the 2018/2019 BC Fiscal Year; and
- d) \$150,000 payable as soon as practicable after the FID of each LNG Project that will have an annual production capacity of 10 million or more tonnes per annum of LNG, not including the PNW LNG Project, the LNG Canada Project or the Kitimat LNG Project.

**ARTICLE 6**  
**REPRESENTATIONS AND WARRANTIES**

- 6.1 Kitselas represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Reconciliation Agreement, that:
- a) it has the legal power, capacity and authority to enter into this Reconciliation Agreement on its own behalf and on behalf of Kitselas Citizens;
  - b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Reconciliation Agreement for and on behalf of Kitselas Citizens; and
  - c) this Reconciliation Agreement is valid and binding obligation upon it.
- 6.2 The Province represents and warrants to Kitselas, with the intent and understanding that they will be relied on by Kitselas in entering into this Reconciliation Agreement, that:
- a) it has the legal power, capacity and authority to enter into this Reconciliation Agreement;
  - b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Reconciliation Agreement; and
  - c) this Reconciliation Agreement is a valid and binding obligation upon it.

**ARTICLE 7**  
**TERM**

- 7.1 The term of this Reconciliation Agreement commences on the Effective Date.
- 7.2 Either Party may terminate this Reconciliation Agreement by giving the other 60 days advance written notice of their intent to do so, specifying the date of the termination, which, for certainty, will not be prior to 60 days from the date of the written notice, and the reasons for termination.
- 7.3 Recognizing the enduring value and importance of the government-to-government relationship supported by this Reconciliation Agreement, the Principals will meet as soon as practicable after a notice of intention to terminate has been provided by a Party in accordance with 7.2 to discuss and attempt to resolve the matter.

- 7.4 If, following a meeting under 7.3, the matter is resolved, a Party providing a notice of intention to terminate under 7.2 may agree in writing to rescind the notice and the term of this Reconciliation Agreement will continue.
- 7.5 If, following a meeting under 7.3, the matter remains unresolved this Reconciliation Agreement will terminate on the date specified in the notice of proposed termination provided under 7.2.
- 7.6 The Parties may agree in writing to terminate this Reconciliation Agreement.
- 7.7 For certainty, the termination of:
- a) this Reconciliation Agreement does not result in the concurrent termination of any Appendix; and
  - b) an Appendix by either Party in accordance with its terms, will not result in the termination of this Reconciliation Agreement or any other Appendix.

## **ARTICLE 8 REVIEW AND AMENDMENT**

- 8.1 The Principals will meet within 12 months of the Effective Date and thereafter at least once per annum to review the overall relationship between the Parties and the effectiveness of this Reconciliation Agreement in contributing to the achievement of the purposes set out in 3.1.
- 8.2 The Senior Officials will meet annually to:
- a) consider the implementation of this Reconciliation Agreement and applicable Appendices;
  - b) consider the recommendations of any working groups created in accordance with this Reconciliation Agreement;
  - c) discuss provincial or regionally based issues and initiatives that may be of interest to or impact Kitselas; and
  - d) discuss other matters as agreed to by the Senior Officials.
- 8.3 The Senior Officials will meet and review this Reconciliation Agreement as soon as practicable five years after the Effective Date, and as soon as practicable every five years thereafter, and will consider recommendations for amendments, modifications and deletions as they may consider appropriate to update and improve the effectiveness of this Reconciliation Agreement in achieving the purposes set out in 3.1.

- 8.4 The Parties may agree to meet and develop work plans and budgets to assist in the implementation of this Reconciliation Agreement.

## **ARTICLE 9 DISPUTE RESOLUTION**

- 9.1 If a Party determines that a Dispute has arisen it may deliver to the other Party a written notice (the "Dispute Notice") describing in reasonable detail the Dispute. The Senior Officials will meet within 14 days of the receipt of the Dispute Notice and will attempt in good faith to identify a resolution to the Dispute within 30 days of delivery of the Dispute Notice and recommend such resolution to the Parties, provided no such recommendation will be binding on the Parties until approved by both Parties in writing.
- 9.2 The Senior Officials will use diligent efforts to resolve a Dispute, and may involve other experts and associates as agreed to in their discussions. If the Dispute has not been resolved by agreement of the Parties within 30 days after the delivery of the Dispute Notice then:
- a) either Party may, by written notice to the other Party, refer the Dispute to the Principals; and
  - b) the Principals will attempt in good faith to resolve the Dispute as soon as practicable after delivery of the notice under a).
- 9.3 The Principals may, at any time, agree in writing to refer the Dispute to mediation by a mutually acceptable mediator specified in that agreement. Each Party is responsible for its own costs of mediation and will bear an equal share of the remuneration and expenses of the mediator.
- 9.4 If the Dispute has not been resolved within 60 days of the delivery of the Dispute Notice, or such other period agreed to by the Parties, the Principals may, at any time, agree in writing to refer the Dispute to arbitration pursuant to the *Arbitration Act, R.S.B.C. 1996, c.55*.

## **ARTICLE 10 CONFIDENTIAL INFORMATION**

- 10.1 The Parties may, subject to applicable provincial and federal law, agree to develop a protocol or understandings dealing with the exchange and disclosure of information under this Reconciliation Agreement that either Party identifies as sensitive or confidential in nature.

## **ARTICLE 11 NOTICE AND DELIVERY**

11.1 If any notice or other communication is required to be given by a Party under this Reconciliation Agreement, it will be made in writing and it will be effectively given by:

- a) personal delivery to the address of the other Party set out below, on the date of delivery;
- b) pre-paid registered mail to the address of the other Party mentioned in this Reconciliation Agreement, on the date the registered mail is delivered; or
- c) facsimile to the facsimile number of the other Party set out in this Reconciliation Agreement, on the date the facsimile is received.

11.2 The address and facsimile numbers are:

- a) for Kitselas:

Kitselas Band Council  
2225 Gitaus Road  
Terrace, BC  
V8G 0A9  
Attention: Chief Administrative Officer

- b) for the Province:

Ministry of Aboriginal Relations and Reconciliation  
PO Box 9100 Stn Prov Govt  
Victoria, BC V8W 9B1  
Fax: (250) 387-6073  
Attention: Assistant Deputy Minister, Negotiations and  
Regional Operations Division

11.3 Any notice or other communications will be deemed to have been given on the date it is actually received if received before 4:00 pm Pacific Standard Time or on the next business day if received after 4:00 pm Pacific Standard Time.

11.4 Kitselas or the Province may at any time give notice to the other of any change of information in accordance with 11.1.

**ARTICLE 12**  
**CONDITIONS PRECEDENT TO FUNDING**

- 12.1 Despite any other provision of this Agreement, the provision of funding or any other payment or benefits 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, RSBC 1996, c. 138*, 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; and
  - c) Kitselas being in compliance with its material obligations under the Kitselas Coastal Fund Agreement.

**ARTICLE 13**  
**GENERAL PROVISIONS**

- 13.1 This Reconciliation Agreement is not a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 13.2 This Reconciliation Agreement does not create, amend, define, affirm, recognize, limit, abrogate, extinguish, replace or derogate from any Kitselas Aboriginal Rights.
- 13.3 Except as expressly set out herein, this Reconciliation Agreement does not limit the position a Party may take in any legal or administrative proceedings or in any discussions or negotiations between Kitselas and the Province.
- 13.4 Nothing in this Reconciliation Agreement is to be construed as an acceptance of or admission by a Party of the position of another Party regarding any matter, including its jurisdiction, responsibilities or decision-making authority or as an admission of liability.
- 13.5 No partnership, joint venture, agency, fiduciary or employment relationship will be deemed to be created by this Reconciliation Agreement or by any actions of the Parties under this Reconciliation Agreement.




- 13.6 This Reconciliation Agreement does not constitute an admission by the Province of an obligation to provide financial or economic benefits, as provided in this Reconciliation Agreement, as part of the Province's obligation to consult and accommodate in relation to a project.
- 13.7 This Reconciliation Agreement is not intended to be interpreted in a manner that would affect or interfere with any legislative authority of the Province or fetter the discretion of any decision-making authority.
- 13.8 Nothing in this Reconciliation Agreement precludes Kitselas from:
- a) continuing to negotiate and implement revenue and benefit sharing agreements with proponents and other governments;
  - b) accessing economic opportunities and benefits, which may be available to Kitselas, other than those expressly set out in this Reconciliation Agreement; or
  - c) participating in government programs for which Kitselas may be eligible.
- 13.9 This Reconciliation Agreement is not intended to limit or diminish any present or future fiscal transfer agreements between the Parties for programs unrelated to this Reconciliation Agreement.
- 13.10 This Reconciliation Agreement may be entered into by the Province and Kitselas respectively signing a separate copy of this Reconciliation Agreement, including a photocopy or faxed or scanned copy, and delivering it to the other by fax or electronic mail. Each facsimile or scanned copy will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.
- 13.11 If any provision of this Reconciliation Agreement is found by a court of competent jurisdiction to be void or unenforceable at law, it will be severed from this Reconciliation Agreement and the remainder of this Reconciliation Agreement will remain in force and effect, and the Parties will negotiate and attempt to reach agreement on a replacement for that provision with a view to achieving the intent of the Parties as expressed in this Reconciliation Agreement.
- 13.12 The Minister of Aboriginal Relations and Reconciliation may delegate to one or more employees or agents of the Province any one or more of his or her non-statutory powers or duties under this Reconciliation Agreement.

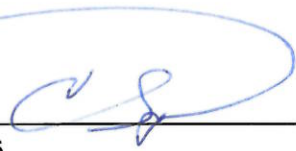
13.13 The Kitselas Chief may delegate to one or more of employees or agents of Kitselas any one or more of his or her powers or duties under this Reconciliation Agreement.

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

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

**Signed on behalf of Kitselas as  
represented by the Chief Councillor**

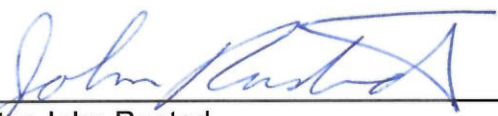
  
\_\_\_\_\_  
Chief Joe Bevan


  
\_\_\_\_\_  
Witness

**MAR 30 2017**

\_\_\_\_\_  
Date

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

  
\_\_\_\_\_  
Minister John Rustad

  
\_\_\_\_\_  
Witness

**MAR 30 2017**

\_\_\_\_\_  
Date

## APPENDIX A – KITSELAS LNG BENEFITS AGREEMENT

### KITSELAS LNG BENEFITS AGREEMENT



## **KITSELAS LNG BENEFITS AGREEMENT**

This Agreement is dated for reference March 30, 2017

### **BETWEEN:**

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

(the "Province")

### **AND:**

Kitselas First Nation, on behalf of itself and Kitselas Citizens, as represented by the Chief and Council

("Kitselas")

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

### **WHEREAS:**

- A. The Province is committed to developing a liquefied natural gas (LNG) industry in British Columbia;
- B. Pacific Northwest LNG is proposing to construct and operate the PNW LNG Project on and adjacent to Lelu Island, with related marine facilities in the Port of Prince Rupert;
- C. LNG Canada is proposing to construct and operate the LNG Canada Project in Kitimat, B.C., with related marine facilities in Douglas Channel;
- D. There are proposals for Other LNG Projects within the Prince Rupert LNG Project Area;
- E. Chevron Canada and Woodside Energy International Limited are proposing to construct and operate the Kitimat LNG Project in Bish Cove near Kitimat B.C., with related marine facilities in Douglas Channel;
- F. Kitselas has indicated that it is supportive of the PNW LNG Project, the LNG Canada Project, the Kitimat LNG Project and the Other LNG Projects provided

that its interests are met, including addressing issues related to Aboriginal Rights and the cumulative impacts of such development; and

- G. Kitselas and the Province wish to enter into this Agreement to confirm their respective commitments in relation to the PNW LNG Project, the LNG Canada Project, the Other LNG Projects and the Kitimat LNG Project.

**NOW THEREFORE** the Parties agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### **1.1 Definitions.** 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*;

**“Agreement”** means this Kitselas First Nation LNG Benefits Agreement, including the Schedules, as amended from time to time in accordance with its terms, and any agreement, document or instrument executed or delivered pursuant thereto;

**“Airport Groundside Lands”** means those lands having an area of approximately 25 hectares as shown for illustrative purposes in Plan 1 of Schedule 1 and, following completion and approval of a legal survey of those lands in accordance with this Agreement and provincial law, the land legally described in the approved survey, which for greater certainty will not include any land below the natural boundary as defined in the *Land Act* and the land within any Crown Corridor;

**“Associated Infrastructure”** means any infrastructure project reasonably necessary for the PNW LNG Project, the LNG Canada Project, an Other LNG Project, or the Kitimat LNG Project, as applicable, for electricity, 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 reasonably necessary for the related construction, operation and maintenance of the project including related lay down areas and work camps, but does not include any natural gas transmission line or the BC Hydro Terrace to Kitimat hydro-electric transmission line;

**“Closing”** means the completion of the transfer of a Parcel by the Province to a Designated Company on the Closing Date;

**“Closing Date”** means the date or dates on which the documents for the transfer of a Parcel to a Designated Company under section 4.1 are submitted for filing in the Land Title Office;

**“Commencement of Construction”** means the date on which the proponent of the PNW LNG Project, the LNG Canada Project, an Other LNG Project, or the Kitimat LNG Project, as applicable, issues a notice or notices to proceed to its EPC contractor in respect of all material engineering, procurement and construction contracts for the project, excluding other site assessment or exploration work;

**“Council”** and **“Band Council”** mean, in respect of Kitselas, 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, including railway purposes, and that is identified in Schedule 2, as amended in accordance with section 7.3;

**“Crown Grant”** means a grant (as defined in the *Land Act*) of the fee simple title of a Parcel;

**“Designated Company”** means one or more companies incorporated under federal or provincial law, all the shares of which are wholly owned directly or indirectly, legally and beneficially, by Kitselas and which Kitselas has designated to take fee simple title to a Parcel; which for greater certainty may include a company that is acting as a partner in a limited partnership or a limited liability partnership and may include a company holding a Parcel in bare trust for and on behalf of Kitselas;

**“Dubose Lands”** means those lands having an area of approximately 1,140.3 hectares as shown for illustrative purposes in Plan 3 of Schedule 1 and, following completion and approval of a legal survey of those lands in accordance with this Agreement and provincial law, the land legally described in the approved survey, which for greater certainty will not include any land below the natural boundary as defined in the *Land Act* and the land within any Crown Corridor;

**“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 the PNW LNG Project, the LNG Canada Project, an Other LNG Project, or the Kitimat LNG Project, as applicable;

**“FID” or “Final Investment Decision”** means a final and unconditional decision of the proponent of the PNW LNG Project, the LNG Canada Project, an Other LNG Project, or the Kitimat LNG Project, as applicable, to proceed with the construction of the project, which, 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, 2012*;
- 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;

**“FID Date”** means the date on which the proponent of the PNW LNG Project, the LNG Canada Project, an Other LNG Project, or the Kitimat LNG Project, as applicable, makes a public pronouncement of a FID;

**“Final Agreement”** means the final land claim agreement to be entered into by Kitselas, the Province and Her Majesty the Queen in Right of Canada in accordance with stage 5 of the British Columbia Treaty Commission process;

**“Governmental Action”** means any provincial or federal approval, decision, process, agreement, authorization or action of any kind whatsoever, including approvals, decisions, 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 the PNW LNG Project, the LNG Canada Project, an Other LNG Project, or the Kitimat LNG Project, as applicable, and their Associated Infrastructure;

**“GST”** means the goods and services tax imposed under the *Excise Tax Act* (Canada);

**“Incremental Funding”** has the same meaning as in the Kitselas Coastal Fund Agreement;

**“Incremental Project Funding Notice”** has the same meaning as in the Kitselas Coastal Fund Agreement;

**“ITA Opportunity Lands”** means those lands as shown for illustrative purposes in Schedule 6 having an area of approximately 1,391.5 hectares;

**“Kitimat LNG Project”** means the description of the project as set out in the application made to the British Columbia Environmental Assessment Office, subject to modifications that may be required in the course of securing environmental or regulatory approvals, for a natural gas receiving and LNG production facility that, at full build out, will produce approximately 10 million tons of LNG per annum, along with a marine terminal, with a material offload facility, and supporting infrastructure, and related shipping activities;

**“Kitselas”** means the “band”, as that term is defined in the *Indian Act*, named the “Kitselas First Nation” and includes all Kitselas Citizens;

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

**“Kitselas Coastal Fund Agreement”** means the “Kitselas Coastal Fund Agreement” entered into by the Parties concurrently with this Agreement, as amended from time to time in accordance with its terms;

**“Lands”** means any, all or a combination of any of the Parcels;

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

**“LNG Canada Project”** means the description of the project as set out in the application made to the British Columbia Environmental Assessment Office, subject to modifications that may be required in the course of securing environmental or regulatory approvals, for a natural gas receiving and LNG production facility that, at full build out, will produce approximately 26 million tons of LNG per annum, along with a marine terminal, with a material offload facility, and supporting infrastructure, and related shipping activities;

**“Other LNG Project”** means any project proposed within the Prince Rupert LNG Project Area to produce and export LNG that is a “reviewable project” within the meaning of the *Environmental Assessment Act*, as that LNG project is described in the applicable application made to the Canadian Environmental Assessment Agency and the British Columbia Environmental Assessment Office, subject to any modifications to that description that may be required in the course of securing environmental and regulatory approvals, along with any related marine terminal, material offload facility, and supporting infrastructure, and related shipping activities, but does not include:

- a) the PNW LNG Project; or
- b) any LNG project that may be proposed within the Prince Rupert LNG Area after 4 LNG projects, not including the PNW LNG Project, that are



“reviewable projects” within the meaning of the *Environmental Assessment Act* located within the Prince Rupert LNG Area have made a FID;

“**Parcel**” means any, all or a combination of any of the means any, all or a combination of any of the Airport Groundside Lands, Thornhill Lands or the Dubose Lands;

“**Permitted Encumbrances**” means the reservations, exceptions, liens, charges, and interests described in Schedule 2 as amended in accordance with section 7.2 for each of the Parcels or any other Permitted Encumbrances agreed to by the Parties;

“**PNW LNG Project**” means the Pacific Northwest Liquefied Natural Gas project proposed on and adjacent to Lelu Island, British Columbia, as described in the applications made to the British Columbia Environmental Assessment Office and the Canadian Environmental Assessment Agency, as well as any expansion to four trains capable of producing approximately 24 million tons of LNG per annum; and as approved in the British Columbia Environmental Assessment Office *Environmental Assessment Certificate #E14-04*, as amended or replaced from time to time, and in the Decision Statement, dated September 27, 2016, issued under section 54 of the *Canadian Environmental Assessment Act, 2012*, as amended or replaced from time to time;

“**Prince Rupert LNG Project Area**” means those lands and waters shown as the “Prince Rupert LNG Project Area” in Schedule 7;

“**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;

“**PST**” means the sales tax imposed under the *Provincial Sales Tax Act*; and

“**Thornhill Lands**” means those lands as shown for illustrative purposes in Plan 2 of Schedule 1 having an area of up to approximately 62 hectares and, following completion of the planning process referred to in section 5.3 (c) and agreement of the Parties on required revisions to the boundaries of those lands as a result of

that planning process and completion and approval of a legal survey of those revised boundaries in accordance with this Agreement and provincial law, the land legally described in the approved survey, which for greater certainty will not include any land below the natural boundary as defined in the *Land Act* and the land within any Crown Corridor.

