

**Consultation Protocol**

**between**

**KITSELAS FIRST NATION,**

**("Kitselas")**

**as represented by its Chief and Council**

**and**

**HIS MAJESTY THE KING IN RIGHT OF CANADA,**

**("Canada")**

**as represented by the Minister of Crown-Indigenous Relations**

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



**WHEREAS:**

- A. Kitselas has Aboriginal rights, laws and values in their territory, and is dedicated to the wellbeing of their territory, their culture, and their membership;
- B. Kitselas has an interest in the processes and decisions of Canada regarding development and ongoing operations, and their potential impact and effect on Kitselas territory, culture, and membership;
- C. The Parties are committed to fostering excellent working relationships to implement a Consultation Process as described in this protocol;
- D. Canada adopted the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* (the "Principles") to guide the work required to fulfill the Government's commitment to renewed nation-to nation, government-to-government relationships with Indigenous peoples and, to make a fundamental change in the relationship with Indigenous Peoples.
- E. The Principles are to be read as a whole together with their supporting commentary, including Principle 6: "The Government of Canada recognizes that meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources."
- F. Canada and Kitselas wish to build mutual understanding, trust, and a constructive working relationship between them in areas of mutual interest based on recognition of rights, respect, cooperation and partnership as reflected in the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*, and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* in a manner consistent with Canada's Constitution. Both Canada and Kitselas share the values of responsibility to their respective communities, respect for the environment, and commitment to a constructive working relationship.
- G. The Parties see the relationship developed through this Consultation Protocol ("Protocol") as a tool for Kitselas enacting stewardship of its territory in a manner consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*.
- H. The Parties see this as a living document that they will work together to ensure it reflects their growing relationship and current best practices with regard to consultation and accommodation.

NOW THEREFORE the Parties agree as follows:

## 1. INTERPRETATION

### 1.1. Definitions. In this Protocol:

“**Business Day**” means any day other than Saturday or Sunday or a statutory holiday or other holidays that the Kitselas Nation observes;

“**Consensus**” means a mutually-acceptable level of agreement necessary to move forward, that is achieved through a process of exchanging information and ideas with open minds in a collaborative manner to identify, explore, and consider options in-depth.

“**Consultation Process**” means the process set out in Section 6 of this Protocol and, where applicable, the relevant Consultation Guidelines;

“**Consultation Guidelines**” means a framework for consultation specific to a Responsible Department included in Appendix B;

“**Dispute**” means any disagreement which arises between the Parties in relation to the interpretation or implementation of this Protocol, but does not include a disagreement arising from consultation on a Proposed Activity, or regarding any recommendations, or any decision on a Proposed Activity made by a Responsible Department following consultation;

“**Issue**” means a disagreement between the Responsible Department and Kitselas arising from a consultation relating to a Proposed Activity;

“**Kitselas Knowledge**” means the accumulated body of knowledge, observations and understandings about the environment, and about the relationship of living beings with one another and the environment, that is rooted in the traditional way of life of the Kitselas First Nation; this information is held by Kitselas as it relates to its historic and current use and stewardship of its territory;

“**Kitselas Rights**” means:

- a. asserted Aboriginal rights including Aboriginal title;
- b. established Aboriginal rights including Aboriginal title, which are recognized and affirmed under section 35(1) of the *Constitution Act, 1982*; and
- c. related interests,  
of Kitselas;

**“Project”** means a work, undertaking or activity that is the subject of Proposed Activities;

**“Proponent”** means the entity proposing a Project, such as a third party, or department or corporation of Kitselas;

**“Proposed Activity”** means proposed federal conduct in the nature of a permit, approval, authorization, or decision of a similar nature that may reasonably have an impact on Kitselas Rights;

**”Protocol“** means this Protocol and includes the appendices attached;

**“Protocol Area”** means the geographic area to which this Protocol applies as shown in Appendix A;

**“Responsible Department”** means the federal department or Crown agency that is responsible for a Proposed Activity;

**“Senior Level”** means the Chief Administrative Officer or member of chief and council of Kitselas, and executive level official within the relevant Responsible Department.

1.2. **Interpretation.** For the purposes of this Protocol:

- a. “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
- b. the preamble and headings are for convenience only, and do not define, limit, alter or enlarge the scope or meaning of any provision of this Protocol;
- 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 otherwise requires;
- e. in the calculation of time under this Protocol, all references to “days” are to calendar days except that if the time for doing an act falls or expires on a day that is not a Business Day, the time is extended to the next Business Day;
- f. any reference to a corporate entity includes any predecessor or successor to such entity; and
- g. there will be no presumption that doubtful expressions, terms or provisions in this Protocol are to be resolved in favour of any Party.

