

POTABLE WATER SERVICING AND INFRASTRUCTURE AGREEMENT

THIS AGREEMENT dated for reference the 12 day of October, 2017,

BETWEEN:

UNION BAY IMPROVEMENT DISTRICT (an Improvement District incorporated pursuant to the Local Government Act (British Columbia)), P.O. Box 70, Union Bay, B.C. V0R 3B0

("UBID")

AND:

34083 YUKON INC., (an extra-provincial company incorporated in its current jurisdiction on February 20, 2002 and registered in British Columbia on March 7, 2002), having a mailing address at #201 – 1830 Riverside Lane, Courtenay, BC V9N 8C7

(the "**Developer**")

WITNESSES THAT WHEREAS:

- A. UBID is the holder of a water licence (the "**Water Licence**") issued pursuant to the Water Act (British Columbia) granting UBID, as the licence holder, the right to divert, store and carry water from Langley Lake for domestic purposes and includes the licence for the dam at Langley Lake.
- B. UBID has the authority under the Local Government Act (British Columbia) to regulate the supply and distribution of water within its boundaries, and to make agreements respecting matters within its objects.
- C. The Developer owns lands in Union Bay, BC, (the "**Developer's Lands**") that are situated within the boundaries of the jurisdiction of UBID.
- D. UBID currently operates potable water infrastructure for the benefit of the residents of Union Bay, BC, on a portion of the Lands pursuant to a lease made between the Developer and UBID.
- E. UBID wishes to continue to operate the existing potable water infrastructure in its current location on the Developer's Lands until UBID is able to construct and commence operating new, permanent potable water infrastructure in a new location elsewhere on the Developer's Lands, all in accordance with the terms of this Agreement.
- F. The Developer wishes to develop the Developer's Lands and to obtain potable water servicing from UBID for the new development on the Developer's Lands, all in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual premises and covenants herein contained, and other good and valuable consideration that is recognized and acknowledged by each of the Developer and UBID has having been received from the other, the Developer and UBID hereby covenant and agree as follows:

1. Subject to the terms of this Agreement, UBID will continue to operate its existing potable water treatment infrastructure (the "**Current Treatment Plant**") on that portion of the Developer's Lands shown outlined in red on the plan attached hereto as Schedule A-1 (the "**Current Treatment Plant Location**"), on the terms of the lease agreement attached hereto as Schedule B (the "**Lease**"). The term of the Lease for the Current Treatment Plant Location will expire five (5) years after the date of this Agreement, subject to the terms of this Agreement. UBID will not upgrade the Current Treatment Plant other than to carry out routine repair and maintenance work necessary to sustain the operation of it. UBID and the Developer agree that the prior lease agreement made between UBID and the Developer with respect to the Current Treatment Plant Location is terminated and of no further force or effect.

2. UBID will construct its new permanent potable water treatment infrastructure (the "**New Treatment Plant**" at the corner of McLeod Road and Musgrave Road in Union Bay British Columbia), on that portion of the Developer's Lands shown on the plan attached hereto as Schedule A-2 and consisting of approximately four (4) acres, the final boundaries of which shall be as mutually agreed upon between the Developer and UBID, both acting reasonably (the "**New Treatment Plant Location**"). The Developer will apply to subdivide the New Treatment Plant Location under section 99(1)(h)(ii) of the *Land Title Act* and concurrently with the registration of the reference plan under section 99(1)(h)(ii) of the *Land Title Act* will transfer the New Treatment Plant Location to UBID for consideration of \$1.00, free and clear of all encumbrances except non-financial encumbrances that UBID, acting reasonably, agrees will not interfere with its use of the New Treatment Plant Location for UBID approved functions. The Developer and UBID agree to take all steps necessary to effect the subdivision and transfer of the New Treatment Plant Location to UBID on or before December 31, 2017. The Developer will not receive any credit from UBID against development cost charges, capital expenditure charges or other fees or expenses in exchange for the transfer of the New Treatment Plant Location to UBID. UBID will be responsible for all costs associated with the subdivision and transfer of the New Treatment Plant Location from the Developer's Lands, including all survey costs, Land Title Office registration fees and applicable taxes, with the exception of the legal and approval expenses incurred by the Developer in connection with completing the subdivision and transfer of the New Treatment Plant Location to UBID. Prior to the subdivision and transfer of the New Treatment Plant Location, UBID and its agents and contractors may enter onto the Developer's Lands in the general location of the New Treatment Plant Location in order to conduct inspections, tests and surveys that are reasonably required for establishing the final boundaries of the New Treatment Plant Location.

