

PERMIT

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

AND:

OKANAGAN INDIAN BAND

AND:

CITY OF KELOWNA

For lands requested to be added to Duck Lake Indian Reserve No. 7

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SCHEDULE A – Band Council Resolution

SCHEDULE B – Assignment Consent Agreement

SCHEDULE C – Environmental Protection Measures

SCHEDULE D – Certificate of Independent Legal Advice

SCHEDULE E – Overview Sketch of Permit Area

SCHEDULE F – Standard Operating Procedures

SCHEDULE G – Sewer Force Main Drawings

THIS PERMIT AGREEMENT is made

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of Indigenous Services

("Canada")

AND:

OKANAGAN INDIAN BAND, as represented by Council

("OKIB")

AND:

CITY OF KELOWNA, a municipality under the laws of British Columbia having an office at 1435 Water Street, Kelowna, BC V1Y 1J4

(the "Permittee")

WHEREAS:

- A. The definitions for essential defined terms in this Permit appear in section 1.1 below.
- B. The Permit Area is part of the Lands requested by the Council to be set apart as a reserve (by way of an addition to the Reserve) by the Minister of Crown-Indigenous Relations under section 4 of the ALRRCA for the use and benefit of OKIB.
- C. OKIB negotiated with the Permittee the permitting arrangement set out in this Permit and the terms and conditions were negotiated between the Parties.
- D. The Council consented to the issuance of this Permit, and authorized its signatories to execute this Permit on behalf of OKIB, by way of resolution attached as Schedule A.
- E. The Minister of Crown-Indigenous Relations is authorized to issue this Permit under section 6 of the ALRRCA.

F. By a “Ministerial Delegation pursuant to section 9 of the *Department of Crown-Indigenous Relations and Northern Affairs Act*” dated August 29, 2019, the Minister of Crown-Indigenous Relations delegated that minister’s powers, duties and functions under subsection 6(1) of the ALRRCA to the Minister of Indigenous Services.

NOW THEREFORE, for mutual consideration, the Parties agree as follows:

1. INTERPRETATION

1.1 In this Permit:

“**ALRRCA**” means the *Addition of Lands to Reserves and Reserve Creation Act*, SC 2018, c 27, s 675.

“**Alterations**” means any substantial (in the reasonable opinion of Canada or OKIB) alterations, restorations, renovations, relocations, reductions, additions, expansions, reconstructions, removals, replacements, repairs or modifications of all or part of the Works.

“**Appraisal**” means a written opinion of the Fair Market Fees prepared by an Appraiser in accordance with generally accepted appraisal practices.

“**Appraiser**” means a person who is accredited as an appraiser by the Appraisal Institute of Canada or its successor.

“**Artifact**” means any burial site, human remains, or any item of archeological or cultural interest.

“**Authority**” means any federal, provincial, municipal, OKIB or other governmental authority having jurisdiction in respect of the Permit Area, or the use of the Permit Area, including any utility company lawfully acting under its statutory power.

“**Authorized Uses**” means the uses referred to in section 2.4.

“**Commencement Date**” means the date that the Permit Area is set apart as a reserve under section 4 of the ALRRCA.

“**Construction and Environmental Management Plan**” means:

- (a) plans, design briefs, and construction specifications prepared and certified by an Engineer, on the basis that they may be relied upon by each of the Parties; and
- (b) any other documents relating to the construction or removal of the Works that are reasonably required by the Decision Maker,

which comply with or are consistent with:

- (c) applicable Laws;
- (d) an applicable Development Plan; and
- (e) any mitigation measures required under an applicable Environmental Review,

and includes plans to address how the impacts on the Environment during construction or removal of the Works will be managed, including the management of soil, water, waste, traffic and fire safety.

“Contaminant” includes any toxic substance, deleterious substance, hazardous substance, hazardous waste, hazardous recyclable, ozone-depleting substance, halocarbon, pesticide, waste, designated material or substance as defined in or pursuant to any applicable Environmental Laws.

“Council” means OKIB’s “council of the band” within the meaning of the *Indian Act*.

“Decision Maker” means the Minister, when the Minister is representing Canada under this Permit, and means the Council, or a Person designated by the Council, if OKIB takes over the position of Canada under this Permit by operation of law.

“Development Plan” means a scaled site plan for the Works, prepared and certified by an Engineer on the basis that it may be relied upon by each of the Parties, which includes a “North” arrow, title block, drawing scale, date, developer’s name and address, reference numbers, and the following features, including their location and dimensions where applicable:

- (a) boundary lines, acreage, natural and artificial features, and contiguous property;
- (b) roads, parking lots, and driving aisles;
- (c) buildings and structures; and
- (d) buried utilities.

“Engineer” means a person who is licensed as an engineer in the province of British Columbia.

“Environment” has the meaning given it in the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33.

“Environmental Laws” means:

- (a) any Laws relating, in whole or in part, to the assessment and protection of the Environment; and

- (b) any decisions, determinations, mitigation measures, standards, codes, guidelines or environmental protection measures made pursuant to those Laws.

“Environmental Review” means Canada’s environmental review process to enable Canada to determine the environmental effects of a Project proposed for the Permit Area.

“Exempt Project” means a Project that is in one of the classes of projects designated under section 88 of the *Impact Assessment Act*, or any similar concept in any amended, succeeding or replacement Law.

“Exempt Work” means the operation, maintenance, repairs and minor upgrades of the Existing Sewer Works as per the SOP.

“Existing Sewer Works” means the sewer force main existing on the Permit Area on the Commencement Date and shown on the drawings attached as Schedule G. These Works consist of the following:

- (a) a sanitary sewer pressurized mainline which transfers wastewater from lands serviced by the Permittee which consists of buried pipeline, air valves, gate valves, maintenance portals, access roads and incidental hardware. The buried mainline is generally located 13.72 metres east of the centre line of the Rail Trail and aligned entirely within the permit area; and
- (b) a wastewater service area operated by the permittee servicing OKIB lands and areas in the District of Lake Country, a municipality under the laws of British Columbia.

“Fair Market Fees” means the most probable annual fees that the Permit Area should bring in a competitive and open market, reflecting all conditions of this Permit and assuming the following conditions:

- (a) Canada and the Permittee are typically motivated, well informed, well advised and are acting prudently in an arm’s length transaction;
- (b) a reasonable time is allowed for exposure in the open market and the fees represent the normal consideration for the Permit Area unaffected by undue stimuli or special fees or concessions granted by anyone associated with the transaction;
- (c) the Permit Area is owned by Canada in fee simple, free of all charges and encumbrances other than those registered in the Registry, and the inalienability or Indian reserve status of the Reserve is not a discounting factor and will not be used as a basis to lower valuation in comparing the Permit Area to other properties, whether or not such properties are Indian reserve lands; and

- (d) the Permit Area does not include any Works, including the Existing Sewer Works, and the contributory value of the Permittee's Works will not be taken into account.

“Gross Negligence or Willful Misconduct” means any act or failure to act (whether sole, joint or concurrent) by a Party that was intended to cause or was in reckless disregard of, or wanton indifference to, the harmful consequences to the safety or property of a Person which the Party knew, or should have known, would result from such act or omission, but does not include any act or failure to act that constitutes mere ordinary negligence or was done or omitted to be done in accordance with the express instructions or approval of the relevant Parties.

“Impact Assessment Act” means the *Impact Assessment Act*, SC 2019, c 28, s 1.

“Indian Act” means the *Indian Act*, RSC 1985, c I-5.

“Initial Period” means:

- (a) the five-year period starting on the commencement of the period referred to in paragraph 3.4.1(c) or (d), as the case may be; or
- (b) if the period referred to in in paragraph 3.4.1(c) or (d), as the case may be, is less than five years, that lesser period.

“Lands” means the area more particularly known and described as:

In the Province of British Columbia
In Osoyoos Division of Yale District

All of the Railway through Duck Lake Indian Reserve No. 7 as shown on Plan RR1222A recorded in the Canada Lands Surveys Records in Ottawa.
Containing about 17.36 acres (7.025 hectares),

or known by such legal description as may follow any setting apart as an addition to the Reserve for the use and benefit of OKIB.

“Laws” means all laws, statutes, regulations, codes and by-laws, as amended or replaced from time to time.

“Minister” means the Minister of Indigenous Services or any successor or replacement Minister with responsibility for administering this Permit.

“MOU” means the Memorandum of Understanding made as of January 25, 2022, between the District of Lake Country, OKIB and the Permittee.

“New Sewer Works” means:

- (a) all sanitary sewer and drainage pipelines;

- (b) all works, valves, pumps, fittings, meters, manholes, equipment, connections, appurtenances and other ancillary and related infrastructure owned or operated by the Permittee for conveying, disposing or treating wastewater; and
- (c) all other works required in connection with the sanitary sewer and drainage pipelines,

constructed on the Permit Area after the Commencement Date, but, for greater certainty, does not include Alterations to Existing Sewer Works constructed on the Permit Area after the Commencement Date.

“Party” means a party to this Permit.

“Period” means, as the case may be:

- (a) the Initial Period;
- (b) a five-year period starting on the day following the end of a preceding five-year period; or
- (c) the last period before OKIB and the Permittee enter into a Sewer Service Agreement or the last period of the Term, as the case may be, which may be less than five years, starting on the day following the end of the last full five-year period.

“Permit” means this agreement, and all Schedules attached to it, as amended from time to time.

“Permit Area” means that portion of the Lands shown generally on the overview sketch attached as Schedule E and, following any setting apart as an addition to the Reserve, more particularly known and described as:

In the Province of British Columbia
In Osoyoos Division Yale District

All of the Railway Right of Way in Township 23, within Duck Lake Indian Reserve No. 7, as shown on Plan KAP602A filed in the Land Title Office, a copy of said plan is recorded as Plan RR1222A in the Canada Lands Surveys Records.

Lands described comprise about 2.61 hectares (6.44 acres).

“Person” includes any individual, partnership, firm, company, corporation, incorporated or unincorporated association or society, co-tenancy, joint venture, syndicate, fiduciary, estate, trust, bank, government, governmental or quasi-governmental agency, board, commission or authority, organization or any other form of entity however designated or constituted, or any group, combination or aggregation of any of them.

“Prepaid Fees” means the amount set out in subsection 3.3.1.

“Project” has the meaning given it in section 81 of the *Impact Assessment Act*, and any similar concept in any amended, succeeding, or replacement Law.

“Registry” means the Indian Lands Registry, established under the *Indian Act*, or any successor or replacement registry with registration jurisdiction over the Permit Area.

“Release” includes discharge, dispose of, spray, inject, inoculate, abandon, deposit, spill, leak, leach, seep, pour, emit, empty, throw, dump, place or exhaust.

“Reserve” means Duck Lake Indian Reserve No. 7, which has been set apart for the use and benefit of OKIB.

“Schedule” means an attachment to this Permit labeled as a Schedule, which forms part of and is integral to the Permit.

“Sewer Service Agreement” means the sewer service agreement between the Permittee and OKIB contemplated in the MOU.

“SOP” means the Permittee's standard operating procedures attached as Schedule F.

“Substantial Completion” means the date on which a written certificate by an Engineer is delivered to each of Canada and OKIB certifying to them that the Works are substantially complete in all material respects, in a proper and workmanlike manner, and in accordance with the applicable Development Plan, the applicable Construction and Environmental Management Plan, applicable Laws, and the requirements in this Permit, except for deficiencies the correction of which, in the opinion of the Engineer, will be adequately addressed by the Permittee.

“Taxes” means any tax of an Authority applicable to the granting of this Permit or the payment of Prepaid Fees, Fair Market Fees or any other amount payable to Canada or OKIB under this Permit.

“Term” means the period starting on the Commencement Date and continuing for so long as the Permit Area is required by the Permittee for the Authorized Uses, unless this Permit ends early.

“Works” means:

- (a) the Existing Sewer Works; and
- (b) the New Sewer Works,

on the Permit Area, regardless of when constructed, and including any Alterations to any of them.

- 1.2 **Definitions** – Defined words are capitalized for ease of reference. A defined word may be read as having an appropriate corresponding meaning when it is used in the singular, plural, noun or verb form.
- 1.3 **Parts of the Permit** – The parts of this Permit are: article (1.); section (1.1); subsection (1.1.1); and paragraph (1.1.1(a)). Unless stated otherwise, any reference in this Permit to an article, section, subsection, or paragraph means the appropriate part of this Permit.

2. **USE OF AND ACCESS TO THE PERMIT AREA**

2.1 **Permittee's Rights to the Permit Area**

2.1.1 This Permit authorizes and permits the use and occupation by the Permittee of the Permit Area for the Authorized Uses.

2.1.2 The rights provided under this Permit do not, and will not be deemed to, convey or confer on the Permittee any title, fee, estate, or other right “in rem” in the Permit Area.

2.2 **Prior Rights** – This Permit is subject to any existing interest or right given for or attaching to the Permit Area, whether or not the Permittee has notice of such prior interest or right.

2.3 **Subsequent Rights** – The Permittee acknowledges that Canada and OKIB may authorize, as to their respective jurisdictions and authorities, further use and occupation of the Permit Area, subject to the Permittee's rights under this Permit. If Canada or OKIB authorizes any further use or occupation of the Permit Area, OKIB will use reasonable efforts to notify the Permittee of any such use or occupation.

2.4 **Authorized Uses** - Subject to every other part of this Permit, Canada hereby authorizes the Permittee to use the Permit Area non-exclusively for the Term to:

2.4.1 construct, maintain, operate, inspect, patrol (including aerial patrol), and remove the Works on the Permit Area;

2.4.2 unload and temporarily store materials on the Permit Area as necessary in connection with the rights granted under subsection 2.4.1;

2.4.3 clear and keep clear the Permit Area of any trees or other vegetation which may interfere with or affect the exercise of the Permittee's rights under this Permit;

2.4.4 pass and repass over the Permit Area and, with the consent of OKIB, over other parts of the Reserve, with or without workers, vehicles, materials and equipment, as necessary in connection with the exercise of the Permittee's rights under this Permit; and

- 2.4.5 generally, do all things necessary or incidental to the undertaking of the Permittee in connection with the foregoing.
- 2.5 **Permittee's Obligations** – The Permittee will:
- 2.5.1 not install any above grade works forming part of the Works without prior written consent of either the Council or a representative of OKIB designated from time to time by the Council, such consent not to be unreasonably withheld;
 - 2.5.2 construct, operate, maintain and remove the Works in a proper and workmanlike manner and, without limiting the foregoing, in accordance with any applicable consents, approvals, authorizations and determinations under sections 4.1 and 4.3 of this Permit;
 - 2.5.3 at all times keep and maintain the Works in good and safe repair and condition;
 - 2.5.4 forthwith, after completing any construction, operation, maintenance or removal of the Works, remove any of its structures, materials or equipment as are no longer required, raking up all rubbish and construction debris, and restoring the surface of such portions of the Permit Area and any of the Reserve utilized for access with the consent of OKIB as nearly as practicable to the same condition as existed prior to the commencement of such work; and
 - 2.5.5 without limiting any other part of this Permit, perform its activities under this Permit at a standard at least equal to that in respect of similar pipelines or works off-reserve.
- 2.6 Subject to section 2.7, the Permittee will provide OKIB with reasonable written notice of all proposed work to be performed on the Permit Area under this Permit.
- 2.7 Except in the event of an emergency, the Permittee will provide OKIB with not less than 10 days prior written notice of all proposed work to be performed on the Permit Area under this Permit involving below grade digging or excavation.
- 2.8 The Permittee will not fence the Permit Area or any part of it without the prior written consent of Canada and OKIB, except for safety reasons for a temporary period in connection with any work by the Permittee on the Permit Area.
- 2.9 The Permittee's rights or interests below the surface of the Permit Area are limited to such rights or interests as necessary for the exercise of the Permittee's rights under this Permit and the Permittee acknowledges that a separate permit is required under subsection 58(4) of the *Indian Act*, and may be required under other applicable Laws, for the taking or use of sand, gravel, clay and other non-metallic substances on or under lands in the Reserve.

- 2.10 The Permittee will not remove any merchantable timber from the Permit Area except in compliance with all applicable Laws.
- 2.11 The Permittee will compensate OKIB, or any other Person in lawful possession of lands in the Reserve, for damage to chattels, crops, trees or improvements, including buildings, drains, ditches, culverts, fences, bridges and roads, caused by the Permittee in the exercise of its rights or caused by its failure to fulfill its obligations under this Permit.
- 2.12 **Nuisance** – Except as required by the construction or removal of the Works, the Permittee will not cause or permit any nuisance on the Permit Area.
- 2.13 **Waste** – The Permittee will not cause or permit the commission of any waste of the Permit Area.
- 2.14 **Garbage** – The Permittee will not cause or permit any garbage or debris to be placed or left on the Permit Area, except as is reasonably necessary in accordance with the Authorized Uses.
- 2.15 **Inspection** – Canada and OKIB may each inspect (including the conducting of site assessments, audits or other tests on, and investigations of) the Permit Area at any time during the Term.
- 2.16 **Artifacts and Survey Monuments**
- 2.16.1 If any Artifact is discovered on the Permit Area, then the Permittee will immediately cease any work in the area of the Artifact and promptly notify OKIB of such Artifact. If there are no applicable OKIB or federal Laws relating to the disturbance of such Artifact, then the Permittee will comply with the requirements set out in the *Heritage Conservation Act*, RSBC 1996, c 187, even if not applicable on the Reserve, and with the reasonable requirements of OKIB.
- 2.16.2 If the Permittee causes or permits a legal survey monument to be disturbed, damaged or destroyed during the Term, then the Permittee will ensure that it is replaced by a licensed surveyor to the satisfaction of the Surveyor General of Canada.
- 2.17 **Representations about the Permit Area and its Use**
- 2.17.1 The Permittee acknowledges and agrees that Canada is authorizing the Permittee's use of the Permit Area on an "as is – where is" basis.
- 2.17.2 The Permittee acknowledges and agrees that neither Canada, OKIB, their respective officials, servants, employees, agents, contractors, subcontractors or other legal representatives, nor the Council has made any representations or warranties with respect to:

- (a) the condition of the Permit Area, including the Permit Area's compliance with any Laws or the presence of Contaminants on the Permit Area;
- (b) issues of title or encumbrances affecting title;
- (c) access to and from the Permit Area; or
- (d) the suitability of the Permit Area for the Permittee.

