

REVENUE SHARING AGREEMENT

THIS AGREEMENT made as of the 1 day of November, 2011

BETWEEN:

THE CITY OF TERRACE, a municipal corporation under the *Community Charter* and *Local Government Act* having its municipal office and postal address at 3215 Eby Street, Terrace, BC, V8G 2X8 Canada

(the "City")

AND:

KITSELAS FIRST NATION, an Indian Band as defined by the Indian Act having an address at 2225 Gitaus Road, Terrace, BC, V8G 0A9 Canada

("Kitselas")

(collectively, the "Parties")

RECITALS

- A. Kitselas First Nation and the City of Terrace entered into a Memorandum of Understanding in January 2007 to secure the transfer of the lands referred to in this Agreement as the "Airport Lands".
- B. Kitselas First Nation and the City of Terrace wish to implement the commitments in the Memorandum of Understanding, by entering into this Agreement relating to some of the Government to Government Matters contained in the Memorandum of Understanding, and by entering into a Joint Venture Agreement to be signed contemporaneously with this Agreement.
- C. The Airport Lands are within the municipal boundaries of the City of Terrace and therefore fall under the City of Terrace's taxing authority as set out in the *Community Charter* and *Local Government Act*.
- D. The Parties wish to outline the tax status of the Airport Lands prior to their development and document their agreement regarding tax sharing after development of the Airport Lands.

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement unless something in the subject matter or context is inconsistent therewith, the capitalized terms herein will have the meanings set out below:

- (a) **“Airport Lands”** means those lands shown on Appendix A to this Agreement and includes those lands known as the Skeena Industrial Development Park and Groundside Commercial Lands;
- (b) **“Annual Adjustments”** means those adjustments made by the City to reflect prior year(s) bad debt from applicable unpaid tax accounts and any retroactive property tax adjustments;
- (c) **“Annual City Revenue”** means the Annual Net Revenue less the Annual Kitselas Revenue;
- (d) **“Annual Gross Revenue”** means general municipal property value taxes collected by the City of Terrace from taxpayers within the Airport Lands, but excluding school taxes or other taxes collected by the City on behalf of another taxing authority;
- (e) **“Annual Net Revenue”** means Annual Gross Revenue less Annual Adjustments;
- (f) **“Annual Kitselas Revenue”** means Kitselas’ share of the Annual Net Revenue as determined in accordance with the formulae set out in Section 3.2 of this Agreement;
- (g) **“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia;
- (h) **“Commencement Date”** means November 1, 2011;
- (i) **“KPop”** means the population of the Kitselas First Nation living on only the three Kitselas areas known as Kshish 4, Kitselas 1 and Kulspai 6, as per the latest Canadian Census Count as published by Statistics Canada;
- (j) **“Term”** has the meaning given in Section 2.1 of this Agreement; and
- (k) **“TPop”** means the total population of the City of Terrace per the latest Canadian Census Count as published by Statistics Canada.

1.2 **Headings**

The division of this Agreement into sections and the insertion of the recitals and headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement.

1.3 **Currency**

All transactions referred to in this Agreement will be made in lawful currency of Canada.

1.4 **Singular, plural, gender and person**

Wherever in this Agreement the context so requires the singular number shall include the plural number and vice versa and words importing gender shall be deemed to include all genders.

1.5 **Statutes**

Each reference to a statute is deemed to be reference to that statute and to the regulations made under that statute as amended or re-enacted from time to time.

1.6 Appendices

The following attached appendices are incorporated in this Agreement and are deemed to be part of this Agreement and any reference to this Agreement shall mean this Agreement including such appendices:

Appendix A - Airport Lands

1.7 Time of day

Unless otherwise specified, references to time of day or date mean the local time or date in Terrace, British Columbia.

2. TERM OF AGREEMENT

2.1 Term

The term of this Agreement (the “**Term**”) will commence on the Commencement Date and continue for perpetuity, subject to the following:

- (a) earlier termination in accordance with the terms of this Agreement; and
- (b) the Parties agree that they will review the terms and conditions of this Agreement every 10 years during the Term with a view to updating and revising the Agreement as may be mutually beneficial to the Parties. After such periodic review, all terms and conditions of this Agreement not mutually amended, will remain the same.

3. TAX SHARING WITH THE KITSELAS FIRST NATION

3.1 Tax revenue sharing

Subject to the provisions of this Agreement, the City agrees to share with Kitselas the Annual Net Revenue for the Term of this Agreement.

3.2 Determination of revenue share amounts

The parties agree that their respective shares of the Annual Net Revenue will be based on the following specific formulae:

$$\text{Annual Kitselas Revenue} = \text{Annual Net Revenue} \times \text{KPop}/(\text{KPop} + \text{TPop})$$

$$\text{Annual City Revenue} = \text{Annual Net Revenue} - \text{Annual Kitselas Revenue}$$

3.3 Verification of revenue share amounts

For certainty, the Annual Gross Revenue, Annual Adjustments, Annual Net Revenue, Annual Kitselas Revenue and Annual City Revenue shall be determined solely by the City, and the City’s annual audit will be conclusive evidence of the accuracy of these amounts. The City will provide Kitselas with a copy of the annual audit.