3. Concurrently with the transfer of the New Treatment Plan Location to UBID, UBID shall grant the Developer an option to purchase the New Treatment Plan Location for consideration of \$1.00, on the terms of the option to purchase that is attached to this Agreement as Schedule C (the "**Option**"), such Option to be exercisable only in the event that UBID does not commence construction of the New Treatment Plant on the New Treatment Plant Location within five (5) years of the date of this Agreement. In the event that the Developer exercises the Option, and in

the event UBID has not by that date constructed the New Treatment Plant on an alternative site, the Lease shall automatically extend until the earlier of: a) the date that is five years following the Developer's exercise of the Option; and b) the date that UBID completes commissioning of the New Treatment Plant on an alternative site.

4. UBID will use the New Treatment Plant Location exclusively for purpose of carrying out UBID's approved functions. UBID will not sell the New Treatment Plant Location or any portion thereof. UBID acknowledges, confirms and agrees that it has selected the New Treatment Plant Location at the corner of McLeod Road and Musgrave Road in Union Bay, British Columbia having undertaken appropriate investigations and due diligence to satisfy itself that the New Treatment Plant Location is a suitable site for the New Treatment Plant and that it is large enough to situate one or more reservoirs as well as a place for a modular and expandable water filtration plant and associated treatment equipment. The Developer will transfer the New Treatment Plant Location to UBID on an "as is where is" basis with no representations or warranties as to the suitability of the New Treatment Plant Location for the New Treatment Plant.

5. UBID acknowledges that it will not occupy the New Treatment Plant Location until such time as the New Treatment Plant Location has been subdivided and transferred to UBID in accordance with section 3 of this Agreement. UBID further acknowledges that until the New Treatment Plant Location is transferred and registered with Land Titles it will not enter upon or alter the New Treatment Plant Location (except as expressly permitted under section 2 of this Agreement) without the Developer's prior written consent.

6. As between UBID and the Developer, UBID will be exclusively responsible for all costs, fees and expenses to:

- (a) prepare and develop the New Treatment Plant Location for the New Treatment Plant;
- (b) acquire equipment and other assets to comprise the New Treatment Plant;
- (c) relocate existing equipment comprising the Current Treatment Plant and other assets located at the Current Treatment Plant Location to the New Treatment Plant Location;
- (d) decommission and remove the entire Current Treatment Plant from the Current Treatment Plant Location;
- (e) decommission the concrete reservoir that is located on the Current Treatment Plant Location, and remove it in whole or in part, and backfill the area with clean, suitable fill, all as a professional engineer determines will render the Current Treatment Plant Location suitable for residential development;
- (f) restore and remediate the Current Treatment Plant Location to standards that permit the Current Treatment Plant Location to be used for residential purposes, including all aquatic and stream protection work necessary to keep the Comox Valley Regional District Aquatic Development Permit issued with respect to the

use of the Current Treatment Plant Location (the "**Aquatic DP**") in good standing;

- (g) complete all decommissioning, restoration and remediation work in accordance with all applicable statutes and regulations, including the bylaws and development permit requirements of the Comox Valley Regional District;
- (h) upon completion of the work under section 6(f), provide the Developer with the written opinion of a qualified professional that the Current Treatment Plant Location has been remediated to standards that permit the Current Treatment Plant Location to be used for residential purposes; and
- (i) all legal expenses (\$12,500) incurred by the Developer in connection with the damage done to the Current Treatment Plant Location by UBID that resulted in the Developer having to obtain the Aquatic DP and all survey costs incurred by the Developer for improvements it was to carry out on the Current Treatment Plant Location. Upon payment UBID will be released from any further liability with respect to the damage done to the Current Treatment Plant Location by UBID that resulted in the Developer having to obtain the Aquatic DP.

7. UBID shall complete the requirements of sections 6(d) through (h) within five years of the date of this Agreement, unless the Lease is extended in accordance with section 3 of this Agreement, in which case the requirements of sections 6(d) through (h) shall be completed by UBID by no later than the expiry of the extended term of the Lease.

8. Except as set out in this Agreement and where permitted under the *Local Government Act* (British Columbia) as a credit against capital expenditure charges, nothing in this Agreement will reduce or otherwise limit the amount of capital expenditure charges payable by the Developer to UBID in connection with the development of the Developer's Lands.