1.3. **Appendices.** The following are the Appendices to and form part of this Protocol:

Appendix A – Protocol Area

Appendix B – Individual department Consultation Guidelines

## 2. PRINCIPLES

2.1. As both Parties communicate with each other and enhance their working relationship, they will aim to be guided by the following principles.

**Mutual understanding and openness** – Canada and Kitselas will identify, assemble, develop and share information that will allow both to better understand each other's interests and perspectives on issues. The Parties also recognize that the need for mutual openness will have to be balanced at times with the need to protect confidential information.

**Commitment** – Canada and Kitselas are committed to enhancing their working relationship, to furthering common interests, and to resolving common challenges. Both Parties will favour the route of discussion and negotiation in meeting their challenges.

**Problem-solving** – Canada and Kitselas will strive earnestly to find innovative solutions to resolve difficult issues. However, if the Parties are not able to resolve these issues, they should communicate such decisions or positions in advance of the Proposed Activity coming into effect.

**Respect** – Canada and Kitselas will respect each other's mutual interests arising from an existing and/or Proposed Activity within or affecting the Protocol Area.

**Trust** – Canada and Kitselas recognize that building and maintaining trust in their working relationship can be achieved by sharing information and jointly developing effective communication mechanisms.

**Relationship with Proponents** – Canada and Kitselas will continue to encourage early and respectful engagement and consultation between Proponents and Kitselas.

**Staff Relationship** – Canada and Kitselas will aim to develop a strong staff level relationship to ensure consultation obligations are carried out proactively in a mutually agreed manner.

**Effective** – Canada and Kitselas will aim to conduct consultation on a timely, economic and effective basis.

**Transparent** – Canada and Kitselas will aim to share information that will enable Kitselas to participate in consultation.

**Advanced Planning** – Canada and Kitselas will strive to anticipate and plan information needs in advance, in order to identify, assemble, develop and share information and respective concerns in a timely manner.

### **3. PURPOSE**

- 3.1. The purpose of this Protocol is to increase consultation effectiveness and process certainty by:
- a. facilitating meaningful dialogue and a respectful nation-to-nation relationship between the Parties based on recognition of Aboriginal rights, respect, co-operation and partnership as reflected in the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*, and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* in a manner consistent with Canada's Constitution;
  - b. fulfilling Canada's duty to consult on Proposed Activities in a manner that fosters the efficient and effective implementation of the Parties' respective decision-making obligations;
  - c. improving relationships between the Parties through consistent, open and timely communication that is systematic, transparent and adaptable to the needs of the Parties;
  - d. creating an efficient consultation structure relating to Proposed Activities;
  - e. increasing consultation process certainty relating to land and resource management within the Protocol Area;
  - f. helping guide the Parties in their interactions and in their efforts to build respect, mutual understanding and trust;
  - g. integrating and functioning consistently with other agreements between the Parties; and
  - h. building and maintaining a mutually beneficial working relationship by identifying and resolving issues regarding Proposed Activities;

### **4. SCOPE**

- 4.1. **Application of the Protocol.** This Protocol applies to any Proposed Activity within or affecting the Protocol Area, including any Proposed Activity set out in the Consultation Guidelines.

- 4.2. **Statutory/Regulatory Consultation Processes.** For greater certainty this Protocol does not apply to statutory or regulatory assessment processes of federal boards and tribunals such as the Impact Assessment Agency of Canada, Canada's Energy Regulator, and the Canadian Nuclear Safety Commission.
- 4.3. **Use of the Protocol.** The Parties acknowledge that consultation pursuant to this Protocol is their preferred approach where Canada has a duty to consult with Kitselas in respect of a Proposed Activity. However, the use of this Protocol is voluntary and does not prevent the Parties from undertaking consultation in another manner or forum.
- 4.4. **Non-Use of Protocol.** Where a Party proposes to not use this Protocol, the Parties will:
- a. discuss their reasons for not using this Protocol;
  - b. discuss whether to reconsider using the Protocol; or
  - c. seek Consensus on an alternative consultation process;
- unless the Parties agree that there is an already existing or agreed upon alternate consultation process.
- 4.5. **Phased-in Implementation.** Responsible Departments without existing Consultation Guidelines may, and are encouraged to, conclude Consultation Guidelines with Kitselas after the execution of this Protocol. In such instances these Consultation Guidelines will be added to Appendix B of this Protocol pursuant to subsection 11.6.
- 4.6. **Delegation to Third Parties.** Where applicable, Canada may also delegate procedural aspects of consultation to a third party, including Proponents, to assist it in meeting its duty to consult and, where appropriate, accommodate in respect of a Proposed Activity. This includes using information obtained by such third parties from Kitselas regarding potential impacts to Kitselas Rights, and any impact avoidance, mitigation, offset or compensation measures adopted or implemented by them for accommodation purposes.
- 4.7. **Notice of Intention to Delegate or Rely.** Canada will notify Kitselas as early as possible of its intent to delegate procedural aspects of consultation to a third party or to rely on accommodation activities pursuant to subsection 4.6, and will provide Kitselas with an opportunity to both validate any information received and provide any additional input in relation to such activities.
- 4.8. **Emergency Measures.** For greater certainty, nothing in this Protocol is intended to preclude Canada from taking measures to respond to an emergency or to urgent circumstances involving a threat or harm to a person, property or the environment that occurs within or affecting the Protocol Area.

