

CHAPTER 19 FISCAL RELATIONS

1. The Parties acknowledge that they each have a role in supporting Tsawwassen First Nation, through direct or indirect financial support or through access to public programs and services, as set out in the Fiscal Financing Agreement or provided through other arrangements.
2. Every five years, or other periods as may be agreed, the Parties will negotiate and attempt to reach agreement on a Fiscal Financing Agreement that will:
 - a. set out the Agreed-Upon Programs and Services, including the recipients of those programs and services;
 - b. set out the responsibilities of each of the Parties in respect of the Agreed-Upon Programs and Services;
 - c. set out the funding in respect of the Agreed-Upon Programs and Services;
 - d. set out the contribution of Tsawwassen First Nation to the funding of the Agreed-Upon Programs and Services from its own source revenues as determined under clause 4 of this chapter;
 - e. set out mechanisms for the transfer of funds to Tsawwassen First Nation from Canada or British Columbia;
 - f. set out procedures for:
 - i. the collection and exchange of information, including statistical and financial information, required for the administration of Fiscal Financing Agreements;
 - ii. dispute resolution in relation to Fiscal Financing Agreements;
 - iii. the accountability requirements, including those in respect of reporting and audit, of Tsawwassen First Nation;
 - iv. negotiating the inclusion of additional programs and services to the list of the Agreed-Upon Programs and Services within the term of a Fiscal Financing Agreement;
 - v. addressing exceptional circumstances and emergencies; and
 - vi. negotiating subsequent Fiscal Financing Agreements; and
 - g. address other matters as agreed to by the Parties.
3. In negotiating a Fiscal Financing Agreement, the Parties will take into account:
 - a. the cost of providing, either directly or indirectly, the Agreed-Upon Programs and Services that are reasonably comparable to similar programs and services available in other communities of similar size and circumstance in south-western British Columbia;
 - b. efficiency and effectiveness, including opportunities for economies of scale, in the provision of the Agreed-Upon Programs and Services, which may include, where appropriate, cooperative arrangements with other governments, First Nations or existing service providers;

Fiscal Relations

- c. the existing levels of funding provided by Canada or British Columbia;
 - d. the costs of operating Tsawwassen Government;
 - e. the prevailing fiscal policies of Canada or British Columbia;
 - f. the location and accessibility of communities on Tsawwassen Lands;
 - g. the jurisdictions, authorities, programs and services assumed by Tsawwassen First Nation under this Agreement;
 - h. the desirability of reasonably stable, predictable and flexible fiscal arrangements;
 - i. the changes in price and volume, which may include the number of individuals eligible to receive the Agreed-Upon Programs and Services; and
 - j. other matters as agreed by the Parties.
4. From time to time, the Parties will negotiate and attempt to reach agreement on the own source revenue contribution of Tsawwassen First Nation to the funding of the Agreed-Upon Programs and Services under subclause 2.d, taking into account:
 - a. the capacity of Tsawwassen First Nation to generate revenues;
 - b. the existing Tsawwassen First Nation own source revenue arrangements negotiated under this Agreement;
 - c. the prevailing fiscal policies on the treatment of First Nation own source revenue in self government fiscal arrangements;
 - d. that own source revenue arrangements should not unreasonably reduce incentives for Tsawwassen First Nation to generate revenues;
 - e. that the reliance of Tsawwassen First Nation on fiscal transfers should decrease over time as it becomes more self-sufficient; and
 - f. other matters as agreed by the Parties.
5. In negotiating the own source revenue contribution of Tsawwassen First Nation to the funding of the Agreed-Upon Program and Services under clause 4, unless otherwise agreed:
 - a. own source revenue arrangements will not include:
 - i. the Capital Transfer, in the manner set out in the initial agreement in respect of own source revenues;
 - ii. the proceeds from the sale of Tsawwassen Lands;
 - iii. any federal or provincial payments under Fiscal Financing Agreements or other agreements for programs and services;
 - iv. the interest or income on funds received by Tsawwassen First Nation from Canada or British Columbia for a purpose related to the implementation of this Agreement and held in a special purpose fund as set out in the initial agreement in respect of own source revenues, or as agreed by the Parties from time to time, provided that the interest or income is used for a purpose or activity that is intended by the Parties to be funded from that special purpose fund;

- v. the payments received as a result of the settlement in 2004 relating to Roberts Bank port facility and the Tsawwassen ferry terminal;
 - vi. gifts or charitable donations;
 - vii. the amounts received as compensation for specific losses or damages to property or assets;
 - viii. a Specific Claim Settlement; or
 - ix. other sources agreed by the Parties; and
 - b. own source revenue arrangements will not permit:
 - i. Canada to benefit from the decision of British Columbia to vacate tax room or to transfer revenues or tax authorities to Tsawwassen First Nation; or
 - ii. British Columbia to benefit from the decision of Canada to vacate tax room or to transfer revenues or tax authorities to Tsawwassen First Nation.
 - 6. If the Parties do not reach agreement on a subsequent Fiscal Financing Agreement by the expiry date of an existing Fiscal Financing Agreement, the existing Fiscal Financing Agreement:
 - a. will continue in effect for up to two years from its original expiry date, or for such other period of time as the Parties may agree in writing; and
 - b. will terminate on the earlier of:
 - i. the expiry of the extended term determined in accordance with subclause 6.a; and
 - ii. the date of commencement of a subsequent Fiscal Financing Agreement.
 - 7. The creation of Tsawwassen Government, the provision of Tsawwassen Government legislative authority under this Agreement, or the exercise of Tsawwassen Government legislative authority does not create or imply any financial obligation or service responsibility on the part of any Party, other than as set out in a Fiscal Financing Agreement.
 - 8. For greater certainty, where the Parties agree in the initial Fiscal Financing Agreement that Canada will provide Time Limited Federal Funding for any Tsawwassen First Nation responsibilities specified in that agreement and Canada duly provides the Time Limited Federal Funding, Canada has no obligation to negotiate and attempt to reach agreement on the provision of further funding for any of the responsibilities specified.
 - 9. For greater certainty, where the Parties agree in the initial Fiscal Financing Agreement that British Columbia will provide Time Limited Provincial Funding for any Tsawwassen First Nation responsibilities specified in that agreement and British Columbia duly provides the Time Limited Provincial Funding, British Columbia has no obligation to negotiate and attempt to reach agreement on the provision of further funding for any of the responsibilities specified.
-

Fiscal Relations

10. Any funding required for the purposes of a Fiscal Financing Agreement, or any other agreement that is reached as a result of negotiations that are required or permitted under any provision of this Agreement and that provides for financial obligations to be assumed by a Party, is subject to the appropriation of funds:
 - a. in the case of Canada, by Parliament;
 - b. in the case of British Columbia, by the Legislature of British Columbia; and
 - c. in the case of Tsawwassen First Nation, by Tsawwassen Government.