9. UBID will continue with its plans to work with its engineering consultants to design and, through a competitive bid process, select a vendor to supply the filtration units and other equipment for the New Treatment Plant. The Developer will make available to UBID at no cost the package of engineering plans, specifications and details commissioned by the Developer to the date of this Agreement in connection with the construction of a new water treatment facility.

10. UBID will use commercially reasonable efforts to complete the construction and installation of the New Treatment Plant on the New Treatment Plant Location within the time required under the terms of the operating permit issued by the Vancouver Island Health Authority, subject always to UBID obtaining all necessary approvals for the borrowing of funds necessary for the construction of the New Treatment Plant.

11. UBID will design and construct the New Treatment Plant according to plans and specifications prepared by engineering consultants with experience in the design and construction of similar infrastructure. Without limiting the foregoing, any settling or sediment ponds installed on the New Treatment Plant Location will be constructed with an engineered liner, should UBID's engineering consultants recommend that feature.

12. The Developer acknowledges that the New Treatment Plant will be designed by UBID so that its capacity may be expanded to treat water at a rate of 28 litres per second as is permitted under the Water Licence, and that UBID will be the sole owner and operator of the New Treatment Plant.

13. The New Treatment Plant will be designed and built by UBID to accommodate two 14 litre/second DAF units. Initially, only one DAF unit will be installed by UBID.

14. The Developer agrees to pay UBID the following, at the times and in the manner set out in section 16 to 18 of this Agreement:

- a. the difference between:
 - i. the actual cost of designing and constructing the New Treatment Plant, including the cost of installing, upsizing or replacing new or existing water supply or distribution pipes, conduits, valves, lift stations and other infrastructure as is directly related to and required for the construction and operation of the New Treatment Plant; and
 - ii. the costs UBID would have incurred in designing and constructing a New Treatment Plant that was sized to accommodate only one 14 litre/second DAF unit, including the cost of installing, upsizing or replacing new or existing water supply or distribution pipes, conduits, valves, lift stations and other infrastructure as is directly related to and required for the construction and operation of a New Treatment Plant of that size, as estimated by UBID's engineering consultants; and
- b. the cost of the purchase and installation of the second DAF unit, in order to meet the subdivision conditions under the Development Permit that has been issued by the Comox Valley Regional District for the subdivision of the Developer's Lands.

15. To the extent permitted under the Local Government Act, the Developer will be entitled to receive a credit against capital expenditure charges otherwise levied by UBID in the amount of the costs paid by the Developer under section 14 of this Agreement.

16. Prior to the award of the contract for the construction of the New Treatment Plant, UBID will provide the Developer with an estimate, prepared by UBID's engineering consultant, of the costs under both sections 14.a.i and 14.a.ii. As security for its payment obligation under section 14.a, the Developer shall within thirty days of the receipt of that cost estimate, and in any event prior to UBID's execution of the construction contract, provide UBID with a letter of credit issued by a Canadian financial institution, in a form satisfactory to UBID, in the amount of 125% of the difference between the two estimates.

17. Upon final commissioning of the New Treatment Plant, the Developer shall pay to UBID the difference between the actual costs incurred by UBID under section 14.a.i, and the estimated costs under section 14.a.ii, and upon payment being made UBID shall release the letter of credit provided under section 16 to the Developer. Should the Developer fail to make such payment within thirty days of the final commissioning of the New Treatment Plant, UBID may draw upon

the letter of credit provided under section 16, and any difference between UBID's actual costs and the amount secured under the letter of credit shall be released to the Developer.

18. Within thirty days of written notice from UBID that it intends to purchase and install the second DAF unit at the New Treatment Plant, the Developer shall pay UBID an amount equal to the estimated cost of purchasing and installing that second DAF unit, as estimated by UBID's consulting engineer.

19. The Developer and UBID acknowledge that it is not known how much additional water can be drawn from Langley Lake and that additional hydrology studies may have to be done or additional water found to determine if there is sufficient water to justify expanding the New Treatment Plant beyond the size sufficient to treat the maximum amount of water permitted to be drawn under the Water Licence.

20. UBID acknowledges and agrees that the Developer intends to proceed with preparing a subdivision plan for an initial phase of development on the Developer's Lands with a water demand of 60 to 100 single family residential units (the "**Initial Phase**"). The Developer will apply to the Ministry of Transportation and Infrastructure for approval for the subdivision of the initial phase of development and the Developer will apply to UBID for water service in the normal way, in accordance with UBID bylaws.