## **5. ENGAGEMENT FORUM**

5.1. **Establishment of Engagement Forum.** The Parties will establish an Engagement Forum.

5.2. **Engagement Forum Structure and Relations.** The Engagement Forum consists of three components:

- a. **Executive Committee.** The Executive Committee is convened as necessary on a case by case basis. Its membership may vary depending on the nature of the discussion. It is composed of Senior Level officials of Kitselas and of Crown Indigenous Relations Canada, and, if necessary, of relevant Responsible Departments. The responsibilities of the Executive Committee include:
  - i. meet when reasonably requested;
  - ii. consider recommendations from the Relationship Committee on strategic matters;
  - iii. high level strategic problem solving including Dispute Resolution;
  - iv. reviewing the implementation of the Protocol including its effectiveness in forging a strong relationship between the Parties;
  - v. amending this Protocol;
  - vi. make recommendations to the Chief of Kitselas First Nation and the Minister of Crown Indigenous Relations Canada as appropriate; and
  - vii. other matters as agreed.
- b. **Relationship Committee.** The Relationship Committee, consisting of the Kitselas Director of Lands and Resources and the Senior Consultation Advisor for Crown Indigenous Relations Canada or successor to this position, will meet regularly and at least quarterly (in person or remotely) or as appropriate. The Relationship Committee will:
  - i. oversee the implementation and maintenance of this Protocol;
  - ii. review annually the implementation of the Protocol;
  - iii. assess the Protocol's implementation;
  - iv. discuss funding associated with the implementation of the Protocol and any related reporting requirements;



- v. discuss initiatives to foster a strong working relationship between the Parties including activities related to the implementation of this Protocol;
  - vi. make recommendations to the Executive Committee for its review and, if appropriate, approval with respect to specific matters;
  - vii. consider recommendations from the Inter-Departmental Committee to improve the Protocol under subsection 5(c)(iv)(C); and
  - viii. other matters reasonably related to the Protocol.
- c. **Inter-Departmental Committee.** The Inter-Departmental Committee is composed of the the Senior Consultation Advisor for Crown Indigenous Relations Canada, or successor to this position, and representatives of Responsible Departments, as well as the Kitselas Director of Lands and Resources, and Kitselas representatives, with the authority to make relevant recommendations. The responsibilities of the Inter-Departmental Committee include meeting as appropriate for purposes including:
- i. exchanging information regarding the progress of existing and upcoming consultations to facilitate coordination of consultation activities;
  - ii. exchanging information to build a stronger understanding of the interests of the Parties;
  - iii. reviewing and advising on implementation of the Protocol to the Relationship Committee; and
  - iv. meeting at the beginning of the fiscal year, and at other times as needed, to:
    - A. discuss priorities and upcoming consultation activities;
    - B. discuss improvements to maintain an efficient Consultation Process; and
    - C. provide recommendations to the Relationship Committee to improve this Protocol, including possible amendments.

## 6. CONSULTATION PROCESS

- 6.1. The Responsible Department will consult with Kitselas regarding any Proposed Activity within or affecting the Protocol Area.
- 6.2. The Parties will participate in good faith in the Consultation Process, set out in this section.