2.17.3 The Permittee represents and warrants that, prior to the Commencement Date, it conducted an inspection of the Permit Area, including any investigations that it deemed prudent regarding the Permit Area's compliance with applicable Laws, title, encumbrances, access and the presence of Contaminants on the Permit Area.

2.17.4 The Permittee represents and warrants that it is satisfied that the Permit Area is suitable for its intended uses and that those uses are within the Authorized Uses.

2.17.5 The Permittee represents and warrants that, effective as of the Commencement Date, the Permittee has surrendered and relinquished all of its rights and interests in:

- (a) Pipe Crossing Agreement KPR.04.1014, Mile 106.72, between Kelowna Pacific Railway Ltd. and City of Kelowna (SAP 3069616), signed by City of Kelowna January 6, 2004 and by Kelowna Pacific Railways Ltd. February 2, 2004; and
- (b) Pipe Crossing Agreement KPR.04.1011, Mile 107.13, between Kelowna Pacific Railway Ltd. and City of Kelowna (SAP 3069620), signed by City of Kelowna January 6, 2004 and by Kelowna Pacific Railways Ltd. February 2, 2004.

3. FEES AND OTHER PAYMENTS

3.1 **Payments** – All payments made by the Permittee to Canada under this Permit will be:

- 3.1.1 paid in Canadian dollars;
- 3.1.2 made payable to the Receiver General for Canada;
- 3.1.3 paid without any prior demand, set-off, deduction or abatement; and
- 3.1.4 accompanied by any applicable Taxes.

3.2 **Outstanding Amounts** – Canada may apply any outstanding amounts owed to it by the Permittee under the Permit as Canada sees fit.

3.3 **Prepaid Fees**

3.3.1 The Permittee paid Prepaid Fees of \$10.00 to Canada on the Commencement Date, the receipt and sufficiency of which are hereby acknowledged by all Parties.

3.3.2 The Permittee agrees that the Permittee has no right to a refund of any Prepaid Fees from Canada or OKIB if this Permit ends early.

3.4 **Payment of Fair Market Fees in Certain Circumstances**

3.4.1 If:

(a) the Permittee and OKIB fail to enter into a Sewer Service Agreement as contemplated in the MOU within two years of the Commencement Date; or

(b) the Sewer Service Agreement ends before the end of the Term of this Permit and is not replaced with another sewer service agreement acceptable to OKIB and the Permittee,

then, upon OKIB or the Permittee delivering notice of the event to Canada and to the other Party, Fair Market Fees, as determined under section 3.5, will be payable by the Permittee for the period:

(c) starting on the Commencement Date and ending on the day OKIB and the Permittee enter into a Sewer Service Agreement; or

(d) starting on the day following the end of the Sewer Service Agreement and ending on the last day of the Term of this Permit,

as the case may be.

3.4.2 Once the Fair Market Fees for the Initial Period have been determined under section 3.5, the Permittee will promptly pay to Canada for the current year and, if applicable, each past year of the Initial Period:

(a) such Fair Market Fees owing for that year of the Initial Period;

(b) any Taxes on such Fair Market Fees; and

(c) interest at the rate set out for Indian moneys held by the government of Canada, calculated quarterly and compounded semi-annually, from the start of that year of the Initial Period until such Fair Market Fees are paid.

- 3.4.3 For the remainder of the Initial Period and in each subsequent Period, the Permittee will pay annual Fair Market Fees to Canada in the following amounts, plus applicable Taxes, on or before the anniversary date of the start of the period referred to in paragraph 3.4.1(c) or (d), as the case may be:
- (a) for the remainder of the Initial Period, the Fair Market Fees for the Initial Period as determined under section 3.5; and
 - (b) in each subsequent Period, the greater of the Fair Market Fees paid in the previous Period or the Fair Market Fees for that subsequent Period as determined under section 3.5.
- 3.4.4 Canada will deposit any Fair Market Fees and any interest received under subsection 3.4.2 to an account for the benefit of OKIB. The Permittee agrees that the Permittee has no right to a refund of any Fair Market Fees or interest from Canada or OKIB if this Permit ends early.
- 3.5 **Fair Market Fees Determination** – The process to determine Fair Market Fees is as follows:
- 3.5.1 Within 90 days of Canada being notified of either of the events in paragraph 3.4.1(a) or (b), or, for each Period after the Initial Period, no later than 90 days and no more than 120 days before the beginning of that Period, the Permittee will obtain an Appraisal (the “Permittee’s Appraisal”) and deliver a copy of the Permittee’s Appraisal to each of Canada and OKIB. The Permittee’s choice of Appraiser and terms of reference for the Appraisal must be approved by each of Canada and OKIB in advance.
- 3.5.2 If either Canada or OKIB does not agree with the Fair Market Fees determination in the Permittee’s Appraisal, then, within 120 days of receipt of the Permittee’s Appraisal, such Party (at its expense if subsection 3.5.6 does not apply) will obtain an Appraisal (the “Second Appraisal”), a copy of which such Party will promptly deliver to each of the other Parties.
- 3.5.3 If the Fair Market Fees determination in the Permittee’s Appraisal is:
- (a) equal to or higher than the Second Appraisal, then Fair Market Fees are determined to be the amount in the Permittee’s Appraisal;
 - (b) no more than 15.0% lower than the Second Appraisal, then Fair Market Fees are determined to be the amount in the Second Appraisal; or
 - (c) more than 15.0% lower than the Second Appraisal, then the Appraiser of the Second Appraisal (the “Second Appraiser”) and the Permittee’s Appraiser will promptly discuss the two Appraisals so as to attempt to reconcile the differences between their Appraisals and

jointly determine Fair Market Fees within 60 days of the delivery of the Second Appraisal to the Permittee.

- 3.5.4 If the Appraisers are unable to jointly determine Fair Market Fees within the 60-day period set out in paragraph 3.5.3(c), then the Permittee and the Party who retained the Second Appraiser will agree upon a third, independent Appraiser to promptly review the two Appraisals and determine Fair Market Fees, which determination is binding upon the Parties. Subject to subsection 3.5.6, the Party who retained the Second Appraiser and the Permittee will each bear 50% of the costs of the Appraiser under this subsection.
- 3.5.5 If the Permittee fails to comply with subsection 3.5.1 in the time allowed, then Canada may at any later time obtain an Appraisal and determine Fair Market Fees based on the valuation in that Appraisal, which determination is binding on the Parties. When Fair Market Fees are determined under this subsection, Canada will promptly notify the Permittee and OKIB of such amount.
- 3.5.6 If Canada obtains an Appraisal under subsection 3.5.5, or either Canada or OKIB obtains an Appraisal under subsection 3.5.2 that is in the category set out in paragraph 3.5.3(c), then:
- (a) the expense for such Appraisal will, upon notice, be immediately due as an amount owing to Canada or OKIB, as the case may be, which the Permittee will promptly pay; and
 - (b) the costs for the work of the Appraisers in paragraph 3.5.3(c) and 3.5.4 will be paid solely by the Permittee.

3.6 Sufficiency of Fees – OKIB acknowledges and agrees that:

- 3.6.1 the Prepaid Fees are reasonable and sufficient consideration for this Permit;
or
- 3.6.2 if section 3.4 applies, the Prepaid Fees and Fair Market Fees are reasonable and sufficient consideration for this Permit,

and OKIB hereby releases Canada and Canada's officials, servants, employees, agents, contractors, subcontractors and other legal representatives from any liability associated with the sufficiency of the consideration for this Permit.

3.7 Other Amounts Payable

- 3.7.1 If, at any time before or after this Permit ends, Canada incurs any expenses by reason of any failure of the Permittee to perform or observe any of the Permittee's obligations to Canada under this Permit, then the amount of each expense, together with interest, accruing from the date of such

expense, and an administration fee of 15% of the expenses will be payable to Canada and will be promptly paid by the Permittee on notice from Canada.

3.7.2 If, at any time before or after this Permit ends, OKIB incurs any expenses by reason of any failure of the Permittee to perform or observe any of the Permittee's obligations to OKIB under this Permit, then the amount of each expense, together with interest, accruing from the date of such expense, and an administration fee of 15% of the expenses will be payable to OKIB and will be promptly paid by the Permittee on notice from OKIB. Amounts payable to OKIB will be paid in Canadian dollars, accompanied by any applicable Taxes, and without any set-off, deduction, or abatement.

3.8 **Arrears to Bear Interest** – Subject to subsection 3.4.2, if any amount owing to Canada or OKIB by the Permittee under this Permit is not paid when due, then the Permittee will pay interest on the unpaid amount at the prime lending rate established by the Bank of Canada, calculated quarterly and compounded semi-annually, plus 5% per annum, from the date the amount is due until the date that the payment is received. This stipulation for interest will not prejudice or affect any remedies of Canada or OKIB under this Permit or otherwise, or be construed to relieve the Permittee from any default in paying any amount owing at the time and in the manner specified in this Permit.

3.9 **Survival of Sections** – Sections 3.6 to 3.8, inclusively, survive when this Permit ends.

4. CONSTRUCTION

4.1 **No New Sewer Works Without Consent** – Without limiting section 4.3, before beginning any construction of New Sewer Works on the Permit Area, or altering the Permit Area in anticipation of such construction, the Permittee will obtain the consent of the Council, which consent may be unreasonably withheld.

4.2 **No Consent for Exempt Work** – For greater certainty, the Permittee is not required to obtain the consent of the Council for Exempt Work.

4.3 **No Construction or Removal Before Review** – Except for Exempt Work, before beginning any construction or removal of any Works on the Permit Area, or altering the Permit Area in anticipation of such construction or removal, the Permittee will, if applicable:

4.3.1 apply to the appropriate Authority for, and obtain, any necessary approvals and authorizations;

4.3.2 unless the construction or removal constitutes an Exempt Project, complete an applicable Construction and Environmental Management Plan for such

construction or removal that is considered to meet the requirements of this Permit by the Decision Maker under section 8.3; and

- 4.3.3 unless the construction or removal constitutes an Exempt Project, obtain a written determination from the Decision Maker under section 8.2 that the applicable Project pertaining to such construction or removal may proceed.
- 4.4 **Construction Already Occurred** – For greater certainty, Canada’s and OKIB’s approval or authorization under subsection 4.3.1 is not necessary for construction that has already occurred in relation to the Existing Sewer Works prior to the execution of this Permit. The Permittee represents and warrants that as of the Commencement Date, the Existing Sewer Works have been constructed in a proper and workmanlike manner and in accordance with all approvals and authorizations required under applicable Laws, and satisfy the standards set for the Permittee for the respective type of Works off-reserve.
- 4.5 **Stop Work Orders and Injunctions** – If section 4.1 or 4.3 is breached, then, in addition to any other remedy available to either Canada or OKIB:
 - 4.5.1 each such Party may issue a “stop work order”, which such Party is entitled to post in conspicuous locations on the Permit Area;
 - 4.5.2 OKIB may bar any Person performing any physical activity that is contributing to such breach from the Reserve until such time as the breach is rectified by obtaining all of the required consents, approvals, authorizations, plans and determinations required under section 4.1 or 4.3;
 - 4.5.3 the Permittee will promptly remediate any damage to the Permit Area and any other area on the Reserve arising from such breach that is not otherwise consented to under section 4.1, or approved of, authorized or consented to in a determination as required by section 4.3; and
 - 4.5.4 each of Canada and OKIB is entitled to obtain an injunction from a court of competent jurisdiction against the continuation of such breach, such Party’s costs of which (including legal costs on a solicitor and own client basis) are to be paid promptly to the applicable Party.
- 4.6 **Construction Compliance** – Once the requirements of section 4.1, if applicable, and section 4.3 have been met in relation to any Works, the Permittee will promptly construct or remove such Works:
 - 4.6.1 in a proper and workmanlike manner;
 - 4.6.2 in accordance with any applicable consents, approvals, authorizations, plans and determinations, including any applicable Development Plan and Construction and Environmental Management Plan;
 - 4.6.3 in accordance with applicable Laws;

4.6.4 in accordance with all mitigation measures required under an applicable Environmental Review; and

4.6.5 to at least the standards set for the Permittee for the respective type of Works off-reserve, as those standards may be amended or replaced from time to time.

4.7 **Drawings and Plans**

4.7.1 Upon completion of the construction of the Works, the Permittee will promptly deliver to each of Canada and OKIB reproducible as-built or record drawings of completed Works, certified correct by an Engineer, that the standards referred to in section 4.6 have been met.

4.7.2 The Permittee will maintain an updated chronological record of all finalized Construction and Environmental Management Plans relating to the Permit Area. Within 30 days of a request by either Canada or OKIB, the Permittee will provide the requesting Party with a copy of the updated chronological record and copies of such plans for any year identified by the requesting Party.

5. **THE WORKS**

5.1 **Damage to, or Destruction of, Works** – Subject to section 5.2, if any Works are damaged or destroyed during the Term, then:

5.1.1 the Permittee will promptly notify each of Canada and OKIB of the damage:

5.1.2 this Permit will not be deemed to have ended; and

5.1.3 the Permittee will repair or replace the Works within a reasonable time and, to the extent possible, to a standard at least substantially equal in quality of material and workmanship to the original material and workmanship.

5.2 **Damage to, or Destruction of, Works by OKIB** – If any Works are damaged or destroyed by OKIB during the Term, then:

5.2.1 OKIB will promptly notify the Permittee of the damage;

5.2.2 this Permit will not be deemed to have ended; and

5.2.3 the Permittee will repair or replace the Works within a reasonable time and, to the extent possible, to a standard at least substantially equal in quality of material and workmanship to the original material and workmanship, the reasonable costs of which will be paid by OKIB to the Permittee.

5.3 **Repair & Maintenance** – Neither Canada nor OKIB will be required to maintain or make any repairs or Alterations to any Works. The Permittee will repair and

maintain the Works in good order and condition in all respects to the standard consistent with the age and nature of the Works as would be maintained by a prudent owner.

6. INSURANCE

6.1 **Errors and Omissions Insurance** – The Permittee will provide evidence to each of Canada and OKIB that errors and omissions insurance, with minimum limits of \$1,000,000 per claim and annual aggregate, is obtained with respect to design work of the Engineers on any Works to be constructed.

6.2 **Construction Insurance** – From the date that construction is started on the Permit Area, including the stockpiling of construction materials on the Permit Area in anticipation of construction, to Substantial Completion, and any other time Works are being constructed, the Permittee will ensure that the following insurance is obtained and maintained:

6.2.1 Commercial general liability insurance against claims for bodily injury (including death), personal injury or property damage arising in connection with the use of the Permit Area for construction. The policy will be written on a commercial general liability basis with liability limits of at least \$5,000,000 per occurrence (or any other higher amount that either Canada or OKIB reasonably requires by delivery of notice to the Permittee before construction begins) and with each of Canada and OKIB as additional insureds.

6.2.2 Except for Exempt Projects and Exempt Work, “wrap-up” construction insurance to cover “all risks” of physical damage to, or loss of, the Works (including goods and materials to be incorporated in the Works while in storage at the site or in transit to it) and must include the perils of flood and earthquake (for any properties located in earthquake zones classified as high to extreme by the Institute for Catastrophic Loss Reduction or its successor). The policy will be written in an amount at least equal to such Works’ full replacement value, plus no less than 25% of budgeted “soft costs”, and with OKIB as an additional insured with loss payable to the Permittee and OKIB as their respective interests may appear.

6.3 **Liability & Property Insurance** – In addition to section 6.2, the Permittee will ensure that the following insurance is maintained during the Term and any other period it may be on the Permit Area, including any period where the Permittee is removing the Works under section 11.3, notwithstanding section 11.7:

6.3.1 Commercial general liability insurance against claims for bodily injury (including death), personal injury or property damage arising in connection with the use of the Permit Area. The policy will be written on a commercial general liability basis with liability limits of at least \$5,000,000 per occurrence (or to any higher amount that either Canada or OKIB reasonably

requires by delivery of notice to the Permittee) and with each of Canada and OKIB as additional insureds.

6.3.2 Property insurance to cover “all risks” of physical damage to, or loss of, the Works and must include the perils of flood and earthquake (for any properties located in earthquake zones classified as high to extreme by the Institute for Catastrophic Loss Reduction or its successor) and blanket by-laws and sewer backup coverage. The policy will be written in an amount at least equal to such Works’ full replacement value, with OKIB as an additional insured with loss payable to the Permittee and OKIB as their respective interests may appear.

6.3.3 Any other insurance that may be reasonably required from time to time by either Canada or OKIB and that a prudent owner of the Permit Area or the Works would obtain.

6.4 Self-Insurance

6.4.1 Notwithstanding sections 6.1 - 6.3 but subject to subsections 6.4.2 and 6.4.3, the Permittee may, with the consent of Canada and OKIB, elect to self-insure with respect to the Permittee’s obligations in sections 6.1 - 6.3. In such circumstances, the Permittee is not required to obtain and maintain the insurance required in sections 6.1 - 6.3, provided the Permittee requires any Person, other than the Permittee, carrying on construction on the Permit Area due to the Permittee’s rights under this Permit to obtain and maintain the insurance required under sections 6.1 - 6.3, and to ensure that all such insurance includes Canada and OKIB as additional insureds.

6.4.2 If the Permittee determines that it can no longer self-insure, or otherwise elects to obtain any of the insurance required under sections 6.1 - 6.3 instead of self-insuring, the Permittee will, within 30 days of such determination or election, deliver to Canada and OKIB proof of the insurance required under sections 6.1 - 6.3 or the insurance the Permittee has elected to obtain, as the case may be.

6.4.3 If Canada or OKIB, each in its sole discretion, determines that the Permittee’s self-insurance is no longer adequate to address the matters for which insurance is required under sections 6.1 - 6.3, the Permittee will, on notice from Canada or OKIB, as the case may be, obtain the insurance required under sections 6.1 - 6.3 and provide to Canada and OKIB proof of such insurance within 30 days of such notice.

6.5 General Insurance Provisions

6.5.1 Every insurance policy required under this Permit in which Canada or OKIB is an insured (either additional or additional named) will contain:

- (a) an agreement by the insurer that it will not cancel the policy without first giving such insured at least 30 days prior notice;
- (b) a clause to the effect that any release from liability entered into prior to any loss will not affect the right of such insured to recover;
- (c) a waiver of subrogation by the insurers against such insured; and
- (d) a provision that the policies will not be invalidated by any act, omission or negligence of any Person that is not within the knowledge or control of such insured.