21. UBID will service the Initial Phase with potable water if and when the Developer's application for water service complies with UBID's bylaws, and where UBID has confirmed that there is a sufficient supply of water within UBID's water service to service the Initial Phase, and upon payment of UBID's Capital Expenditure Charges (CEC), in accordance with UBID's Capital Expenditure Charge Bylaw No. 250, as it may be amended or replaced from time to time, subject to any CEC credits that the Developer may be lawfully entitled to.

22. UBID acknowledges and agrees that when the Developer begins the Initial Phase of development, the Developer is entitled to apply to UBID for water to service additional lots to be developed on the Developer's Lands, subject to the requirements of all UBID bylaws, the sufficiency of an adequate water supply within UBID's water service, and payment of Capital Expenditure Charges.

23. After the Initial Phase, for each additional increment of 500 residential units (whether single-family or multi-family units) to be developed on the Developer's Lands, the Developer will deliver to UBID for its review and approval, acting reasonably and in accordance with applicable laws and UBID's bylaws, copies of all studies and reports the Developer has obtained or commissioned from accredited third party professionals in order to substantiate the adequacy of the supply of water in Langley Lake (or such other potable water sources as may be approved or permitted under applicable laws) for the planned capacity of such development increment, all in accordance with UBID Bylaw #176, as it may be amended or replaced from time to time, and in accordance with the Water Licence, as it may be amended, replaced or consolidated from time to time. For certainty, the Developer's obligation under this section is in addition to and does not derogate from the requirements of UBID's bylaws for the subdivision and servicing of land, all of which shall continue to apply to the Developer's Lands whether those lands are subdivided and developed in increments of less than 500 residential units.

24. UBID agrees to give reasonable consideration to the studies and reports submitted by the Developer under section 23 of this Agreement, including proposals for the expansion of UBID's water service through the addition of such other potable water sources as may be approved or permitted under applicable laws, and as may be necessary for the development of further portions of the Developer's Lands following the Initial Phase. For certainty:

- a. any proposals for the expansion of UBID's water service shall be subject to the approval of the UBID Board of Trustees being obtained; and
- b. UBID's approval of any expansion of its water service shall be subject to the Developer's agreement to be responsible (subject to any CEC credits that are available) for all associated costs, including infrastructure costs, and the cost of obtaining all necessary tenures, rights of way, licences and regulatory approvals.

25. The Developer further agrees to transfer to UBID that portion of the Developer's Lands shown in the approximate location on the sketch plan attached hereto as Schedule A-3 and consisting of approximately one (1) hectare (the "**Fire Hall Lands**"), as the site of the new UBID Fire Hall. The Developer will apply to subdivide the Fire Hall Lands under section 99(1)(h)(ii) of the *Land Title Act* and concurrently with the registration of the reference plan under section 99(1)(h)(ii) of the *Land Title Act* will transfer the Fire Hall Lands to UBID for consideration of \$1.00, free and clear of all encumbrances except non-financial encumbrances that UBID, acting reasonably, agrees will not interfere with its use of the Fire Hall Lands for their intended purpose. The Developer and UBID agree to take all steps necessary to effect the subdivision and transfer of the Fire Hall Lands on or before the date that is two years after the date of this Agreement. The Developer will not receive any credit from UBID against capital expenditure charges or other fees or expenses in exchange for the transfer of the Fire Hall Lands to UBID. UBID will be responsible for all costs associated with the transfer of the Fire Hall Lands from the Developer's Lands, including all survey costs, Land Title Office registration fees and applicable taxes, with the exception of the legal and approval expenses incurred by the Developer in connection with completing the transfer of the Fire Hall Lands from the Developer's Lands.

26. Notwithstanding section 25 of this Agreement, the Developer will be responsible at its sole cost for servicing the Fire Hall Lands with telecommunications, hydro, water, sanitary and storm sewer, highway access, and natural gas services up to the boundary of the Fire Hall Lands, and not later than two years after the date the Fire Hall Lands are subdivided and transferred to UBID. As an exception to the foregoing, the Developer shall not be responsible to provide services that cannot then be made available to the Fire Hall Lands on a commercially reasonable basis.