**1.2 Interpretation.** For purposes of this Agreement:

- a) "including" means "including, but not limited to" and "includes" means "includes, but not limited to";
- b) 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;
- c) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- d) 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;
- e) 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;
- f) any reference to the delivery on Closing of an agreement, document or instrument "in the form" of an attached schedule means an agreement, document or instrument substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Parties;
- g) each and every release, covenant and other agreement given, and action to be taken, by Kitselas under this Agreement means Kitselas acting by and through its Mayor and Council, and will be conclusively deemed to have been given, or taken, by Kitselas on its own behalf, and for and on behalf of its Kitselas Citizens;
- h) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party; and
- i) land below a natural boundary, as defined in the *Land Act*, or land within any Crown Corridor do not form part of any Parcel.

**1.3 Impact Benefit Agreement Negotiations.** Nothing in this Agreement is intended to limit or prevent Kitselas from negotiating and attempting to reach an

agreement with the proponent of an LNG project on financial or other benefits associated with the approval, construction and operation of an LNG project and its Associated Infrastructure or receiving benefits in accordance with any such agreement.

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

- Schedule 1 Maps of Parcels (Plans 1 to 3) for Illustrative Purposes
- Schedule 2 Permitted Encumbrances and Crown Corridors
- Schedule 3 Form C Additions to Reserve Restrictive Covenant
- Schedule 4 Designated Company Agreement
- Schedule 5 GST Certificate
- Schedule 6 Map of ITA Opportunity Lands
- Schedule 7 Map of the Prince Rupert LNG Project Area

**ARTICLE 2 - REPRESENTATIONS AND WARRANTIES**

**2.1 Kitselas Representations.** Kitselas represents and warrants to the Province, with the intent and understanding that the Province will rely on those representations in entering into this Agreement, that:

- a) it enters into this Agreement for, and on behalf of, its Kitselas Citizens; and
- b) it, as represented by its Chief and Council, has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement on behalf of Kitselas and Kitselas Citizens.

**2.2 Provincial Representations.** The Province represents and warrants to Kitselas, with the intent and understanding that Kitselas will rely on those representations in entering into this Agreement, that:

- a) it has the legal power, capacity and authority to enter into this Agreement; and
- b) subject to the terms and conditions of this Agreement, it has the legal power, capacity and authority to carry out its obligations under this Agreement.

### **ARTICLE 3 – FINANCIAL BENEFITS**

- 3.1 Prior Capacity Funding.** Kitselas acknowledges that prior to the Effective Date the Province has provided \$250,000 to it for capacity funding purposes to assist with completing the PNW LNG Project and LNG Canada Project term sheet and this Agreement.
- 3.2 Legacy Fund for PNW LNG Project and LNG Canada Project.** In connection with the PNW LNG Project and the LNG Canada Project, the Province will provide legacy funding to Kitselas as follows:
- a) \$350,000, as soon as practicable after the Effective Date;
  - b) \$1,000,000, as soon as practicable after the earliest FID Date of either the PNW LNG Project or the LNG Canada Project; and
  - c) \$1,000,000, as soon as practicable after the earliest Commencement of Construction of either the PNW LNG Project or the LNG Canada Project.
- 3.3 Additional Funding for PNW LNG Project and LNG Canada Project.** In connection with the PNW LNG Project and the LNG Canada Project, the Province will provide funds to Kitselas to support the proposed Kitselas community hall as follows:
- a) \$250,000, as soon as practicable after the Effective Date, to be used for the community hall planning process; and
  - b) \$2,000,000, as soon as practicable after the earliest FID Date of either the PNW LNG Project or LNG Canada Project, to be used for community hall construction costs or other purposes consistent with section 3.6.
- 3.4 Legacy and Capacity Funding for the Other LNG Projects.** In connection with the Other LNG Projects, the Province will provide legacy and capacity building funding to Kitselas as follows:
- a) \$500,000, as soon as practicable after the Effective Date; and
  - b) \$6,500,000, as soon as practicable after the earliest Commencement of Construction of either the PNW LNG Project or the LNG Canada Project.
- 3.5 Legacy and Capacity Funding for Kitimat LNG Project.** In connection with the Kitimat LNG Project, the Province will provide legacy and capacity building funding to Kitselas as follows:
- a) \$250,000, as soon as practicable after the Kitimat LNG Project FID Date;

and

- b) \$1,500,000, as soon as practicable after the Commencement of Construction of the Kitimat LNG Project.

**3.6 Use of Funds.** Unless otherwise specifically indicated, any funds paid to Kitselas in accordance with this Agreement will be used by Kitselas for the following purposes:

- a) community development projects and social initiatives;
- b) investment in renewable energy projects and community energy planning;
- c) education and skills training, in particular for Kitselas Citizens to participate in business or employment opportunities created by LNG Projects; or
- d) economic development, including investment that supports LNG development activities.

#### **ARTICLE 4 – TRANSFER OF LANDS**

**4.1 Parcel Transfers.** Subject to the Permitted Encumbrances and the terms of this Agreement, including the satisfaction or waiver of all applicable conditions precedent, the Province will transfer the Lands to a Designated Company on the following dates:

- a) **Airport Groundside Lands:** as soon as practical after:
  - (i) the Effective Date, and
  - (ii) receipt of a written request from Kitselas to transfer the Parcel, received within 2 years from the Effective Date; and
- b) **Thornhill Lands:** as soon as practicable after:
  - (i) the earliest Commencement of Construction of either the PNW LNG Project or the LNG Canada Project, and
  - (ii) receipt of a written request from Kitselas to transfer the Parcel, received within 7 years from the date in subsection b) (i); and
- c) **Dubose Lands:** as soon as practicable after:
  - (i) the earliest Commencement of Construction of either the PNW

LNG Project or the LNG Canada Project, and

- (ii) receipt of a written request from Kitselas to transfer the Parcel, received within 7 years from the date in subsection c) (i).

- 4.2 Expiry of Notice Period.** If Kitselas has not provided a written request in accordance with section 4.1 to transfer a Parcel within 90 days prior to the expiration of the applicable notice period, at Kitselas request, the Parties will meet to discuss the transfer of that Parcel.
- 4.3 Pre-Closing Deliveries by Kitselas.** At least 60 days, or other time period agreed to by the Parties, prior to the Closing Date with respect to a Parcel, Kitselas will deliver to the Province a direction identifying the Designated Company that will take fee simple title to the Parcel.
- 4.4 Closing Deliveries by Province.** Subject to the Permitted Encumbrances and the terms of this Agreement, including the satisfaction or waiver of the conditions precedent under Article 5, the Province will provide the Designated Company identified under section 4.3 with a Crown Grant in fee simple for the applicable Parcel to be transferred.
- 4.5 Closing Deliveries by Kitselas.** Not less than 14 days before the applicable Closing Date with respect to a Parcel to be transferred, Kitselas will execute and deliver, or cause to be executed and delivered, or deliver, as the case may be, to the Province:
- a) a restrictive covenant granted by the Designated Company substantially in the form attached as Schedule 3 in relation to the Parcel;
  - b) an agreement executed by the Designated Company substantially in the form attached as Schedule 4 in relation to the Parcel;
  - c) a certificate signed by an officer of the Designated Company substantially in the form attached as Schedule 5 confirming the Designated Company's GST registration number and registered status;
  - d) a letter of undertaking signed by Kitselas's legal counsel undertaking, among other things, that the restrictive covenant (Schedule 3) and applicable Permitted Encumbrances will be filed concurrently with the Crown Grant in the order of priority set out in this Agreement and that the Province will be provided with a signed copy of the Designated Company Agreement (Schedule 4) and the GST Certificate (Schedule 5);
  - e) a Property Transfer Tax form executed by the Designated Company; and
  - f) all such other documents that may be necessary or advisable for Kitselas

or a Designated Company to provide to complete the transactions contemplated under this Agreement.

- 4.6 Registration of Lands.** All Parcels transferred under this Agreement will be registered in the Land Title Office.
- 4.7 Closing Procedure.** The legal counsel for Kitselas and the Province will confirm in writing the manner in which the documents necessary or advisable to transfer and register each of the Parcels will be produced, managed, exchanged and delivered. Without limiting the generality of the foregoing, legal counsel responsible for registering a Parcel will:
- a) provide a letter of undertaking;
  - b) provide copies of all documents filed under section 4.5(d) to legal counsel for the other Party.
- 4.8 Staged Transfer of Portions of a Parcel.** If Kitselas determines that rather than obtaining the transfer of an entire Parcel it would like to obtain a staged transfer of portions of the Parcel, it may provide notice to the Province and the Parties will negotiate and attempt to reach agreement on amendments to this Agreement to address that interest.
- 4.9 Confirmation of Parcel Boundaries.** As soon as practicable after Kitselas delivers a notice under section 4.1 requesting a transfer of a Parcel, the Parties will meet to review and confirm the boundaries of the Parcel to be transferred as shown in Schedule 1 and may, prior to the Province obtaining a legal survey of those Lands, agree to adjust the boundaries of the Parcel and amend Schedule 1 accordingly.
- 4.10 Status of the Lands.** Kitselas acknowledges that:
- a) subject to the terms and conditions of this Agreement, the Lands will be transferred to a Designated Company in fee simple and, for certainty, after Closing the Lands will be subject to provincial and federal laws of general application; and
  - b) the Province has made no representation or warranty regarding the Lands becoming a pre-approved addition to the treaty settlement lands of Kitselas under the Final Agreement.

## **ARTICLE 5 – CONDITIONS PRECEDENT**

- 5.1 Band Council Resolution.** The obligations of the Province under this Agreement are subject to Kitselas delivering to the Province on or before the

Effective Date a resolution made by its elected Council authorizing Kitselas's representatives named in the resolution to execute and deliver this Agreement on behalf of Kitselas.

**5.2 Conditions Precedent to all Land Transfers.** The obligation of the Province to transfer each of the Parcels to a Designated Company under this Agreement is subject to:

- a) Kitselas being in compliance with all of its material obligations under this Agreement;
- b) the representations and warranties of Kitselas under this Agreement being true and correct on the applicable Closing Date;
- c) the Province having received a written request from Kitselas within the time period identified in section 4.1 to transfer the applicable Parcel;
- d) all material obligations of Kitselas and the Designated Company in respect of all previously transferred Parcels having been fully performed in accordance with this Agreement;
- e) the Province being satisfied that it has fulfilled any consultation obligations it may have with respect to assertions of Aboriginal Rights to the applicable Parcel by First Nations other than Kitselas;
- f) the Parties reaching agreement in accordance with section 7.2 on the Permitted Encumbrances applicable to the Parcel and updating and amending Schedule 2 in respect of that Parcel accordingly;
- g) the Parties reaching agreement in accordance with section 7.3 on the location and size of Crown Corridors or statutory rights of way or easements required to address transportation routes, electrical and natural gas transmission infrastructure and water, sewage or other utility corridor requirements and updating and amending Schedule 2 in respect of that Parcel accordingly;
- h) legal surveys for the applicable Parcel having been completed by the Province and approved in accordance with provincial law before the applicable Closing Date; and
- i) the minister responsible having authorized the disposition of the applicable Parcel in accordance with provincial law before the applicable Closing Date.

**5.3 Conditions Precedent to Particular Parcels.** In addition to the conditions set out in section 5.2 applicable to all Parcels, the obligation of the Province to



transfer the following Parcels to a Designated Company under this Agreement is also subject to the following conditions:

**a) Airport Groundside Lands:**

- (i) without limiting sections 6.3 and 6.4 and subject to section 6.6, the Province having completed a review of the environmental condition of the Lands and, in consultation with Kitselas, determining that there are no significant environmental remediation risks associated with the Parcel; and
- (ii) the Province having received written confirmation from the City of Terrace that it has surrendered its interest in the Parcel under the Option to Purchase Agreement dated April 18, 2008, in a form and content satisfactory to the Province acting reasonably;

**b) Dubose Lands:**

- (i) the Parties reaching agreement on the terms and conditions of a *Land Title Act* section 219 covenant restricting the use of an agreed to portion of the Dubose Lands for commercial or industrial purposes only, to be registered as a first charge against the title to the Parcel unless the Parties agree otherwise; and
- (ii) the Province, Kitselas and the holder of the Terrace Community Forest Licence (the "Licensee") concluding an agreement or agreements respecting ongoing forest activities within that portion of the Dubose Lands currently within the Terrace Community Forest, which provides:
  - 1. the consent of the Licensee, not to be unreasonably withheld, to the change in the boundary or area of the Terrace Community Forest Agreement arising as a result of the transfer of the Dubose Lands and to any corresponding reduction in the allowable annual cut under the Terrace Community Forest Agreement;
  - 2. the Licensee releasing any claims it may have against the Province for compensation under the *Forest Act* associated with the reduction in the annual allowable cut arising as a result of the deletion of the Dubose Lands from the Terrace Community Forest Agreement; and
  - 3. the Licensee or Kitselas indemnifying and saving the Province harmless from and against all claims, demands, liabilities, losses, damages, costs or expenses suffered or

incurred by it after Closing for compensation under the *Forest Act* associated with the reduction in the annual allowable cut arising as a result of the deletion of the Dubose Lands from the Terrace Community Forest Agreement.

**c) Thornhill Lands:**

- (i) within 12 months of the Effective Date of this Agreement, the Regional District of Kitimat Stikine completing a land use planning process involving Ministry of Transportation and Infrastructure and Kitselas that identifies required road and weigh scale infrastructure exclusions and the Parties agreeing on revised boundaries of the Parcel that address those interests.

**5.4** The Parties acknowledge that the agreement(s) to be concluded under section 5.3 (b) (ii) will involve Kitselas and the Licensee reaching agreement on approaches to address the Licensee's interests associated with the reduction in the annual allowable cut arising as a result of the deletion of the Dubose Lands from the Terrace Community Forest Agreement and those approaches may include:

- a) the ongoing ability of the Licensee to harvest timber on undeveloped areas of the Dubose Lands as identified by Kitselas from time to time;
- b) the ability of the Licensee to harvest timber on alternate lands acquired by Kitselas, including incremental treaty lands or future treaty settlement lands; or
- c) other measures as may be agreed to by Kitselas and the Licensee.

**5.5** The Parties acknowledge that the agreement(s) to be concluded under section 5.3 (b) (ii) will not involve the Province agreeing to include any additional provincial Crown land within the Terrace Community Forest Agreement or providing the Licensee with any compensation.

**5.6 Conditions Precedent to the Payment of Funds.** The obligation of the Province to make any payments to Kitselas under this Agreement is subject to:

- a) Kitselas being in compliance with all of its material obligations under this Agreement; and
- b) the representations and warranties of Kitselas under this Agreement being true and correct on the applicable payment date.

- 5.7 Waiver of Conditions Precedent.** The conditions precedent set out in this Article are for the sole benefit of the Province and may be waived by the Province on written notice to Kitselas.
- 5.8** Notwithstanding section 5.7, the Province will waive the condition precedent set out in section 5.3 b) ii) 3 if, on or before the Closing Date of the Dubose Lands, the Final Agreement is in force and effect and the Province, acting reasonably, determines that the Final Agreement adequately addresses the potential liability of the Province to provide compensation under the *Forest Act* associated with the reduction in the annual allowable cut arising as a result of the deletion of the Dubose Lands from the Terrace Community Forest Agreement.

## **ARTICLE 6 – CONDITION OF LANDS**

- 6.1 Lands “As Is”.** Kitselas acknowledges and agrees that any and all of the Lands acquired by a Designated Company under this Agreement are acquired “as is”.
- 6.2 Viability of Lands.** Kitselas acknowledges and agrees that the Province has not given any representation or warranty concerning:
- a) physical access to the Lands including, without limitation, overland access;
  - b) the economic feasibility of the development of the Lands;
  - c) the fitness of the Lands for any particular use, including the intended use of it by Kitselas or by a Designated Company; and
  - d) the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands.
- 6.3 Environmental Condition.** Kitselas:
- a) 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
  - b) acknowledges and agrees that the Province has not given any representation or warranty concerning the condition of the Lands (including surface water and groundwater), environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Lands and on or under any surrounding or neighbouring land and the current and past uses of the Land and any surrounding or neighbouring land.
- 6.4 Environmental Conditions.** Kitselas 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 contamination or any other toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater) and any other costs of remediation of the Lands, whether disclosed or undisclosed, known or unknown, created or existing, that arose before the Closing Date or arose before and continues after the Closing Date;
- b) release the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs, actions, causes of action, suits and proceedings with respect to any and all environmental liabilities described in this section 6.4 a), and
- c) 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 any and all environmental liabilities described in this section 6.4 a).

**6.5 Post-Closing Date.** Section 6.4 does not apply where the environmental liability relating to the Lands results from the acts or omissions of British Columbia after the Closing Date.

**6.6 Pre-Closing Discovery of Contamination.** If prior to Closing either Party becomes aware that the Lands to be transferred are a “contaminated site” within the meaning of the *Environmental Management Act* the Parties will negotiate and attempt to reach agreement on potential comparable alternate lands.

## **ARTICLE 7 – ENCUMBRANCES AND CROWN CORRIDORS**

**7.1 Permitted Encumbrances.** Kitselas accepts fee simple title to each Parcel subject to the Permitted Encumbrances and covenants not to do, or allow to be done, anything that would interfere with any rights 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.

**7.2 Finalization of Permitted Encumbrances.** The Parties acknowledge that as of the Effective Date the land status review of the Parcels required to identify all existing reservations, exceptions, liens, charges and interests has not been completed and that between the Effective Date and the transfer of a Parcel to a Designated Company, the Parties will review and amend Schedule 2 (Permitted Encumbrances) in respect of that Parcel accordingly.

**7.3 Finalization of Crown Corridors.** The Parties acknowledge that as of the Effective Date:

- a) the location and size of Crown Corridors required to be excluded from the Parcels; and
- b) the location, size and terms and conditions of easements or statutory rights of way required to address transportation routes, including railway routes, electrical and natural gas transmission infrastructure and water, sewage or other utility corridor requirements on or through the Parcels to service the Parcels or lands outside the Parcels;

have not been finalized, and agree that between the Effective Date and the transfer of each Parcel to a Designated Company they will review and amend Schedule 2 in respect of that Parcel accordingly.

**ARTICLE 8 – TRANSACTION COSTS**

**8.1 Property Transfer Tax, Survey and Other Costs.** The Province is responsible for the payment of the following costs in connection with the transfer of the Lands:

- a) subject to section 8.4, the cost of obtaining a legal survey of the outer boundaries of each Parcel;
- b) the costs associated with the preparation of Crown grants; and
- c) property transfer tax, and for greater 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.

**8.2 GST, PST and Other Charges.** Kitselas is responsible for GST and any other federal sales tax, and any other transfer or registration charges which the Province has not expressly agreed to accept responsibility for under this Agreement.

**8.3 Annual Taxes and Other Costs.** In accordance with provincial law, the Designated Company is responsible for any and all annual taxes payable in respect of the Lands. For greater certainty, on and after the applicable Closing Date, the Province is not required to assume any financial or other obligation with respect to that Parcel.

**8.4 Costs Associated with the Transfer of Portions of a Parcel.** For certainty, the obligation of the Province under section 8.1 a) is to pay for the cost to survey the

outer boundaries of a Parcel and if Kitselas wishes to obtain the staged transfer of portions of a Parcel as contemplated by section 4.8, it is responsible for the cost of any additional required survey work and other related costs.

## **ARTICLE 9 - OTHER LAND RELATED COVENANTS**

### **9.1 Other Kitselas Covenants.** Kitselas further acknowledges and covenants that:

- a) the Lands that may be transferred to a Designated Company 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 at no time after Closing, will Kitselas seek to add any of the Lands to its reserve lands without the consent of the Province; and
- b) the Lands are subject to provincial and local government laws, including applicable zoning, land use, land development and property tax laws, and at no time after Closing will Kitselas challenge the applicability of provincial or local government laws to the Lands.

### **9.2 Indemnity for Charges.** Kitselas will indemnify and save harmless the Province and all Provincial Officials from any and all damages, losses, liabilities or costs that the Province or any Provincial Official may suffer or incur in connection with or as a result of any suit, action, claim, proceeding or demand made by any person other than the Province arising in connection with any Permitted Encumbrance or any charge or encumbrance granted by Kitselas or the Designated Company.