6.5.2 All property insurance policies will include either a stated amount co-insurance endorsement or, alternatively, confirm that no co-insurance applies, to prevent the insureds from becoming co-insurers.

6.5.3 All insurance required under this Permit must include the features customarily included in that type of insurance on similar Works in British Columbia by prudent owners and any features that Canada or OKIB reasonably requires. The insurance must not include any non-standard, special, or unusual exclusions or restrictive endorsements without first getting the written consent of each of Canada and OKIB.

6.5.4 The Permittee will not do anything, or permit or suffer anything to be done, at the Permit Area that might cause the insurance policies required by this Permit to be invalidated or cancelled.

6.5.5 On the Commencement Date, the Permittee will promptly deliver certificates evidencing every insurance policy that is required by this Permit to each Party insured under such insurance, and will deliver to each such Party, at least 15 days before the expiry of any such insurance, a certificate of renewal, or other evidence satisfactory to each such Party, that the insurance has been renewed or replaced.

6.5.6 The Permittee will provide each of Canada and OKIB with a written statement, prepared and signed by a qualified insurance professional, confirming that the insurance policies obtained for the benefit of such Party satisfy the terms of the Permit.

6.5.7 The Permittee will, upon request from Canada or OKIB, deliver to the requesting Party a certified copy of every requested insurance policy.

6.6 Release of Insured Claims – The Permittee releases:

6.6.1 Canada and Canada's officials, servants, employees, agents, contractors, subcontractors and other legal representatives from all liability for loss (including economic loss), damage or injury (including any loss, damage or injury that may arise out of the negligence or omission of any of them)

in any way caused by or resulting from any of the perils or injury against which it has covenanted in this Permit to insure; and

6.6.2 OKIB and OKIB's officials, servants, employees, agents, contractors, subcontractors and other legal representatives from all liability for loss (including economic loss), damage or injury (including any loss, damage or injury that may arise out of the negligence or omission of any of them) in any way caused by or resulting from any of the perils or injury against which it has covenanted in this Permit to insure.

6.7 **Payment of Loss under Insurance** – The insureds to whom moneys are payable under any or all of the policies of insurance required to be obtained under subsections 6.2.2 or 6.3.2 (or self-insurance under subsection 6.4.1 with respect to the Permittee's obligations in subsections 6.2.2, or 6.3.2) will use such insurance moneys for the repair or replacement of the Works for which such insurance moneys were paid against certificates of the Engineer (or such other Person as OKIB and the Permittee may agree upon) who is in charge of such repair or replacement.

6.8 **Cancellation of Insurance** – The Permittee will immediately notify each of Canada and OKIB if any insurance policy in which such Party is an insured is:

6.8.1 cancelled or threatened to be cancelled, and promptly deliver evidence of a certificate of renewal or other evidence satisfactory to such Party that the insurance has been renewed or replaced at least 15 days before the cancellation of such policy; or

6.8.2 suspended, and promptly provide evidence to such Party that the policy has been reinstated or replaced.

6.9 **Payment of Insurance Premiums** – If the insurance premiums are not paid when they become due, then the insured Canada or OKIB may pay them or obtain any insurance that such Party deems necessary, in such Party's sole discretion, and such Party's payment for this are immediately due and payable by the Permittee upon delivery of notice from such Party.

7. LAWS / TAXES / UTILITIES

7.1 Compliance with Laws

7.1.1 The Permittee will comply with all applicable Laws regarding this Permit, the Permit Area and any activity on the Permit Area and will require and ensure that any other Person on the Permit Area because of the Permittee's rights under this Permit also complies with all applicable Laws regarding this Permit, the Permit Area and any activity on the Permit Area.

7.1.2 The Permittee will promptly deliver to each of Canada and OKIB copies of any notice from an Authority requiring something to be done, or stop being done, on the Permit Area. Once the matter under the notice has been resolved to the Authority's satisfaction, the Permittee will promptly deliver proof, satisfactory to each of Canada and OKIB, evidencing the resolution.

7.1.3 On request from Canada or OKIB, the Permittee will either promptly deliver to such Party information from an Authority about the Permittee's compliance, or promptly arrange for written authorization to allow such Party to receive information from an Authority about the Permittee's compliance or non-compliance with applicable Laws.

7.2 **Taxes**

7.2.1 Without limiting the generality of section 7.1, the Permittee will promptly pay all applicable taxes, trade licences, rates, levies, duties and assessments of any kind, together with all charges, penalties and interest imposed by any Authority, regarding the Permittee's interest in this Permit, the use and occupation of the Permit Area under this Permit or the payment of fees or other amounts payable by the Permittee.

7.2.2 Without in any way relieving or modifying the obligation of the Permittee to comply with subsection 7.2.1, the Permittee may contest or appeal the validity or amount of any tax, trade licence, rate, levy, duty, assessment, charge, penalty or interest referred to in subsection 7.2.1, provided that the Permittee promptly commences any proceedings to contest or appeal such validity or amount and continues the proceedings with all due diligence and does not cause a charge, encumbrance or claim to be made against the Permit Area.

7.2.3 The Permittee will, on request by Canada or OKIB, provide such Party with official receipts of the Authority or other proof satisfactory to such Party evidencing payment of any applicable taxes, trade licences, rates, levies, duties, assessments, charges, penalties or interest.

7.3 **Utilities**

7.3.1 Neither Canada nor OKIB will be required to provide any services, utilities or facilities to the Permit Area. The Permittee will secure or provide, and will maintain, all services, utilities and facilities required from time to time for the use of the Permit Area.

8. ENVIRONMENT

8.1 Compliance with Environmental Laws

- 8.1.1 The Permittee will comply with the environmental protection measures set out in Schedule C.
- 8.1.2 The Permittee will not use the Permit Area to generate, manufacture, refine, treat, transport, store, handle, transfer, produce, Release or process any Contaminants, except as may be reasonably required for the Authorized Uses and in compliance with Environmental Laws.
- 8.1.3 The Permittee will not carry out any operations or activities, or construct any Works, that in the reasonable opinion of either Canada or OKIB materially increase the risk of liability to such Party (whether directly or indirectly) as a result of the application of Environmental Laws.
- 8.1.4 If Canada or OKIB reasonably determines that the promulgation of, or amendment to, any Environmental Laws has materially increased the probability or extent of such Party's liability under any Environmental Laws with respect to the Authorized Uses, then the Permittee is responsible to each of Canada and OKIB for such potential liability and the Parties will, if a Party reasonably considers it necessary, negotiate an amendment to this Permit to better reflect this assumption of, and provide a process for payment for, such potential liability by the Permittee.

8.2 Environmental Impact Review

- 8.2.1 As a "designated project", as defined in the *Impact Assessment Act*, has its own process under the auspices of a different federal minister than the Minister, subsections 8.2.2 – 8.2.8 and sections 8.3 and 8.4 do not apply to a designated project and any similar concept in any amended, succeeding, or replacement Law.
- 8.2.2 Subsections 8.2.3, 8.2.5 – 8.2.8 only apply to the Decision Maker's environmental assessment responsibilities with respect to the existence, scoping, and determination of a Project and do not limit the processes or powers of any other federal minister with assessment responsibilities for such Project.
- 8.2.3 If the Permittee considers that a proposed Project is an Exempt Project, then it will deliver to the Decision Maker (and, if the Minister is the Decision Maker, then also to OKIB) sufficient information about the proposed Project for the Decision Maker to determine if the Project is or is not an Exempt Project. If the Decision Maker determines that the proposed Project is an Exempt Project, then, subject to any conditions imposed by the Decision Maker under its determination, an environmental impact determination of

such Project is not required and subsections 8.2.5 – 8.2.8 and sections 8.3 and 8.4 do not apply to such Project.

8.2.4 An environmental impact determination of Exempt Work is not required and subsections 8.2.5 – 8.2.8 and sections 8.3 and 8.4 do not apply to Exempt Work unless the Exempt Work will be carried out due to Contaminants.

8.2.5 The Permittee will deliver to the Decision Maker (and, if the Minister is the Decision Maker, then also to OKIB) any information about a proposed Project reasonably required by the Decision Maker, including:

- (a) an environmental site assessment of the environmental condition of the Permit Area affected by such Project, stating that it may be relied upon by all Parties;
- (b) a Development Plan consistent with the Project; and
- (c) an environmental review report of such Project,

to enable the Decision Maker:

- (d) to determine the environmental effects of such Project as the Decision Maker may by applicable Law be required to make; or
- (e) if OKIB takes over the position of Canada under this Permit by operation of law and no applicable Law requires such determination, then, in the discretion of the Decision Maker, to determine whether or not, subject to any mitigation measures that the Decision Maker reasonably requires, the Project is likely to cause any significant adverse environmental effects.

8.2.6 If the Decision Maker is not reasonably satisfied with any information delivered under subsection 8.2.5, then the Decision Maker will notify the Permittee of each inadequacy (and, if the Minister is the Decision Maker, deliver a copy of such notification to OKIB). The Permittee will ensure that the inadequacies are addressed to the reasonable satisfaction of the Decision Maker, which revised information the Permittee will deliver to the Decision Maker (and, if the Minister is the Decision Maker, then also to OKIB).

8.2.7 If the Decision Maker determines that the Project may proceed, then the Permittee will:

- (a) ensure that the Project, including site preparation, construction, operation and decommissioning of the Project, will comply with any mitigation measures, including monitoring and compliance, that the Decision Maker reasonably requires under such determination; and

(b) deliver to the Decision Maker (and, if the Minister is the Decision maker, then also to OKIB) certification by an Engineer, or applicable professional, of the implementation, within the timelines specified in such determination, of all mitigation measures, including monitoring and compliance, required under such determination.

8.2.8 If the Decision Maker reasonably determines that the Project may not proceed, then:

(a) the Decision Maker will deliver reasons for such determination to the Permittee (and, if the Minister is the Decision Maker, deliver a copy to OKIB); and

(b) subject to such appeals as may be permitted by law, the Permittee releases Canada, the Decision Maker, OKIB, Council and their respective officials, servants, employees, agents, contractors, subcontractors and other legal representatives for the inability of the Permittee to use the Permit Area as anticipated.

8.3 Construction and Environmental Management Plan

8.3.1 The Permittee will deliver to each of the Decision Maker (and, if the Minister is the Decision Maker, deliver a copy to OKIB) a Construction and Environmental Management Plan for any Works proposed to be constructed or removed under a Project.

8.3.2 The Decision Maker will review the Construction and Environmental Management Plan to determine if it meets the requirements of this Permit. If no further information is required, then the Decision Maker will inform each of the Permittee and OKIB of this. If further information is reasonably required, then the Decision Maker will notify each of the Permittee and OKIB of this and the Permittee will deliver such additional information to the Decision Maker (and, if the Minister is the Decision Maker, deliver a copy to OKIB). This process will continue until the Decision Maker is reasonably satisfied that the Construction and Environmental Management Plan meets the requirements of this Permit.

8.3.3 The Permittee acknowledges and agrees that none of Canada, OKIB, Council, or the Decision Maker owes a duty of care to the Permittee or any other Person in reviewing any Construction and Environmental Management Plan, as such review is solely for the respective benefit of the Canada and OKIB. The Permittee releases Canada, OKIB, Council, the Decision Maker, and their respective officials, servants, employees, agents, contractors, subcontractors and other legal representatives from any liability associated with their reviews of, and the Permittee's implementation of, any Construction and Environmental Management Plan.

8.4 **Environmental Bond** – The Permittee acknowledges that Canada may require security for the decommissioning of a Project as a mitigation measure in a determination under an Environmental Review of such Project. If such security is required, then the Permittee will provide Canada with security (such as an environmental bond, letter of credit or other security) reasonably acceptable to Canada, in an amount reasonably acceptable to Canada, for the decommissioning of such Project. That security will be provided to Canada promptly after notification and will remain a paid up, valid security until the completion of the decommissioning of the Project, whether that is before or after this Permit ends.

8.5 **Environmental Site Assessment**

8.5.1 Prior to the execution of this Permit, Tetra Tech Canada Inc., a qualified independent consultant undertook an environmental site assessment of the environmental condition of the Permit Area prior to the Commencement Date, resulting in a report titled “Human Health and Ecological Risk Assessment, CN Railway Right-of-Way Mile 105.9 to 106.6 and Mile 107.0 to 107.5 Duck Lake Indian Reserve 7” and dated November 23, 2018. The consultant has stated that the report may be relied upon by all Parties and the Permittee agrees that all Parties may rely upon it.

8.5.2 Within 8 months before the expiration of the Term, or within 120 days after the earlier termination of this Permit, the Permittee will have a qualified independent consultant undertake an environmental site assessment of the environmental condition of the Permit Area at that time and will provide each of Canada and OKIB with a report, reasonably satisfactory to each of them, on such condition. The report will state that it may be relied upon by all Parties and the Permittee agrees that all Parties may rely upon it.

8.5.3 The environmental site assessment reports referred to in subsections 8.5.1 and 8.5.2 will be *prima facie* evidence of the environmental condition of the Permit Area immediately prior to the Commencement Date and immediately prior to the expiration of this Permit or immediately after the earlier termination of this Permit, as the case may be.

8.5.4 Prior to the end of the Term, or within 60 days after the issuance of the report referred to in subsection 8.5.2 if this Permit ends early, the Permittee will remediate the Permit Area to the environmental condition of the Permit Area identified in the report referred to in subsection 8.5.1 or to such other environmental condition as may be acceptable to both Canada and OKIB, but, if Canada and OKIB disagree upon such other environmental condition, then to the more stringent requirements of either of them.

8.6 **Contaminants and Releases**

8.6.1 Prior to the end of the Term or within 90 days after the earlier termination of this Permit, the Permittee will remove from the Permit Area any

Contaminants that are, or have been, located, stored or incorporated on the Permit Area by the Permittee or any Person on the Permit Area because of the Permittee's rights under this Permit and, upon removal, will promptly provide each of Canada and OKIB with documentation satisfactory to each of them, confirming the completion of the removal satisfactory to each of them and any Authority.

8.6.2 Upon the Release of any Contaminants by the Permittee or any Person on the Permit Area because of the Permittee's rights under this Permit, the Permittee will:

- (a) immediately deliver notice to Canada, OKIB and any appropriate Authority of the occurrence of the Release;
- (b) ensure that any notice includes details relating to the Release, including the time and extent of the Release, the estimated amount of such Contaminants, the remedial action taken prior to the delivery of the notice, and the remedial action that the Permittee intends to take in order to contain or rectify the Release;
- (c) immediately remove from the Permit Area such Contaminants, and take all remedial action necessary to fully rectify the effects of the Release, in compliance with all reasonable requests by each of Canada and OKIB and all applicable Environmental Laws;
- (d) provide each of Canada and OKIB with an environmental site assessment report, satisfactory to each of them, prepared by a qualified independent consultant, specifying the Permittee's activities under paragraph (c) and the state of the Permit Area after the completion of such activities as compared to the state of the Permit Area prior to the Release, and stating that such report may be relied upon by all Parties, and the Permittee agrees that each of Canada and OKIB may rely on such report; and
- (e) undertake such further activities as either Canada or OKIB may reasonably require to remove such Contaminants and rectify the Release, based on the report referred to in this subsection.

8.7 **Representations and Warranties** – The Permittee represents and warrants to each of Canada and OKIB that:

8.7.1 the Permittee's operations on the Permit Area do not involve the location, storage, incorporation, manufacture or Release of any Contaminants except in accordance with this Permit; and

8.7.2 neither the Permittee nor its directors or senior officers have been prosecuted for any offences or received any orders or administrative, monetary or other similar penalties under any Environmental Laws.

8.8 **Survival of Article** – This article survives when this Permit ends.

9. **ASSIGNMENTS AND ENCUMBRANCES**

9.1 **Assignments Require Consent** – The Permittee may not assign its interest in this Permit without the consent of each of Canada and OKIB and no assignment is valid until the proposed assignee has executed a written agreement with the Parties substantially in the form of the Assignment Consent Agreement attached as Schedule B.

9.2 **No Relief by Assignment** – An assignment will not relieve or discharge the Permittee from any of its obligations or liabilities under this Permit unless the Party benefitting from such obligation or liability has agreed, in writing, to release the Permittee from such obligation or liability. For greater certainty, any such agreements by Canada and OKIB need not be consistent with each other.

9.3 **No Encumbrances** – The Permittee will not charge, mortgage, pledge or encumber the Works or any of its rights under this Permit.

10. **DEFAULTS AND EARLY TERMINATION**

10.1 **Defaults on Obligations Owed to Canada or OKIB**

10.1.1 If the Permittee defaults on any obligation owed to Canada or OKIB under this Permit, then that Party may deliver to the Permittee a default notice, with a copy to the other Party.

10.1.2 The Permittee will cure the default identified in a default notice within 30 days of delivery for a default of any obligation. If such default can reasonably be cured within 30 days after the default notice is delivered, and the Permittee fails to cure such default within the 30 days, or such default cannot reasonably be cured within 30 days after the default notice is delivered and the Permittee does not begin to cure such default within the 30 days to the reasonable satisfaction of Canada or OKIB, or continue to cure such default with due diligence after beginning to cure, then, as applicable:

(a) Canada may declare the Term ended by delivering a termination notice to the Permittee, with a copy to OKIB; or

(b) OKIB may sue the Permittee for damages.

10.1.3 If a default is not cured within the time provided for under this Permit, then Canada or OKIB may cure such default in that Party's sole discretion. Any of Canada's or OKIB's expenses will be promptly payable by the Permittee upon delivery of notice from the applicable Party.

10.1.4 If Canada or OKIB begins to cure a default, then that Party will have no obligation to continue to cure such default to completion and will not be liable for any losses or expenses suffered by the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit, arising due to Canada's or OKIB's actions under this section.