27. For certainty, nothing in this Agreement shall fetter the discretion of the UBID Board of Trustees in the exercise of their statutory powers, duties and functions. Additionally, nothing in this Agreement:

- a. operates as a contractual promise, representation or warranty that UBID now has, or in the future will have, a sufficient supply of water within its water service to service the development of all or any part of the Developer's Lands;

- b. prevents UBID from receiving and approving applications for water service from other owners or developers, even though such applications may reduce the availability of water for the Developer's Lands; and
- c. entitles the Developer to a reservation or guarantee of water supply pending receipt of an application for water service; it being understood that UBID is legally obliged to consider applications for water service as and when they are received.

28. No waiver by or on behalf of a Party of any breach of a provision of this Agreement shall be binding upon that Party unless it is expressed in writing and duly executed by the Party and such a waiver shall not operate as a waiver of any future breach, whether of a like or different character.

29. The Parties from time to time and at all times shall do all further acts and execute and deliver all such further deeds and documents in a timely and diligent manner as shall reasonably be required to fully perform and carry out the terms of this Agreement.

30. The Parties have expressed their entire understanding and agreement concerning the subject matter of this Agreement and no implied covenant, condition, warranty, representation, term or reservation shall be read into this Agreement relating to or concerning such subject matter.

31. Any amendment to this Agreement must be made in writing and be signed by the parties or by their respective solicitors on their behalf.

32. This Agreement contains the entire agreement between the Parties with respect to the subject matter herein contained, and no assent or consent to changes in or waiver of any of this Agreement in spirit or letter shall be deemed or taken as made unless the same is done in writing and signed by the Parties. For certainty, this Agreement supersedes any and all previous agreements entered into between UBID and the Developer touching on the matters dealt with herein, or concerning the design and construction of a water treatment plant and the provision of water service to the Developer's Lands.

33. In the event any term or provision of this Agreement or the Schedules attached hereto is illegal or invalid for any reason whatsoever as determined by a competent court of law, such term or provision shall be severable and the same shall not affect the validity of the remainder of this Agreement and the Schedules attached hereto. The Parties shall forthwith, upon discovery of the illegality or invalidity referred to in this section, either negotiate diligently and in good faith the term or provision to render it legal and valid having regard to its spirit and intent or alter their performance under the term or provision having regard to its spirit and intent to avoid the illegality or invalidity.

34. All notices and reports given under this Agreement shall be made in writing and may be served personally, by facsimile device or by registered mail or by bonded courier to the parties at the following addresses:

If to the Developer:

34083 Yukon Inc.
c/o Kensington Island Properties,
Attention: Brian McMahon, Vice President
#201 – 1830 Riverside Lane
Courtenay, BC V9N 8C7
Facsimile: (250) 703-9542

If to UBID:

Union Bay Improvement District,
Attention: Chair, Board of Trustees
P.O. Box 70, Union Bay, BC, V0R 3B0
Facsimile: (250) 335-1178

35. This Agreement shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and assigns.

36. This Agreement and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the Province of British Columbia, Canada.

37. Time is of the essence in this Agreement.

38. If either party hereto is prevented or delayed from undertaking or completing its respective obligations hereunder as a result of earthquake, flood or other act of God, fire, explosion or accident, howsoever caused, act of any governmental authority, strike, lockout, inability to obtain or delay in obtaining labour, supplies, materials or equipment, delay or failure by carriers or contractors, breakage or other casualty, climactic condition, or any other event of any nature whatsoever beyond the reasonable control of the respective parties, then the date by which such obligation is to have been undertaken or completed will be extended for a period equivalent to such period of delay, provided that for certainty no lack of money, financing, credit, or any increase in the cost of performing the obligation in question will excuse performance.

39. Despite section 38 of this Agreement, in the event that the New Treatment Plant Location is not subdivided and transferred to UBID on or before the date required under section 2 herein for any reason, UBID reserves the right to terminate this Agreement on provision of written notice to the Developer, except that the Lease will continue, and shall be automatically extended as necessary, for a period of five years following the date of termination of this Agreement.

[The remainder of this page is intentionally left blank.]

40. This Agreement may be executed in two or more counterparts and each counterpart when executed and delivered shall have the same force and effect as an original instrument and as if all parties had executed and delivered the same instrument.

41. In the event that the Developer's Lands are sold, transferred, or otherwise disposed of the Developer may assign this Agreement to the new owners with the advance written approval of UBID, not to be unreasonably withheld.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the year and date first written above.