6.3. **General Consultation Principles.** For greater certainty,

- a. **Department with Consultation Guidelines.** Where a Responsible Department has concluded Consultation Guidelines with Kitselas, all notifications and communications with Kitselas shall take place through a shared engagement record provided in the Responsible Department's Consultation Guidelines within the applicable timeframes set out in the Responsible Department's Consultation Guidelines;
- b. **Conflicting Provisions.** In case of a conflict between a provision of this Protocol and a provision in a Responsible Department's Consultation Guidelines, the Consultation Guidelines shall prevail, unless otherwise specified;
- c. **Department Without Consultation Guidelines.** Where a Responsible Department has not concluded Consultation Guidelines, it will contact Kitselas to discuss an approach for notification and communication through a shared engagement record;
- d. **Shared Engagement Record.** For greater certainty, the shared engagement record constitutes the consultation record for any consultation conducted pursuant to this Protocol;
- e. **Communications to Kitselas.** Except as otherwise provided, all communications to Kitselas relating to a consultation shall be sent by email as follows:  
  
to the Project Assessment Officer  
  
at [pao@kitselas.com](mailto:pao@kitselas.com)  
  
with a cc to: [cedarbox@kitselas.com](mailto:cedarbox@kitselas.com)
- f. **Change of Address.** A Party may give written or e-mail notice to the other Party of any change of address or email address of the Party giving notice. After such notice has been given, the new address or email address will apply for purposes of this Protocol.

6.4. **Initial Notice**

- a. When a Responsible Department initiates consultation on a Proposed Activity within or affecting the Protocol Area, it shall provide initial notice to Kitselas,
  - i. in a manner consistent with their Consultation Guidelines where applicable;
  - ii. as set out in subsection 6.3.c, where the Responsible Department does not have Consultation Guidelines.

- b. This initial notice shall contain all available relevant information about the Proposed Activity, including preliminary assessment of possible impacts of the Proposed Activity on Kitselas Rights and may be accompanied by an information package containing supporting documentation and any other relevant materials.
- c. Kitselas will confirm that the information provided is complete (consistent with the shared engagement record) and, where appropriate, their agreement to the approach to consultation proposed by the Responsible Department within:
  - i. the timeline identified in the Responsible Departments' Consultation Guidelines, or
  - ii. an agreed upon time, where the Responsible Department does not have a Consultation Guidelines.
- d. The timelines for consultation will commence when the information provided is complete (consistent with the shared engagement record).

6.5. **Preliminary Response.** The Responsible Department and Kitselas will agree on a reasonable time for Kitselas to assess whether or not, and the extent to which the Proposed Activity may impact Kitselas Rights through the shared engagement record.

6.6. **Engagement**

- a. Following receipt of the preliminary response, the Responsible Department and Kitselas will, among others things:
  - i. collaboratively discuss their views with respect to the Proposed Activity, including its potential impacts and benefits;
  - ii. discuss options to avoid, mitigate or otherwise address impacts of the Proposed Activity as appropriate;
  - iii. discuss the participation of the Proponent in the Consultation Process, including working with the Proponent to develop accommodation measures, where appropriate, to address potential impacts of the Proposed Activities;
  - iv. discuss recommendations which will be included in the shared engagement record;
  - v. seek Consensus on options to resolve any differences between the Responsible Department and Kitselas; and
  - vi. any other matters related to the Proposed Activity;

with the goal of seeking Consensus on recommendations to be made to the decision maker ("Consensus Recommendations").

- b. Prepare a summary of any Consensus Recommendations and any other recommendations made separately by either Kitselas or the Responsible Department to be provided to the relevant decision makers.
- c. Throughout this process, the Responsible Department and Kitselas, upon request by either of them, will meet in a timely manner to seek Consensus on:
  - i. any matters listed in subsection 6.6.a;
  - ii. issues on which the Responsible Department or Kitselas may disagree;
  - iii. options to address any ongoing disagreement; and
  - iv. other matters as agreed by the Responsible Department and Kitselas.

#### **6.7. Accommodation Measures**

- a. Where a Proposed Activity may adversely impact Kitselas' Rights, the Responsible Department and Kitselas will seek Consensus on appropriate accommodation measures to avoid, minimize or otherwise address the adverse impacts.
- b. The Parties agree that these accommodation measures may include:
  - i. mitigation measures to avoid, or reduce, adverse impacts on Kitselas Rights;
  - ii. measures that would offset adverse impacts on Kitselas Rights;
  - iii. measures that compensate for adverse impacts on Kitselas Rights, whether financially or otherwise;
  - iv. measures to monitor and adaptively manage adverse impacts on Kitselas Rights; and
  - v. rejection or deferral of a proposed Project or a Proposed Activity because of its potential for serious adverse impacts on Kitselas Rights.
- c. Canada and Kitselas will collaborate where appropriate, and will make best efforts to ensure that any federal conditions related to the Proposed Activity are implemented and enforced.