11. END OF PERMIT

- 11.1 **Surrender of the Permit** – If the Permittee determines that it no longer requires the Permit Area for any of the Authorized Uses, then the Permittee will give Canada and OKIB reasonable notice that this Permit will end on a date specified in the notice at which time, the Permittee will peaceably surrender and yield up use and occupation of the Permit Area to Canada and OKIB, as to their respective interests, in the condition required by the terms of this Permit and, subject to section 11.3, all Works will be the property of OKIB absolutely, free of all encumbrances and for no compensation.
- 11.2 **Challenge by Canada or OKIB** – If Canada or OKIB determines that, in its view, the Permit Area is no longer required by the Permittee for any of the Authorized Uses, either of them may request that the Permittee give the notice required under section 11.1. If the Permittee declines to give the notice, or disputes that it is required, then the dispute may be submitted by any Party to the applicable dispute resolution process in article 14.
- 11.3 **Notice to Remove Works** – If, on or before the 90th day after this Permit ends, OKIB notifies the Permittee that the Works described in such notice are to be removed from the Permit Area, then the Permittee will promptly and within a reasonable time, not to exceed three years after this Permit ends, remove the Works and will leave the remainder of the Permit Area in good and substantial repair and condition and free from all debris to the reasonable satisfaction of OKIB.
- 11.4 **Failure to Remove Works** – If the Permittee does not remove the Works as required under section 11.3, then OKIB may remove and dispose of them in OKIB's sole discretion and return the Permit Area to a good and substantial repair and condition and free from all debris. Upon notice from OKIB, the Permittee will promptly pay to OKIB all of OKIB's expenses incurred under this section. OKIB will not be responsible to the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit, for any loss suffered by the Permittee or such Person, as the case may be, as a result of OKIB's actions under this section.
- 11.5 **Condition of the Permit Area if Works Remain** – If any or all of the Works remain on the Permit Area, the Permittee will, in accordance with the direction provided by OKIB, and subject to compliance with all Laws, either:

- 11.5.1 decommission the Works on the Permit Area and leave the remainder of the Permit Area in good and substantial repair and condition to the reasonable satisfaction of OKIB; or
- 11.5.2 leave both the Works and the remainder of the Permit Area in good and substantial repair and condition to the reasonable satisfaction of OKIB.
- 11.6 **Future Liability** – The Permittee will remain liable for any environmental damage to the Permit Area arising from any Works that remain on the Permit Area, except that, if Canada or OKIB uses or authorizes the use of any such Works for any purpose, then the Permittee will not be liable for any environmental damage to the Permit Area to the extent caused by such use of the Works.
- 11.7 **Access After Termination** – The Permittee is entitled to access the Permit Area when this Permit ends only at the reasonable times and on the reasonable conditions set by OKIB, and only to be able to perform any of the Permittee's obligations that survive after this Permit ends.
- 11.8 **Recovery at End of Permit** – When this Permit ends, Canada and OKIB, as applicable, will be entitled to recover from the Permittee:
- 11.8.1 any amount accrued or accruing;
- 11.8.2 all prospective losses and damages arising from any consequential loss or damage caused by the Permittee; and
- 11.8.3 any other amounts allowed by law,
- under or in relation to this Permit.
- 11.9 **Survival of Article** – This article survives when this Permit ends.

12. INDEMNITIES

- 12.1 **Permittee's Indemnity of Canada** – The Permittee will indemnify and hold harmless Canada and Canada's officials, servants, employees, agents, contractors, subcontractors and other legal representatives from and for any claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs (including reasonable legal fees, on a solicitor and own client basis, and reasonable consultant and expert fees), liabilities, losses (including any diminution in the market value of the Permit Area, based on the Authorized Uses) and sums paid in settlement of any claims that arise during or after the Term and are in any way based upon, arise out of or are connected with:
- 12.1.1 a default of any of the Permittee's obligations under this Permit;

12.1.2 any injury to, or death of, any Person on the Permit Area during the Term in any way due to the actions or omissions of the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit;

12.1.3 any damage to, or loss of, property by any Person during the Term in any way due to the actions or omissions of the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit;

12.1.4 Canada reviewing a Construction and Environmental Management Plan;

12.1.5 the Decision Maker determining under an Environmental Review that a Project should not proceed; or

12.1.6 Canada's curing or attempt to cure a default of this Permit,

but not if due to the Gross Negligence or Willful Misconduct of Canada or Canada's officials, servants, employees, agents, contractors, subcontractors or other legal representatives, unless such negligence or misconduct involves a peril against which the Permittee is obligated to obtain and maintain insurance, in which case the release set out in section 6.6 absolves Canada of all liability for such negligence or misconduct.

12.2 Permittee's Indemnity of OKIB – The Permittee will indemnify and hold harmless OKIB and OKIB's officials, servants, employees, agents, contractors, subcontractors and other legal representatives from and for any claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs (including reasonable legal fees, on a solicitor and own client basis, and reasonable consultant and expert fees), liabilities, losses (including any diminution in the market value of the Permit Area, based on the Authorized Uses) and sums paid in settlement of any claims, that arise during or after the Term and are in any way based upon, arise out of or are connected with:

12.2.1 a default of any of the Permittee's obligations under this Permit;

12.2.2 any injury to, or death of, any Person on the Permit Area during the Term in any way due to the actions or omissions of the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit;

12.2.3 any damage to, or loss of, property by any Person during the Term in any way due to the actions or omissions of the Permittee, or any Person on the Permit Area due to the rights of the Permittee under this Permit;

12.2.4 OKIB reviewing a Construction and Environmental Management Plan;

12.2.5 OKIB determining under an Environmental Review that a Project should not proceed;

12.2.6 OKIB's curing or attempt to cure a default of this Permit; or

12.2.7 OKIB's removal and disposal of any Works, and returning the Permit Area to a good and substantial repair and condition and free from all debris, under section 11.4,

but not if due to the Gross Negligence or Willful Misconduct of OKIB or OKIB's officials, servants, employees, agents, contractors, subcontractors or other legal representatives, unless such negligence or misconduct involves a peril against which the Permittee is obligated to obtain and maintain insurance, in which case the release set out in section 6.6 absolves Canada of all liability for such negligence or misconduct.

12.3 **Survival of Article** – This article survives when this Permit ends.

13. DELIVERY

13.1 **General Requirement** – All notices, requests, demands, consents and approvals and directions under this Permit, which will be in writing, and any fees or other amounts to be paid, will be delivered in accordance with this article to the following addresses:

To Canada:

Director, Lands and Economic Development
Indigenous Services Canada
British Columbia Regional Office
600 – 1138 Melville Street
Vancouver, BC V6E 4S3
Fax: (604) 775-7149

To OKIB:

Okanagan Indian Band
12420 Westside Road,
Vernon, BC V1H 2A4
Fax: (250) 542-4990
Attention: (Chief and Council)

To the Permittee:

City of Kelowna
1435 Water Street,
Kelowna, BC V1Y 1J4
Fax: (250) 862-3399
Attention: (General Manager of Infrastructure)

13.2 **Date of Delivery** – If any question arises as to the date on which payment, notice, request, demand, consent, approval, or direction was made, it will be deemed to have been delivered:

13.2.1 if sent by fax, the day of transmission if transmitted before 3:00 p.m., otherwise, the next day;

13.2.2 if sent by mail, on the sixth day after the notice was mailed; or

13.2.3 if sent by any means other than fax or mail, the day it was received.

If the postal service is interrupted or threatened to be interrupted, then any payment, notice, request or demand will only be sent by means other than mail.

13.3 **Change of Contact Information** – Any Party may change its contact information shown in this Permit by informing the other Parties of the new contact information in writing, and the change will take effect 30 days after the notice is delivered.

14. DISPUTE RESOLUTION

14.1 Disputes Involving Canada

14.1.1 Any dispute arising from or under this Permit involving Canada that is not resolved by negotiation will be resolved by referral, in the first instance, to the Federal Court of Canada or any replacement or successor court having jurisdiction.

14.1.2 If the Federal Court of Canada refuses jurisdiction or does not determine the dispute, then a Party to the dispute may refer it to any other court that has jurisdiction and the Parties may exercise any other right or remedy they have under this Permit or otherwise.

14.2 Disputes Not Involving Canada

14.2.1 Any dispute arising from or under this Permit solely between OKIB and the Permittee will be resolved as follows:

(a) Negotiation: The Party who wishes a dispute to be resolved will deliver a dispute notice to the other Party. Each Party will promptly designate a senior representative who will attempt in good faith to resolve the dispute by negotiation.

(b) Mediation: If negotiation does not resolve the dispute within 15 days of delivery of the dispute notice, then either Party may deliver a mediation notice to the other Party. The Parties will then promptly appoint a qualified, impartial and experienced mediator, the cost of which will be paid equally by both Parties. If the Parties cannot agree on a mediator within 15 days of delivery of the mediation notice, then the mediator will be appointed by the British Columbia International Commercial Arbitration Centre (or its successor, or a similar body if neither is available). Within 10 days of appointment of a mediator, each Party will provide the mediator and each other

with a written statement of its position about the dispute and summary of the arguments supporting its position. The mediator will meet with the Parties in his or her sole discretion in an attempt to resolve the dispute. The Parties will provide any additional information requested by the mediator. The mediator may hire experts, the cost of which will be paid equally by the Parties unless the mediator orders a different division.

- (c) Arbitration: If the dispute is not resolved within 30 days of the appointment of a mediator, then, on application by any Party, the dispute may be referred to a single arbitrator under the *Arbitration Act*, SBC 2020, c 2. The decision of the arbitrator is final and binding on the Parties. The cost of the arbitrator will be paid equally by the Parties unless the arbitrator orders a different division.

14.2.2 For greater certainty, if OKIB takes over the position of Canada under this Permit by operation of law, then any dispute arising between the Parties from or under this Permit will be resolved under this section 14.2 and not section 14.1.

15. MISCELLANEOUS

15.1 **Headings** – All headings in this Permit have been inserted as a matter of convenience and for reference only and in no way define, limit, enlarge, modify or explain the scope or meaning of the Permit or any of its provisions.

15.2 Extended Meaning

15.2.1 A word in the singular form may be read in the plural form if the context allows it and a word in the plural form may be read in the singular form if the context allows it. All genders are included in any gender expressed.

15.2.2 The words “include”, “includes” and “including” are to be read as if they are followed by the phrase “without limitation”.

15.2.3 The phrase “this Permit ends” includes an ending by expiration of the Term and an earlier termination. The phrases “earlier termination” and “early termination” include a surrender.

15.2.4 The phrase “on the Permit Area” includes in, under and above the Permit Area.

15.2.5 The word “construct” includes lay down, install and erect.

15.2.6 Unless otherwise stated in this Permit, the construction of Works includes the making of any Alterations to a Work.

- 15.3 **Joint and Several** – If a Party is comprised of more than one Person, then all covenants and agreements of that Party are joint and several.
- 15.4 **Governing Laws** – This Permit will be governed by and interpreted in accordance with the applicable Laws of Canada and of the Province of British Columbia. For greater certainty, any reference to a statute in this Permit means that statute, and any regulations made under it, all as amended or replaced from time to time.
- 15.5 **Entire Agreement** – This Permit constitutes the entire agreement between the Parties with respect to the subject matter of this Permit and supersedes and revokes any and all previous discussions, negotiations, arrangements, letters of intent, offers and representations. There are no other covenants, agreements, representations or warranties between the Parties whatsoever other than those set out in this Permit. For greater certainty, the Permittee and OKIB acknowledge and agree that this Permit is contemplated by the MOU and is not in replacement of the MOU.
- 15.6 **Non-Derogation** – This Permit is without prejudice to the position that any Party may have on the existence or scope of the Aboriginal rights recognized and affirmed under section 35 of the *Constitution Act, 1982*, including Aboriginal title, that OKIB may have in the Permit Area.
- 15.7 **Modification** – Any modifications of this Permit will be in writing and executed in the same manner as this Permit.
- 15.8 **Consent and Approval** – Unless any part of this Permit states otherwise, when a Party is required to provide consent or approval under this Permit, that consent or approval will not be unreasonably withheld.
- 15.9 **Acting Through Representatives** – Wherever in this Permit a Party is required or has the right to do anything, including the provision of consent or approval, OKIB may act through its Council and Canada and the Permittee may act through their respective authorized representatives.
- 15.10 **Time is of the Essence** – Time is of the essence in this Permit and time will remain of the essence notwithstanding any extension granted to a Party.
- 15.11 **Severability** – If any part of this Permit is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder of this Permit, which will continue in full force and effect and be construed as if this Permit had been executed without the invalid part.
- 15.12 **Survival of Obligations and Rights** – If a part of this Permit states that it survives when this Permit ends, then the survival of that part is only to the extent required for the performance of any obligations, and the exercise of any rights, pertaining to it.

- 15.13 **Others Performing the Permittee's Obligations** – The Permittee may allow any Person to perform the Permittee's obligations under this Permit, but in doing so the Permittee will ensure performance of such obligations by such Persons and it in no way affects the Permittee's obligation to perform.
- 15.14 **All Terms are Covenants** – All agreements, terms, conditions, covenants, provisions, duties and obligations to be performed or observed under this Permit are deemed to be conditions as well as covenants.
- 15.15 **No Presumption** – There will be no presumption that any ambiguity in any of the terms of this Permit will be interpreted in favour of any Party.
- 15.16 **No Cost to Canada or OKIB** – Except as otherwise explicitly set out in this Permit, neither Canada nor OKIB will be responsible during the Term for any costs, charges or expenses arising from or relating to the Permit Area, the use or occupancy of the Permit Area, or any of the Permittee's obligations under this Permit.
- 15.17 **Binding on Successors** – This Permit will be for the benefit of and be binding upon each Party's respective heirs, successors, executors, administrators, assigns and other legal representatives.
- 15.18 **Remedies are Cumulative** – Notwithstanding any part of this Permit that provides a remedy other than cancellation by Canada or suing for damages by OKIB, all remedies under this Permit or at law may be exercised at the same time and the exercise of one remedy does not preclude the exercise of any other remedy.
- 15.19 **No Waiver** – No condoning, excusing or overlooking of any default of this Permit will operate as a waiver by, or otherwise affect the respective rights of, the other Parties in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted to be done by any Party, except by an express waiver in writing.
- 15.20 **No Assumption of Responsibility** – No consent or absence of consent by either Canada or OKIB will in any way be an assumption of responsibility or liability by such Party for any matter subject to or requiring such Party's consent.
- 15.21 **Not a Joint Venture** – Nothing in this Permit will be construed as creating a relationship of agency, partnership, joint venture or other such association between any of the Parties.
- 15.22 **Authority** – The Permittee represents and warrants that it has the power and authority to enter into this Permit and to perform all of the Permittee's obligations, covenants and agreements contained in this Permit.
- 15.23 **Counterpart Execution** – This Permit may be executed in one or more counterparts, each of which is considered to be an original but all of which together

constitute one and the same document. Each Party will promptly deliver its originally executed Permit to the other Parties.

The Parties have executed this Permit on the dates indicated below.

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of Indigenous Services

Signature

Printed name

Title

Date signed by Canada: _____

[Signature page to a permit between His Majesty the King in right of Canada, Okanagan Indian Band and City of Kelowna]

)	CITY OF KELOWNA , by its authorized
)	signatory
)	
)	
)	
)	
_____)	_____
Witness as to the Permittee's)	Signature
authorized signatory)	
)	_____
)	Printed Name
)	
)	_____
)	Title
)	
)	I am authorized to sign on behalf of the
)	Permittee.
)	
)	Date signed by the Permittee: _____

[Signature page to a permit between His Majesty the King in right of Canada, Okanagan Indian Band and City of Kelowna]

SCHEDULE A

BAND COUNCIL RESOLUTION

WHEREAS:

- A. We have negotiated a "Permit" to be entered into between His Majesty the King in right of Canada, Okanagan Indian Band, and City of Kelowna, to which this resolution is to be attached as a schedule; and
- B. The terms used in this resolution that are defined in the Permit have the same meaning as in the Permit.

BE IT RESOLVED that the Council, on behalf of Okanagan Indian Band:

- 1. has read and understood the Permit terms;
- 2. acknowledges and agrees that the Prepaid Fees and, if applicable, the Fair Market Fees as set out in the Permit, are reasonable and sufficient consideration for the Permit;
- 3. acknowledges that it has been advised by Canada to receive independent legal and financial advice about the Permit before executing it and to continue to obtain such advice about OKIB's rights and obligations throughout the Term of the Permit;
- 4. consents to the execution of the Permit on its terms; and
- 5. authorizes any two members of the Council to execute the Permit on behalf of OKIB.

DATED _____, 20__.

Quorum for the Council is _____ members.

Chief

Councillor

Councillor

Councillor

Councillor

SCHEDULE B

ASSIGNMENT CONSENT AGREEMENT

THIS ASSIGNMENT CONSENT AGREEMENT is dated the ____ day of _____, 20 __

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of [Minister's title]

("Canada")

AND:

OKANAGAN INDIAN BAND, as represented by Council

("OKIB")

AND:

[PERMITTEE'S NAME,] of [●]

(the "Permittee")

AND:

[ASSIGNEE'S NAME,] of [●]

(the "Assignee")

(Collectively the "Parties")

WHEREAS:

- A. Canada authorized the Permittee to use the Permit Area, by way of a permit to which OKIB is a Party and which is dated [Month Day, Year] and registered in the [insert applicable registry such as the Indian Lands Registry] under No. [#] (the "Permit").

- B. The Permittee wants to assign its right and interest in the Permit to the Assignee by entering into an assignment agreement, which is attached as Schedule A to this agreement (the "Assignment").
- C. Under the Permit, the Assignment is not valid without the consent of each of Canada and OKIB and without the Parties entering into this agreement.

NOW THEREFORE, in consideration of the representations, warranties, obligations, covenants and agreements in this agreement, the Parties agree as follows:

1. Consent

- 1.1 Each of Canada and OKIB hereby consent to the Assignment.

2. Covenants and Representations of Assignee

- 2.1 The Assignee covenants with each of Canada and OKIB to observe and perform all of the obligations, covenants and agreements in the Permit to be observed or performed by the Permittee from and after the date of the assignment of the Permit.

- 2.2 The Assignee has inspected the Permit Area and confirms that neither Canada, OKIB, their respective officials, servants, employees, agents, contractors, subcontractors or other legal representatives, nor the Council have made any representations or warranties with respect to:

- 2.2.1 the condition of the Permit Area, including the Permit Area's compliance with any Laws or the presence of Contaminants on the Permit Area;

- 2.2.2 issues of title or encumbrances affecting title;

- 2.2.3 access to and from the Permit Area; or

- 2.2.4 the suitability of the Permit Area for the Assignee.