### **9.3 Registration of Unregistered Interests.** The Parties will identify any unregistered interests which may require registration against the applicable Parcel in the Land Title Office, and, once agreed, set out such interest in Schedule 2.

### **9.4 Unregisterable Permitted Encumbrances.** If any Permitted Encumbrance is not registerable in accordance with the *Land Title Act*, Kitselas will cause the Designated Company to enter into an agreement with the holder of that Permitted Encumbrance on substantially the same terms and conditions that exist between the Province and the holder of that Permitted Encumbrance, to take effect on the Closing Date of the applicable Parcel.

### **9.5 Interim Uses.** The Province may authorize the interim use and occupation of the Lands prior to Closing with the consent of Kitselas.

## **ARTICLE 10 – INCREMENTAL TREATY NEGOTIATIONS**

- 10.1 ITA Negotiations.** If requested to do so, the Province will negotiate and attempt to reach an agreement or agreements with Kitselas on an incremental treaty agreement that would set out the terms and conditions by which the Province would transfer the ITA Opportunity Lands to a company owned and controlled by Kitselas in advance of the Final Agreement.

## **ARTICLE 11 – KITSELAS ASSURANCES**

- 11.1 PNW LNG Project and LNG Canada Project Assurances.** Provided that the Province is not in breach of its material obligations under this Agreement, Kitselas will:

- a) indicate in writing that it is supportive of the PNW LNG Project, its Associated Infrastructure and any related Governmental Action, and the LNG Canada Project, its Associated Infrastructure and any related Governmental Action, if so requested by the Province;
- b) continue to participate in the PNW LNG Project and the LNG Canada Project environmental assessment and regulatory processes in a timely manner;
- c) confirm that it is being consulted and accommodated in respect of the PNW LNG Project, its Associated Infrastructure and any related Governmental Action, and the LNG Canada Project, its Associated Infrastructure and any related Governmental Action;
- d) not initiate or participate, directly or indirectly, in any legal action or proceeding that challenges, directly or indirectly, the PNW LNG Project, its Associated Infrastructure or any related Governmental Action, or the LNG Canada Project, its Associated Infrastructure and any related Governmental Action, on the basis that Kitselas has not been adequately consulted or accommodated or that the PNW LNG Project, its Associated Infrastructure or any related Governmental Action or the LNG Canada Project, its Associated Infrastructure and any related Governmental Action, constitutes an infringement of its Aboriginal Rights;
- e) not initiate, support or participate, directly or indirectly, in any action that would interfere with, delay, hinder or otherwise oppose the PNW LNG Project, its Associated Infrastructure or any Governmental Action or the LNG Canada Project, its Associated Infrastructure and any related Governmental Action; and

- f) not support actions of any kind whatsoever by a Kitselas Citizen or a member of any other First Nation that would interfere with, delay, hinder or otherwise oppose the PNW LNG Project, its Associated Infrastructure and any related Governmental Action, or the LNG Canada Project, its Associated Infrastructure or any related Governmental Action.

**11.2 Assurances upon the PNW LNG Project or LNG Canada Project FID.**

Provided that the Province is not in breach of its material obligations under this Agreement, upon the earlier of the FID in respect of the PNW LNG Project or the LNG Canada Project, Kitselas:

- a) releases and discharges the Province and all Provincial Officials from all claims with respect to the Province's obligation to consult and, where appropriate, accommodate in respect of the PNW LNG Project, its Associated Infrastructure and any related Governmental Action, and the LNG Canada Project, its Associated Infrastructure and any related Governmental Action;
- b) releases and discharges the Province and all Provincial Officials from all claims of infringement of its Aboriginal Rights in respect of the PNW LNG Project, its Associated Infrastructure and any related Governmental Action, and the LNG Canada Project, its Associated Infrastructure and any related Governmental Action; and
- c) acknowledges that the Province has fulfilled all obligations it may have to provide Kitselas 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 with respect to the PNW LNG Project, its Associated Infrastructure, and any related Governmental Action and the LNG Canada Project, its Associated Infrastructure and any related Governmental Action.

**11.3 Assurances in relation to the Lands and Permitted Encumbrances.** Upon the Closing Date, Kitselas:

- a) releases and discharges the Province and all Provincial Officials from all claims with respect to the Province's obligation to consult and, where appropriate, accommodate in respect of the transfer of the Parcel to the Designated Company and any Permitted Encumbrances in respect of the Parcel;
- b) releases and discharges the Province and all Provincial Officials from all claims of infringement of its Aboriginal Rights in respect of the Parcel and any applicable Permitted Encumbrances; and



- c) acknowledges that the Province has fulfilled all obligations it may have to provide Kitselas 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 with respect of the transfer of the Parcel to the Designated Company and any Permitted Encumbrances in respect of the Parcel.

**11.4 Assurances of Kitselas in relation to the Other LNG Projects.** Provided that the Province is not in breach of its material obligations under this Agreement, Kitselas will:

- a) support the Other LNG Projects generally, provided that they are developed in a manner that is environmentally and socially responsible and respectful of Kitselas' Aboriginal Rights;
- b) participate in good faith in all environment assessment and regulatory processes for each of the Other LNG Projects;
- c) not initiate, support or participate, directly or indirectly, in any activity that would physically interfere with so as to delay, hinder or impede the development of an Other LNG Project, its Associated Infrastructure or any related Governmental Action;
- d) not support actions of any kind whatsoever by a Kitselas Citizen of Kitselas or a member of any other First Nation that would physically interfere with so as to delay, hinder or impede the development of an Other LNG Project, its Associated Infrastructure or any related Governmental Action;
- e) acknowledge and agree that the Province has fulfilled all obligations it may have to provide Kitselas with financial or economic accommodation, economic or other benefits including lands, capacity funding, and payments or compensation of any kind whatsoever with respect to each of the Other LNG Projects, its Associated Infrastructure and any related Governmental Action; and
- f) release and discharge the Province and Provincial Officials from all claims for financial or economic accommodation, economic or other benefits including lands, monetary damages, or other payments or compensation of any kind whatsoever associated with:
  - (i) the Province's obligation to consult, and where appropriate, accommodate in respect of each of the Other LNG Projects, its Associated Infrastructure and any related Governmental Action, and

- (ii) any infringement of Kitselas' Aboriginal Rights in respect of each of the Other LNG Projects, its Associated Infrastructure and any related Governmental Action.

**11.5 Releases in respect of Other LNG Projects.** Upon the Commencement of Construction of an Other LNG Project, Kitselas will:

- a) not initiate or participate in or support any legal action or proceeding that challenges, directly or indirectly, that Other LNG Project, its Associated Infrastructure or any related Governmental Action on the basis that Kitselas has not been adequately consulted on that Other LNG Project, its Associated Infrastructure or any related Governmental Action or that Other LNG Project, its Associated Infrastructure or any related Governmental Action constitutes an unjustified infringement of its Aboriginal Rights;
- b) release and discharge the Province and all Provincial Officials from all claims with respect to the Province's obligation to consult, and where appropriate, accommodate, in respect of that Other LNG Project, its Associated Infrastructure and any related Governmental Action;
- c) release and discharge the Province and all Provincial Officials from all claims of infringement of its Aboriginal Rights in respect of that Other LNG Project, its Associated Infrastructure and any related Governmental Action; and
- d) notwithstanding subsections a), b) and c), if Kitselas has not delivered an Incremental Project Funding Notice in respect of an Other LNG Project prior to the Province issuing an LNG facility permit under the *Oil and Gas Activities Act* in respect of that Other LNG Project, the covenants and releases under subsections a), b) and c) will be suspended and the Province will not seek to enforce or rely on subsections a), b) and c) until such time as Kitselas provides an Incremental Project Funding Notice in respect of that Other LNG Project.

**11.6 Kitimat LNG Project Assurances.** Provided that the Province is not in breach of its material obligations under this Agreement, Kitselas will:

- a) participate in good faith in all environment assessment and regulatory processes for the Kitimat LNG Project;
- b) not initiate, support or participate, directly or indirectly, in any activity that would physically interfere with so as to delay, hinder or impede the development of the Kitimat LNG Project, its Associated Infrastructure or any related Governmental Action;

- c) not support actions of any kind whatsoever by a Kitselas Citizen or a member of any other First Nation that would physically interfere with so as to delay, hinder or impede the development of the Kitimat LNG Project, its Associated Infrastructure or any related Governmental Action;
- d) acknowledge and agree that the Province has fulfilled all obligations it may have to provide Kitselas with financial or economic accommodation, economic or other benefits including lands, capacity funding, and payments or compensation of any kind whatsoever with respect to the Kitimat LNG Project, its Associated Infrastructure and any related Governmental Action; and
- e) release and discharge the Province and Provincial Officials from all claims for financial or economic accommodation, economic or other benefits including lands, monetary damages, or other payments or compensation of any kind whatsoever associated with:
  - (i) the Province's obligation to consult, and where appropriate, accommodate in respect of each of the Kitimat LNG Project, its Associated Infrastructure and any related Governmental Action, and
  - (ii) any infringement of Kitselas' Aboriginal Rights in respect of each of the Kitimat LNG Project, its Associated Infrastructure and any related Governmental Action.

**11.7 Assurances upon the Kitimat LNG Project FID.** Provided that the Province is not in breach of its material obligations under this Agreement, upon the FID in respect of the Kitimat LNG Project, Kitselas:

- a) releases and discharges the Province and all Provincial Officials from all claims with respect to the Province's obligation to consult and, where appropriate, accommodate in respect of the Kitimat LNG Project, its Associated Infrastructure and any related Governmental Action;
- b) releases and discharges the Province and all Provincial Officials from all claims of infringement of its Aboriginal Rights in respect of the Kitimat 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 Kitselas 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 with respect to the Kitimat LNG Project, its Associated Infrastructure, and any related Governmental Action.

## **ARTICLE 12 - DISPUTE RESOLUTION**

- 12.1 Representatives.** If a dispute arises between the Province and Kitselas regarding the interpretation of a provision of this Agreement, representatives of the Parties will meet as soon as is practicable to attempt to resolve the dispute.
- 12.2 Senior Representatives.** If the representatives of the Parties are unable to resolve differences at the appropriate level, the dispute will be raised to more senior levels of the Province and Kitselas.
- 12.3 Other Means.** The Parties may choose other appropriate approaches to assist in reaching resolution of the dispute.

## **ARTICLE 13 – NOTICES**

- 13.1 Notices.** 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, e-mail or facsimile copier, when received as follows:

if to the Province:

Deputy Minister  
Ministry of Natural Gas Development  
P.O Box 9319 Stn. Prov. Gvt.  
Victoria, B.C. V8W 9B1

Fax: 250 952-0269

And to:

Deputy Minister  
Ministry of Aboriginal Relations and Reconciliation  
P.O Box 9100 Stn. Prov. Gvt.  
Victoria, B.C. V8W 9B1

Fax: (250) 387-6073

and if to Kitselas:

Kitselas Band Council  
2225 Gitaus Road  
Terrace, BC  
V8G 0A9

Attention: Chief Administrative Officer

Fax: (250) 628-9259

- 13.2 Change of Address.** 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.

**ARTICLE 14 - COMING INTO EFFECT, SUSPENSION OF PROVINCIAL  
OBLIGATIONS, TERMINATION AND SURVIVAL**

- 14.1 Coming into Effect.** This Agreement comes into effect when it has been executed and delivered by the Parties.
- 14.2 Suspension of Provincial Obligations.** Subject to section 14.3, notwithstanding any other provision in this Agreement, if:
- a) Kitselas fails to perform or is in breach of any of its material obligations under this Agreement;
  - b) any representation or warranty made by Kitselas in this Agreement is not true or incorrect;
  - c) Kitselas initiates, participates in or supports any legal action or proceeding that challenges, directly or indirectly:
    - (i) the PNW LNG Project,
    - (ii) the LNG Canada Project,
    - (iii) the Kitimat LNG Project, or
    - (iv) any Other LNG Project,

or any Associated Infrastructure or related Governmental Action in respect of any such LNG project, on the basis that Kitselas has not been adequately consulted or accommodated or that such LNG project constitutes an unjustified infringement of Kitselas' Aboriginal Rights;

- d) Kitselas initiates, participates or supports, directly or indirectly in any activity that would physically interfere with so as to delay, hinder or otherwise oppose any LNG project identified in subsection c) or any Associated Infrastructure or related Governmental Action in respect of such LNG project; or
- e) Kitselas supports actions of any kind whatsoever by a Kitselas Citizen or a member of any other First Nation that would interfere with so as to delay, hinder or oppose any LNG project identified in subsection c) or any Associated Infrastructure or related Governmental Action in respect of such LNG project;

then the Province may, by written notice to Kitselas:

- a) suspend the transfer of any Lands that have not yet been transferred to Kitselas under this Agreement; or
- b) suspend the payment of any funds under this Agreement that have not yet been made to Kitselas under this Agreement.

**14.3 Notice of Proposed Suspension.** Prior to taking any action under section 14.2, the Province will notify Kitselas of the proposed action and the Parties will meet within 30 days to discuss and attempt to resolve the matter.

**14.4 Province may Terminate on Breach.** Subject to sections 14.5 and 14.7, the Province may, by written notice to Kitselas, terminate this Agreement if Kitselas is in breach of any of any of its obligations set out in Article 11 (Assurances) or Article 9 (Other Covenants).

**14.5 Notice of Proposed Termination.** Prior to terminating this Agreement under section 14.4, the Province will notify Kitselas of the proposed termination and the Parties will meet within 30 days to discuss and attempt to resolve the matter.

**14.6 No Meeting or Resolution of Outstanding Matter.** For certainty, nothing in sections 14.3 or 14.5 limits the ability of the Province to take any action if Kitselas does not meet with the Province or the Parties are not able to resolve the matter as a result of meeting in accordance with sections 14.3 or 14.5.

**14.7 Suspension prior to Termination.** The Province may not provide a notice to terminate this Agreement under section 14.5, unless it has firstly provided a notice of suspension of obligations in accordance with section 14.3 and the 30

day time period for the Parties to meet and attempt to resolve the matter under section 14.3 has expired.

- 14.8 Survival of Terms and Conditions after Transfer of Lands.** Article 6 - Condition of Lands, and Article 9 - Other Land Related Covenants and section 11.3, survive the completion of the transfer of any Parcel or the termination of this Agreement and, for greater certainty, will continue to apply to the Lands.
- 14.9 Survival of Terms and Conditions after Payment of Funds.** If the financial benefits to be paid to Kitselas under sections 3.1, 3.2, 3.3, and 3.4 have been provided, sections 11.2, 11.4 and 11.5 survive the termination of this Agreement and, if the financial benefits to be paid to Kitselas under section 3.5 have been provided, sections 11.6 and 11.7 survive the termination of this Agreement.
- 14.10 Termination.** Notwithstanding any other provision of this Agreement, this Agreement terminates and all obligations of the Parties under this Agreement cease if the Commencement of Construction of either the PNW LNG Project or the LNG Canada Project has not occurred within 5 years from the Effective Date.
- 14.11 Meeting Prior to Date of Termination.** The Parties will meet at least 60 days prior to the potential termination of this Agreement under section 14.10 to discuss the status of this Agreement.
- 14.12 Failure to Meet or Agree.** For certainty, nothing in section 14.11:
- a) limits the operation of section 14.9 if Kitselas fails to meet; or
  - b) requires the Parties to agree to extend the term of this Agreement.

## **ARTICLE 15 – GENERAL**

- 15.1 Financial Administration Act.** The Province's obligations set out in this Agreement are subject to 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 expenditure in respect of an obligation may be required, to make that expenditure, and Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited any expenditure that is necessary under any required appropriation.
- 15.2 Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement.

**15.3 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 whatsoever for the better and absolute performance of the terms and conditions of this Agreement.

**15.4 No Implied Waiver.** 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 constitute a waiver of any other provision, obligation or subsequent default.

**15.5 Successors.** This Agreement will enure to the benefit of and be binding on Kitselas and its successors.

**15.6 No Admissions.** Nothing in this Agreement will be construed:

- a) to limit or prevent Kitselas from participating in any revenue sharing arrangements that the Province may establish for eligible First Nations in relation to any revenues generated from provincial Crown land dispositions, or other provincial revenues other than those contained in the Coastal Fund Agreement or this Agreement, associated with LNG projects;
- b) to preclude Kitselas from identifying concerns about potential impacts of any LNG project and its Associated Infrastructure in the applicable environmental assessment or regulatory process, and either Party may seek to resolve those concerns as part of the applicable environmental assessment or regulatory process;
- c) to preclude Kitselas from taking any necessary steps in accordance with applicable federal and provincial law with respect to concerns it may have as a result any LNG project proponent being in breach of its obligations under its licenses, permits and approvals;
- d) to preclude Kitselas from identifying concerns about the enforcement of conditions attached to a Governmental Action with the relevant provincial agencies;
- e) as an admission by the Province of the validity of any claim by Kitselas to a specific treaty right or an Aboriginal Right;



- f) as an acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to Kitselas; or
- g) to preclude or limit the Province from relying on the provision of any benefit provided to Kitselas under this Agreement in any legal proceeding with respect to the adequacy of financial accommodation or compensation for any alleged infringement of Kitselas' Aboriginal Rights in relation to the PNW LNG Project, the LNG Canada Project, any Other LNG Project, or the Kitimat LNG Project.

**15.7 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); or
- b) recognize, affirm, define, deny, limit or amend any Aboriginal Right or any responsibilities of the Parties except as set out in this Agreement.

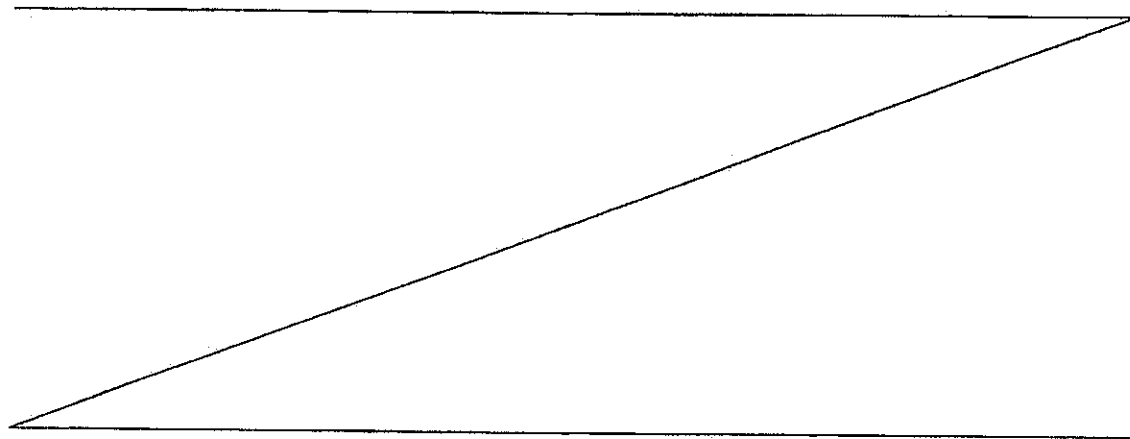
**15.8 No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.

**15.9 Amendment.** This Agreement may be amended from time to time by the Parties in writing.

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

**15.11 Assignment.** This Agreement, or any benefit under this Agreement, may not be assigned by a Party without the express written consent of the other Party.