- d. The Parties will seek to identify revenue-sharing or socio-economic opportunities related to the Proposed Activity in the Protocol Area, that are consistent with the Parties' policies and mandates, and the nature of the Proposed Activity.

#### 6.8. Consensus Recommendations

- a. Where a contemplated decision on a Proposed Activity is consistent with the Consensus Recommendations, the Responsible Department will
  - i. provide written notification of the decision after it has been made; and
  - ii. upon request, identify how the Consensus Recommendations and any related accommodation measures were addressed.
- b. Where a contemplated decision on a Proposed Activity is not consistent with the Consensus Recommendations, the Responsible Department will
  - i. notify Kitselas of the contemplated decision before it is made; and
  - ii. upon request, and consistently with subsection 9.2, meet with Kitselas to discuss the contemplated decision and attempt to resolve their differences.
- c. Where a decision is made that is not consistent with the Consensus Recommendations, and the Responsible Department and Kitselas have not resolved their differences, the Responsible Department will
  - i. notify Kitselas of the decision;
  - ii. upon request, and consistently with subsection 9.2, attempt to meet with Kitselas within 14 calendar days after the decision has been made, or within an agreed upon timeframe, to discuss:
    - A. how the Consensus Recommendations were addressed;
    - B. why consistency was not reached; and
    - C. steps they may wish to take to protect the relationship envisioned by this Protocol.

## **7. CONSENT**

- 7.1. It is Kitselas' prerogative to provide its free, prior and informed consent to any Proposed Activity that may adversely impact Kitselas's Rights.
- 7.2. The fact that the Responsible Department and Kitselas have achieved Consensus should not be construed as Kitselas consenting to the Proposed Activity.
- 7.3. Kitselas may at any time during the Consultation Process decide whether or not they consent to the Proposed Activity. Prior to the decision being made, the Responsible Department and Kitselas may discuss whether Kitselas is considering withholding its consent to the Proposed Activity.
- 7.4. Kitselas may condition its consent on whether the Proponent or the Responsible Department is satisfying the conditions upon which that consent is based.
- 7.5. In cases in which Kitselas withholds its consent to a Proposed Activity, the Responsible Department and Kitselas will, upon request, meet to discuss the circumstances that led to Kitselas withholding its consent with the goal of collaborating on next steps to maintain a strong working relationship.
- 7.6. Where Kitselas declares its opposition to a Proposed Activity, Canada will seriously consider not approving the Proposed Activity.

## **8. INFORMATION SHARING AND CONFIDENTIALITY**

- 8.1 **Kitselas Knowledge.** Canada acknowledges that:
  - a. Kitselas is custodian of Kitselas Knowledge that they may own or hold individually or collectively, and that may be confidential in nature;
  - b. Kitselas may share Kitselas Knowledge with Canada for the purpose of fulfilling consultation undertaken pursuant to this Protocol; and
  - c. the Parties will manage Kitselas Knowledge in accordance with the owner or holder's wishes, subject to applicable laws, or any information sharing agreement to which Canada is a party.
- 8.2 **Information Sharing.** The Parties will support consultation under this Protocol by making reasonable efforts to share relevant Kitselas Knowledge and, will assist the other Party in:
  - a. interpreting the information;
  - b. determining the current and future use of the information; and