- 2.3 The Assignee makes the same representations and warranties to each of Canada and OKIB that the Permittee made in the Permit.

- 2.4 The Assignee represents and warrants to each of Canada and OKIB that the person or persons signing this agreement on the Assignee's behalf have the authority to bind the Assignee to this agreement.

3. General

- 3.1 The Permit will survive the execution of this agreement and will not merge in this agreement.

- 3.2 Any terms not defined in this agreement but defined in the Permit have the same meanings that are given to them in the Permit.
- 3.3 This agreement will enure to the benefit of and be binding upon the Parties and their respective heirs, administrators, successors, representatives and assigns.
- 3.4 All headings are for convenience and reference only. They are not to be used to define, limit, enlarge, modify or explain the scope or meaning of any provision.

IN WITNESS WHEREOF the Parties have executed this agreement as of the date first written above.

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of [Minister's title]

Signature

Printed Name

Title

Date signed by Canada: _____

) **OKANAGAN INDIAN BAND**, as
) represented by the Council
)
)

Witness as to OKIB's authorized signatory

) _____
) Signature

) _____
) Printed Name

) _____
) Title

Witness as to OKIB's authorized signatory.

) _____
) Signature

) _____
) Printed Name

) _____
) Title

) We are authorized to sign on behalf of
) OKIB.
)

) Date signed by OKIB: _____

EXECUTED in the presence of:

)

[PERMITTEE'S NAME]

)

)

As to the Permittee's authorized signatory

)

Signature

)

)

Printed Name

)

)

Title

)

I am authorized to sign on behalf of the Permittee.

)

)

Date signed by the Permittee: _____

)

EXECUTED in the presence of:

)

[ASSIGNEE'S NAME]

)

)

As to the Assignee's authorized signatory

)

Signature

)

)

Printed Name

)

)

Title

)

I am authorized to sign on behalf of the Assignee.

)

)

Date signed by the Assignee: _____

)

SCHEDULE A TO ASSIGNMENT CONSENT AGREEMENT

(attach a copy of the assignment agreement)

SCHEDULE C

ENVIRONMENTAL PROTECTION MEASURES

1. The Permittee shall (whether Exempt Works or not) adhere to the recommendations of the TetraTech Risk Assessment (Human Health and Ecological Risk Assessment, CN Railway Right-of-Way Mile 105.9 to 106.6 and Mile 107.0 to 107.5 Duck Lake Indian Reserve 7; prepared by TetraTech; dated November 23, 2018), which includes ensuring that rock overburden must be left in place or replaced.
2. The Permittee shall ensure appropriate measures are taken to comply with requirements of the *Species at Risk Act*, SC 2002, c 29, *Fisheries Act*, RSC 1985, c F-14, *Migratory Birds Convention Act, 1994*, SC 1994, c 22, and all other applicable federal legislation, all as amended or replaced from time to time.
3. The following is a list of Best Management Practices to guide the Permittee's environmental protection measures, which may change over time. Environmental standards and best management practices of the day shall apply. The referenced links to published documents existed in November, 2022 to demonstrate the nature and intent of the documents available at the time of permit:

City of Kelowna 2040 Official Community Plan:

[2040 Official Community Plan | City of Kelowna](https://www.kelowna.ca/our-community/planning-projects/2040-official-community-plan?adlt=strict)

(<https://www.kelowna.ca/our-community/planning-projects/2040-official-community-plan?adlt=strict>)

Province of British Columbia published Natural Resource Best Management Practices:

[Natural Resource Best Management Practices - Province of British Columbia \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/laws-policies-standards-guidance/best-management-practices?keyword=best&keyword=management&keyword=practices)

(<https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/laws-policies-standards-guidance/best-management-practices?keyword=best&keyword=management&keyword=practices>)

Department of Fisheries and Oceans' ("DFO") *Fisheries Act* measures to protect fish and fish habitat, standards and codes of practice when working in or near water:

- DFO published measures to protect fish and fish habitat:

<https://www.dfo-mpo.gc.ca/pnw-ppe/measures-mesures-eng.html>

- DFO published standards and codes of practice:

<https://www.dfo-mpo.gc.ca/pnw-ppe/practice-pratique-eng.html>

Federal guidelines for implementing Environment and Climate Change Canada measures to protect Species at Risk under the *Species at Risk Act*, and migratory birds under the *Migratory Birds Convention Act, 1994*:

- A guide to your responsibilities under the *Species at Risk Act*:

<https://www.canada.ca/en/environment-climate-change/services/species-risk-education-centre/your-responsibility/your-responsability-guide.html#toc9>

- Guidelines to avoid harm to migratory birds:

<https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/reduce-risk-migratory-birds.html>

SCHEDULE D

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____ (*name*), of _____
(*name of city, town, village, etc.*), British Columbia, certify that:

1. I am a member in good standing of the Law Society of British Columbia and am qualified to practice law in British Columbia;

2. I was retained by the Council of the Okanagan Indian Band (“OKIB”) to act as independent legal counsel to OKIB and to advise as to the legal nature and effect on OKIB and its members of the “Permit” to be entered into between His Majesty the King in right of Canada, OKIB and the City of Kelowna (the “*permit*”), to which this certificate is to be attached as a schedule, including, without limitation, the release to be given by OKIB under the *permit* relating to the sufficiency of the consideration (the “*legal advice*”);

3. I provided the *legal advice* to the Council, believe that Council understood the *legal advice*, and it appeared that Council authorized, or would be authorizing, the execution of the *permit* without any fear, threats, coercion, or undue influence of, or from, any person.

Signed at _____ (*name of city, town, village, etc.*), British Columbia, on _____, 20__ (*date*).

Signed in the presence of:)
)
_____)
(*signature of witness*))
)
_____)
(*name of witness*))
)
_____)
)
_____)
(*address*))

_____)
(*signature*))
_____)
(*name*))

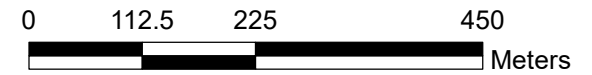
SCHEDULE E

OVERVIEW SKETCH OF PERMIT AREA



**DUCK LAKE IR No. 7
PERMIT AREA**

OSOYOOS DIVISION YALE DISTRICT
PROVINCE OF BRITISH COLUMBIA
LAT: 50°00'30" N LONG: 119°23'45" W
PREPARED ON: MARCH 24, 2022



SCALE 1:7,500

- N SGB Project: 2017 10 104
- Datum: NAD 1983
- Map Projection: Transverse Mercator
- UTM Zone: 11
- UTM Map Grid is in units of Metres.
- Image Source: City of Kelowna
- Image Date: 2020

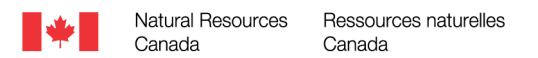
Linework derived from the Canada Lands Cadastral Dataset as of 2021-10-01
© Government of Canada with permission from Natural Resources Canada, Surveyor General Branch.

This is not a plan of survey. This map is illustrative only and is not to be used for defining boundaries. Administrative decisions should be based on legal documents and legal survey plans.

Legend

- Permit Area
- Reserve Boundaries
- Township Line

SURVEYOR GENERAL BRANCH
BRITISH COLUMBIA REGIONAL OFFICE
1501-1138 MELVILLE ST.
VANCOUVER, BC



SCHEDULE F

STANDARD OPERATING PROCEDURES



Forcemain Pigging & Swabbing Operations Standard Operating Procedure

FORCEMAIN PIGGING & SWABBING OPERATIONS – STANDARD OPERATING PROCEDURE

PURPOSE

The purpose of this procedure is to establish consistent forcemain pigging and swabbing operating procedures, standardize operations to maximize operations efficiency and avoid in-use damage to equipment, infrastructure and other property.

SCOPE

This procedure covers core operating methods and the minimum care standards for pigging and swabbing a sewer forcemain to remove grit, biofilms, solids and FOG accumulations within pipe and on pipe wall.

APPLICABILITY

These procedures apply to City of Kelowna operators when operating, or having care and control of forcemain pigging and swabbing operations.

PREREQUISITES

All operators must be authorized, oriented and trained on pigging and swabbing procedures before operating.

REFERENCE SOURCES:

- [City of Kelowna Fleet Operator Manual](#)
- [WorkSafeBC Regulations](#)
- [Landfill - SOP Responsible Equipment Operating.docx](#)
- [Wastewater Collection - Dumping Debris Body SWP.docx](#)
- [Wastewater Collection - High Pressure Jet Rodder SWP.docx](#)
- [Wastewater Collection - Manhole Cover Replacement. SWP.docx](#)
- [Water Distribution - Hydrant Valve Operating or Exercising SWP.docx](#)
- [Water Distribution - Metered Backflow Preventer SWP.docx](#)
- [WWTF - Lift Station Cleaning \(non-entry\) SWP.docx](#)
- [General - Hand Tools SWP.docx](#)
- [First Aid - Workplace Injury Response Procedure.docx](#)
- [Tailgate Meeting -Template.pdf](#)
- [Risk Assessment Form.docx](#)
- <https://www2.gov.bc.ca/assets/gov/driving-and-transportation/transportation-infrastructure/engineering-standards-and-guidelines/traffic-engineering-and-safety/traffic-engineering/traffic-management-and-traffic-control/2020-traffic-control-manual/2020-traffic-management-manual-for-work-on-roadways.pdf>
- Road Usage Permit
- Hydrant Usage Permit
- Manufacturers appropriate relevant tool and equipment operating and maintenance manuals

PPE REQUIRED:

- Hi-visibility coveralls
- Safety Boots & gloves
- Hard hat and hearing protection as required
- Other PPE as required for specific tool or equipment use as recommended by manufacturer

Effective Date	Revised Date	Authorized By	Approved By
September 19, 2022			

TOOLS AND EQUIPMENT REQUIRED:

- Working radios &/or cellular phones
- Jet/Vac truck(s)
- Reduced Pressure Backflow Assembly (RPBA) w/hydrant connection, valve and hoses
- Companion flange, bolts and reducer/adaptor to Hydrant hose connection (Storz)
- Various hand tools as required for the job and task
- Contract Traffic Control Personnel site specific (includes signage, buffer and arrow board vehicles, traffic cones/pylons, barricades)
- Various size and densities of Pigs or Swabs appropriate for diameter of Forcemain

PRE – Work Procedure	
	Activity
Foremen (WWN & WWTF)	<ul style="list-style-type: none"> • Request Road Usage Permit (if working within a road right of way) • Hold pre-work (Tailgate) site safety meeting and perform Field Level Risk Assessment (FLRA) with all involve staff and contract personnel • Review/establish traffic routing and control site specific • Plan vacuum points for intercepting flow at/before sewer lift station, discharge point/manholes downstream of forcemain discharge point, and routing of trucks (round trip route)
Operator conducted Inspections	<ul style="list-style-type: none"> • Thorough and effective pre-use, in-service and post-use equipment inspections are mandatory • Report all equipment deficiencies, large or small and all fluids added to the equipment

Effective Date	Revised Date	Authorized By	Approved By
September 19 th , 2022			

Standard Operating Procedure	
	Activity
Objectives & Tasks	<ul style="list-style-type: none"> • TCP's to set up signage and traffic control equipment if/as required where traffic will be impacted/affected. • Set up and connect RPBA to fire hydrant with control valve at hydrant and hose to Pig launcher assembly • Confirm pig launcher port valve is in closed position • Remove cap/blind from end of pig launcher port • Set up Jet/Vac trucks at Lift station and/or upstream manholes to prepare to intercept flow • WWC operator to set up at forcemain discharge manhole to monitor discharge from forcemain and intercept pigs/swabs as they exit the forcemain • All operators test and confirm radio contact with each other • WWTP operator to shut down and lock out lift station pumps • Jet/Vac trucks to begin vacuuming wastewater and truck around to manhole(s) downstream of forcemain discharge manhole • Close inline valve on forcemain between lift station and pigging port assembly • Select appropriate pig or swab (starting with smaller and/or softer progressing to larger/denser with subsequent pigging/swabbing as deemed necessary) • Insert pig/swab in pigging port • Install fire hose adaptor/connection and hose to the pigging port and slowly charge with water from hydrant • Once pressurized, notify operator at downstream end of forcemain that pig is being launched and open the pig port plug valve and start timing procedure • Measure and record time that it takes for pig/swab to travel through pipe • Observe and note consistency and quantity (time) of material/sludge discharged ahead of the pig/swab • Repeat process as many times as necessary until no debris/sludge is discharged ahead of pig/swab • Once satisfactory results are achieved with pigs/swabs, flow clean water through forcemain until runs clear at discharge end • Close pig port plug valve and shut down hydrant control valve • Open forcemain control valve at lift station • Restart lift pumps and shut down vacuum trucks • Confirm pumps are running/pumping before sending vacuum trucks away. • Disconnect hydrant, RPBA and hoses, drain hydrant and install hydrant cap • Clean up site, close manhole covers, pickup and store tools and equipment • Release Traffic control personnel to clean up signage, traffic control devices as applicable
Operating Hazards	<ul style="list-style-type: none"> • Working with municipal wastewater creates risk of exposure to dangerous and noxious elements • Pig/Swab getting stuck in forcemain causing partial/complete blockage • Inflow at lift station exceeding capacity of vacuum trucks resulting in SSO • Site specific hazards (traffic, confined spaces)
Tool and equipment Operating Techniques	<ul style="list-style-type: none"> • Adhere to equipment design use and recommendations • Follow procedures and recommendations in equipment operating manual, SOPs, SWPs and Fleet Operating Manual

Effective Date	Revised Date	Authorized By	Approved By
September 19 th , 2022			

POST – House keeping	
Responsibility	Activity
Inspection	<ul style="list-style-type: none"> Perform equipment post-use inspection, note and report any damage or deficiencies
Submittals	<ul style="list-style-type: none"> Turn in all documentation, permits, forms to Foreman

Written By:	Mike Murrell	Title:	Supervisor	Dept.	Wastewater Network Operations
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Effective Date	Revised Date	Authorized By	Approved By
September 19 th , 2022			



CSE – Air Valve Inspection, Testing or Replacement of Sanitary System Safe Work Procedure

0180-04 SWP Rev0 14-12-11

CSE – AIR VALVE INSPECTION, TESTING OR REPLACEMENT (WATER) - SAFE WORK PROCEDURE

PURPOSE

The purpose of this procedure is to safely perform inspection, testing or replacement of sanitary system, (Air Release) (Air/Vacuum) and (Combination Air Valves) found in confined spaces.

SCOPE

This procedure covers confined space entry for inspection, testing or replacement of air valves.

APPLICABILITY

These procedures apply to all employees performing air valve inspection, testing or replacement.

PREREQUISITES

Employee must be a Certified Wastewater Operator Min-EOCP Level 1 WD
Trained in confined space entry procedures.

REFERENCE SOURCES:

- City of Kelowna Safety Management System
- CSE Program Guide Risk Assessment, Safe Work Procedures, Permit and Classifications
- WorkSafe BC Regulations
- Traffic Control Manual for Work on Roadways
- Maintenance & Inspection Procedures/Recommendations per (Valve Manufacturers Use Instruction Manual)

PPE REQUIRED:

- | | | |
|---------------------------------|---------------------|-------------------|
| • Hard Hat | • Tripod | • Gas Detector |
| • Hi Visibility – Vest/Overalls | • Winch/Fall Arrest | • Gloves |
| • CSA Approved Footwear | • Harness | • Ventilator/Hose |

TOOLS AND EQUIPMENT REQUIRED:

- | | | |
|--------------------|-------------------|---------------|
| • Manhole Puller | • Screwdriver | • Pipe Wrench |
| • Valve Key | • Crescent Wrench | • CSE Permit |
| • Tailgate Meeting | • Traffic Plan | |

PRE – Work Procedure	
Responsibility	Activity
Employee	<ul style="list-style-type: none"> • Employee must be a Certified Wastewater Operator Min-EOCP Level 1 • Trained in Confined Space Entry procedures
Employee	<ul style="list-style-type: none"> • It is the employee’s responsibility to bump test gas detector prior to use

Effective Date	Revised Date	Authorized By	Approved By
October 30, 2013	January 16, 2017	Occupational Health & Safety Branch	<i>Nathan Peters CRSP</i>

Employee	<ul style="list-style-type: none"> Conduct tailgate meeting
Employee	<ul style="list-style-type: none"> Traffic Plan – (Traffic Control Manual) for Work on Roadways
Employee	<ul style="list-style-type: none"> Ensure site is free of tripping hazards, setup required equipment, inspection of CSE equipment for wear/damage before use.

Safe Work Procedure

Responsibility	Activity
Employee	<ul style="list-style-type: none"> The atmosphere to be continuously monitored (CSE permit to be updated every 20 minutes until task is complete). Once the atmosphere has been deemed safe, entry may commence once the entrant has been connected to life line. The entrant must remain connected to life line at all times when in confined space.
Employee	<ul style="list-style-type: none"> The confined space Supervisor will keep in contact with entrant while continuously monitoring and documenting the atmosphere readings, also safeguarding the entrance from the public. Should alarm occur; CSE Supervisor to use retrieval crank to extricate entrant. Should a major emergency occur; phone 911 immediately, then commence self-rescue with the harness and start CPR immediately while waiting for emergency services. (Ensure Supervisor and OHS Branch is alerted as soon as possible).
Employee	<ul style="list-style-type: none"> Inspection, testing or replacement will include inspecting air valve for leaks, operation of sanitary air valve, draining valve body, flushing to clear any debris, following maintenance procedures per – Manufacturers User Instruction Manual

POST – House keeping

Responsibility	Activity
Employee	<ul style="list-style-type: none"> Be sure all equipment has been collected, no tripping hazards exist and secure area (lids in place or hatches closed) if applicable

Written by:	Ken Salisbury	Title:	Utilities Foreman	Dept.	Utilities
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Effective Date	Revised Date	Authorized by	Approved by
Oct 30, 2013	January 16, 2017	Occupational Health & Safety Branch	<i>Nathan Peters CRSP</i>



Sanitary Sewer Force Main Repair or Replacement Standard Operating Procedure

SANITARY SEWER FORCE MAIN REPAIR OR REPLACEMENT - SOP

PURPOSE

The purpose of this procedure is to identify the operating procedures, ensure the safety of employees and protection of the environment when repairing or replacing sections of a sanitary sewer force main

SCOPE

This procedure covers all City of Kelowna worksites where sewer force mains are being repaired or sections replaced

APPLICABILITY

These procedures apply to all City of Kelowna utilities workers who repair or replace sections of sewer force mains.