4. PAYMENT OF ANNUAL KITSELAS REVENUE

4.1 Place of payment

The City will make all payments pursuant to this Agreement to Kitselas, or the Kitselas Development Corporation, or such other entity designated by Kitselas, by cheque or any other agreed form of payment, at the address provided in writing from time to time by Kitselas to the City for this purpose.

4.2 Frequency and timing of payments

The City will pay the Annual Kitselas Revenue on annual basis, on or about August 1st in each year during the Term, in accordance with the formulae set out in Section 3.2 above.

5. TERMINATION

5.1 By agreement

This Agreement may be terminated at any time during the Term as may be mutually agreed upon in writing by the parties.

5.2 Adverse effect

The Parties agree and acknowledge that either Party may terminate this Agreement at any time during the Term if, as a result of any legislation or court determination, the City's or Kitselas' interest in the Airport Lands is adversely affected.

5.3 Limitation of Liability

The Parties agree that notwithstanding anything herein or any duty, principle, term or rule of law to the contrary, whether express or implied, neither Party shall be liable to the other Party for any loss or damage of any nature whatsoever flowing from early termination of this Agreement, including without limitation any special, incidental, direct, indirect or consequential damages arising out of such early termination nor shall the Parties be under any further obligation to one another.

6. NOTICES

6.1 Notices

Any notice, request, demand and other communication required or permitted to be given under this Agreement shall be in writing and will be sufficiently given if it is delivered by hand, facsimile transmission, e-mail or prepaid registered mail (return receipt requested) as follows:

- (a) If to the City:

City of Terrace
3215 Eby Street, Terrace, BC V8G 2X8 Canada
Attention: Chief Administrative Officer

Fax: (250) 638 4777

- (b) If to Kitselas:

Kitselas Band Council

2225 Gitaus Road, Terrace, BC, V8G 0A9 Canada
Attention: Chief Councillor

Fax: (250) 635 5335

or at such other address as the party to whom the notice is sent may specify by notice given in accordance with the provisions of this section. Any such notice, request, demand or other communication given as aforesaid will be deemed to have been given, in the case of delivery by hand, when delivered, in the case of facsimile transmission or e-mail, when a legible facsimile or e-mail is received by the recipient if received before 5:00 p.m. on a day other than a Business day, or on the next Business Day if such facsimile or e-mail is received on a day which is not a Business Day or after 5:00 p.m. on a Business Day, and in the case of delivery by prepaid registered mail, as aforesaid, on the date received. In the event of discontinuance of postal service due to strike, lockout, labour disturbance or otherwise, notice, demands, requests and other communications shall be delivered by hand or facsimile transmission or e-mail.

7. GENERAL

7.1 Assignment

This Agreement shall not be assignable by Kitselas in whole or in part without the mutual written consent of the City. Any purported assignment without the City's required consent is not binding or enforceable against the City.

7.2 Enurement

This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

7.3 Written Waivers

Any waivers must be in writing and signed by the party granting the indulgence, and then such waiver shall only be effective in a specific instance and for the specific purpose for which it is given.

7.4 Further Assurances

Each party will execute and deliver promptly all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions of this Agreement.

7.5 Remedies Cumulative

The rights and remedies under the Agreement are cumulative and are not in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

7.6 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

7.7 Delivery by Fax or Electronically

Any party may deliver an executed copy of this Agreement by fax or by electronic mail in PDF format but that party will immediately dispatch by delivery in person to the other parties an originally executed copy of this Agreement.

7.8 Amendment

This Agreement may not be amended except by a written instrument signed by the City and Kitselas.

7.9 Entire Agreement

With the exception of the Memorandum of Understanding and the Joint Venture Agreement referred to in the Recitals of this Agreement, this Agreement and all documents contemplated by or delivered under or in connection with this Agreement constitute the entire agreement between the parties and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings whether written or oral, express or implied, or otherwise.

7.10 Governing Law

This Agreement and any dispute arising out of or in connection with this Agreement shall be governed exclusively by and shall be enforced, construed and interpreted exclusively in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of this Agreement.

7.11 Attornment

The parties agree to submit to and hereby attorn to the exclusive jurisdiction of the courts of the Province of British Columbia for any action arising out of or in connection with this Agreement.

7.12 Paramountcy

The provisions set forth in any other agreement between Kitselas and the City will not merge with this Agreement but shall survive the execution and delivery of this Agreement except that, if such provisions are inconsistent with the provisions hereof, this Agreement shall govern.

7.13 Independent Legal Advice

Kitselas confirms it has had an opportunity to obtain independent legal advice in entering into this Agreement.