- c. subject to where disclosure is required by law, determining the terms under which it may be disclosed, in whole or in part, to any other person.
- 8.3 **Use of Information.** Where a Responsible Department wishes to use information provided by Kitselas in a prior consultation for the purposes of a new consultation with Kitselas, the Responsible Department shall seek consent from Kitselas on the relevance, completeness and applicability of that information, and how that information will be used.
- 8.4 **Confidential Information.** A Party may provide information in confidence in any consultation conducted under this Protocol by marking the information as “Confidential,” and, where the Parties agree that the information is confidential, such information will be held in confidence by the other Party, subject to subsections 8.5 to 8.8, or unless disclosure is otherwise required by law.
- 8.5 **Other Federal Departments and Agencies.** Unless otherwise agreed by Kitselas, any information provided in confidence to a Responsible Department by Kitselas in a consultation conducted under this Protocol will be deemed to have been provided in confidence to Canada, and may only be shared with other federal departments and agencies for the purposes of that same consultation with Kitselas.
- 8.6 **Access to Information Act Requests.** If Canada receives a request under the *Access to Information Act* (“ATIA”) for access to information received from Kitselas under this Protocol, all relevant provisions of the ATIA apply, including the requirement to provide Kitselas with notice of the intended disclosure and the opportunity to make representations regarding such disclosure.
- 8.7 **Disclosure Otherwise Required by Law.** In addition to any ATIA request, if Canada is otherwise required by law to disclose information received from Kitselas under this Protocol, all relevant provisions of the applicable law will apply, including any limits on disclosure, and any requirements to provide Kitselas with notice of the intended disclosure and the opportunity to make representations regarding such disclosure.
- 8.8 **Legal Proceedings.** Notwithstanding anything in this current section, a Party may present confidential records or information in evidence before a tribunal or other judicial proceeding relating to consultation and, where appropriate, accommodation, conducted under this Protocol. The use of such confidential records or information is subject to any rules of admissibility of evidence applicable to that tribunal or judicial proceeding. Upon a Party tendering such confidential records or information to the court or in another legal proceeding, any of the Parties may ask the court or tribunal to make a sealing order in relation to the confidential records or information.

8.9 **Additional Conditions.** The Parties acknowledge that:

- a. this Protocol is not confidential and may be made public and tendered as evidence in a court of law or other legal proceedings in accordance with applicable legislation;
- b. section 8 does not apply to information that is already in the public domain; and
- c. the disclosure of confidential information provided by Canada may be restricted under federal law or subject to additional conditions on disclosure.

8.10 **Proceeding Without Prejudice.** Notwithstanding any other provision of this Protocol, the Responsible Department and Kitselas have the option of determining that, at any time prior to or during the consultation, discussions may be held and information exchanged, until further notice, on a without prejudice basis, in order to permit frank, cooperative and solution-oriented interaction without concern for the legal significance of admissions, concessions, positions and discussions for the period of time specified or agreed upon.

## 9. DISPUTE AND ISSUES RESOLUTION

9.1. **Dispute Resolution.** The Parties recognize that the success of this Protocol will depend on their ability and willingness to recognize, explore and resolve differences which may arise between them, and that they will endeavor to resolve such differences in a manner that fosters an improved ongoing and respectful government-to-government relationship as follows:

- a. where a Dispute arises the Parties will attempt to resolve it through the Engagement Forum as directed by the Relationship Committee; and
- b. the Parties may utilize alternate dispute resolution mechanisms such as mediation or facilitation at any stage of the Dispute resolution. The cost of using professional assistance will be shared by the parties to the Dispute.

9.2. **Issues Resolution.** Any Issue arising from a consultation on a Proposed Activity will be referred to a Senior Level within Kitselas and the Responsible Department.

## 10. CONSULTATION UNDER PROTOCOL

10.1. **Satisfaction of Consultation Obligations.** The Parties acknowledge that consultation conducted under this Protocol will:



- a. constitute the process by which Canada will fulfill its duty to consult Kitselas on Proposed Activities within or affecting the Protocol Area;
- b. constitutes the process by which Kitselas will respond to Canada regarding Proposed Activities within or affecting the Protocol Area; and,
- c. where appropriate, be the means by which Canada will identify and propose potential measures or processes to accommodate any adverse impacts on Kitselas Rights resulting from Proposed Activities within or affecting the Protocol Area.

## 11. GENERAL

### 11.1. **Not a Treaty.** This Protocol 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.

### 11.2. **Acknowledgement.** The Parties acknowledge and enter into this Protocol on the basis that Kitselas asserts Kitselas Rights within the Protocol Area but that the specific nature, scope or geographic extent of those Kitselas Rights have yet to be determined. The Parties intend that broader processes outside of this Protocol may be engaged in to bring about reconciliation and may lead to a common understanding of the nature, scope and geographic extent of Kitselas Rights.

### 11.3. **No Admissions.** Nothing in this Protocol will be construed as:

- a. an admission of the validity of, or any fact or liability in relation to, any claims relating to alleged past or future infringements of Kitselas Rights;
- b. an acknowledgement of any obligation to provide any financial, economic or other compensation as part of Canada's duty to consult and where appropriate, accommodate; or
- c. in any way limiting the position the Parties may take in any negotiations or in any discussions or negotiations between the Parties, except as expressly contemplated in this Protocol.

### 11.4. Nothing in this Protocol is intended to:

- a. prevent Kitselas from relying on any common law or statutory right they may have respecting the duty to consult; or
- b. alters any statutory or regulatory requirement to which Canada is subject.