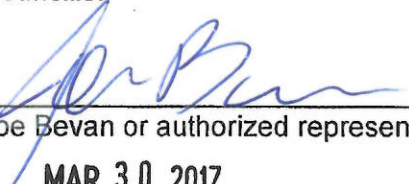
**THIS SPACE LEFT INTENTIONALLY BLANK**



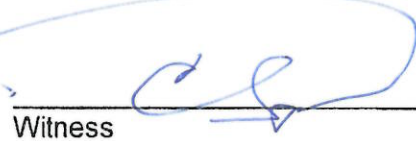
**15.12 Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a scan, photocopy or facsimile copy) and delivering it to the other Party by facsimile or electronic transmission.

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

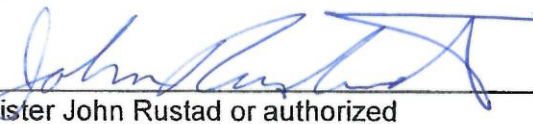
Signed on behalf of Kitselas by the  
Chief Councillor

  
\_\_\_\_\_  
Chief Joe Bevan or authorized representative  
**MAR 30 2017**

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Witness

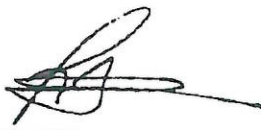
Signed on behalf of Her Majesty the Queen In  
Right of the Province of British Columbia as  
represented by the Minister of Aboriginal  
Relations and Reconciliation

  
\_\_\_\_\_  
Minister John Rustad or authorized  
representative  
**MAR 30 2017**

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Witness

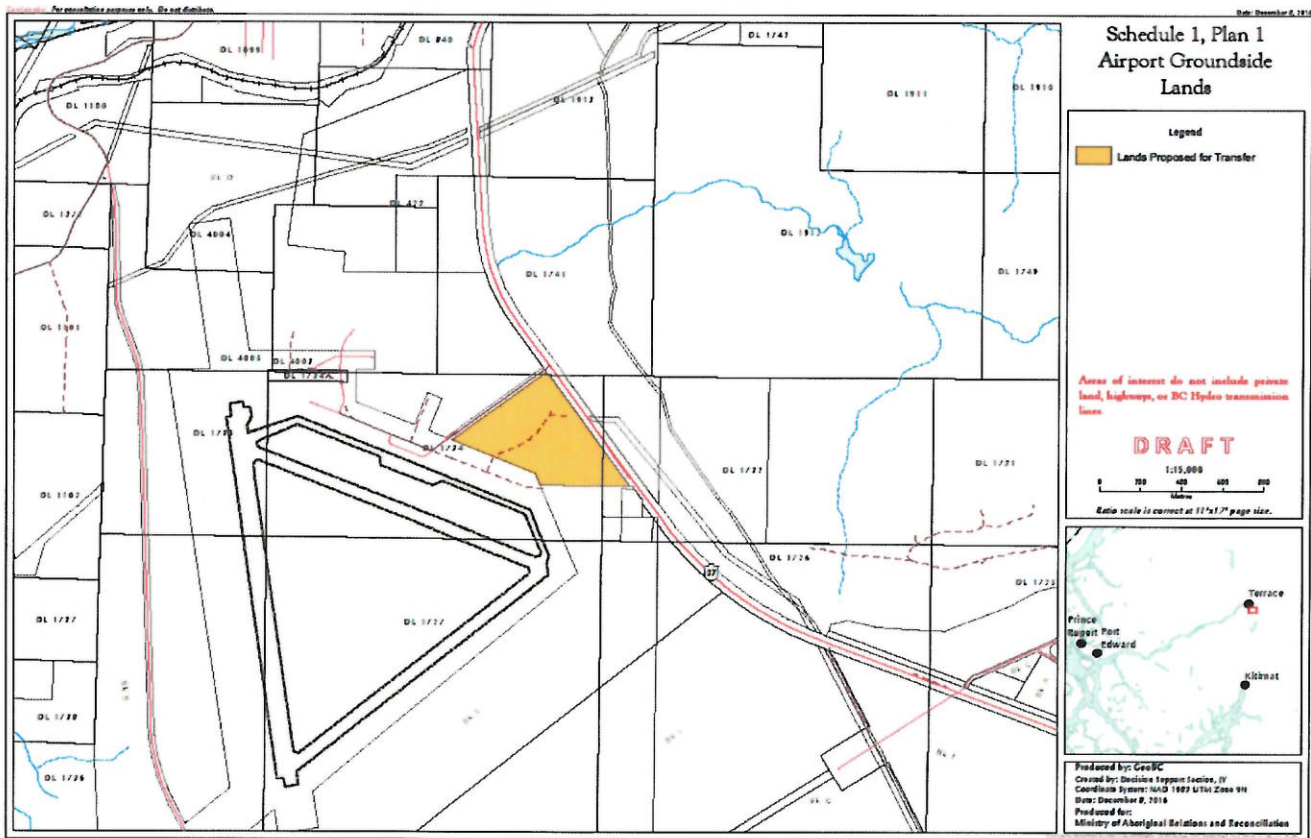
Signed on behalf of Her Majesty the Queen In  
Right of the Province of British Columbia as  
represented by the Minister of Natural Gas  
Development

  
\_\_\_\_\_  
Minister Rich Coleman or authorized  
representative  
**MAR 29 2017**

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Witness

**Schedule "1" – Map of Lands for Illustrative Purposes  
Plan 1 to Plan 3 – Map of Parcels for Illustrative Purposes**









## Schedule 2 Permitted Encumbrances and Crown Corridors

### Part 1 – Permitted Encumbrances

### Part 2 - Permitted Encumbrances-Interests Not Registered on Title

### Part 1 – Permitted Encumbrances

<b>Permitted Encumbrances that apply to all Parcels</b>
<p>All interests that encumbered or applied to the Parcel as of the Effective date and any renewal or replacement of that interest by the Province.</p> <p>All interests registered on title under the <i>Land Title Act</i> as of the Closing Date;</p> <p>All subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the Parcel;</p> <p>All exceptions and reservations contained in section 50(1) of the <i>Land Act</i>;</p> <p>Any conditional or final water license or substituted water license issued or given under the <i>Water Act</i>, 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 Parcel and to maintain, repair and operate any works permitted on the Parcel under the license at the date of the Crown grant;</p> <p>All subsisting grants to, or subsisting rights of any person made or acquired under the <i>Mineral Tenure Act</i>, <i>Coal Act</i> or <i>Petroleum and Natural Gas Act</i> or under any prior or subsequent enactment of the Province of British Columbia of like effect;</p> <p>All other liens, charges and encumbrances granted by the Province, with the written consent of Kitselas prior to the Closing Date; and</p> <p>A restrictive covenant in favour of Her Majesty the Queen in right of the Province of British Columbia to be registered against the title to the Parcel in the form attached as Schedule 4 (Additions to Reserve Restrictive Covenant).</p>

## Schedule 6 ITA Opportunity Lands

\*Final ITA encumbrances/exclusions will be negotiated in ITA document

<b>Land Act Tenures</b>		
<b>Interest Holder</b>	<b>Tenure Type</b>	<b>File #</b>
Chevron Canada Limited	Licence of Occupation	6408868
Pacific Future Energy Corporation	Application Licence of Occupation	6408904
	Temporary Licence	6408901
	Temporary Licence	6408953
Regional District Kitimat-Stikine	Licence of Occupation	6407789
Pacific Trail Pipelines Management Inc	Licence of Occupation	9636609
	Temporary Permit	9636410
	Investigative Permit	9640217
	Investigative Permit	9640216
8056587 Canada Inc	Investigative Licence/Waterpower	6408456
		6408455
Ministry of Forests, Lands and Natural Resource Operations	Sec 16 Land Act Reserve for forest management research	0331030
<b>Forestry Tenures</b>		

Ministry of Forests, Lands and Natural Resource Operations	Forest research plots	EP0712 EP1325
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#### **Schedule 1 – Plan 2 Thornhill Lands**

<b>Land Act Tenures</b>		
<b>Interest Holder</b>	<b>Tenure Type</b>	<b>File #</b>
Pacific Northern Gas LTD	Physical trespass of road associated with Statutory Right of Way	0320447

#### **Schedule 1 Plan 3 Dubose Lands**

<b>Land Act Tenures</b>		
<b>Interest Holder</b>	<b>Tenure Type</b>	<b>File #</b>
Pacific Trail Pipelines Management Inc	Temporary Permit	9636410
	Investigative Permit	9640217
	Investigative Permit	9640216
Pacific Future Energy Corporation	Temporary Licence	6408901
	Temporary Licence	6408953
Ministry of Forests, Lands and Natural Resource Operations	Sec 16 Land Act Reserve for forest management research	0331030
<b>Forestry Tenures</b>		
Ministry of Forests, Lands and Natural Resource Operations	Forest research plots	EP0712 EP1325

**NOTE:** The above list of Permitted Encumbrances is a preliminary list and further land statusing work is required. It may be that as a result of further land statusing work the boundaries of the Parcels may have to be amended.

#### **Part 2 - Permitted Encumbrances-Interests Not Registered on Title**

<b>Interests Not Registered on Title</b>
Utility and local government Interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer continue on the Lands shown in Schedule 1.

#### **Part 3 – Crown Corridors and Interests to be Excluded**

#### **Schedule 6 ITA Opportunity Lands**

<b>Interest Holder</b>	<b>Tenure Type</b>	<b>File #</b>
Pacific Northern Gas LTD	Statutory Right of Way	0348345
		6400350
Pacific Trail Pipelines	Application/Interim Licence	Sec 138 PNG

Management Inc		Act
British Columbia Hydro and Power Authority	Statutory Right of Way	0228298 0260382
BC Ministry of Forests, Lands and Natural Resource Operations	North Kitimat Mainline Forest Permit Road Lakelse Forest Service Road Wedeeene Forest Service Road	R07570 Sec A 8261 01 9714 01
Ministry of Forests, Lands and Natural Resource Operations <b>OR</b> Skeena Valley Snowmobile Association	Kitimat Main Road Parking Area	REC136007

### Schedule 1 Plan 3 Dubose Lands

Interest Holder	Tenure Type	File #
Pacific Trail Pipelines Management Inc	Application/Interim Licence	Sec 138 PNG Act
British Columbia Hydro and Power Authority	Temporary Licence (to be replaced with SRow for electric power line)	6408847
BC Ministry of Forests, Lands and Natural Resource Operations	Lakelse Forest Service Road Wedeeene Forest Service Road	8261 01 9714 01

#### NOTES:

Further work is required on the Crown Corridors as there may be other Crown Corridors that apply to the Parcels. In addition, municipal roads running through the Parcels are not listed as they are excluded from any Crown land granting process under the *Land Act*. Also roads that form the boundary of a Parcel in accordance with the required right of way width for such roads are not included as Crown Corridors and will be addressed through the surveying process.

Crown Corridors are shown for illustrative purposes on the maps of the parcels. The actual width and alignment of those Crown Corridors may change with new information or with the construction of the excluded feature.



### Schedule 3 - 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 | <input type="checkbox"/>            | D.F. No.                              |
| (b) | Express Charge Terms        | <input checked="" type="checkbox"/> | Annexed as Part 2                     |
| (c) | Release                     | <input type="checkbox"/>            | 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.

3. TRANSFEROR(S):\* (Grantor)

3. 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 9049, STN PROV GOVT, Victoria, British Columbia, V8W 9E2

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**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			Party(ies) Signature(s)
	Y	M	D	
				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 enure 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 4 - Designated Company Agreement**

This Agreement is dated for reference \_\_\_\_\_, 2016.

**BETWEEN:**

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

(the "Province")

**AND:**

\_\_\_\_\_, a company incorporated under the laws of British Columbia and  
having its principle place of business at [address]

(the "Designated Company")

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

**WHEREAS:**

- A. The Province and Kitselas have entered into an agreement dated \_\_\_\_\_ (the "Agreement") pursuant to which the Province will transfer to the Designated Company fee simple title to those lands legally described as:

[Insert Legal Description of lands]

(the "Parcel")

- B. Kitselas and the Designated Company have agreed that, as a condition of the transfer of the Parcel, the Designated Company will execute and deliver this Designated Company Agreement on the terms set out below.

NOW THEREFORE the Province and the Designated Company agree as follows:

1. **Defined Terms.** The terms "Province" and "Kitselas" and any other capitalized terms used in this Designated Company Agreement and defined in the Agreement will have the meaning given to those terms in the Agreement.
2. **Environmental Condition.** The Designated Company 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 Parcel.
3. **Agreement Binding.** Without limiting the generality of the foregoing, the terms of the Agreement relating to the Parcel which are for the benefit of the Province are legally binding on the Designated Company as if the Designated Company was a party to the

Agreement, including, without limitation, Article 6 Condition of the Lands and Article 9 Other Covenants of the Agreement.

4. **Enforcement of Agreement.** The Province may, in its sole discretion, enforce any term or condition of the Agreement, including any obligation, covenant or indemnity of Kitselas, against the Designated Company or Kitselas or both of them.
5. **Representation and Warranty.** The Designated Company warrants and represents that it is in good standing and that it has the legal power, capacity and authority to enter into and to carry out its obligations under each agreement and transaction to which it is a party in accordance with this Agreement.
6. **Legal Advice.** The Designated Company acknowledges that it has had full opportunity to review the terms and conditions of this Designated Company Agreement and the Agreement, a copy of which is attached as Schedule A, and to seek independent legal advice with respect to their terms and conditions.
7. **Entire Agreement.** This Designated Company Agreement is the entire agreement between the Parties in respect of the subject matter of this Designated Company Agreement and, except as set out in this Designated Company Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Designated Company Agreement. The Schedules and Appendices to this Designated Company Agreement form part of this Designated Company Agreement.
8. **Further Acts and Assurances.** 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 Designated Company Agreement.
9. **No Implied Waiver.** Any waiver of:
  - a) a provision of this Designated Company Agreement;
  - b) the performance by a Party of an obligation under this Designated Company Agreement; or
  - c) a default by a Party of an obligation under this Designated Company 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.
10. **Successors.** This Designated Company Agreement will enure to the benefit of and be binding on the Designated Company and its successors and the Province.
11. **No Admissions.** Nothing in this Designated Company Agreement will be construed as an:
  - a) admission by the Province of the validity of any claim by Kitselas to a specific aboriginal right or aboriginal title within the meaning of section 35 of the *Constitution Act, 1982*; or

- b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to Kitselas.

12. **Not a Treaty.** This Designated Company 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); or
- b) recognize, affirm, define, deny, limit or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Designated Company Agreement.

13. **No Fettering.** Nothing in this Designated Company Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.

14. **Amendment.** This Designated Company Agreement may be amended from time to time by the Parties in writing.

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

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

Signed by the Designated Company as of \_\_\_\_\_, 20\_\_\_\_ by:

[Name of Company]

\_\_\_\_\_  
Per: Authorized Signatory

SIGNED on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA by the Minister of Aboriginal Relations and Reconciliation or the Minister's authorized representative as of \_\_\_\_\_, 20\_\_\_\_:

\_\_\_\_\_  
Minister of Aboriginal Relations and Reconciliation  
or the Minister's authorized representative

**Schedule 5 – GST Certificate**

**FORM 221(2)(b) (CERTIFICATE AS TO REGISTRATION STATUS OF PURCHASER)**

**Certificate as to Registration Status of Purchaser**

(Paragraphs 221(2)(b) and (c))

FROM:        *[the "Vendor"]*  
TO:            *[the "Purchaser"]*  
RE:            *[the "Property"]*

---

THE PURCHASER HEREBY CERTIFIES TO THE VENDOR PURSUANT TO PARAGRAPHS 221(2)(b) AND (c) OF *THE EXCISE TAX ACT* (THE "ACT") THAT THE PURCHASER:

is a prescribed recipient under the Act.

[OR]

is registered under Part IX of the Act, its registration number is *[number]* and the Purchaser will account for the tax payable in respect of the purchase of the Property in accordance with the Act.

The Purchaser acknowledges that the Vendor is relying on this Certificate in connection with the sale of the Property.

Each term that is used in the Certificate and that is defined in, and for the purposes of, Part IX of the Act has the meaning assigned to it in Part IX of the Act.

DATED *[month, day, year]*.

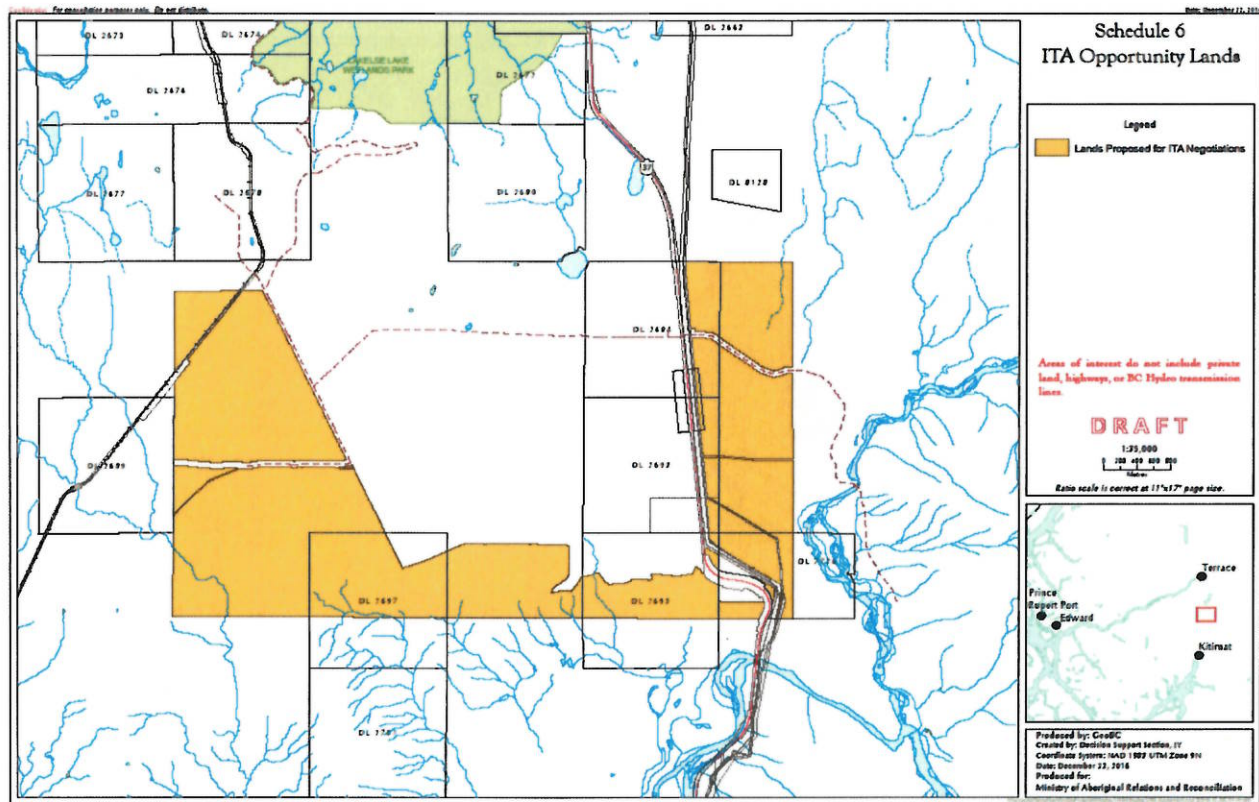
[Designated Company name]  
By its authorized signatory