PREREQUISITES

- Experience- Mobile Equipment (Excavator)
- Experience with Excavations (Locates/Ground Disturbance Spoil Piles, Shoring/Sloping)
- WHMIS- Sodium Hypochlorite for Cleaning the Pipe

REFERENCE SOURCES:

- City of Kelowna Safety Management System
- WorkSafe BC Regulations: Part 5- Chemical Agents and Biological Agents, Part 7- Noise, Vibration, Radiation and Temperature, Part 8-PPE, Part 16-Mobile Equipment, Part 18-Traffic Control, Part 20- Construction, Excavation and Demolition

PPE REQUIRED:

- | | | |
|-------------------------------|---|--|
| • Appropriate eye protection | • High visibility apparel | • Safety headgear (must be worn when lifting with chain or when excavator boom is operating) |
| • Disinfectant/hand-sanitizer | • Protective clothing (Tyveks when working with sewage) | |
| • High visibility apparel | • Appropriate safety footwear | • Gloves |

TOOLS AND EQUIPMENT REQUIRED:

- | | | |
|---------------------------------------|--|--|
| • Service truck | • Tandem truck | • Trench cage (if sloping isn't possible and the trench is 1.2m or deeper) |
| • Power/Hand Tools | • Hydro excavator truck | • Traffic Control Personnel (If location of sewer force main is in active roadway) |
| • Section of PVC Pipe for Replacement | • Repair Clamp and Fittings for Repairing Damaged Pipe | |
| • Wrenches/Impact | • Hand Saw/Cut Off Saw | |
| • Sodium Hypochlorite | | |

PRE - Work Procedure	
Responsibility	Activity
Utilities Construction Supervisor/Foreman	<ul style="list-style-type: none"> • Ensure that all ground disturbance requirements are followed: <ul style="list-style-type: none"> ○ Locates are valid and on-site prior ○ As-builts are reviewed ○ Ground Disturbance Form is completed (Mandatory 2021) <p>If power or gas are determined to be in the work zone from locates or as-builts hand digging (1 meter each side of the utility) or hydro-excavation is required to confirm utility location, depth and alignment prior to any mechanical digging.</p>
Utilities Construction Supervisor/Foreman	<ul style="list-style-type: none"> • Contact Wastewater staff to have on standby as sewer force mains are under pressure as the nearby Lift Stations are pumping sewage to the sewer force main. Wastewater will shut off the pumps in the lift station which will then reduce and eliminate the sewage being fed to the sewer force main. • Contact sanitary foreman to have sewer vac trucks in order to bypass the lift station while the repair is being complete. • Review work area to ensure sewage cannot enter any nearby body of water. Have the crew use the excavator to create berms if required and block any culverts/access points to water. • If a sewage leak has occurred, contact water quality standby at 250-864-7460 to complete testing and notify the appropriate authorities. • Clean up the sewer leak per direction of the authorities <p>Note: Task should be done at low flow volumes to reduce pressure where possible.</p>
Pipefitter/layer	Establish traffic control (as necessary)
Pipefitter/layer	<ul style="list-style-type: none"> • Complete tailgate or FLRA- Field Level Risk Assessment to account for identified underground utilities as well as other hazards on the site. (Traffic, Overhead Power, Heat Stress, Rigging & Hoisting, Mobile equipment, etc.) <p>Note: If traffic control is necessary, the City of Kelowna will review their tailgate with the Traffic Control Personnel so that they are aware of the site hazards. Ensure that Traffic control has the proper set up for the proper type of roadway. Crew reviews and signs off on Traffic Control tailgate.</p>

Safe Work Procedure and Standard Operating Procedure	
Responsibility	Activity
Pipefitter/layer/excavator or hydro vac operator	<ul style="list-style-type: none"> • Commence digging with excavator, hydro-excavate if required) • Inspect excavation for any lateral/vertical earth movement or water infiltration (dewater as necessary). • Ensure spoil pile is kept a safe distance from excavation (minimum of 0.6m) and work area is free of trip hazards.
Pipefitter/layer	<ul style="list-style-type: none"> • Excavate to the pipe so that the entire pipe is visible so the determination can be made as to whether a section of pipe needs to be replaced or whether you can repair the pipe with a repair clamp. • Use sewer vac trucks to manage any flows from the damaged pipe and ensure no sewer leaks to nearby bodies of water

<p>Pipefitter/layer</p>	<p><i>If Replacement Section is Required:</i></p> <ul style="list-style-type: none"> • Cut PVC on both sides of the localized damage. (cracks, holes, etc.) • Remove damaged section of pipe. • Cut new piece of PVC long enough to replace the piece that has been removed. • Place rubber gaskets on each side of new pipe and on ends of old pipe so that the rubber gaskets can be tightened. • Check for leaks (Wastewater will turn back on pumps at lift station if they were turned off during the replacement process)
<p>Pipefitter/layer</p>	<p><i>If Repair of Pipe is Required:</i></p> <ul style="list-style-type: none"> • Clean the pipe (Follow Manufacturers Specifications to clean and install repair clamp- instructions come with every repair clamp) • Attach clamp and tighten bolts to secure in place. • Check for leaks (Wastewater will turn back on pumps at lift station if they were turned off during the replacement process)
<p>Pipefitter/layer</p>	<ul style="list-style-type: none"> • If no leaks are noted, backfill can commence. • Backfill with sand or drain rock dependent on soil conditions. • Backfill until pipe is completely covered and compact. (Generally, this will be done with a jumping jack tamper- If large area you may require roller/plate tamper for compaction around the site)

<p style="text-align: center;">POST - House keeping</p>	
<p>Responsibility</p>	<p>Activity</p>
<p>Pipefitter/layer</p>	<ul style="list-style-type: none"> • Collect, clean, and store all tools, equipment, and materials appropriately. • Remove any traffic control devices not necessary to guard any unrestored area. • Make a final sweep of the worksite to confirm the site is safe, secure, clean and that nothing has been left behind • Review the site for any sewage leaks to nearby bodies of water - If a sewage leak has occurred contact water quality standby at 250-864-7460 to complete testing and notify the appropriate authorities.
<p>Pipefitter/layer & Roadways</p>	<p>If asphalt and concrete work is required, delineated work area and use caution tape, contact roadways for them to complete the asphalt/concrete work.</p>



ROW_SRW Brushing & Clearing Operations Standard Operating Procedure

ROW SRW BRUSHING & CLEARING OPERATIONS – STANDARD OPERATING PROCEDURE

PURPOSE

The purpose of this procedure is to establish consistent Right of Way and Statutory Right of Way brushing and clearing operating procedures, standardize operations to maximize operations efficiency and avoid in-use damage to equipment, infrastructure and other property and ensure safe and unobstructed access to Wastewater and Stormwater infrastructure.

SCOPE

This procedure covers core operating methods and the minimum care standards for Right of Way (ROW) and Statutory Right of Way (SRW) brushing and clearing.

APPLICABILITY

These procedures apply to City of Kelowna operators when operating, or having care and control of Right of Way and Statutory Right of Way brushing and clearing operations.

PREREQUISITES

All operators must be authorized, oriented and trained on all tools, equipment and falling/brushing/clearing procedures before operating.

REFERENCE SOURCES:

- [City of Kelowna Fleet Operator Manual](#)
- [WorkSafeBC Regulations](#)
- [Landfill - SOP Responsible Equipment Operating.docx](#)
- [General - Hand Tools SWP.docx](#)
- [First Aid - Workplace Injury Response Procedure.docx](#)
- [Tailgate Meeting -Template.pdf](#)
- [Risk Assessment Form.docx](#)
- [General - Saw - Chainsaw SWP.docx](#)
- [Parks - Chipper. SWP.docx](#)
- [Parks - Stump Grinder - Operation SWP.docx](#)
- [Parks - Trackless Front Flail SWP.docx](#)
- [Parks - Truck Mounted Winch SWP.docx](#)
- [Parks - Portable Winch - Operation SWP.docx](#)
- [Parks - Trail Maintenance SWP.docx](#)
- [Parks - Collecting Coniferous Branches SWP.docx](#)
- <https://www2.gov.bc.ca/assets/gov/driving-and-transportation/transportation-infrastructure/engineering-standards-and-guidelines/traffic-engineering-and-safety/traffic-engineering/traffic-management-and-traffic-control/2020-traffic-control-manual/2020-traffic-management-manual-for-work-on-roadways.pdf>
- [General - Power Lines - working in close proximity SWP.docx](#)
- Road Usage Permit
- Manufacturers appropriate relevant tool and equipment operating and maintenance manuals

PPE REQUIRED:

- Hi-visibility coveralls
- Safety Boots
- Gloves
- Hard hat
- Hearing protection
- Chain Saw safety Chaps
- Eye/Face protection
- Other PPE as required for specific tool or equipment use as recommended by manufacturer
- Other PPE or clothing as required dependant on environmental or weather conditions

Effective Date	Revised Date	Authorized By	Approved By
September 19, 2022			

TOOLS AND EQUIPMENT REQUIRED:

- Working radios &/or cellular phones
- Trackless with flail mower attachment
- Chain saw
- String Trimmer
- Winch (portable or truck mounted)
- Stump grinder
- Chipper
- Various hand tools as required for the job and task
- Contract Traffic Control Personnel site specific (includes signage, buffer and arrow board vehicles, traffic cones/pylons, barricades)
- Contract tree removal services for trees taller than five metres, larger caliper than 150mm trunk, or growing within limits of approach of overhead utility lines

PRE – Work Procedure	
	Activity
Foreman (WWN)	<ul style="list-style-type: none"> • Request Road Usage Permit (if working within a road right of way) • Hold pre-work (Tailgate) site safety meeting and perform Field Level Risk Assessment (FLRA) with all involve staff and contract personnel • Review/establish traffic routing and control site specific hazards • Request utility locate information through BC One Call 1 800-474-6886 • Request permits from other utilities if working within, under, or over their utilities
Operator conducted Inspections	<ul style="list-style-type: none"> • Thorough and effective pre-use, in-service and post-use equipment inspections are mandatory • Report all equipment deficiencies, large or small and all fluids added to the equipment

Effective Date	Revised Date	Authorized By	Approved By
September 19 th , 2022			

Standard Operating Procedure	
	Activity
Crew Objectives & Tasks	<ul style="list-style-type: none"> • TCP's to set up signage and traffic control equipment if/as required where traffic will be impacted/affected. • All operators test and confirm radio contact with each other • Control/Restrict public access to work zone with signage and barriers and take photographs for documentation • Determine limits of brushing, mowing or clearing of ROW/SRW by width/length (e.g. 3 metres each side of pipe centerline, or to edge of ROW/SRW, whichever is greater and mark with stakes or flagging tape • Walk length/breadth of estimated days work plan looking for hidden hazards (rocks, holes, fencing, rubbish, fauna) and flag or remove as necessary • Choose appropriate tools/equipment based on type and size of vegetation and terrain (eg. string trimmer or mower for grasses, Flail mower on trackless for bushes/brush, chain saw and stump grinder for trees) • If working in teams, stay separated by sufficient distance to ensure projectiles and flying debris will not strike one another while still staying within eyesight of one another and in communication as to where each is working/moving to or intended actions • Proceed mowing/clearing operations following all relevant SWPs and SOPs • All grass, brush and trees are left onsite but larger woody debris should be chipped and left onsite • Stumps should be ground flush with ground to allow passage of wheeled equipment • Upon completion of clearing operations, clean up site, pickup and store tools and equipment • Release Traffic control personnel to clean up signage, traffic control devices as applicable • Repeat process annually to ensure large vegetation does not get established
Operating Hazards	<ul style="list-style-type: none"> • Tool and equipment specific hazards (eg. Chainsaw kickback, flying debris from flail mowers) • Site specific hazards (eg. traffic, Falling trees, Trees contacting overhead power lines)
Tool and equipment Operating Techniques	<ul style="list-style-type: none"> • Adhere to equipment design use and recommendations for safe operation • Follow procedures and recommendations in equipment operating manual, SOPs, SWPs and Fleet Operating Manual