11.5. **No Fettering.** Nothing in this Protocol will be interpreted in a way that would affect or unlawfully interfere with any legislative authority of Canada or fetter the discretion of any decision-making authority.

11.6. **Amendment.** This Protocol may be amended in writing as follows:

- a. For any amendment to this Protocol, by written agreement of the Executive Committee of the Engagement Forum, consisting of Senior Level officials of the Minister Crown-Indigenous Relations, on behalf of Canada, and the Chief and Council of the Kitselas First Nation, or delegated representatives.
- b. For any amendment to a Consultation Guideline, by the relevant Responsible Department and the Director of Lands and Resources of Kitselas.
- c. As new Consultation Guidelines are completed they will be attached to Appendix B of this Protocol which will be considered amended accordingly.
- d. Appendix A Map may be changed by Kitselas.
- e. Aboriginal and Treaty Rights Information System (ATRIS) will be updated to reflect any updates and amendments to this Protocol.

## 12. FUNDING

12.1. **Provision of Base Funding.** Canada commits to provide capacity funding for the implementation of this Protocol in a timely manner. Such Contribution funding to be provided from the Department of Crown-Indigenous Relations will be negotiated between the Parties based on considerations such as annual activity reports and budgets to be submitted by Kitselas.

12.2. **Funding for Consultation on Proposed Activities.** Where a Responsible Department applies this Protocol, funding may be available to support consultation for specific Proposed Activities. The Responsible Department will seriously consider and respond to capacity funding requests specific to that Proposed Activity.

12.3. **Provision of Funding.** Any funding to be provided by Canada is subject to annual appropriations by the Parliament of Canada.

12.4. **Separate Funding Agreements.** Any funding arrangement made pursuant to this Protocol will be detailed in a separate agreement.

- 12.5. **Additional Funding.** Nothing in this Protocol precludes Kitselas from:
- a. accessing funding that may be available through other federal departments or agencies;
  - b. accessing funding that may be available from a non-governmental body, or another level of government; or
  - c. negotiating revenue-sharing agreements with Proponents.

### 13. REPRESENTATIONS AND WARRANTIES

- 13.1. The Parties represent and warrant to each other that each has the authority to enter into this Protocol and carry out its obligations in accordance with the terms of this Protocol.

### 14. TERM, TERMINATION AND WITHDRAWAL

- 14.1. **Effective Date:** This Protocol shall come into effect on the date of its execution by Kitselas and Canada.
- 14.2. Each Consultation Guideline will come into effect when executed by Kitselas and the relevant Responsible Department.
- 14.3. This Protocol is a living document and process that can be amended as deemed appropriate by both Kitselas and Canada using the process set out in subsection 11.6.
- 14.4. **Termination or Withdrawal.** This Protocol may be terminated in writing by either Party on ninety (90) days' notice or on a date mutually agreed on by the Parties.
- 14.5. **Resolution of Termination or Withdrawal.** In recognition of the enduring value of a Nation-to-Nation relationship between the Parties, the Parties will:
- a. on notice of termination or withdrawal, provide the other Party with the reasons for termination or withdrawal; and
  - b. meet face to face within 30 days from the date notice was provided under subsection 14.4 to attempt to resolve the issue prior to termination or withdrawal.
- 14.6. **Effect of Termination of this Protocol.** Where this Protocol is terminated under subsection 14.4:
- a. section 8 survives termination;
  - b. the members of the Relationship Committee will inform all applicable Responsible Departments that this Protocol has been terminated, and that

the Protocol can no longer be relied upon to fulfill Canada's duty to consult Kitselas; and

- c. any consultation already started under this Protocol may, with the agreement of the Parties, continue in accordance with the Consultation Process.

14.7. **Linkage to Treaty.** The Parties will review and may choose to amend or terminate this Protocol upon ratification of a Final Agreement with Kitselas.

## 15. REPRESENTATIVES

- 15.1. Crown Indigenous Relations, British Columbia Region, Senior Consultation Advisor, or successor to this position, will be the principal representative of Canada with respect to this Protocol and its implementation.
- 15.2. Director of Lands and Resources, or successor to this position will be the principal representative of Kitselas with respect to this Protocol and its implementation at;

Email: [LR.Director@Kitselas.com](mailto:LR.Director@Kitselas.com)

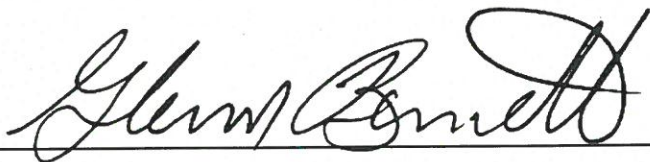
Phone: 778-634-3517

## 16. LANGUAGE

This Protocol was drafted in English and translated into French. The English version of this protocol is authoritative. In the event of a discrepancy between the English and French versions of the text of this Protocol, the English version shall take precedence.