---

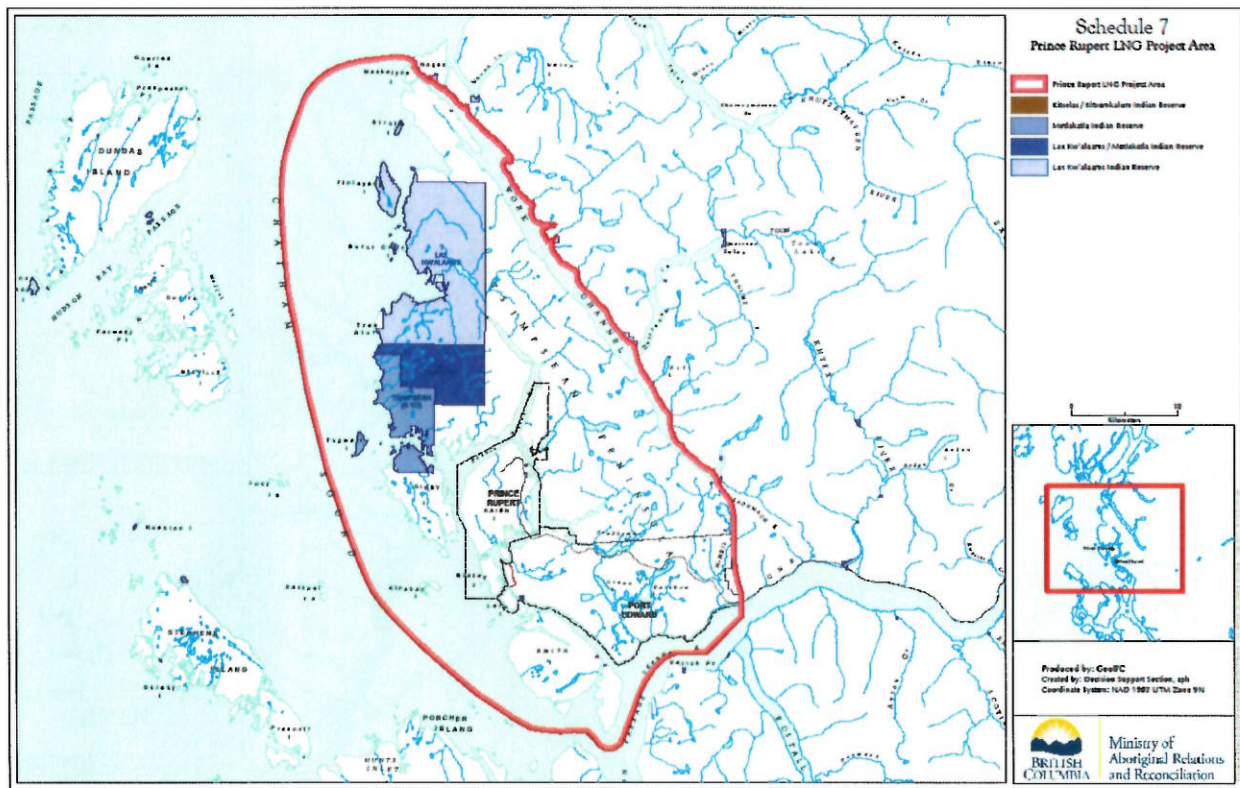
[Print name and title]



## Schedule 6 – ITA Opportunity Lands



## Schedule 7 – Prince Rupert LNG Project Area



**APPENDIX B – KITSELAS COASTAL FUND AGREEMENT**

**KITSELAS LNG COASTAL FUND AGREEMENT**



## **KITSELAS LNG COASTAL FUND AGREEMENT**

This Agreement is dated for reference March 30, 2017

### **BETWEEN:**

**Her Majesty the Queen in right of the Province of British Columbia as  
represented by the Minister of Natural Gas Development and the Minister of  
Aboriginal Relations and Reconciliation**

**(the "Province")**

### **AND:**

**KITSELAS FIRST NATION, on behalf of itself and Kitselas Citizens, as  
represented by the Chief and Council**

**("Kitselas")**

**(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. Kitselas 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. Kitselas and the Province wish to enter into this Agreement to confirm Kitselas' 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 Kitselas 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 Kitselas 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 1<sup>st</sup> of a calendar year and ending on March 31<sup>st</sup> 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 Kitselas to the Province in accordance with 3.6;

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

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

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

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

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

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

**“LNG Benefits Agreement”** means the Kitselas 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
- Pacific NorthWest LNG;
- Prince Rupert LNG;
- Triton LNG;
- WCC LNG; and
- Woodside Energy.

**“LNG Project Expansion Date”** means June 1<sup>st</sup> 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 Kitselas 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 Kitselas Liquefied Natural Gas (LNG) Benefits Agreement – 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 Kitselas' support for that LNG industry, subject to the terms and conditions of this Agreement.
  - b) facilitate the Parties working together to establish an LNG industry in the Map Area that is environmentally and socially responsible and respectful of Kitselas' 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 Kitselas as set out in this Part.

### Base Funding

- 3.2 **Initial Base Funding.** The Province will provide Kitselas 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 Kitselas with Ongoing Base Funding payments, as follows:
- a) If any LNG Project proponent makes a FID before March 31, 2019:
    - i) a one-time payment of \$250,000, payable within 60 days of the FID; and
    - ii) 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); or

- b) if no LNG Project proponent makes a FID before March 31, 2019, ongoing annual payments of \$500,000 each commencing in the year of the Commencement of Construction of an LNG Project for the balance of the Term, payable within 60 days of the Commencement of Construction and on the Annual Payment Date in each subsequent BC Fiscal Year.
- 3.4 Ongoing Base Funding payments provided in accordance with 3.3 a) ii) or 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:
  - a) the obligation to provide Base Funding is only triggered on a one-time basis and Base Funding is not provided for each LNG Project; and
  - b) the obligation to provide Ongoing Base funding under 3.3 b) is only triggered once the Commencement of Construction of the first LNG Project occurs and no retroactive Ongoing Base Funding will be provided for any year prior to the year that the Commencement of Construction of the first LNG Project occurs.

#### **Incremental Project Funding**

- 3.6 After a FID Date for an LNG Project has occurred, Kitselas will determine whether it wishes to receive Incremental Project Funding and provide the assurances set out in 4.2 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 Kitselas 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 Kitselas 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 Kitselas 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 Kitselas 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 Kitselas 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 Kitselas if:
- a) Kitselas 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 Kitselas in this Agreement or any LNG Benefits Agreement is untrue or incorrect;
  - c) Kitselas initiates or supports any legal action that challenges, directly or indirectly, any LNG Project, its Associated Infrastructure or any related Governmental Action; or
  - d) Kitselas 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 Kitselas in respect of an LNG Project for which it has provided an Incremental Project Funding Notice:

- a) under 3.23 c), if Kitselas 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 Kitselas 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 Kitselas 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 Kitselas 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 Kitselas will establish and maintain in its name a separate 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 Kitselas will use the Funding to pursue initiatives consistent with Kitselas' socio-economic objective of enhancing the well-being of Kitselas Citizens.

3.30 For certainty, Kitselas 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, Kitselas will, on or before July 31<sup>st</sup> of each year, make available to Kitselas Citizens 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 Kitselas provides an Incremental Project Funding Notice for each LNG Project that makes a FID after the 10<sup>th</sup> 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 Kitselas 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 – KITSELAS 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 Kitselas 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 Kitselas' 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, Kitselas 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 Kitselas from raising concerns about that LNG Project in any applicable federal or provincial environmental assessment process or with the Province if Kitselas 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 Kitselas from participating in provincial programs generally available to First Nations;
- e) not support actions of any kind whatsoever by a Kitselas 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, Kitselas 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 Kitselas receiving a notice under 4.3 to discuss why Kitselas 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 Kitselas against the Crown in relation to:
- a) the potential infringement of that LNG Project on Kitselas' 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, Kitselas:
- 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 Kitselas 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 Kitselas 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 Kitselas 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) Kitselas being in compliance with all of its material obligations under this Agreement;
  - d) Kitselas' representations and warranties under this Agreement being true and correct; and
  - e) the Province having received an Annual Report from Kitselas 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) Kitselas 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) Kitselas representations and warranties under this Agreement being true and correct on the Effective Date.
- 5.3 For certainty, the provision by the Province to Kitselas 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**

### **Kitselas Representations**

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

### **Provincial Representations**

6.2 The Province represents and warrants to Kitselas, with the intent and understanding that they will be relied on by Kitselas 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) Kitselas failing to perform or being in breach of any of its material obligations under this Agreement;
- b) any representation or warranty made by Kitselas is untrue or incorrect; and

- c) Kitselas 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 Kitselas 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 Kitselas, require that the Event of Default be remedied within a time period identified in the notice; or
  - b) by written notice to Kitselas, 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 Aboriginal Relations and Reconciliation  
P.O. Box 9100 Stn Prov Govt  
Victoria, BC V9W 9B1  
Email: [ABRInfo@gov.bc.ca](mailto:ABRInfo@gov.bc.ca)  
Fax: 250-387-6073  
Attention: Assistant Deputy Minister, Negotiations and Regional  
Operations Division

and if to Kitselas:

Kitselas Band Council  
2225 Gitaus Road  
Terrace, BC  
V8G 0A9  
Fax: (250) 628-9259  
Attention: Chief Administrative Officer

### **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 Kitselas 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 Kitselas 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 Kitselas;
- b) is an admission by the Province that it has an obligation to provide financial or economical accommodation to Kitselas in relation to any LNG Project;
- c) precludes Kitselas from bringing claims for breach of this Agreement;
- d) precludes Kitselas 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 Kitselas in applicable environmental assessment or regulatory processes;
- f) precludes Kitselas from taking steps in accordance with federal and provincial law with respect to concerns Kitselas 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 Kitselas' Aboriginal Rights in relation to any LNG Project; or
- h) precludes Kitselas 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

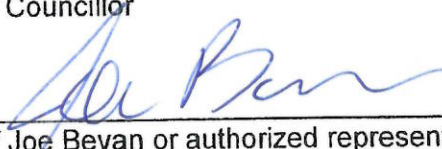
the same instrument.

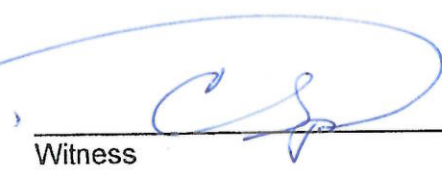
**Electronic Delivery**

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 Kitselas by the  
Chief Councillor

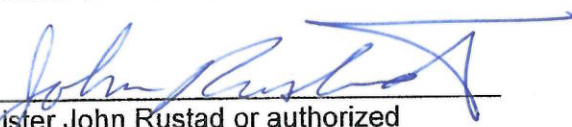
  
\_\_\_\_\_  
Chief Joe Bevan or authorized representative

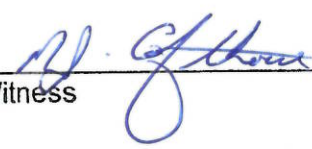
  
\_\_\_\_\_  
Witness

MAR 30 2017

\_\_\_\_\_  
Date

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


  
\_\_\_\_\_  
Minister John Rustad or authorized  
representative

  
\_\_\_\_\_  
Witness

MAR 30 2017

\_\_\_\_\_  
Date

**Signed on behalf of Her Majesty the Queen In  
Right of the Province of British Columbia as  
represented by the Minister of Natural Gas  
Development**

  
\_\_\_\_\_  
Minister Rich Coleman or authorized  
representative

  
\_\_\_\_\_  
Witness

MAR 29 2017

\_\_\_\_\_  
Date



## Schedule A: Map Area



**Schedule B  
Annual Report Template**

<b>Community Priority</b>	<b>Planned Expenditures</b>	<b>Actual Expenditures</b>

## **APPENDIX C – NATURAL GAS PIPELINE BENEFITS UMBRELLA AGREEMENT**

### **Natural Gas Pipeline Benefits Umbrella Agreement**

#### **Kitselas First Nation**

#### **BETWEEN:**

**Her Majesty the Queen in Right of the Province of British Columbia, as  
represented by the Minister of Aboriginal Relations and Reconciliation  
("the Province")**

#### **AND:**

**Kitselas First Nation, on behalf of itself and its Members, as represented by the  
Chief and Council  
("Kitselas")  
(Collectively referred to as the "Parties" and individually referred to as a "Party")**

#### **WHEREAS:**

- A. New natural gas pipelines are proposed in British Columbia.**
- B. The Province is consulting Kitselas on the potential impacts of proposed natural gas pipelines in accordance with provincial legal obligations.**
- C. The Parties wish to develop an effective long-term working relationship that includes Kitselas sharing benefits and supporting the development of the new natural gas pipelines in accordance with this Agreement.**

**NOW THEREFORE the Parties agree as follows:**

#### **PART 1 – DEFINITIONS AND INTERPRETATION**

##### **1.1 Definitions. In this Agreement:**

**"Additional Payment" means the payment provided in accordance with section 3.3  
(Additional Payment);**

**"Agreement" means this Natural Gas Pipeline Benefits Agreement;**

**"Effective Date"** means the last date on which this Agreement is fully executed by the Parties;

**"Eligible First Nation"** means a First Nation that the Province at its sole discretion determines is eligible to receive Ongoing Benefits under section 3.4 (Ongoing Benefits) and for the purposes of this Agreement includes Kitselas;

**"Final Payments"** mean the payments provided in accordance with section 3.2 b) (Payment Schedule) and as set out in Schedules A-C, respectively;

**"Government Actions"** means all processes, decisions, authorizations, permits, licences, approvals, Crown land dispositions, agreements and other actions whatsoever, issued, granted, entered into or otherwise taken by the Province, any minister, public official, employee or agent of the Province, any government corporation, and any person acting as a decision maker under any enactment of the Province;

**"Kitselas"** means the "band", as that term is defined in the *Indian Act*, S.C. 1985, c. I-5, named the "Kitselas First Nation;"

**"In-Service Date"** means the first day that Natural Gas Pipeline Project is placed in-service for transmission of natural gas and is able to make natural gas deliveries to the LNG facility at the terminus of Natural Gas Pipeline Project;

**"Initial Payments"** mean the payments provided in accordance with section 3.2 a) (Payment Schedule) and as set out in Schedules A-C, respectively;

**"Member"** means any person who is a "member of the band", as that phrase is defined in the *Indian Act*, S.C. 1985, of Kitselas;

**"Natural Gas Pipeline Project"** means each of the natural gas pipeline projects defined and set out in Schedules A-C, respectively that have been accepted for review by the Environmental Assessment Office under section 16 of the *Environmental Assessment Act*, [SBC 2002] c. 43 and as varied from time to time, which include(s) components such as a natural gas pipeline, and associated compressor stations, equipment and other physical facilities, valves and meters, power supply sources, equipment staging sites, access roads and rights of ways, construction camps and investigative activities;

**"Ongoing Benefits"** means financial benefits available from the Province to Eligible First Nations provided in accordance with sections 3.4 (Ongoing Benefits) to 3.9 (Inflation Adjustment); and

**"Project Payments"** means the total payment described under section 3.1 (Project Payment) for each of the Natural Gas Pipeline Projects as set out in Schedules A-C, respectively, but does not include any additional payments under section 3.3 (Additional Payment), section 3.4 (Ongoing Benefits) or section 3.10 (Additional Opportunities).

**1.2 Interpretation.** For purposes of this Agreement:

- a) "including" means "including, but not limited to" and "includes" means "includes, but not limited to";
- b) the recitals and 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;
- c) 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;
- d) words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition requires;

- e) any reference to a corporate entity includes any predecessor or successor to such entity; and
- f) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

## **PART 2 – PURPOSE AND SCOPE**

**2.1 Purpose.** The purpose of this Agreement is to provide financial benefits to Kitselas and to secure Kitselas' support in relation to the Natural Gas Pipeline Projects.

**2.2 Scope.** This Agreement applies to each Natural Gas Pipeline Project.

**2.3 Schedules.** This Agreement includes the following schedules:

Schedule A - Coastal GasLink Pipeline Project;

Schedule B - Prince Rupert Gas Transmission Project; and

Schedule C - Westcoast Connector Gas Transmission Project.

## **PART 3 – FINANCIAL BENEFITS**

**3.1 Project Payments.** The Province will provide Kitselas with Project Payments for each Natural Gas Pipeline Project as set out in Schedules A – C, respectively in accordance with section 3.2 (Payment Schedule) and subject to section 6.1 (Conditions Precedent to Funding).

**3.2 Payment Schedule.** The Province will provide the Project Payment for each Natural Gas Pipeline Project in two installments as follows:

- a) An Initial Payment of one half of the total Project Payment will be provided within 90 days after all of the following events have occurred:
  - i. the Province receives written confirmation from the proponent that orders have been placed for substantially all of the pipe required for that Natural Gas Pipeline Project;
  - ii. a contract has been entered into with at least one large diameter pipeline general contractor for completion of the work associated with installation of the pipe for one spread having a linear length of more than 25 kilometres; and
  - iii. the completion of production welding along a portion of at least 10 kilometres of a spread of that Natural Gas Pipeline Project.

(collectively "Material Commencement of Construction")
- b) A Final Payment of one half of the total Project Payment will be provided within 90 days after the In-Service Date of that Natural Gas Pipeline Project.
- c) The Province will provide Kitselas with notice of the achievement of Material Commencement of Construction and the In-Service Date as soon as practicable.

- 3.3 **Additional Payment.** The Province will provide Kitselas with Additional Payments for each Natural Gas Pipeline Project as set out in Schedules A-C, respectively, within 90 days after the Effective Date.
- 3.4 **Ongoing Benefits.** The Province will provide Ongoing Benefits of \$10 million per year for each Natural Gas Pipeline Project to Kitselas and the other Eligible First Nations in accordance with sections 3.5 (Entitlement to Ongoing Benefits) to 3.9 (Inflation Adjustment).
- 3.5 **Entitlement to Ongoing Benefits.** Subject to sections 3.6 (Allocation of Ongoing Benefits) and 3.8 (Ongoing Benefits Agreement), Kitselas will be entitled to receive a share of Ongoing Benefits commencing on the first anniversary of the In-Service Date for each Natural Gas Pipeline Project and continuing annually on each subsequent anniversary of the In-Service Date for as long as the project is making natural gas deliveries to the LNG terminus facility.
- 3.6 **Allocation of Ongoing Benefits.** The Province will not make a determination on the allocation of Ongoing Benefits until after June 30, 2015 to allow Eligible First Nations to negotiate and attempt to reach agreement on the allocation of Ongoing Benefits.
- 3.7 **Eligible First Nations Discussions.** The Province will help to facilitate discussions between Eligible First Nations on the allocation of Ongoing Benefits as follows:



- a) the Province will provide Kitselas with a list of Eligible First Nations as soon as practicable after the date on which this Agreement is fully executed; and
- b) on request, the Province will discuss the potential methodologies for the allocation of Ongoing Benefits with Kitselas and the other Eligible First Nations should they also submit a request.

**3.8 Ongoing Benefits Agreement.** If all of the Eligible First Nations are able to reach agreement on the allocation of the Ongoing Benefits by June 30, 2015, then the Province will allocate the Ongoing Benefits in accordance with such agreement. Where the Eligible First Nations are unable to reach agreement on the allocation of Ongoing Benefits by June 30, 2015, the Province will:

- a) allocate a portion of the Ongoing Benefits to each Eligible First Nation in accordance with a consistent and objective methodology determined by the Province, which may take into account factors such as population and the length of pipeline within traditional territory;
- b) provide notice to Kitselas of the provincial approach to the allocation of Ongoing Benefits amongst Eligible First Nations and the amount and timing of its allocation of Ongoing Benefits as soon as practicable after June 30, 2015;
- c) negotiate and attempt to reach agreement with Kitselas on any amendments applicable to this Agreement.

**3.9 Inflation Adjustment.** The Province will adjust the amount of the Ongoing Payments annually, commencing on the second anniversary of the In-Service Date for the Prince Rupert Gas Transmission Project, based on changes in annual BC Final Domestic Demand Implicit Price Index published by Statistics Canada.