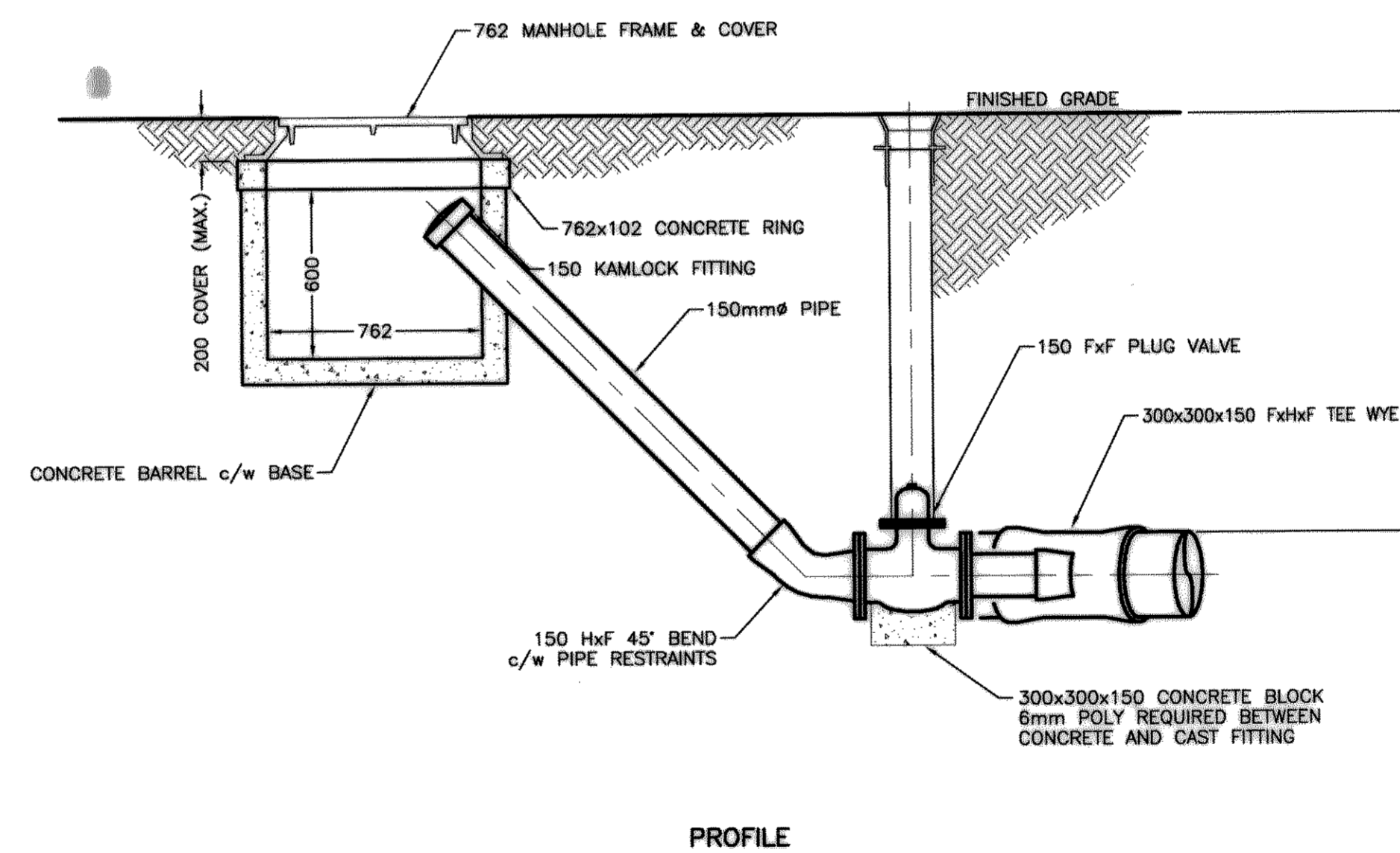
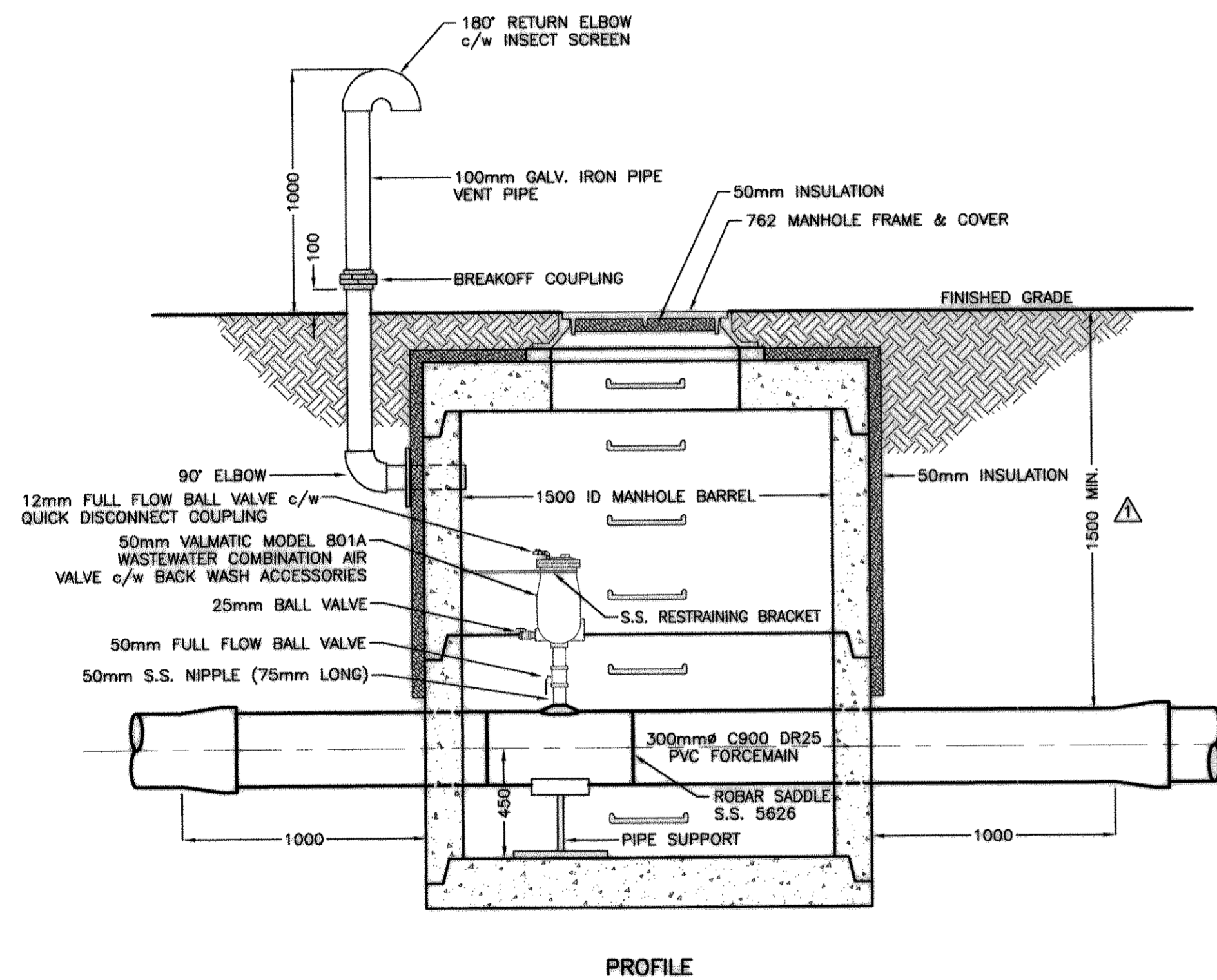
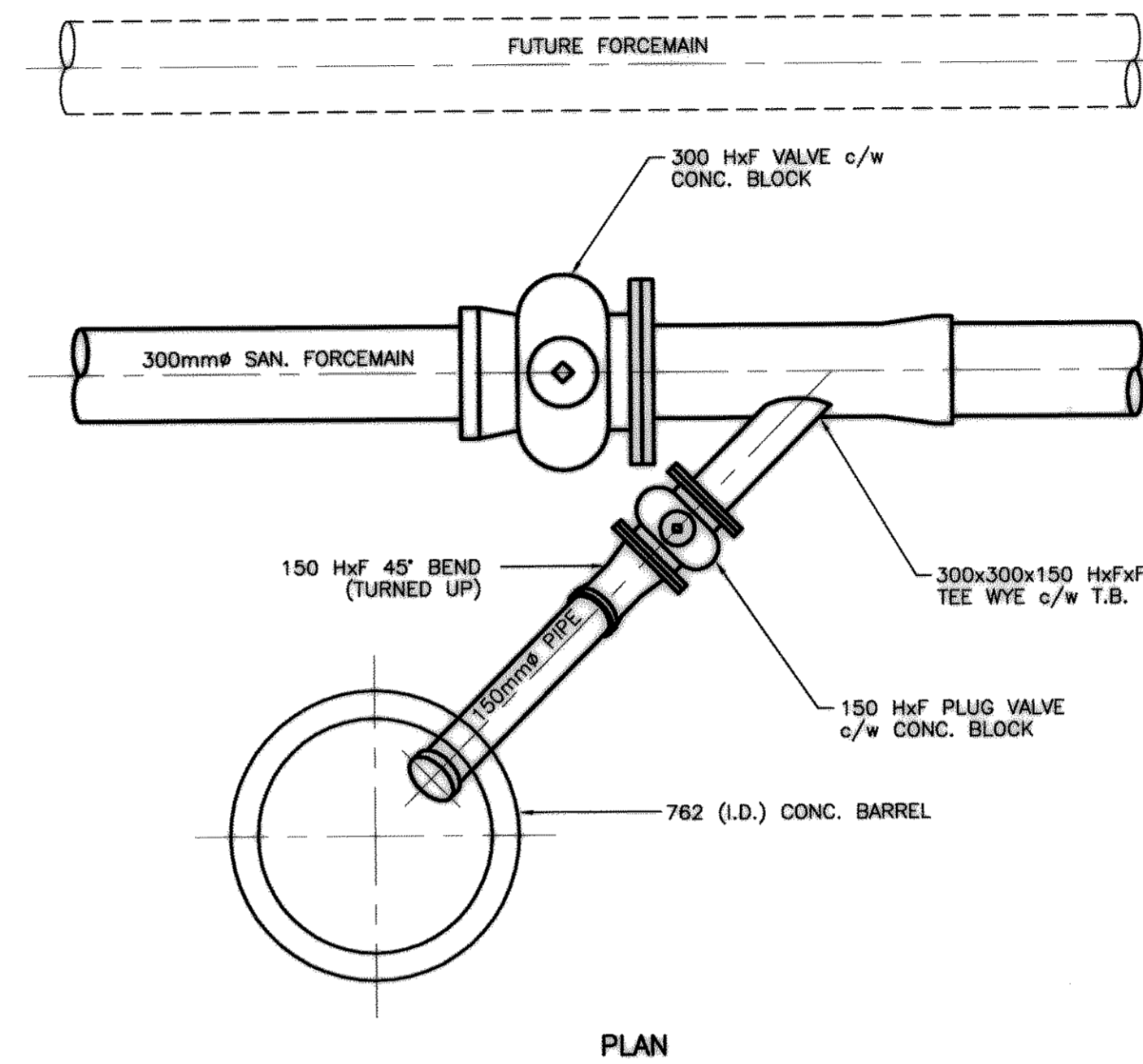
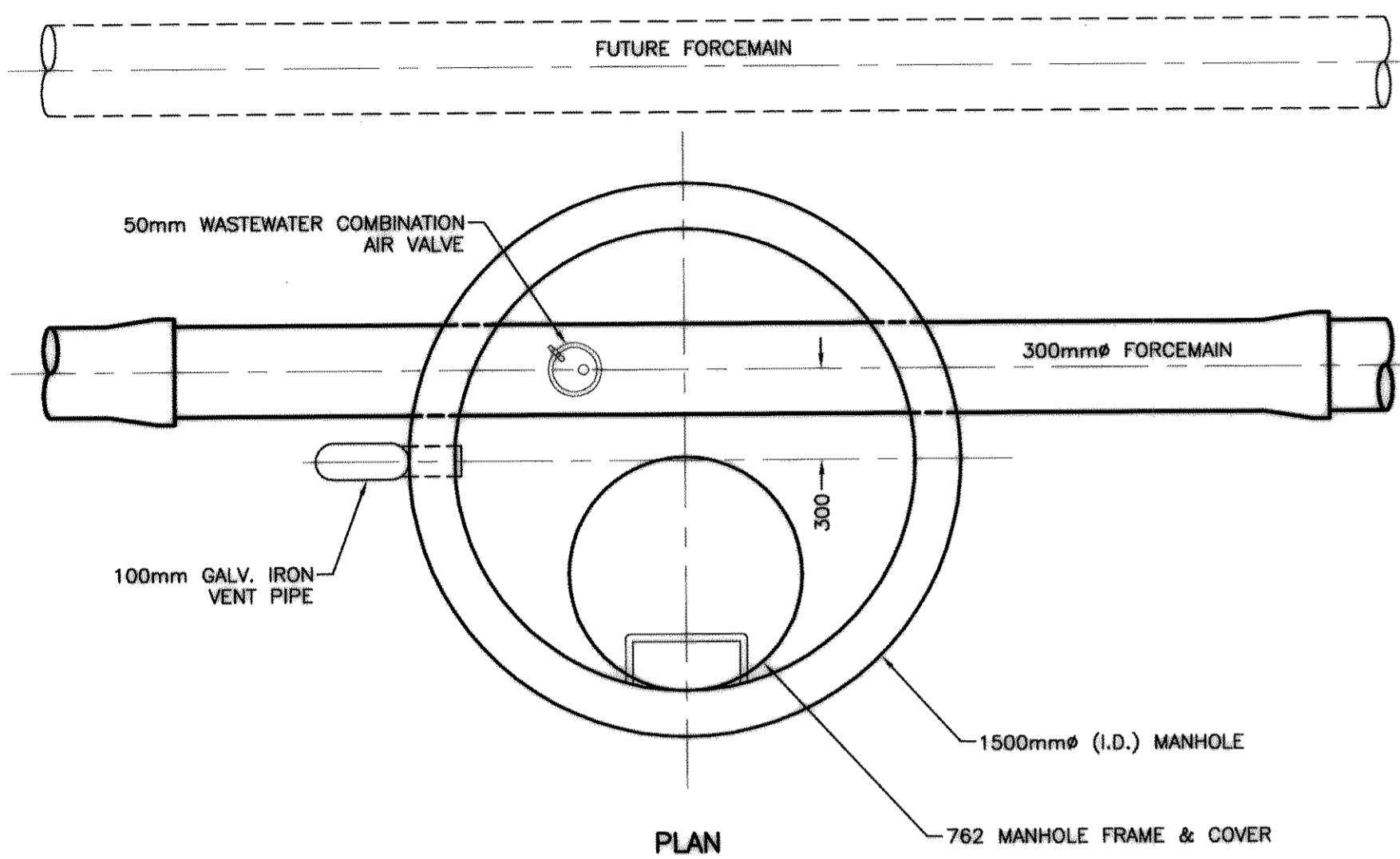
POST – House keeping	
Responsibility	Activity
Inspection	<ul style="list-style-type: none"> • Perform equipment post-use inspection, note and report any damage or deficiencies
Submittals	<ul style="list-style-type: none"> • Turn in all documentation, permits, forms to Foreman

Written By:	Mike Murrell	Title:	Supervisor	Dept.	Wastewater Network Operations
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Effective Date	Revised Date	Authorized By	Approved By
September 19 th , 2022			

SCHEDULE G

SEWER FORCE MAIN DRAWINGS



SEWER AIR RELEASE CHAMBER

SEWER CLEAN-OUT

LEGEND

WATER	---
SAN. SEWER	---
STM. SEWER	---
GAS	---
U/G TELEPHONE	---
U/G ELECTRICAL	---

MANHOLE

UTILITY POLE	○
POWER POLE	●
LAMP STANDARD	□
CATCH BASIN	⊗
HYDRANT	⊕
TREES	⊗
SURVEY MONUMENT	⊗

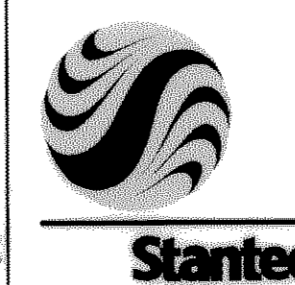
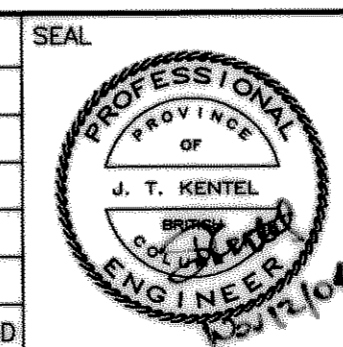
LEGEND

PAVE WITH ASPHALT	▨
REMOVE-REGRADE-REPLACE	▨
LEVEL COURSE	▨

NAD 83

INSERTION BASE POINT = 300,000 , 5,500,000

6					
5					
4					
3					
2	04/03/31	RCR	PLAN OF RECORD	JTK	
1	03/09/03	RCR	COVER OVER PIPE @ AIR RELEASE INCREASED TO 1.50m	JTK	
NO.	DATE	BY	REVISION	CH'KD	



DRAWN	RCR
DESIGN	JTK
APPROVED	
DATE	JULY 2003
SCALE	1 : 20

THE CITY OF KELOWNA
ENGINEERING DEPARTMENT
NORTH END SEWER EXTENSION
AIR RELEASE & CLEAN-OUT
DETAILS

DIVISION	1630150
DRAWING NO.	D01
REV. NO.	2

DUCK LAKE

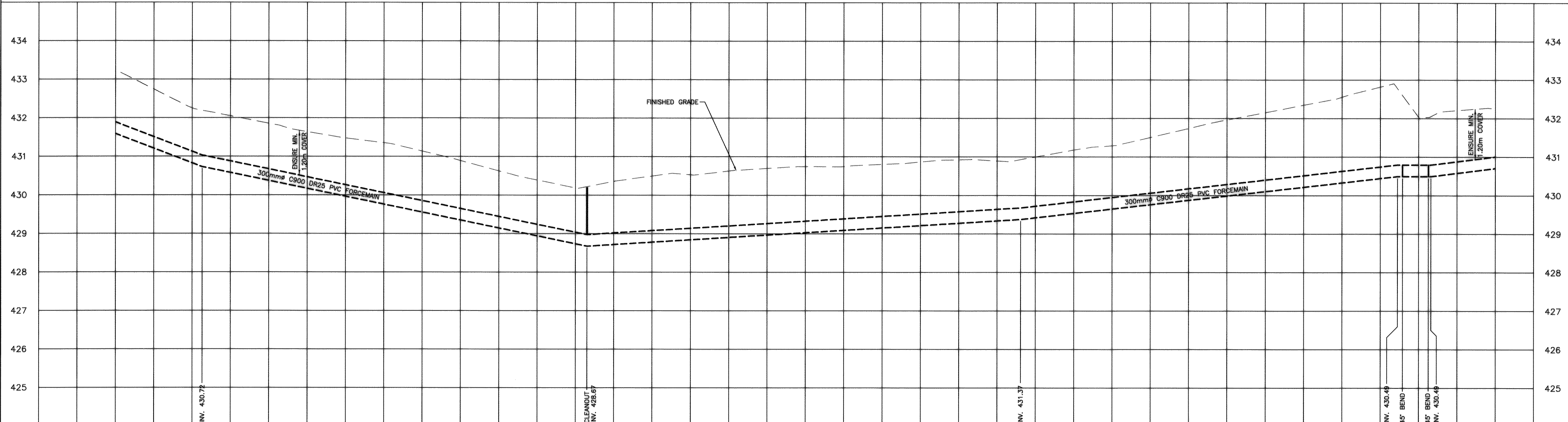
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NOTE:
INSTALLATION AND MAINTENANCE TO BE IN
ACCORDANCE WITH TC E-10 AND APPLICABLE
CSA STANDARDS.

FOR CONTINUATION
SEE DWG. S13

FOR CONTINUATION
SEE DWG. S15

4+820 4+840 4+860 4+880 4+900 4+920 4+940 4+960 4+980 4+990 5+000 5+020 5+040 5+060 5+080 5+100 5+120 5+140 5+160 5+180

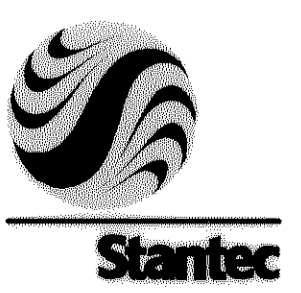
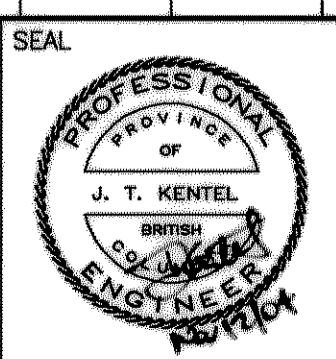


LEGEND	
---	WATER
---	SAN. SEWER
---	STM. SEWER
---	GAS
---	U/G TELEPHONE
---	U/G ELECTRICAL
○	MANHOLE
○	UTILITY POLE
○	POWER POLE
○	LAMP STANDARD
○	CATCH BASIN
○	HYDRANT
○	TREES
○	SURVEY MONUMENT

LEGEND	
▨	PAVE WITH ASPHALT
▩	REMOVE-REGRADE-REPLACE
▧	LEVEL COURSE

NAD 83
INSERTION BASE POINT = 300,000 , 5,500,000

NO.	DATE	BY	REVISION	CH'KD
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5				
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3				
2	04/03/31	RCR	PLAN OF RECORD	JTK
1	03/10/27	RCR	AS PER CNR COMMENTS	JTK