7.14 Severability

Each provision of this Agreement is intended to be severable and if any provision is determined by a court of competent jurisdiction to be illegal or invalid or unenforceable for any reason whatsoever such provision shall be severed from this Agreement and will not affect the legality, validity or enforceability of the remainder of or any other provision of this Agreement.

7.15 Time of Essence

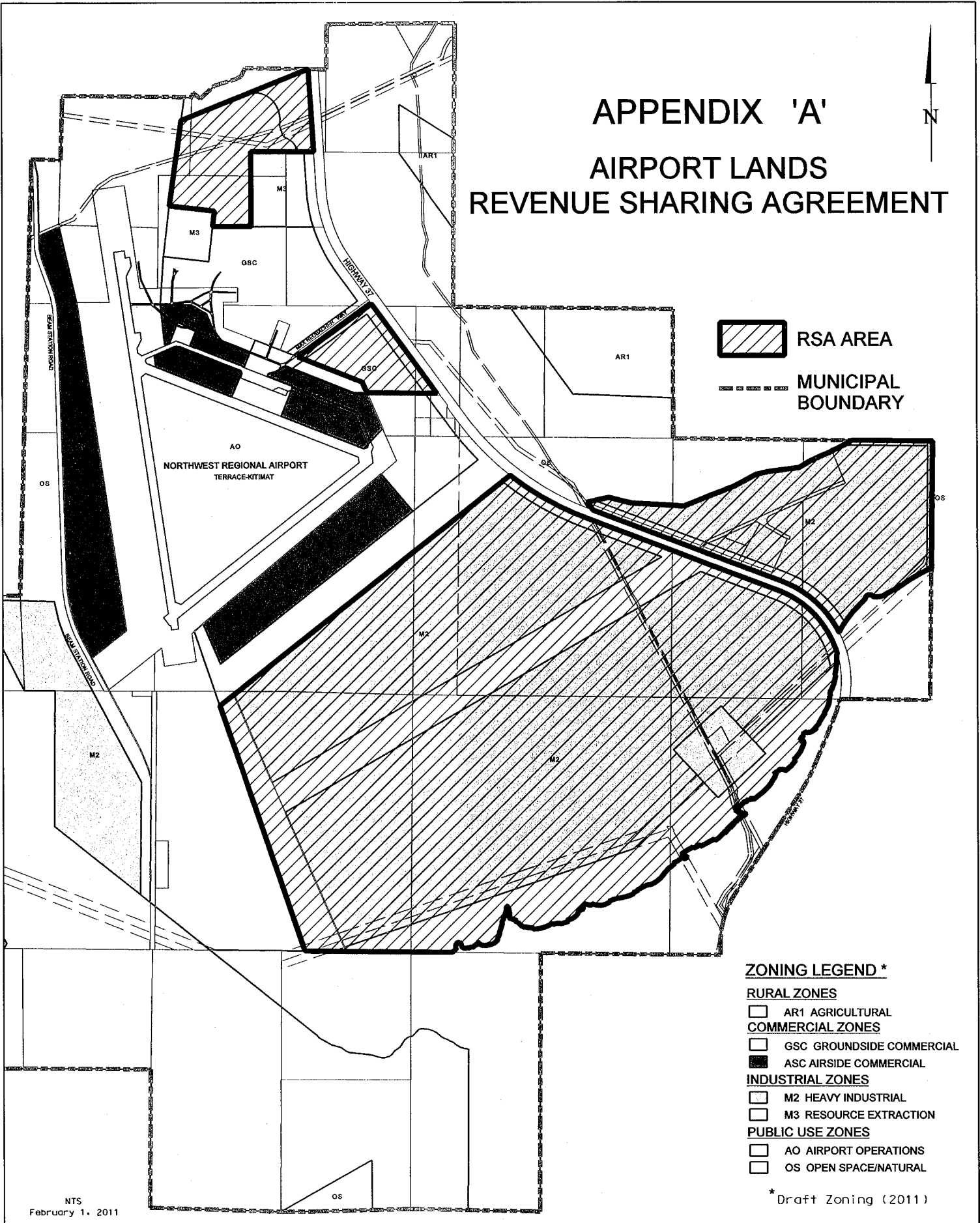
Time shall be of the essence of this Agreement.

7.16 Dispute Resolution

If there is any dispute regarding the interpretation, performance or an alleged breach of this Agreement, either party may give written notice of dispute, including a request for meeting, to the other party and the

APPENDIX 'A'


AIRPORT LANDS REVENUE SHARING AGREEMENT




 RSA AREA
 MUNICIPAL BOUNDARY


ZONING LEGEND *

RURAL ZONES


 AR1 AGRICULTURAL

COMMERCIAL ZONES

 GSC GROUNDSIDE COMMERCIAL


 ASC AIRSIDE COMMERCIAL

INDUSTRIAL ZONES

 M2 HEAVY INDUSTRIAL

 M3 RESOURCE EXTRACTION

PUBLIC USE ZONES

 AO AIRPORT OPERATIONS

 OS OPEN SPACE/NATURAL

* Draft Zoning (2011)