- 3.10 Additional Opportunities.** Where the Province provides new types of financial benefits to First Nations relating to a Natural Gas Pipeline Project, or provides additional financial benefits by changing the methodology used to allocate benefits to First Nations under a Natural Gas Pipeline Benefits Agreement, the Province will provide notice to Kitselas and the Parties will discuss those financial benefits, including any eligibility criteria, with the intention of providing an increased share of financial benefits.
- 3.11 Future Amendments.** Where the benefits under section 3.10 (Additional Opportunities) are provided to First Nations under an agreement the Parties will negotiate and attempt to reach agreement on amendments applicable to this Agreement.
- 3.12 Further Assurances.** Nothing in this Agreement precludes Kitselas from:
- a) continuing to negotiate and implement revenue and benefits-sharing agreements with each Natural Gas Pipeline Project proponent and other governments;
  - b) accessing economic opportunities and benefits, which may be available to Kitselas, other than those expressly set out in this Agreement; or
  - c) participating in government programs for which Kitselas may be eligible.

**3.13 Additional natural gas pipeline projects.** For additional natural gas pipeline projects not identified in Schedule A – C, respectively, where:

- a) a natural gas pipeline proponent has filed an environmental impact assessment for project review of a natural gas pipeline project with the required regulatory agencies, and
- b) the Province has received a mandate to negotiate the provision of benefits with Kitselas for that natural gas pipeline project,

the Parties will negotiate and attempt to reach agreement on an additional schedule for that natural gas pipeline project, substantially on the terms of the Natural Gas Pipeline Projects set out in this Agreement and that additional schedule would be added to and form part of this Agreement.

#### **PART 4 – CONSULTATION ON NATURAL GAS PIPELINE PROJECT**

**4.1 Consultation.** The Parties acknowledge that:

- a) consultation between the Parties is occurring and will continue to occur with respect to the Province's assessment, review, any potential permitting processes and other Government Actions related to each Natural Gas Pipeline Project; and
- b) participation in those processes, including identifying potential impacts and seeking to resolve concerns, is expected to occur in a timely manner and in accordance with common law requirements or the process set out in any applicable consultation process agreement between the Parties.

## PART 5 - CERTAINTY

- 5.1 **Support.** Kitselas will provide any letter, certificate, or confirmation of the matters set out in sections 4.1 (Consultation), 5.2 (Legal Challenges), 5.3 (Release) and 5.6 (Claims Resolved) on written request of the Province.
- 5.2 **Legal Challenges.** Provided the Province is not in default of its obligations under this Agreement, Kitselas agrees not to bring any court actions or proceedings that directly or indirectly challenge any Government Actions in relation to each Natural Gas Pipeline Project on the basis that the Province has failed to consult or accommodate Kitselas or on the basis that the Province has infringed any of Kitselas' rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 5.3 **Release.** On receipt of the Initial Payment under section 3.2 a) (Payment Schedule) and provided the Province is not default of its obligations to make payments under this Agreement (default meaning a failure to make payment within the time required after satisfaction of all conditions for payment), Kitselas releases and discharges the Province from:
- a) all actions, causes of action, claims or proceedings from any legal obligation to consult and accommodate Kitselas or to avoid infringement of Kitselas' rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*; and
  - b) debts, duties, demands, damages, interest, fines and costs, expenses, and compensation whatsoever amount, nature and kind, including economic benefits, capacity funding and revenue sharing or payments of any kind including payments arising from any legal obligation to consult and accommodate or to avoid infringement of Kitselas' rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

- 5.4 **Interference.** Kitselas agrees not to support or participate in any acts that frustrate, delay, stop or otherwise physically impede the right of the Province or the Natural Gas Pipeline Project proponent or any of their respective employees, contractors, agents, representatives or invitees to gain access to the Natural Gas Pipeline Project and to carry out any activities associated with the development and operations of the Natural Gas Pipeline Project.
- 5.5 **Assistance.** Kitselas will assist the Province in seeking to resolve any action that may be taken by any Member that is inconsistent with this Agreement.
- 5.6 **Claims Resolved.** Provided the Province is not in default of its obligations under this Agreement, Kitselas agrees that this Agreement resolves all claims arising from any Government Actions in relation to the Natural Gas Pipeline Project with respect to:
- a) issues of economic benefits, capacity funding and revenue sharing or payments of any kind including payments related to any consultation and accommodation obligations; and
  - b) compensation for infringement of Kitselas' rights recognized and affirmed by section 35(1) of the Constitution Act, 1982.

#### **PART 6 – CONDITIONS PRECEDENT**

- 6.1 **Conditions Precedent to Funding.** Notwithstanding any other provision in this Agreement, any payment of funds by the Province to Kitselas under this Agreement is subject to:
- a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, R.S.B.C. 1996, c. 138 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) the band council resolution under section 6.2 (Conditions Precedent to Agreement) not having been varied, amended, repealed or replaced in a manner that alters or terminates its authority to comply with the terms of this Agreement; and
- d) Kitselas being in compliance with all of its obligations under this Agreement.

**6.2 Conditions Precedent to Agreement.** The Province's execution of this Agreement is subject to:

- a) Kitselas delivering to the Province a true or certified copy of the band council resolution approving this Agreement, authorizing its representative to sign this Agreement;
- b) the Province having obtained all required approvals, including Cabinet and Treasury Board approval; and
- c) Kitselas' representations and warranties under this Agreement being true and correct on the Effective Date.

## **PART 7 - REPRESENTATIONS AND WARRANTIES**

**7.1 Kitselas Representations.** Kitselas 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 its Members;

- b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement for and on behalf of its Members;
- c) it has obtained or had the opportunity to obtain legal advice with respect to this Agreement; and
- d) this Agreement is valid and binding obligation upon it.

**7.2 Provincial Representations.** The Province represents and warrants to Kitselas, with the intent and understanding that they will be relied on by Kitselas in entering into this Agreement, that it has the authority to enter into this Agreement and that this Agreement is a valid and binding obligation of the Province.

## **PART 8 - COMMENCEMENT**

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

## **PART 9 - DISPUTE RESOLUTION**

**9.1 Dispute Resolution.** Where a dispute arises regarding the interpretation of this Agreement, the Parties' duly appointed 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 10 - NOTICE AND DELIVERY**

- 10.1 Notices.** 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:

Deputy Minister  
Ministry of Aboriginal Relations and Reconciliation  
P.O Box Stn. Prov. Govt.  
Victoria, BC V8W 9B1

Fax: (250) 387-6073

and if to Kitselas:

Kitselas Nation  
2225 Gitaus Road  
Terrace, BC V8G 0A9  
Attention: Chief Joe Bevan

Fax: (250) 635-5335

- 10.2 Change of Address.** 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.

- 10.3 Electronic Notice.** The Parties will utilize electronic and other methods of communication for the purposes of engagement whenever practicable and appropriate.



## **PART 11 – GENERAL PROVISIONS**

### **11.1 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*; or
- b. affirm, recognize, abrogate or derogate from any of Kitselas' rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

### **11.2 No Admissions Provisions.** Nothing in this Agreement:

- a) is an admission by the Province of the validity of the claims by Kitselas to an aboriginal or treaty right, including Aboriginal title, recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, or that the Natural Gas Pipeline Project and any related Government Actions have or will result in an unjustifiable infringement of any aboriginal or treaty right(s) recognized and affirmed by section 35(1) of the *Constitution Act, 1982* of Kitselas;
- b) is an admission by the Province that it has an obligation to provide financial or economic accommodation or compensation for any infringement to Kitselas in relation to the Natural Gas Pipeline Project;
- c) is an admission by Kitselas that the Province has fulfilled its obligations to consult, and where appropriate accommodate, Kitselas in respect of any other project;
- d) precludes Kitselas from identifying concerns about potential impacts of the Natural Gas Pipeline Project or precludes the Parties from seeking to resolve those concerns as part of the applicable provincial consultation process;

- e) subject to sections 5.2 (Legal Challenges), 5.3 (Release) and 5.6 (Claims Resolved), precludes Kitselas from taking steps to address concerns it may have as a result of a Natural Gas Pipeline proponent being in breach of its obligations under its environmental assessment or regulatory approvals for that Natural Gas Pipeline Project or related permits;
- f) may be construed as Kitselas providing support for, or a release of, any claims, demands, actions or causes of action that Kitselas may have in relation to the conversion or modification of a Natural gas Pipeline Project for the purpose of transportation of any material other than natural gas;
- g) precludes Kitselas from bringing claims for breach of this Agreement or from defending a claim or raising any right recognized and affirmed by section 35(1) of the *Constitution Act, 1982* as a defence to a regulatory charge; or
- h) precludes the Province from relying on the payments made under this Agreement if challenged in any legal actions or proceedings with respect to the adequacy of accommodation or compensation for any alleged infringement of Kitselas' rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982* in relation to a Natural Gas Pipeline Project.

**11.3 Entire Agreement.** 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.

**11.4 Amendment.** The Parties may agree to amend this Agreement in writing.

**11.5 Validity of Agreement.** 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.

**11.6 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.

**11.7 No Implied Waiver.** 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.

**11.8 Assignment.** Kitselas will not assign, either directly or indirectly, this Agreement or any right of Kitselas under this Agreement without the prior written consent of the Province.

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


11.10 **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.

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

Agreed to this 17 day of December, 2014

Signed on behalf of Kitselas by

  
\_\_\_\_\_  
Joe Bevan, Chief Councillor

  
\_\_\_\_\_  
Witness

Signed on behalf of Her Majesty the  
Queen In Right of the Province of  
British Columbia by

  
\_\_\_\_\_  
John Rustad, Minister

  
\_\_\_\_\_  
Witness

Ministry of Aboriginal Relations and  
Reconciliation

Schedule A – Coastal GasLink Pipeline Project

**“Coastal GasLink Pipeline Project”** means the natural gas pipeline project of that name described in the Environmental Assessment Office Project Approval Certificate issued on October 24, 2014 under the Environmental Assessment Act, [SBC 2002] c. 43 and as varied from time to time, which include(s) components such as a natural gas pipeline, and associated compressor stations, equipment and other physical facilities, valves and meters, power supply sources, equipment staging sites, access roads and rights of ways, construction camps and investigative activities;

**Project Payment:**           \$1,150,000

**Initial Payment:**           \$575,000

**Final Payment:**           \$575,000

**Additional Payment:**   \$230,000

**Ongoing Benefits:** Unless otherwise agreed, as soon as practicable after June 30, 2015, this schedule will be amended to include Kitselas' share of the Ongoing Benefits in accordance with section 3.4 (Ongoing Benefits).

Schedule B – Prince Rupert Gas Transmission Project

**“Prince Rupert Gas Transmission Project”**, means the natural gas pipeline project of that name described in the Environmental Assessment Office Project Approval Certificate issued on November 25, 2014 under the *Environmental Assessment Act*, [SBC 2002] c. 43 and as varied from time to time, which include(s) components such as a natural gas pipeline, and associated compressor stations, equipment and other physical facilities, valves and meters, power supply sources, equipment staging sites, access roads and rights of ways, construction camps and investigative activities;

**Project Payment:** \$1,760,000

**Initial Payment:** \$880,000

**Final Payment:** Where a portion of the Prince Rupert Gas Transmission Project is constructed within 70 meters of the centerline of the Westcoast Connector Gas Transmission Project, the Province, at its sole discretion, may reduce the Project Payment under this Agreement by subtracting from the Final Payment the lesser of: (a) 50% of the payment for that portion of the Prince Rupert Gas Transmission Project which is within 70 meters of the existing pipeline; or (b) \$110,000.

\$880,000 (maximum Final Payment)

\$770,000 (minimum Final Payment)

**Additional Payment:** \$352,000

**Ongoing Benefits:** Unless otherwise agreed, as soon as practicable after June 30, 2015, this schedule will be amended to include Kitselas' share of the Ongoing Benefits in accordance with section 3.4 (Ongoing Benefits).

### Schedule C – Westcoast Connector Gas Transmission Project

**"Westcoast Connector Gas Transmission Project"** means the natural gas pipeline project of that name described in the Environmental Assessment Office Project Approval Certificate issued on November 25, 2014 under the *Environmental Assessment Act*, [SBC 2002] c. 43 and as varied from time to time, which include(s) components such as a natural gas pipeline, and associated compressor stations, equipment and other physical facilities, valves and meters, power supply sources, equipment staging sites, access roads and rights of ways, construction camps and investigative activities;

**Project Payment:** \$1,590,000

**Initial Payment:** \$795,000

**Final Payment:** Where a portion of the Westcoast Connector Gas Transmission Project is constructed within 70 meters of the centerline of the Prince Rupert Gas Transmission Project, the Province, at its sole discretion, may reduce the Project Payment under this Agreement by subtracting from the Final Payment the lesser of: (a) 50% of the payment for that portion of the Westcoast Connector Gas Transmission Project which is within 70 meters of the existing pipeline; or (b) \$320,000.  
\$795,000 (maximum Final Payment)  
\$475,000 (minimum Final Payment)

**Additional Payment:** \$318,000

**Ongoing Benefits:** Unless otherwise agreed, as soon as practicable after June 30, 2015, this schedule will be amended to include Kitselas' share of the Ongoing Benefits in accordance with section 3.4 (Ongoing Benefits) .

## BAND COUNCIL RESOLUTION

The Council of the:	KITSELAS BAND NO. 680
Agency:	BC REGION
District:	NORTHWEST
Province:	BRITISH COLUMBIA
Place:	TERRACE
Date:	December 16, 2014

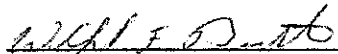
**WHEREAS:** Kitselas wishes to be involved in natural resource development in our Traditional Territory and add value to the economic, environmental and social benefits that may accrue from projects in the Traditional Territory; and

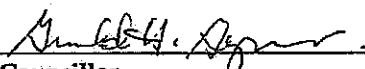
**WHEREAS:** Kitselas has been engaged in negotiations with the Province of British Columbia regarding accommodation for pipeline projects that impact Kitselas rights; and,


**WHEREAS:** Kitselas has been provided with an unexecuted form of Agreement (the "Agreement") to be entered into between Kitselas First Nation and the Province of British Columbia; and

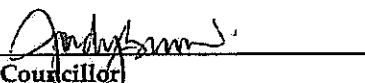
**THEREFORE BE IT RESOLVED:** that Council, on behalf of the First Nation: understands the terms of the Agreement; has received independent legal advice about the Agreement before signing this Resolution; consents to the execution of the Agreement and consents to its execution and delivery, substantially in the form attached to this resolution, subject to any final legal drafting that may be required and authorizes Chief Joseph Bevan and any other member of Council to execute the Agreement, once final legal drafting is completed DATED December 16, 2014

  
Chief Councillor

  
Councillor

  
Councillor

  
Councillor

  
Councillor

\_\_\_\_\_  
Councillor

Quorum of this Council is: 4



## **APPENDIX D – KITSELAS INDIAN BAND FOREST & RANGE CONSULTATION AND REVENUE SHARING AGREEMENT**

### **Kitselas Indian Band Forest & Range Consultation and Revenue Sharing Agreement (FCRSA) (the "Agreement")**

**Between:  
The Kitselas Indian Band**

**As Represented by  
Chief and Council  
(the Kitselas Indian Band)**

**And**

**Her Majesty the Queen in Right of the Province of British Columbia  
as represented by the Minister of Aboriginal Relations and Reconciliation  
("British Columbia")**

**(Collectively the "Parties")**

#### **WHEREAS:**

- A. In 2005, British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and the Union of BC Indian Chiefs entered into a New Relationship and signed the Transformative Change Accord, the purposes of which is to implement a government-to-government relationship based on an effective working partnership, enhanced collaboration, mutual respect and recognition and accommodation of Aboriginal title and rights and achieve the mutual goals of closing the social and economic gap between First Nations and other British Columbians.
- B. In the spirit of the New Relationship and the Transformative Change Accord, British Columbia and Kitselas Indian Band have undertaken a shared commitment to strengthening relationships on a government-to-government basis, and on focusing efforts to close the socio-economic gaps between Aboriginal and non-Aboriginal people.
- C. This Agreement, and the benefits flowing from it, will assist the Kitselas Indian Band in achieving progress towards the goals referred to in the previous recitals, and in particular help to address the conditions that contribute to economic challenges among Aboriginal people and to ensure that they can more fully benefit from and contribute to British Columbia's prosperity.
- D. British Columbia recognizes that Kitselas Indian Band has a unique history and its own culture and traditions that help to define it, and that these characteristics, along with its relationship with British Columbia, form an important context for the cooperative efforts needed to improve the Kitselas Indian Band community's well-being.

- E. The Kitselas Indian Band has Aboriginal Interests within its traditional territory.
- F. British Columbia intends to consult with the Kitselas Indian Band and to accommodate its Aboriginal Interests as appropriate (including accommodation by way of the payments provided through this Agreement), with respect to impacts on the Kitselas Indian Band's Aboriginal Interests arising from forest and/or range resource development activities.
- G. The Kitselas Indian Band intends to fully participate in any consultation or information sharing with British Columbia or a Licensee in relation to forest and/or range resource development activities proposed within the Kitselas Indian Band's Consultation Area that may impact the Kitselas Indian Band's Aboriginal Interests.
- H. This Agreement is intended to assist in achieving stability and greater certainty for forest and/or range resource development on Crown lands within the Consultation Area of the Kitselas Indian Band which will enhance the ability of the forestry and ranching industries to exercise timber harvesting and grazing rights in a timely, economic, and environmentally sustainable manner while longer term interests of the Kitselas Indian Band are addressed through other agreements or processes.

**THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1.0 Definitions**

For the purposes of this Agreement, the following definitions apply:

- 1.1 **"Aboriginal Interests"** means:
  - a) asserted aboriginal rights, including aboriginal title, or
  - b) determined aboriginal rights, including aboriginal title, which are recognized and affirmed under section 35(1) of the *Constitution Act, 1982*.
- 1.2 **"Administrative and/or Operational Decision"** means a decision made by the Minister or a Delegated Decision Maker related to forest and range resources under provincial legislation as identified in the First Annual List and/or Annual List as defined in Appendix B.
- 1.3 **"Band Council Resolution"** means a resolution of Kitselas Indian Band having the form of Appendix D.
- 1.4 **"BC Fiscal Year"** means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year.
- 1.5 **"Delegated Decision Maker"** and **"DDM"** means a person with authority, to make statutory decisions with respect to forest and range resources under provincial legislation as amended from time to time.
- 1.6 **"Designate"** has the meaning given to that term in section 3.1.1.

- 1.7 "Effective Date" means the date on which this Agreement has been ratified and signed by each of the Parties.
- 1.8 "First Fiscal Year of the Term" has the meaning given to that term in section 3.3.
- 1.9 "Licensee" means a holder of a forest tenure or a range tenure.
- 1.10 "Matrix" means the framework in Appendix B which will be used to define consultation between the Parties with respect to Operational and Administrative Decisions.
- 1.11 "Minister" means the Minister of Forests, Lands and Natural Resource Operations having the responsibility, from time to time, for the exercise of powers in respect of forests and range matters.
- 1.12 "Operational Plan" means a Forest Stewardship Plan, Woodlot Licence Plan, a Range Use Plan, or Range Stewardship Plan (as those terms are defined in forest and range legislation) that has or will have effect in the Kitselas Indian Band's Consultation Area.
- 1.13 "Payment Account" has the meaning given to that term in section 3.1.3.
- 1.14 "RA" means a reconciliation agreement between British Columbia and the Kitselas Indian Band that creates a foundation for the reconciliation of aboriginal rights and/or aboriginal title with Crown sovereignty but is not a treaty in the meaning of section 35(1) of the *Constitution Act, 1982*.
- 1.15 "Revenue Sharing Contribution" means each payment to be made by British Columbia to the Kitselas Indian Band in accordance with Section 3.0 of this Agreement.
- 1.16 "SEA" means a strategic engagement agreement between British Columbia and the Kitselas Indian Band that describes a consultation process between the Kitselas Indian Band and more than one natural resource ministry of the Government of British Columbia.
- 1.17 "Forest Tenure Opportunity Agreement" means an agreement signed between the Minister and a First Nation that provides for the Minister to direct award forest tenure under the *Forest Act*.
- 1.18 "Term" has the meaning given to that term in section 11.1.
- 1.19 "Timber Harvesting Land Base" means the portion of the total land area of a management unit considered by Ministry of Forest, Lands and Natural Resource Operations to contribute to, and be available for, long-term timber supply.
- 1.20 "Consultation Area" means, for the purpose of this Agreement, the area shown on the map attached in Appendix A (Consultation Area map) "
- 1.21 "Forest Revenue Sharing Area" means for the purposes this Agreement, the area which the Parties agree is to be used to calculate revenue

sharing as per Appendix C of this Agreement. The Forest Revenue Sharing Area Map is shown in Appendix A of this Agreement.