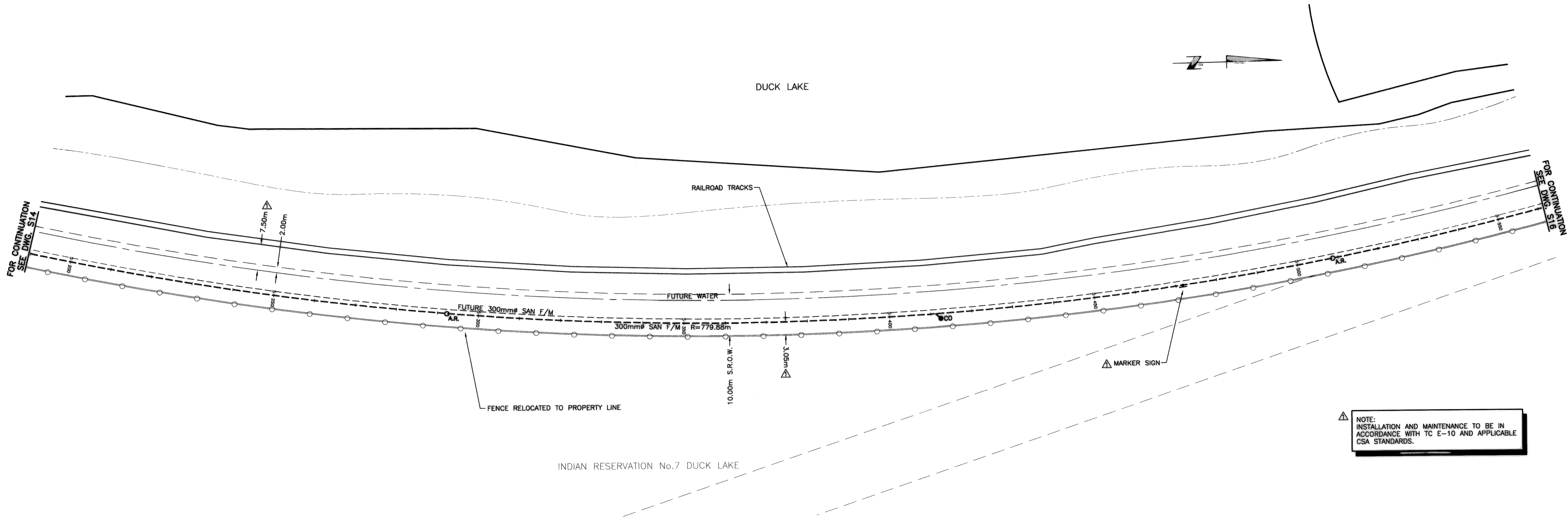


DRAWN	ROR
DESIGN	JTK
APPROVED	
DATE	JULY 2003
SCALE	
	HOR. 1:500
	VERT. 1:50

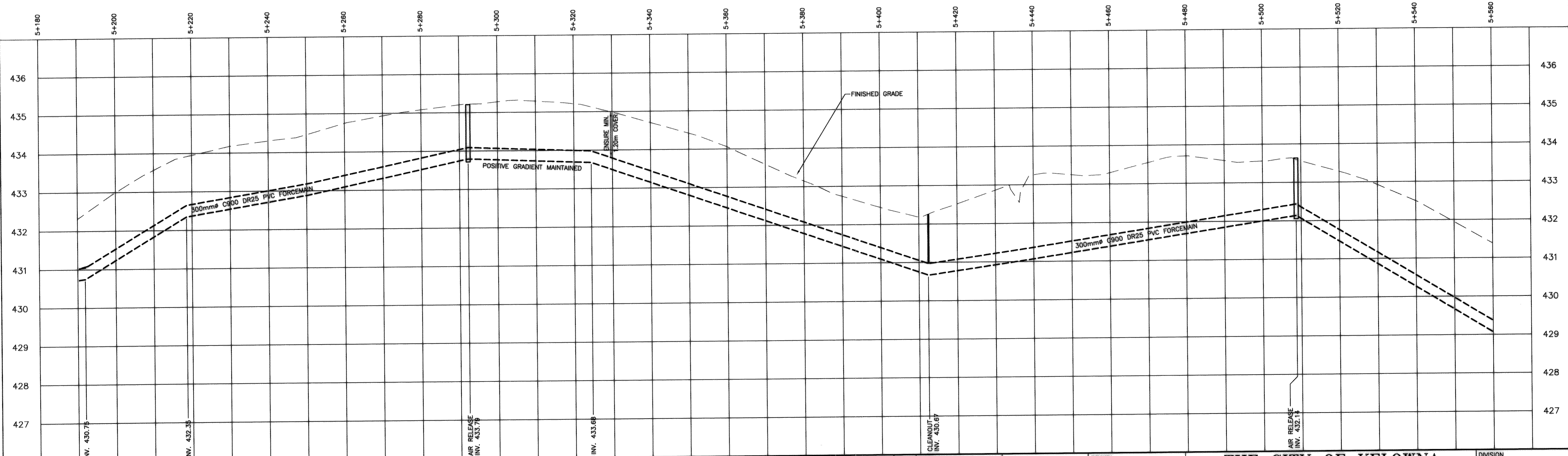
THE CITY OF KELOWNA
ENGINEERING DEPARTMENT

**NORTH END SEWER EXTENSION
SANITARY FORCEMAIN
STN. 4+820 to STN. 5+190**

DIVISION	
1630150	
DRAWING NO.	REV. NO.
S14	2



NOTE:
INSTALLATION AND MAINTENANCE TO BE IN
ACCORDANCE WITH TC E-10 AND APPLICABLE
CSA STANDARDS.



LEGEND		LEGEND	
○	MANHOLE	○	PAVE WITH ASPHALT
●	UTILITY POLE	▨	REMOVE-REGRADE-REPLACE
●	POWER POLE	▧	LEVEL COURSE
□	LAMP STANDARD		
⊕	CATCH BASIN		
⊕	HYDRANT		
⊕	TREES		
⊕	SURVEY MONUMENT		

NAD 83
INSERTION BASE POINT = 300,000 , 5,500,000

NO.	DATE	BY	REVISION
6			
5			
4			
3			
2	04/03/31	RJR	PLAN OF RECORD
1	03/10/27	RJR	AS PER CNR COMMENTS

SEAL

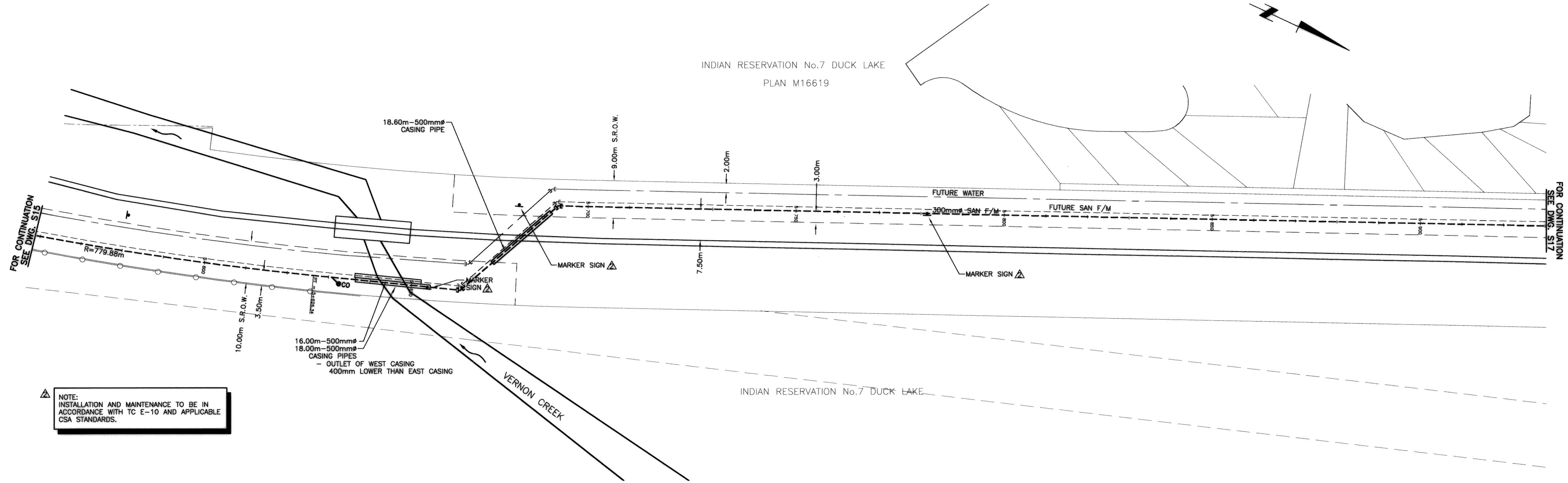
Stantec

DRAWN	RJR
DESIGN	JTK
APPROVED	
DATE	JULY 2003
SCALE	HOR. 1:500 VERT. 1:50

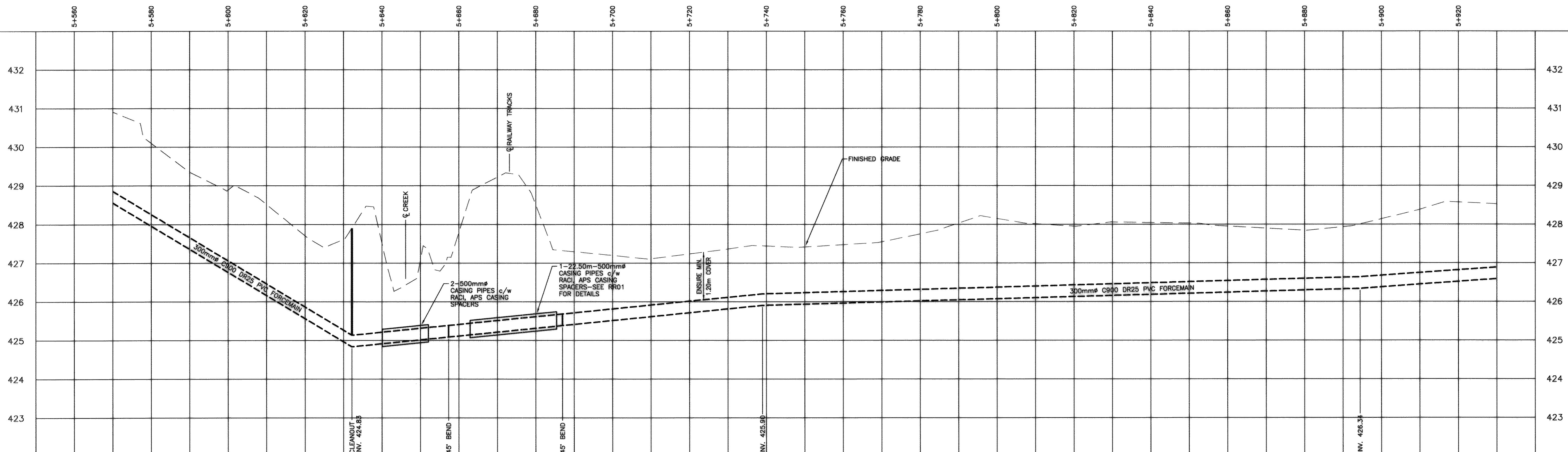
THE CITY OF KELOWNA
ENGINEERING DEPARTMENT
**NORTH END SEWER EXTENSION
SANITARY FORCEMAIN
STN. 5+190 to STN. 5+560**

DIVISION	1630150
DRAWING NO.	S15
REV. NO.	2

INDIAN RESERVATION No.7 DUCK LAKE
PLAN M16619



NOTE:
INSTALLATION AND MAINTENANCE TO BE IN ACCORDANCE WITH TC E-10 AND APPLICABLE CSA STANDARDS.



LEGEND

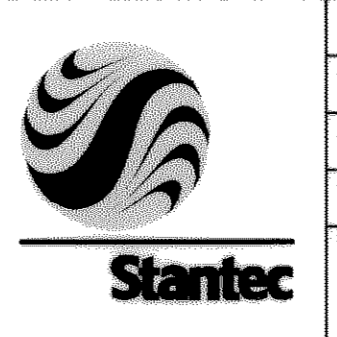
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SAN. SEWER	UTILITY POLE	●
STM. SEWER	POWER POLE	●
GAS	LAMP STANDARD	□
U/G TELEPHONE	CATCH BASIN	⊗
U/G ELECTRICAL	HYDRANT	⊕
	TREES	⊙
	SURVEY MONUMENT	⊙

LEGEND

PAVE WITH ASPHALT	▨
REMOVE-REGRADE-REPLACE	▩
LEVEL COURSE	▧

NAD 83
INSERTION BASE POINT = 300,000 , 5,500,000

NO.	DATE	BY	REVISION	CH'KD
6				
5				
4				
3	04/03/31	RCR	PLAN OF RECORD	JTK
3	03/10/27	RCR	AS PER CNR COMMENTS	JTK
1	03/09/03	RCR	SILT FENCE & NOTES ADDED	JTK



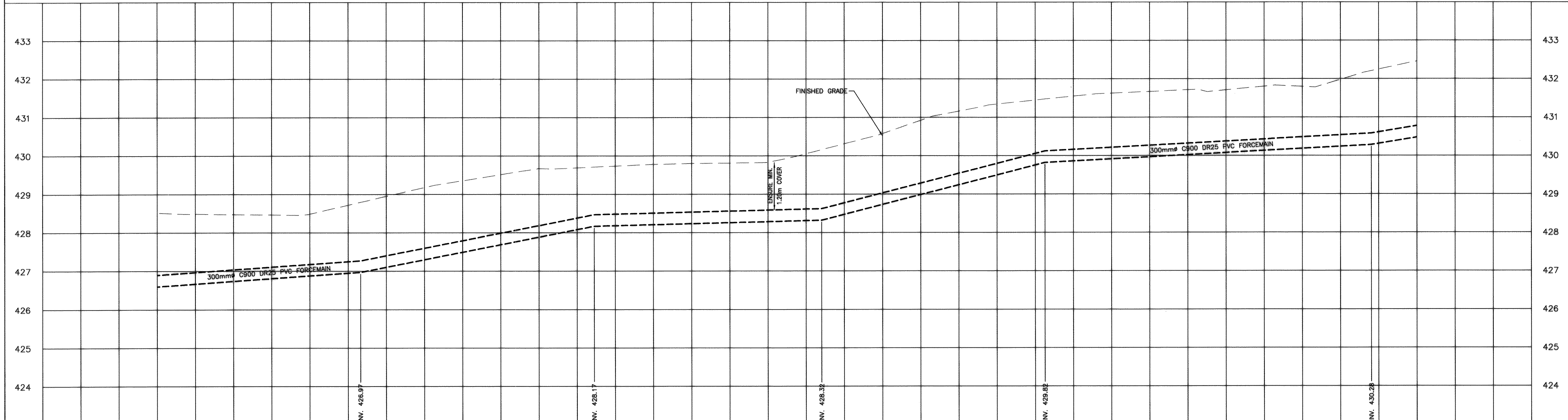
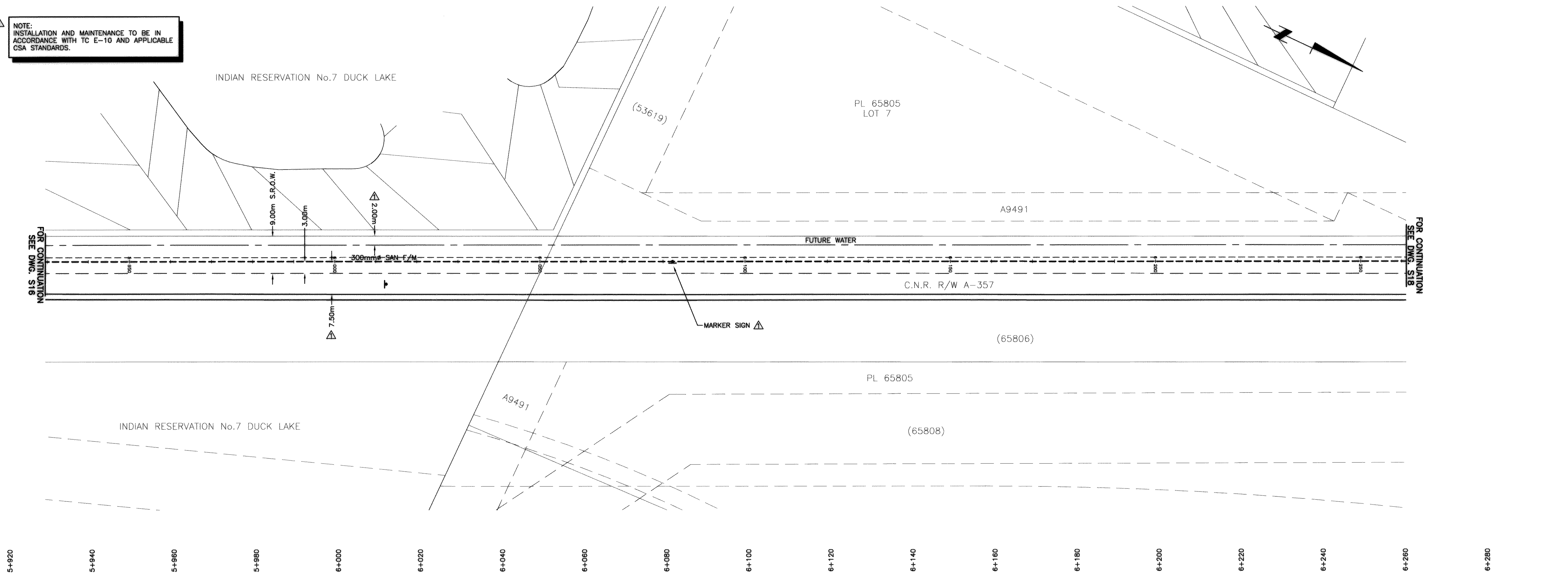
DRAWN	RCR
DESIGN	JTK
APPROVED	
DATE	JULY 2003
SCALE	HOR. 1:500 VERT. 1:50

THE CITY OF KELOWNA
ENGINEERING DEPARTMENT

**NORTH END SEWER EXTENSION
SANITARY FORCEMAIN
STN. 5+560 to STN. 5+930**

DIVISION	1630150
DRAWING NO.	S16
REV. NO.	3

NOTE:
INSTALLATION AND MAINTENANCE TO BE IN ACCORDANCE WITH TC E-10 AND APPLICABLE CSA STANDARDS.



LEGEND

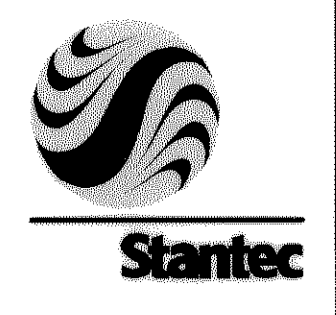
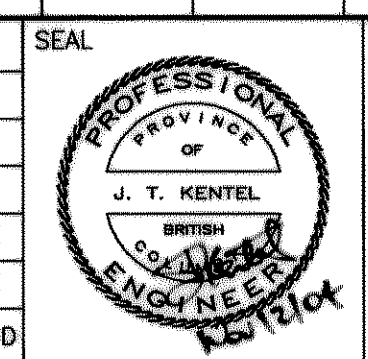
WATER	---	MANHOLE	○
SAN. SEWER	---	UTILITY POLE	●
STM. SEWER	---	POWER POLE	●
GAS	---	LAMP STANDARD	□
U/G TELEPHONE	---	CATCH BASIN	⊗
U/G ELECTRICAL	---	HYDRANT	⊕
		TREES	⊗
		SURVEY MONUMENT	⊙

LEGEND

▨	PAVE WITH ASPHALT
▩	REMOVE-REGRADE-REPLACE
▧	LEVEL COURSE

NAD 83
INSERTION BASE POINT = 300,000 , 5,500,000

NO.	DATE	BY	REVISION
6			
5			
4			
3			
2	04/03/31	RCR	PLAN OF RECORD
1	03/10/27	RCR	AS PER CNR COMMENTS



DRAWN	RCR
DESIGN	JTK
APPROVED	
DATE	JULY 2003
SCALE	HOR. 1:500 VERT. 1:50

THE CITY OF KELOWNA
ENGINEERING DEPARTMENT

**NORTH END SEWER EXTENSION
SANITARY FORCEMAIN
STN. 5+930 to STN. 6+260**

DIVISION	1630150
DRAWING NO.	S17
REV. NO.	2