

Kitselas Band Council Resolution
Re: Authorizing a Property Tax Sharing Agreement with the
Province of BC Re: CN Rail assets on Kitselas Reserve Lands
July 11, 2007

Whereas:

1. Kitselas has passed its Land Management Code and taken over the responsibility for reserve land management; and
2. Kitselas will eventually pass property tax by-laws to generate revenue from the use of reserve land; and
3. The Province of BC has a program for transferring provincial property tax from certain crown corporations and utilities to First Nations in respect of those assets that are located on reserve land, and
4. Kitselas wishes to capture that stream of revenue as soon as possible.

Therefore, be it resolved that:

1. Kitselas Council approves the Tax Sharing Agreement attached as Appendix A, between Kitselas and the Province of BC as an interim measure until new Kitselas property tax by-laws can be developed and approved.
2. Kitselas Council authorizes Chief Councillor Glenn Bennett to sign the Tax Sharing Agreement on behalf of the Kitselas First Nation.

Dated this _____ day of July, 2007

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Appendix A

THIS AGREEMENT dated for reference as the ____ day of ____ 2007.

Between:

Her Majesty the Queen in Right of the Province of British Columbia as represented by
the Minister of Finance. (the "Province")

OF THE FIRST PART

And:

Kitselas First Nation as represented by its Chief Councillor

OF THE SECOND PART

Definitions

1. In this Agreement:

"FAA" means the Financial Administration Act, R.S.B.C. 1996, c. 138;

"Initial Grant" means an amount equal to the total of the Provincial Portion of Property Taxes payable to the Province in 2007 in respect of a Property modified by the Inclusion Factor.

"Grant Formula" means Grant = the sum of (Provincial Portion of Property Taxes x Inclusion Factor) for the Property.

"Grant" means an amount determined by the Grant Formula in that calendar year;

"Inclusion Factor" means the percentage of the area of a Property as that percentage has been identified in Schedule A.

"Property" means the land or lands identified in Schedule A and in the Land Title and Survey Authority, British Columbia;

"Provincial Portion of Property Taxes" means taxes levied under

- (a) For Provincial revenue purposes, section 20 of the *Taxation (Rural Area) Act*, R.S.B.C. 1996, c. 448, to which section 5 or 6 of the *Taxation (Rural Area) Act Regulation*, B.C. Reg. 387/82 applies, excluding, for greater certainty, taxes levied for

- i. The purposes of other bodies including, without limitation, regional districts, improvement districts, hospitals districts, and the Islands Trust; and
- ii. Local services under the *Local Services Act*, R.S.B.C. 1996, c. 276; and

(b) section 119 of the *School Act*, R.S.B.C. 1996, c. 412.

Payment of Grant

2. While this Agreement is in effect, the Province agrees to provide the Grant to the Kitselas First Nation.

Band Taxation

3. While this agreement is in effect, the Kitselas First Nation agrees not to issue a notice of assessment of taxes under the *Indian Act* to the occupier or the person registered as the owner of a Property.

Payment in First Year

4. The Province agrees to pay to the Kitselas First Nation the Initial Grant within 60 days of this Agreement being duly executed by both parties.

Payment in Subsequent Years

5. In each year this Agreement is in effect, the Province will pay to the Kitselas First Nation the Grant for that calendar year on or before July 2 or, if the agreement is concluded after July 2, within 60 days of this Agreement being duly executed by both parties.

Legal Proceedings

6. Nothing in this Agreement constitutes any admission of facts and will not be construed as an admission on the part of any of the Parties.
7. Subject to section 3, nothing in this Agreement shall be construed so as to prejudice any legal or other positions taken, or that may be taken, by either the Kitselas First Nation or the Province in any court, tribunal, administrative proceeding or other process with respect to a Property, including proceedings relating to title, liability for taxes, assessments or levies.

8. If, during the term of this Agreement, the Kitselas First Nation challenges or asserts in legal proceedings or otherwise property taxation authority or jurisdiction for a Property included in this agreement, then the Province may terminate this Agreement without providing notice in accordance with section 11.
9. For greater certainty, section 8 does not apply to legal proceedings initiated to resolve situations in which improvements on a Property have been moved or relocated over time in response to changed natural conditions on a Property in such a manner as to raise a real probability that the improvements are no longer located within the boundaries of the Property.

Duration

10. This Agreement will be effective upon the execution of this Agreement by both Parties.
11. Either Party may terminate this Agreement at the end of any calendar year by providing at least one year's prior written notice.
12. If, there is a breach of this Agreement by one party, the other Party may terminate this Agreement without providing notice in accordance with section 11.

Financial Administration Act

13. Notwithstanding any other provision of this Agreement, the payment of money by the Province to Kitselas First Nation under this Agreement is subject to:
 - (a) there being sufficient monies available in an appropriation, as defined in the FAA, to enable the Province, in any fiscal year when any payment of money from the Province falls due under this Agreement, to make that payment, and
 - (b) Treasury Board, as defined in the FFA, not having controlled or limited, under the FAA, expenditure under any appropriation referred to in paragraph (a).

Representations and Warranties

14. Kitselas First Nation represents and warrants to the Province with the intent that the Province will rely thereon in entering into this Agreement that:
 - (a) it has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement;
 - (b) all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by Kitselas First Nation; and

- (c) this Agreement has been legally and properly executed by Kitselas First Nation.

Survival

15. All provisions of this Agreement in favour of the parties and all rights and remedies of the parties, either at law or in equity, will survive the termination of this Agreement.

Amendment

16. Any amendments to this Agreement shall be made in writing signed by both parties.

Notice

17. Where in this Agreement any notice or other communication is required to be given or made by either of the parties, it shall be in writing and is effective if delivered in person, sent by registered mail or facsimile transmission to the addressees set out below. Any notice or other communication shall be deemed to have been given on the date of delivery, if received before 5:00 p.m. in the place of receipt, otherwise it will be deemed to have been given on the next business day:

British Columbia:

Andy Robinson or designate
Assistant Deputy Minister,
Strategic and Corporate Policy Division
Ministry of Finance
P.O. 9469 Stn.
Provincial Government
Victoria, British Columbia, V8W 9V8
Fax Number: 250-356-7624

Kitselas First Nation:

Glenn Bennett or designate
Chief Councillor
Site 44, Comp 24,
RR2, Terrace, BC V8G 3Z9
Fax number: 250 635 5335

Entire Agreement

18. This Agreement constitutes the entire agreement between the parties and no understandings, representations or agreements, oral or otherwise, exist between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement.

Counterparts

19. This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered shall be an original.

Interpretation

20. Nothing in this Agreement abrogates or derogates from any aboriginal rights or treaty rights of any aboriginal peoples.
21. A reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in substitution for, or in replacement of, it.

This Agreement has been executed by the duly authorized representatives of the Province and the Kitselas First Nation.

HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA
as represented by the Minister of
Finance

Minister of Finance

Date

Kitsefas First Nation

as represented by Chief Glem Bennett

Signature

Date

SCHEDULE A

BC Assessment Folio #	Location References	Inclusion Rate
	Kitselas IR#1	
	Chindamesh IR#2	
	Ksh-ish IR#4	