- 1.22 **"Treasury Board"** means the cabinet committee of British Columbia defined in the *Financial Administration Act*.

## **2.0 Purpose and Objectives**

The purposes and objectives of this Agreement are:

- 2.1 In relation to potential impacts on Kitselas Indian Band's Aboriginal Interests resulting from forest and range development in its traditional territory, to facilitate the Parties in meeting their respective legal consultation obligations by supporting the capacity of Kitselas Indian Band to participate in consultation initiated by British Columbia and by establishing a consultation process which results in appropriate accommodation measures being implemented, where appropriate, in addition to the Revenue Sharing Contribution provided as an accommodation in this Agreement; and
- 2.2 To provide an opportunity for the Kitselas Indian Band to identify and pursue activities that will enhance and improve the social, cultural and economic well-being of its community and assist the Kitselas Indian Band in achieving progress towards closing socio-economic gaps between the members of Kitselas Indian Band and non-Aboriginal people in British Columbia.

## **3.0 Forest Revenue Sharing Contribution**

- 3.1 Recipient Entity:
  - 3.1.1 Unless the Kitselas Indian Band elects to have another entity (its "Designate") receive Revenue Sharing Contributions pursuant to section 3.1.2, recognizing that any such election does not relieve the Kitselas Indian Band of its obligation under this agreement, the Kitselas Indian Band will be the recipient of the Revenue Sharing Contributions.
  - 3.1.2 Where the Kitselas Indian Band chooses to have its Designate receive Revenue Sharing Contributions under this Agreement, British Columbia may withhold payment of the Revenue Sharing Contribution until it is satisfied that the Designate is a registered corporation or society with the legal authority and capacity to receive the funds for the purposes described in section 2.0 and that it has been appointed by Band Council Resolution documented in Appendix D to receive the Revenue Sharing Contribution on behalf of the Kitselas Indian Band.

- 3.1.3 Kitselas Indian Band will establish and throughout the Term maintain a bank account in the name of Kitselas Indian Band (or the Designate, as the case may be) at a Canadian financial institution into which direct deposits can be made by British Columbia for the purpose of receiving monies payable by British Columbia pursuant to this Agreement (the "Payment Account"). Kitselas Indian Band will provide to British Columbia sufficient address and account information respecting the Payment Account to enable British Columbia to make direct deposit payments to the Payment Account.
- 3.2 Subject to section 3.1.2 and section 10.0 of this Agreement, British Columbia will during the Term make annual Revenue Sharing Contributions, calculated in accordance with Appendix C, to the Kitselas Indian Band, or to its Designate, as the case may be, and, subject to section 3.4 and 3.6, the Revenue Sharing Contribution will be disbursed in two equal payments: the first payment to be paid on or before September 30<sup>th</sup>, and the second payment to be paid on or before March 31<sup>st</sup>.
- 3.3 Notwithstanding section 3.2, for the BC Fiscal Year in which the Effective Date falls (the "First Fiscal Year of the Term") the amount calculated in accordance with Appendix C is deemed to be \$147,506. For further certainty the first payment under this agreement will be on September 30, 2014.
- 3.4 For the purposes of determining the amount of the Revenue Sharing Contribution for partial BC Fiscal Years, the amount will be prorated to the month in which the Agreement is signed by the Kitselas Indian Band.
- 3.5 Before November 30<sup>th</sup> of each year during the Term, Kitselas Indian Band will receive written notification from British Columbia of the Revenue Sharing Contribution for the following BC Fiscal Year (including the summary document(s) and calculations identified in Appendix C) and the Kitselas Indian Band agrees that such written notification will have the effect for the purposes of this Agreement of describing the amount of the Revenue Sharing Contribution under this Agreement for that following BC Fiscal Year.
- 3.6 For each BC Fiscal Year subsequent to the First Fiscal Year of the Term, the Revenue Sharing Contribution will be provided by British Columbia to the Kitselas Indian Band or its Designate in the manner specified in section 3.2 only if Kitselas Indian Band has published all of the necessary statements and reports before the appropriate dates as set out in section 6.0 of this Agreement, is in all other respects in compliance with the terms of this Agreement and this Agreement has not been suspended or terminated pursuant to section 10.0.
- 3.7 Notwithstanding any other provisions of this Agreement, the payment of money by British Columbia to the Kitselas Indian Band pursuant to this Agreement is subject to:

- 3.7.1 there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any BC Fiscal Year or part thereof when any such payment may be required, to make that payment; and
- 3.7.2 Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in section 3.7.1.

#### **4.0 Consultation Process**

- 4.1 The Parties agree that consultation with respect to impacts to Kitselas Indian Band's Aboriginal Interests arising from any Operational or Administrative Decisions or Operational Plans is to be carried out in accordance with the process set out in Appendix B of this Agreement.
- 4.2 British Columbia will use the map of the Kitselas Indian Band Consultation Area as set out in this Agreement as Appendix A. 4.3 Kitselas Indian Band agrees that British Columbia may share the map of the Consultation Area as set out in Appendix A with another provincial government agency and/or a licensee responsible for information sharing associated with a decision that is subject to this Agreement.
- 4.4 The Parties agree that in the event Kitselas Indian Band enters into a SEA or RA with British Columbia after the Effective Date which includes a consultation process which addresses forest and range management and decision making, the consultation process set out in the SEA or RA will supersede and replace the consultation process set out in this Agreement for the term of the SEA or RA if the SEA or RA so provides; and in any such case, if the SEA or RA terminates prior to the end of the Term, the Parties agree that the consultation process set out in Appendix B of this Agreement will apply for the remainder of the Term.
- 4.5 In the event that the Effective Date falls after the date on which Kitselas Indian Band enters into a SEA or RA with British Columbia that includes a consultation process which addresses forest and range management and decision making, and the SEA or RA is subsequently terminated prior to the end of the Term, the Kitselas Indian Band agrees that this Agreement will be amended within 60 days of the date of termination of the SEA or RA to include a consultation process in this Agreement.

#### **5.0 Acknowledgments and Covenants by Kitselas Indian Band**

- 5.1 Kitselas Indian Band acknowledges that forest revenues received by British Columbia fluctuate and that the Revenue Sharing Contributions under this Agreement will vary over time.
- 5.2 Kitselas Indian Band agrees that the Revenue Sharing Contributions made under section 3.0 of this Agreement constitute an accommodation for impacts

on Kitselas Indian Band Aboriginal Interests of Administrative Decisions, Operational Decisions and/or Operational Plans.

- 5.3 Kitselas Indian Band agrees that during the term of this Agreement, if the consultation process set out in this Agreement is followed, British Columbia has adequately consulted with respect to potential infringements of Kitselas Indian Band's Aboriginal Interests in the context of Operational Decisions and Administrative Decisions that British Columbia will make and any forest or range practices that may be carried out under an Operational Plan in the Consultation Area.

5.4

## **6.0 Community Priorities, Annual Reports and Records**

- 6.1 Kitselas Indian Band covenants and agrees as follows:

- 6.1.1 Within 60 days of the Effective Date of this Agreement, Kitselas Indian Band or its Designate will prepare a statement of community priorities covering the term of the Agreement, substantially in the form set out in Appendix E that outlines activities it intends to fund to help achieve the socio-economic objectives identified in section 2.2. This statement will outline the community priorities based on the First Fiscal Year Revenue Sharing Contribution.
- 6.1.2 Before the end of each BC Fiscal Year, Kitselas Indian Band or its Designate will update the statement of community priorities identified in section 6.1.1 based on the updated Revenue Sharing Contribution described in section 3.5.
- 6.1.3 Within 90 days of the end of each BC Fiscal Year, Kitselas Indian Band or its Designate will prepare an annual report, substantially in the form set out in Appendix F, identifying all expenditures made from the Payment Account since the date of the last such report (or, in the case of the first such report, since the Effective Date of this Agreement) and confirming that, aside from reasonable administrative expenses, all such expenditures were made for the purpose of accomplishing the purposes and objectives referred to in section 2.0.
- 6.1.4 British Columbia retains the right at its sole discretion, such discretion to be exercised reasonably, to require an audit of expenditures made from the Payment Account to ensure that all such expenditures were made for appropriate purposes under this Agreement, such audit to be at the expense of the Kitselas Indian Band or its Designate.
- 6.1.5 The documents referred to in sections 6.1.1, 6.1.2, and 6.1.3 will be published by Kitselas Indian Band or its Designate in a manner that can reasonably be expected to bring the information to the attention of its communities and the public.

- 6.1.6 The annual report referred to in section 6.1.3 will be provided to British Columbia within 120 days of the end of each BC Fiscal Year.
- 6.1.7 Notwithstanding the termination or expiry of this Agreement, Kitselas Indian Band or its Designate will continue to comply with the provisions of section 6.1 until 90 days after it receives the last Revenue Sharing Contribution from British Columbia.
- 6.2 If Kitselas Indian Band requires funding ("capacity") to engage in consultation processes on forest and range decisions, or with other provincial Ministries where Kitselas Indian Band has entered into an SEA and/or RA with British Columbia, up to \$35,000 annually of the Revenue Sharing Contribution will be used by Kitselas Indian Band for that capacity during the Term of this Agreement.

## **7.0 Security Deposits**

- 7.1 In recognition of Kitselas Indian Band entering into this Agreement, British Columbia may choose not to request a silviculture deposit(s) pertaining to licence(s) entered into as a result of the invitation to apply under a Forest Tenure Opportunity Agreement entered into between Kitselas Indian Band (or a legal entity controlled by the Kitselas Indian Band) and British Columbia.
- 7.2 Kitselas Indian Band agrees that British Columbia may apply any payment that Kitselas Indian Band is entitled to receive under this Agreement, to a maximum of the amounts that British Columbia would have obtained in a silviculture deposit, in order to fully or partially satisfy any unfulfilled financial obligations of Kitselas Indian Band to British Columbia arising from a licence(s) entered into as a result of the invitation to apply under a Forest Tenure Opportunity Agreement entered into between Kitselas Indian Band (or a legal entity controlled by the Kitselas Indian Band) and British Columbia.
- 7.3 Prior to British Columbia applying any payment to satisfy unfulfilled Kitselas Indian Band financial obligations arising from a licence(s) in accordance with section 7.2, British Columbia will notify the Kitselas Indian Band of the unfulfilled financial obligation(s).

## **8.0 Stability for Land and Resource Use**

- 8.1 Kitselas Indian Band will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional interference by members of Kitselas Indian Band with provincially authorized forest and/or range activities and will work co-operatively with British Columbia to assist in resolving any such matters.

## **9.0 Dispute Resolution**



- 9.1 If a dispute arises between British Columbia and the Kitselas Indian Band regarding the interpretation of a provision of this Agreement, the duly appointed representatives of the Parties 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 British Columbia and the Kitselas Indian Band.
- 9.3 If the interpretation dispute cannot be resolved by the Parties directly, the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

## **10.0 Suspension and Termination**

- 10.1 British Columbia may suspend the making of further Revenue Sharing Contributions under this Agreement if it determines, acting reasonably, that Kitselas Indian Band is not fulfilling its obligations under sections 4.0 and 6.0 or sections 8.1 or 10.3 of this Agreement, or where the Kitselas Indian Band has outstanding unfulfilled financial obligations to British Columbia arising from a licence(s) issued further to an agreement between the Kitselas Indian Band and British Columbia. Upon making any such determination, British Columbia will provide notice to Kitselas Indian Band of the alleged non-compliance, and the Parties will then attempt to resolve their differences.
- 10.2 If the alleged non-compliance by Kitselas Indian Band is not resolved within 60 days of the notice provided in section 10.1, British Columbia will notify Kitselas Indian Band that the alleged non-compliance remains unresolved and, without limiting the actions that may be taken by British Columbia, may terminate this Agreement.
- 10.3 If, during the term of this Agreement, Kitselas Indian Band challenges or supports a challenge to an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions or plans, by way of legal proceedings or otherwise, on the basis that, contrary to section 5.2, the Revenue Sharing Contribution provided for in section 3.0 of this Agreement does not provide an accommodation for impacts on Kitselas Indian Band's Aboriginal Interests then, without limiting any actions that may be taken by British Columbia, the Revenue Sharing Contribution provided for in section 3.0 may be suspended or this Agreement may be terminated by British Columbia.
- 10.4 This Agreement will terminate prior to the end of the Term in any one of the following circumstances; 90 days' written notice of termination is given by one Party to the other; termination occurs in accordance with any of the provisions of section 10.0; or upon mutual agreement of the Parties. In the event of such early termination of this Agreement, the Revenue Sharing Contribution for the BC Fiscal Year in which termination becomes effective will be prorated to the termination date.

- 10.5 If a Party gives written notice of its intention to terminate this Agreement effective 90 days from the date of the notice, the Parties will, prior to the end of the 90-day period, meet and will attempt to resolve any issue that may have given rise to the termination notice.

#### **11.0 Term**

- 11.1 The term of this Agreement commences on the Effective Date and, unless terminated earlier in accordance with any of the provisions hereof, will end on the day immediately before the third anniversary of the Effective Date.

#### **12.0 Renewal of the Agreement**

- 12.1 Prior to the expiry of the Term, if the terms and conditions of this Agreement are being met, British Columbia and Kitselas Indian Band will, if each party has received such authorizations as it may require, begin negotiations for the renewal of this Agreement or for a new agreement.

#### **13.0 Amendment of Agreement**

- 13.1 Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 13.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

#### **14.0 Entire Agreement**

- 14.1 This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement.

#### **15.0 Notice**

- 15.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as in this section of the Agreement.
- 15.2 Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.
- 15.3 The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

**British Columbia**

Deputy Minister

Ministry of Aboriginal Relations and Reconciliation  
P.O. Box 9100 STN PROV GOVT  
Victoria B.C. V8W 9B1  
Telephone: (250) 356-1394  
Fax: (250) 387-6594

**Kitselas Indian Band**

Chief Councilor Joseph Bevan  
Kitselas Indian Band  
2225 Gitaus Road  
Terrace, BC V8G0A9  
Telephone: (250) 635-5084  
Facsimile: (250) 635-5335

**16.0 Miscellaneous**

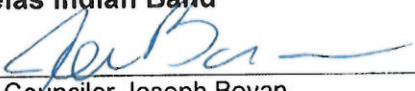
- 16.1 This Agreement shall be interpreted in a manner consistent with provincial and federal law.
- 16.2 This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
- 16.3 This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 16.4 Subject to paragraph 10.3, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 16.5 British Columbia acknowledges and enters into this Agreement on the basis that the Kitselas Indian Band has Aboriginal Interests within their Consultation Area but that the specific nature, scope or geographic extent of Aboriginal Interests of the Kitselas Indian Band have yet to be determined. Broader processes engaged in to bring about reconciliation will result in a common understanding of the nature, scope and geographic extent of Aboriginal Interests or treaty interests of the Kitselas Indian Band.
- 16.6 References in this Agreement to Crown lands are without prejudice to the Kitselas Indian Band's Aboriginal title and/or rights claims over those lands.
- 16.7 This Agreement does not address or affect any claims by the Kitselas Indian Band regarding impacts on its Aboriginal Interests resulting from past Operational or Administrative Decisions made by British Columbia prior to the Effective Date of this Agreement.

- 16.8 This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 16.9 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 16.10 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 16.11 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 16.12 This Agreement is not intended to limit any obligation of forest or range Licensees or other third parties to the Kitselas Indian Band.
- 16.13 This Agreement does not exclude the Kitselas Indian Band from accessing forestry economic opportunities and benefits, which may be available to the Kitselas Indian Band, other than those expressly set out in this Agreement.
- 16.14 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 fact or liability.
- 16.15 This Agreement does not constitute an admission of an obligation to provide financial or economic benefits, as provided in this Agreement, as part of the British Columbia's obligation to consult and accommodate.
- 16.16 If any part of this Agreement is void or unenforceable at law, that part shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.
- 16.17 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.
- 16.18 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.
- 16.19 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.
- 16.20 The appendices to this Agreement form part of the Agreement.
- 16.21 This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be


an original for all purposes and all counterparts taken together will be deemed to constitute one document.

Signed on behalf of:

**Kitselas Indian Band**

  
Chief Councilor Joseph Bevan

March 14, 2014  
Date

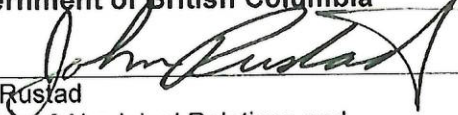
  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Witness of Kitselas Indian Band signatures

Signed on behalf of:

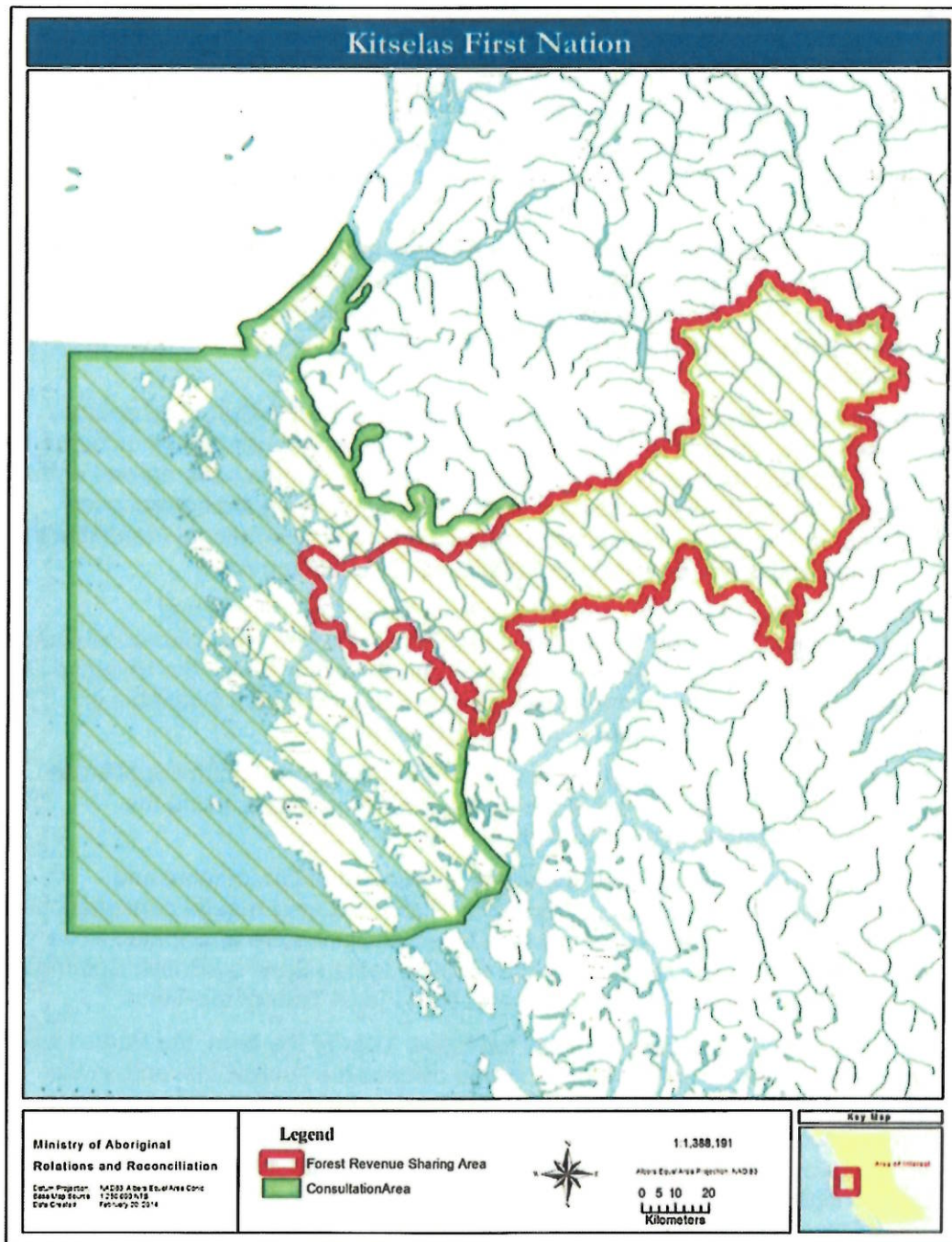
**Government of British Columbia**

  
John Rustad  
Minister of Aboriginal Relations and  
Reconciliation

May 7, 2014  
Date

  
Witness of Minister signature

**APPENDIX A**  
**Map of Kitselas Indian Band Consultation Area and Forest Revenue Sharing Area**



## **APPENDIX B**

### **Consultation**

#### **On Operational and Administrative Decisions and Operational Plans**

In order to facilitate consultation with respect to Operational and Administrative Decisions and Operational Plans, the Parties have agreed to use the Matrix framework set out in section 1.10 of this Appendix ("section 1.10"), which allows the Parties to determine which Operational and Administrative Decisions and Operational Plans will require consultation, as well as the associated appropriate level of consultation for those decisions and plans.