34083 YUKON INC.

UNION BAY IMPROVEMENT DISTRICT

By its authorized signatories:


By its authorized signatories:

James Youngren, President



Chairperson

Brian McMahon, Vice President



Administrator

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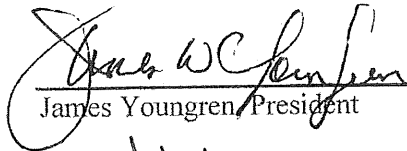
IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the year and date first written above.

34083 YUKON INC.

UNION BAY IMPROVEMENT DISTRICT

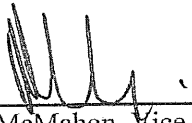
By its authorized signatories:

By its authorized signatories:



James Youngren, President

Chairperson

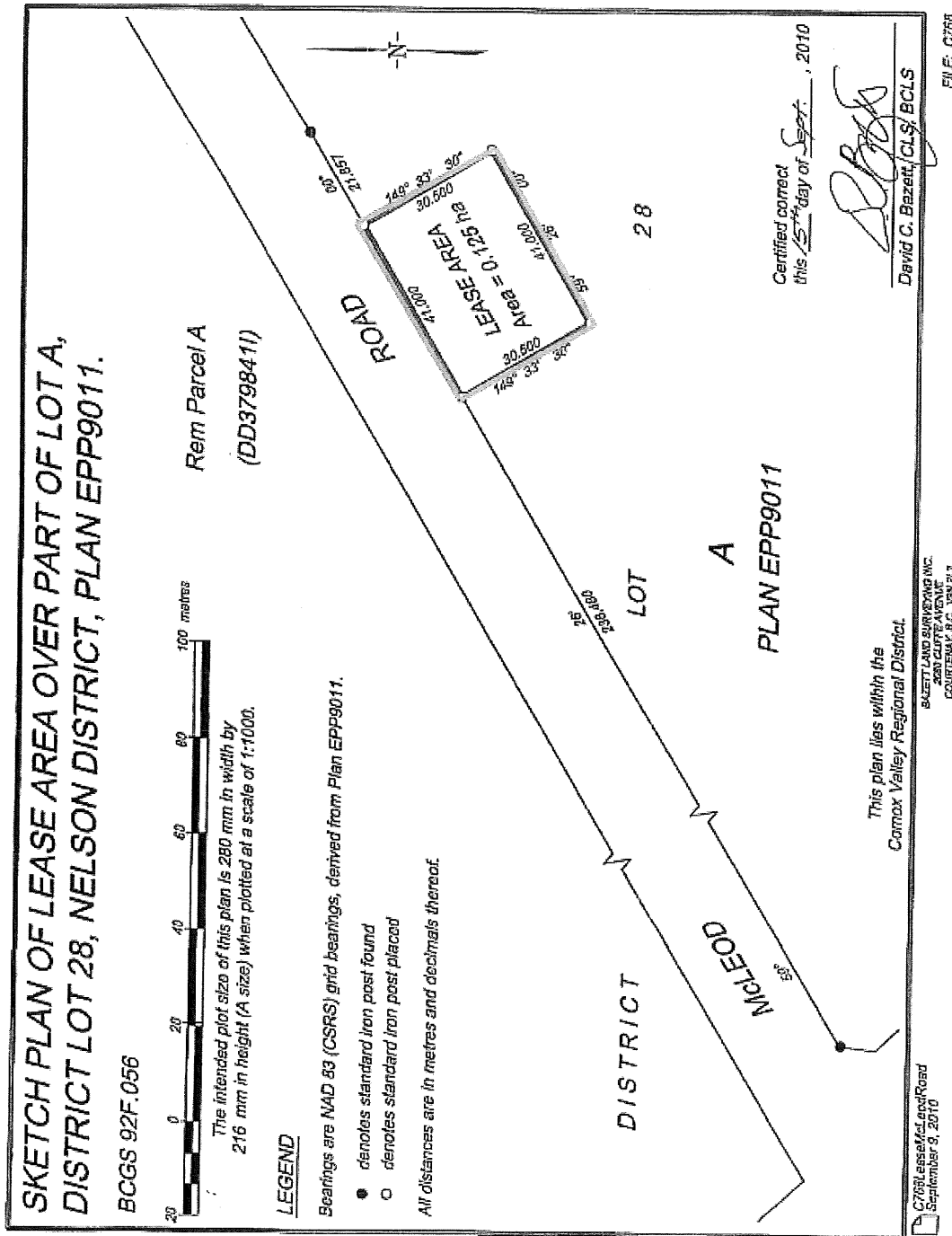


Brian McMahon, Vice President

Administrator

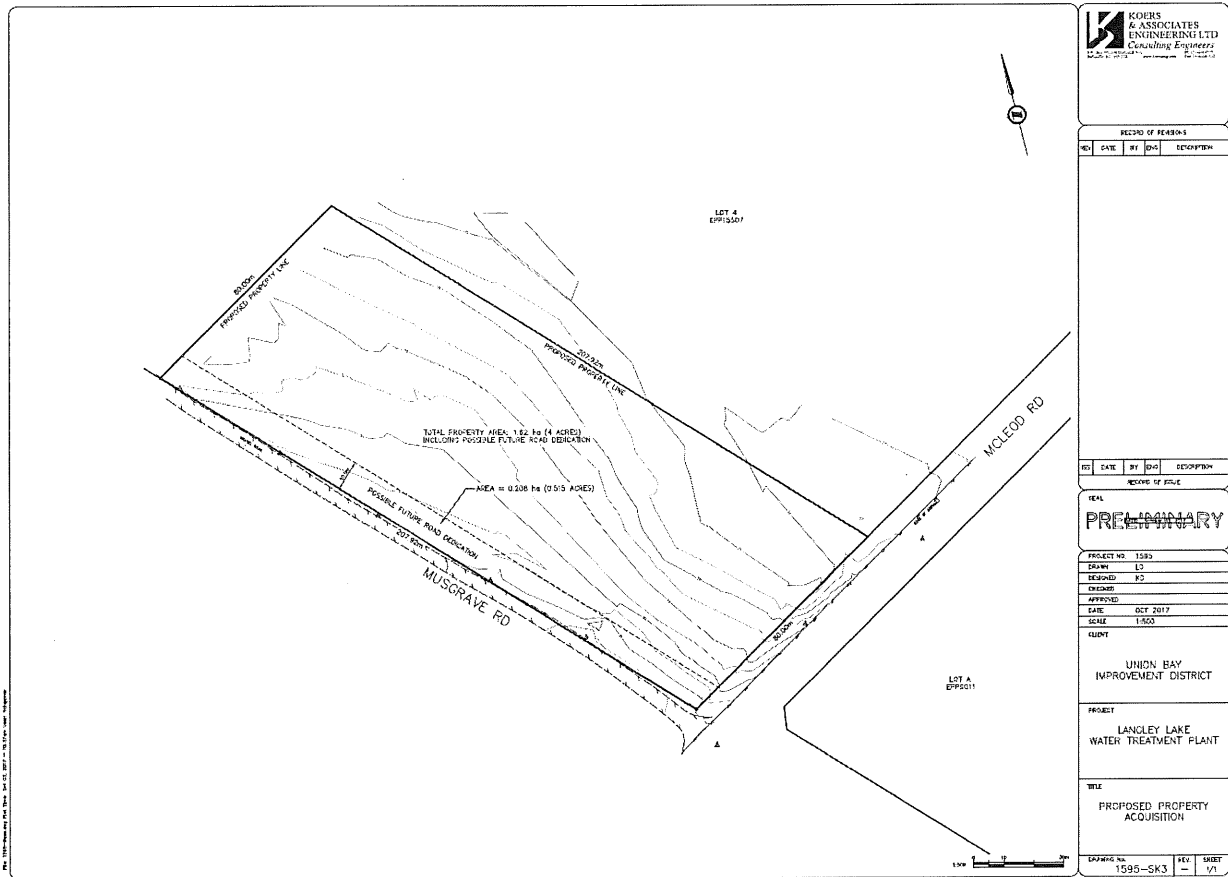
SCHEDULE A-1

CURRENT TREATMENT PLANT LOCATION



SCHEDULE A-2

NEW TREATMENT PLANT LOCATION



RECORD OF REVISIONS

NO.	DATE	BY	DESCRPTION

SCALE OF SCALE

PRELIMINARY

PROJECT NO.	1593
DRAWN	ES
DESIGNED	ES
CHECKED	
APPROVED	
DATE	OCT 2017
SCALE	1:500

CLIENT
UNION BAY
IMPROVEMENT DISTRICT

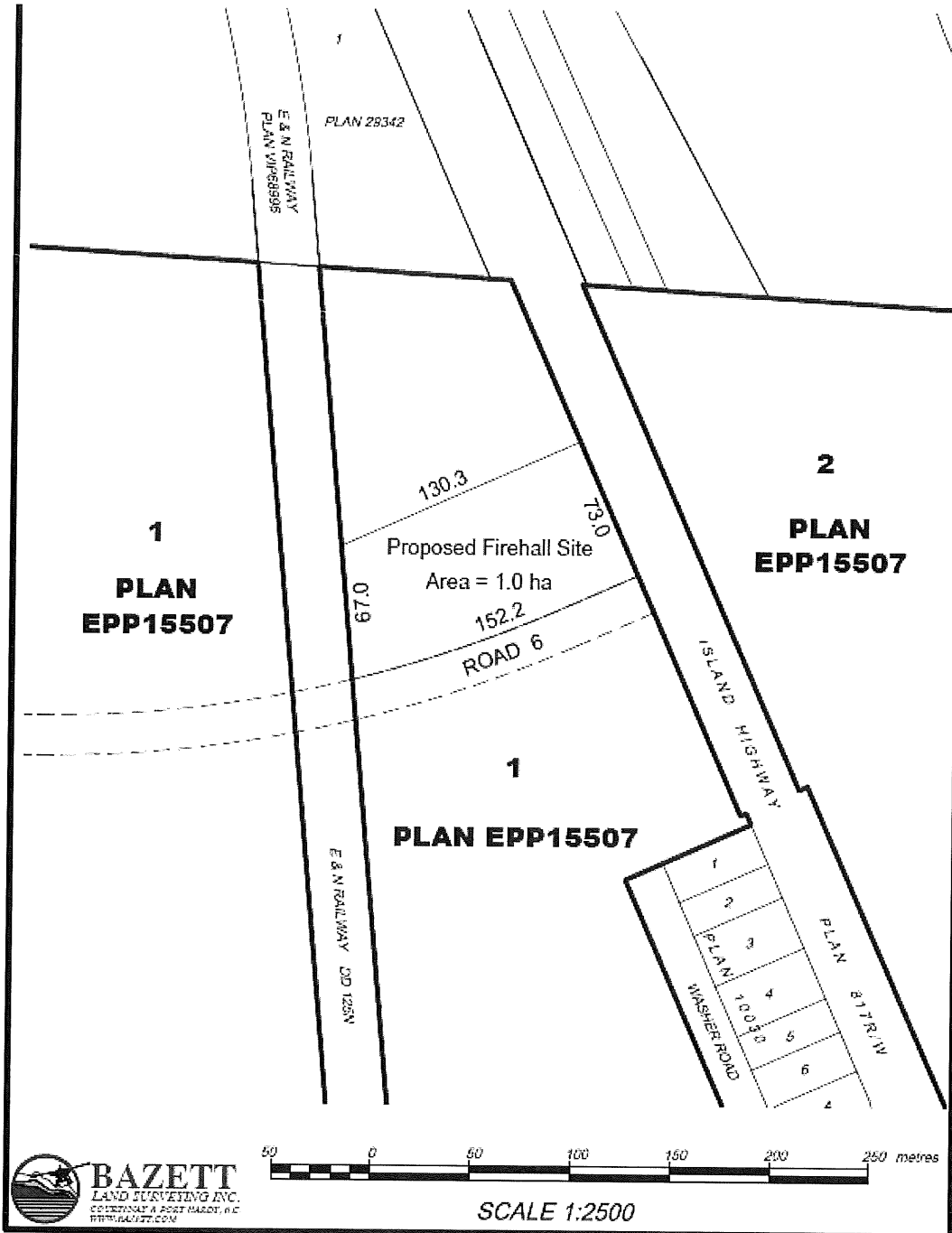
PROJECT
LANGLEY LAKE
WATER TREATMENT PLANT

TITLE
PROPOSED PROPERTY
ACQUISITION

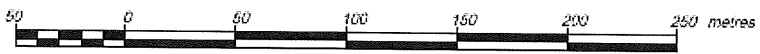
DRAWING NO.	1593-SK3	REV.	1/1
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SCHEDULE A-3

APPROXIMATE LOCATION AND DIMENSIONS OF FIRE HALL LANDS



 **BAZETT**
LAND SURVEYING INC.
CORPORATE & PORT HARBOR, N.C.
WWW.BAZETT.COM



SCALE 1:2500

C768 Master2011.dwg

BAZETT LAND SURVEYING INC.
2120 CLUFFE AVENUE
COURTENAY, B.C. V9N 2E3
PH: (250) 334-3288
WWW.BAZETT.COM

FILE: C768

SCHEDULE B

LEASE

[Attached]