IN WITNESS WHEREOF the Parties have signed this Protocol:

KITSELAS FIRST NATION by:



Glenn Bennett Chief Councilor  
Kitselas First Nation

Date: November 2, 2023

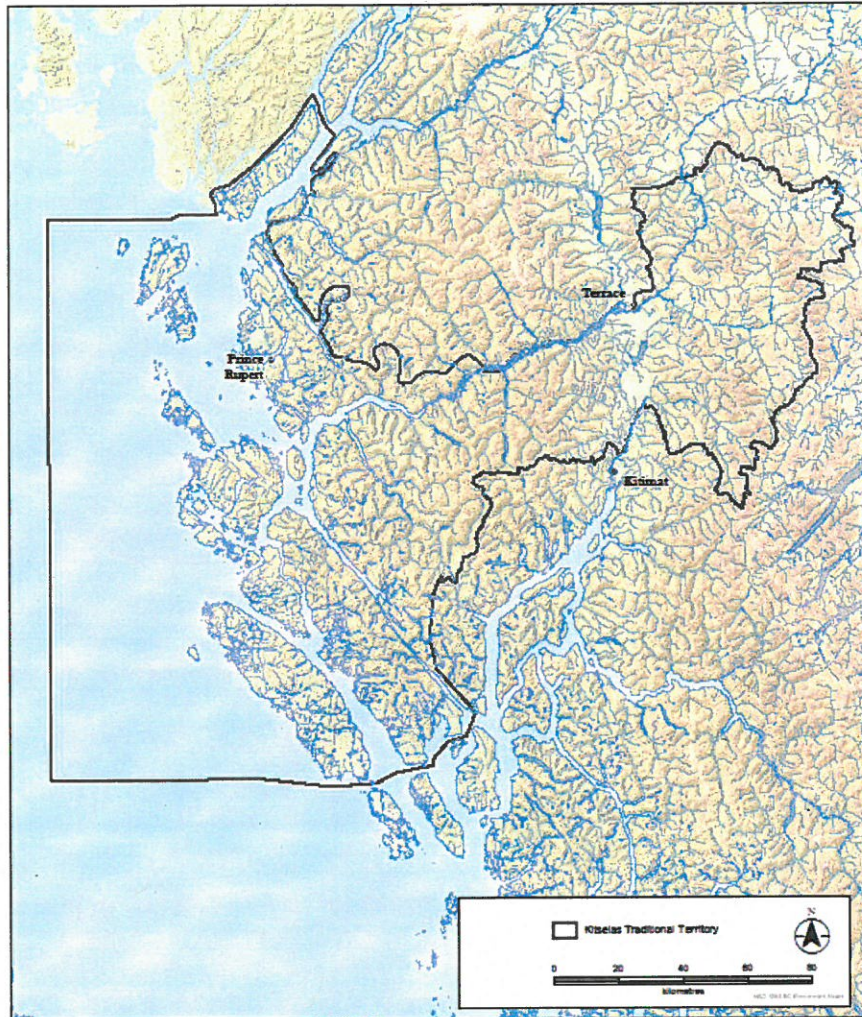
HIS MAJESTY THE KING IN RIGHT OF CANADA by:



The Honourable Gary Anandasangaree  
Minister of Crown-Indigenous Relations Canada

Date: DEC 12 2023

**Appendix A**  
**Kitselas Protocol Area Map**



Source: Atlas of British Columbia, Department of British Columbia Government & Consumer Services

Source: Kit. 2011



**Kitselas Lands & Resources**

The accuracy & completeness of information shown on this map is not guaranteed. It is the responsibility of the user to verify the accuracy of the information shown on this map. The province of British Columbia is not responsible for any errors or omissions on this map.

**Kitselas Traditional Territory**

**FIGURE 1**

The Kitselas Protocol Area map represents the perspective of Kitselas First Nation. The territory identified on this map does not constitute a recognition by Canada of Kitselas territory. This map is subject to change by Kitselas based on the evolution of research.

**Appendix B**  
**Consultation Guidelines**

1. Transport Canada, [date signed]
2. Fisheries and Oceans Canada, [date signed]