- 1.1 British Columbia agrees to consult with Kitselas Indian Band in accordance with the applicable consultation level agreed to by the Parties under section 1.10 on Operational Plans, Operational Decisions, and Administrative Decisions that may potentially adversely impact Kitselas Indian Band's Aboriginal Interests within the Consultation Area.
- 1.2 Kitselas Indian Band agrees to fully participate with British Columbia and/or Licensees or licence proponents, as set out in this Agreement and in accordance with the applicable level of consultation to which the Parties have agreed under section 1.10, in information sharing and/or consultation regarding proposed Operational Decisions, Administrative Decisions, and Operational Plans dealing with forest and range development within the Consultation Area.
- 1.3 In this Appendix, "First Annual List" means a list of Operational and Administrative Decisions and Operational Plans, which may require consultation during the First Fiscal Year of the Term or part thereof in which the Effective Date occurs, that is provided to the Kitselas Indian Band by British Columbia in advance of the Parties entering into this Agreement.
- 1.4 Prior to entering into this Agreement, the Parties will agree on the applicable consultation levels for the decisions on the First Annual List, using the consultation levels described in section 1.10.
- 1.5 In this Appendix, "Annual List" means an annual list of Operational and Administrative Decisions and Operational Plans that may require consultation in a fiscal year of the Agreement in which those decisions are anticipated to be made, and that will be provided to the Kitselas Indian Band by British Columbia before March 31st of each year after the First Fiscal Year of the Term.
- 1.6 For fiscal years subsequent to the First Fiscal Year of the term, the Parties will meet annually on or before March 31st to discuss the Annual List and, in the case of decisions and plans for which the Parties have not already agreed to a consultation level described in section 1.10 in a preceding fiscal year, the Parties will agree on the consultation levels that will be applicable to those Operational and Administrative Decisions and Operational Plans on the Annual List, in accordance with section 1.10.



- 1.7 When British Columbia becomes aware of proposed types of Operational or Administrative Decisions or Operational Plans not contained in the Annual List that will have effect within the Consultation Area of Kitselas Indian Band during the current fiscal year, British Columbia will notify the Kitselas Indian Band of those new types of decisions or plans and the Parties will seek to agree on the consultation levels that will be applicable to those Operational and Administrative Decisions and Operational Plans, in accordance with section 1.10.
- 1.8 In reviewing and responding to an Operational Decision, Administrative Decision, or Operational Plan submitted to them, Kitselas Indian Band will, unless otherwise agreed by the Parties, provide the party (i.e. British Columbia, a licensee or proponent) that supplied the proposed decision or plan to them, with all reasonably available information that will identify any potential impacts to their Aboriginal Interests that may occur as a result of proposed forest and/or range resource development activities pursuant to that Operational Decision, Administrative Decision or Operational Plan within the Consultation Area.
- 1.9 If no response is received from Kitselas Indian Band within the timeframe set out in section 1.10, then British Columbia may conclude that Kitselas Indian Band does not intend to respond or participate in the consultation process in respect of the Operational or Administrative Decision or Operational Plan and that a decision may proceed.
- 1.10 The Parties agree to the following description and intent of the consultation levels:



Level	Description	Intent
<b>1. Information Sharing:</b> prior to formal consultation process	Referral to Kitselas Indian Band during planning to provide opportunity to incorporate Aboriginal Interests prior to submitting plan/request to Decision Maker.	Proponent or tenure holder engages directly with Kitselas Indian Band, and provides summary of communications to British Columbia.
<b>2. Available on Request</b>	Type of notification whereby British Columbia informs Kitselas Indian Band they will not be sending out information.	British Columbia notifies on an annual basis which decision(s) fall in this category. Kitselas Indian Band can request more detail if they wish.
<b>3. Notification</b>	Notify in writing Kitselas Indian Band about an upcoming decision and provide overview information. Would be an opportunity for comment.	British Columbia provides Kitselas Indian Band base level information and a short reasonable time (21-30 calendar day consultation period determined by the Parties) to comment. Limited follow-up.

Level	Description	Intent
<b>4. Expedited Consultation Process</b>	Where there is an imminent threat to a resource value (e.g. mountain pine beetle spread control) an expedited consultation process is undertaken.	Intense but short timeline (about 10 calendar days). A justification for shortening the period would be given by describing the imminent threat. May require a meeting.
<b>5. Normal Consultation</b>	Follow on "normal" track for consultation guided by up-to-date consultation policy. Meetings to resolve issues where possible and make decision in a timely manner.	Intent to follow this course in most circumstances. Usually a 30 – 60 calendar day consultation period. May involve meaningful discussion of accommodation options where appropriate. British Columbia will notify Kitselas Indian Band of the final decision where requested by the Kitselas Indian Band.
<b>6. Deep Consultation</b>	Use reasonable effort to inform in an accessible manner and to engage in full discussions around the proposed decision. Make reasonable efforts to accommodate where necessary. Preliminary assessments may indicate a significant Aboriginal Interest and a significant impact to that interest.	Would involve meaningful discussion of suitable accommodation options and interim solutions where appropriate. May require extended timelines. British Columbia will provide the Kitselas Indian Band with the final decision and rationale in writing.

- 1.11 The Parties may agree to adjust the consultation levels for specific circumstances where detailed Aboriginal Interest information is shared that would suggest a different consultation level.
- 1.12 Kitselas Indian Band agrees that British Columbia is not obligated, unless requested by the Kitselas Indian Band, to inform the Kitselas Indian Band of the Delegated Decision Maker's decision for decisions on which the consultation level has been level three (3) or lower.
- 1.13 If the Parties cannot agree upon which consultation level in section 1.10 should apply to a particular or any Operational or Administrative Decision or Operational Plan, then British Columbia will consult with Kitselas Indian Band on the basis of British Columbia's consultation procedures in effect at the time as well as the applicable case law respecting consultation obligations.

## **APPENDIX C**

### **Revenue Sharing Contribution Methodology**

#### **Traditional Territory Forest Revenue Sharing Component**

- 1.0 In each Fiscal Year that this Agreement is in effect, and subsequent to the release by the Minister of Finance of the previous Fiscal Year's public accounts of British Columbia, a summary document will be prepared of the Kalum District, North Coast District, and Skeena-Stikine District forest revenue, defined as the total of stumpage, waste and annual rent payments received by the Crown for the previous 2 Fiscal Years. An average amount over 2 years will be calculated for the Kalum, North Coast, and Skeena-Stikine Districts.
- 1.1 For the purposes of the summary document in section 1.0 of this Appendix, the stumpage payments from Kitselas Indian Band's Forest License (if applicable) will not be included in the calculations of forest revenue.
- 1.2 The amount of the forest revenue attributed to the Kitselas Indian Band's Forest Revenue Sharing Area will be calculated by determining the percent of Kitselas Indian Band's Forest Revenue Sharing Area that falls within the Timber Harvesting Land Base in the Kalum, North Coast and Skeena-Stikine Districts, applied against the forest revenue described in section 1.0 of this Appendix. This calculation will prorate for overlapping territories of other First Nations.
- 1.3 The Traditional Territory Forest Revenue Sharing Component will be calculated by multiplying 3 percent of the forest revenue attributed to the Kitselas Indian Band as described in section 1.2 of this Appendix.
- 1.4 Where the calculation in section 1.3 of this Appendix is less than \$35,000, Kitselas Indian Band will receive a maximum of \$35,000 to provide capacity to participate in the consultation process in accordance with section 4.0 of this Agreement.
- 1.5 For each Fiscal Year that this Agreement is in effect, the calculations outlined in sections 1.0 to 1.4 of this Appendix will be performed.

#### **Direct Award Tenure Forest Revenue Sharing Component**

- 2.0 Subsequent to the release by the Minister of Finance of the previous Fiscal Year's public accounts of British Columbia, a summary document will be prepared of Kitselas Indian Band's Forest License (if applicable) forest revenue, defined as the total of stumpage payments received by the Crown for the previous Fiscal Year.
- 2.1 The Direct Award Forest Tenure Revenue Sharing Component will be calculated by multiplying 35 percent of the forest revenue as described in section 2.0 of this Appendix.
- 2.2 For each Fiscal Year that this Agreement is in effect, the calculations outlined in sections 2.0 and 2.1 of this Appendix will be performed.

### **Forest Revenue Sharing Transition**

- 3.0 The Parties agree that a transition to revenue sharing based entirely on Forest Revenue will be phased in over the term of the Agreement.
- 3.1 For each BC Fiscal Year that this Agreement is in effect, a portion of the Revenue Sharing Contribution is calculated by adding the total of the Traditional Territory Forest Revenue Sharing Component to the Direct Award Tenure Forest Revenue Sharing Component for that BC Fiscal Year.
- 3.2 For each BC Fiscal Year that this Agreement is in effect, the remaining portion of the Revenue Sharing Contribution is calculated by determining the value of the payments that were made by British Columbia to Kitselas Indian Band in any given full year under the *Kitselas and Kitsumkalum Forestry/Range Interim Measures Agreement* ("the Annual Amount") and applying the following percentages to that Annual Amount:
  - 3.2.2 2014/15 BC Fiscal Year: 45 percent;
  - 3.2.3 2015/16 BC Fiscal Year: 40 percent; and
  - 3.2.4 2016/17 BC Fiscal Year: 0 percent.
- 3.3 Notwithstanding section 3.2 of this Appendix, if the Revenue Sharing Transition Calculation for BC Fiscal years 2014/15 and 2015/16 under section 3.1 provides:
  - 1. an amount calculated under sections 1.3 and 2.1 of this Appendix that is equal to or greater than the annual payments received under the *Kitselas and Kitsumkalum Forestry/Range Interim Measures Agreement*, then the Kitselas Indian Band shall only receive the annual payments described by the Revenue Sharing Transition Calculation in section 3.1 for BC Fiscal Years 2014/15 and 2015/16;
  - 2. an amount calculated under the Revenue Sharing Transition Calculations in sections 3.1 and 3.2 of this Appendix that is greater than the annual payments received under the *Kitselas and Kitsumkalum Forestry/Range Interim Measures Agreement*, then the Kitselas Indian Band shall only receive an annual payment for BC fiscal Years 2014/15 and 2015/16 that is equal to the annual payment received under the *Kitselas and Kitsumkalum Forestry/Range Interim Measures Agreement*.

## **APPENDIX D**

### **Band Council Resolution Appointing the Recipient Entity for this Agreement ("Designate")**

## APPENDIX E

### Kitselas Indian Band Statement of Community Priorities

(Example only)

Socio-economic Priority	Annual Amount			Specific Outcomes	Measurement Criteria
	2014/2015	2015/2016	2016/2017		
Public Works	90,000	90,000	90,000	PROVIDE SERVICES TO THE COMMUNITY THAT IMPROVE THE QUALITY OF LIFE OR LIVING ENVIRONMENT	① COMMUNITY SATISFACTION
Housing	60,000	60,000	60,000		② EXPENSES ACTUALLY INCURRED

2014/2015 Revenue Sharing Contribution \$147,506

2015/2016 Revenue Sharing Contribution \$To Be Determined

2016/2017 Revenue Sharing Contribution \$To Be Determined

## APPENDIX F

### Kitselas Indian Band Statement of Community Priorities

#### Annual Report

*(Example only)*

Socio-economic Priority	2014/2015 Planned Expenditures	2014/2015 Actual Expenditures	Outcomes Achieved	Variance Explanation



Coast Mountains Resource District / Kitselas First Nation					
Annual List for 2014/2015					
Decision Category	Decision	Delegated Decision Maker <sup>1</sup>	Consultation Level	Consultation Period	Coast Mountains Resource District Comments
ADMINISTRATIVE DECISIONS					
TSA AAC	Timber supply reviews (Chief Forester) for timber supply area (TSA) annual allowable cut (AAC) determination	Chief Forester	5	24 months total	North Coast TSA, TSR Initial letters sent 2013, data package expected spring 2014, determination expected late 2014.
TSA AAC	Annual allowable cut apportionment	Minister	5	30-60 days	North Coast TSA Apportionment decision pending late 2014 TSR determination. North Coast TSA, Conservancies and Biodiversity, Mining and Tourism Areas and EBM reductions. Re-apportionment order under sec. 60.4 of the Forest Act, late 2014 – early 2015
Forest Licence	Non-replaceable forest licence (NRFL) extension/Issuance	Regional Executive Director	3,5	21-60 days	[extension=level 3; New licences=level 5.] New - Kitselas and Kitsumkalum FTOA tenures (may be done before previous FCRSA expires). Several expired NRFLs, possibly moving forward to renew or issue RFLs under the Recon. Protocol [extension=level 3; New licences=level 5.]
Forest Licence/TFL	Forest licence/TFL replacement	Regional Executive Director	5	30-60 days	
Timber Licence	Extension	Regional Executive Director	5	30-60 days	
Forest Licence/TL	Transfer/consolidation of forest licences (except woodlots)	Minister	3	21-30 days	
Misc. Forest Tenure Decisions	Conversion of major timber sale licences	Minister	5	30-60 days	
TFL Decisions	Management plan approval	Deputy Chief Forester	3	21-30 days	
TFL Decisions	Deletion of Crown land	Minister	5	30-60 days	



Decision Category	Decision	Delegated Decision Maker <sup>1</sup>	Consultation Level	Consultation Period	Kalum / North Coast District Comments
CFA Decisions	Community forest agreement management plan amendments and approvals	Regional Executive Director or District Manager	3,5	21-60 days	[Amendments=level 3; New plans=level 5.]
CFA Decisions	Timber supply review and/or allowable annual cut determination	Regional Executive Director (RED)	5	30-60 days	
CFA Decisions	Boundary amendment	RED	3	21-30 days	
CFA Decisions	Probationary community forest agreement transition into a community forest agreement		3	21-30 days	
Woodlot Licence Decisions	Direct award of woodlot to First Nations through FRA/FRO process (either new or area increase)	Minister	3	21-30 days	
Woodlot Licence Decisions	Boundary amendment to increase Crown land only under Section 47.3 (FN only)	Regional Executive Director	3	21-30 days	
Woodlot Licence Decisions	New management plan or amendments	District Manager	3	21-30 days	
Land Act Decision	Land Act tenure amendments and approvals related to forestry infrastructure	Minister	3,5	21-60 days	[Amendments=level 3; new permits=level 5. Examples may include dryland sort and foreshore lease tenures]
GARS	Government actions regulation orders	Minister	3	21-30 days	Possible NC TSA EBM order, possible Visuals order
TSA AAC	Annual allowable cut disposition (TSA)	Regional Executive Director	5	30-60 days	
CFA Decisions	Identification of community forest agreement area and district manager approval	District Manager	5	30-60 days	

OPERATIONAL DECISIONS					
Decision Category	Decision	Delegated Decision Maker <sup>1</sup>	Consultation Level	Consultation Period	Kalum / North Coast District Comments
Forest Licence/TFL/CFA/WL	Cutting permit issuance	District Manager	1-5	0-60 days	Approx. 25-30 /yr. Consultation period subject to information sharing summary provided by licensee. North Coast Approx. 3-5 this year. Consultation period subject to information sharing summary provided by licensee.
Special Use Permits	Special use permit amendments/replacement and issuance	District Manager	3,5	21-60 days	[Amendments/replacements=level 3; new permits=level 5.]
OGMAs	Establishment of old growth management area	District Manager	2	annual notice	OGMAs established under Kalum SRMP 2005
Forest Licence	Forest stewardship plan extensions	District Manager	3	21-30 days	
Forest Licence/TFL/CFA	FSP approval (including major amendments)	District Manager	5	30-60 days	Possible Major amendment to Kitselas FSP, Kitsumkalum FSP through FTOA licence issuances.
Forest Licence/TFL/CFA	Forest stewardship plans minor amendments	District Manager	2	n/a	FSP minor amendments not consulted on. District Manager decision
Woodlot Licence Decisions	Woodlot licence plan/forest development plan amendments	District Manager	5	30-60 days	
Forest Licence/TFL/CFA/WL	CP amendments	District Manager	2	n/a	Minor amendments only. See <i>Cutting Permit and Road Tenure Administration Manual</i> for additional clarification.
LBIS funding [Forest Investment Account - Stewardship]	Stand treatments to meet timber objectives (fertilization/herbicide/brushing)	District Manager	2	up to 10 days	funding anticipated but not yet committed
Misc. Forest Tenure Decisions	Free use permit issuance or FN cultural use	District Manager	2	annual notice	
Misc. Forest Tenure Decisions	Authority to harvest timber by Crown agents ( <i>Forest Act</i> Sec 52)	District Manager and Timber Sales Manager	2	annual notice	Occasionally used for such items as FSR realignments, heli pad clearing for BCTS, research branch destructive sampling, parks staff.



Decision Category	Decision	Delegated Decision Maker <sup>1</sup>	Consultation Level	Consultation Period	Kalum / North Coast District Comments
Misc. Forest Tenure Decisions	Permit to grow and/or harvest Christmas trees on Crown land	District Manager	2	annual notice	
Licence to Cut - OLTC, FLTC	Forestry licence to cut issuance (minor cutting, small scale salvage, recreation sites and trails)	District Manager and Regional Executive Director	2	annual notice	
Licence to Cut - OLTC, FLTC	Community wildfire protection (FLTC)	Regional Executive Director	3	21-30 days	
Licence to Cut - OLTC, FLTC	Occupant licence to cut issuance	District Manager	2	annual notice	Approx. 8-10 per year. Cell towers, green energy projects, mineral claims, heli ski gliding, etc.
Licence to Cut - OLTC, FLTC	Forestry licence to cut issuance by BC Timber Sales	Timber Sales Manager	2	annual notice	
Road Use Permits	Road use permits on FSRs (new and amendments)	District Manager	2	annual notice	
Road Permit Issuance	Road permits issuance and amendment	District Manager and Timber Sales Manager	1-5	0-60 days	Approx. 25-30 /yr. Consultation period subject to information sharing summary provided by licensee. North Coast approx. 5-10/yr. Consultation period subject to information sharing summary provided by licensee.
BC Timber Sales	Timber sale licence issuance	Timber Sales Manager	3	21-30 days	

