
CITY OF KELOWNA
MEMORANDUM

Date: March 20, 2008
File No.: 2250-70-85/5600-12
To: City Manager
From: Water & Drainage Manager
Subject: LATECOMER AGREEMENT – UBCO RESERVOIR

RECOMMENDATION

THAT the City enter into the Latecomer Agreement with the Glenmore-Ellison Improvement District, Pier Mac Petroleum Installations Ltd. and The University of British Columbia, as attached to the Report of the Water & Drainage Manager dated March 20, 2008;

AND THAT the Mayor and City Clerk be authorized to execute and affix the corporate seal to this Latecomer Agreement.

BACKGROUND:

The City of Kelowna, Glenmore-Ellison Improvement District, Pier Mac Petroleum and the University of British Columbia entered into an agreement to complete water system extensions within the north end of the City. These water system components included booster station improvements, pipeline and reservoir construction.

The City's interests, as one of the Developer's, included water supply and servicing to the Kelowna International Airport lands, as well as the provision for future servicing to the North Kelowna Industrial Area.

The Glenmore-Ellison Improvement District has required that the Developers pay for the design, construction and installation of certain infrastructure to provide water servicing. A portion of these water servicing components will be excess or extended servicing capacity as contemplated under section 747.2(1) of the *Local Government Act*, and will serve lands other than those of the Developers.

Pursuant to the *Local Government Act*, where an owner of land that is to be subdivided or developed is required to provide excess or extended services by the District, and where the District considers its cost to be provided these services are excessive: then the District can require the services to be paid for by the owner.

However, where the owner is required to pay for these costs, the District is required to:

- (a) determine the proportion of the cost of providing the water facilities that it considers constitutes the excess or extended service;
- (b) determine which part of the excess or extended service that it considers will benefit each of the parcels of land that will be serviced by the excess or extended service; and



- (c) impose as a condition of an owner connecting to or using the excess or extended Service, a charge related to the benefit determined under paragraph (b).

The total amount of the Latecomer agreement is \$331,877.00, and the proportion for each developer is presented in the following table:

Developer	Portion	Amount
City of Kelowna	36.57%	\$107,195.00
Pier Mac	33.08%	\$121,458.00
UBC	30.35%	\$103,224.00
Total	100.00%	\$331,877.00

The Glenmore-Ellison Improvement District will register this Latecomer Agreement along with a Bylaw to allow the District to recover these funds in accordance with the attached Latecomer Agreement. GEID will maintain a complete accounting of the Latecomer credit amounts and will forward payment to the City of Kelowna as the funds are received from the various developers.


 Don Degen
 Water & Drainage Manager

Approved for Inclusion:



Director of Works & Utilities

Attach.



Glenmore-Ellison Improvement District

445 Glenmore Road
Kelowna, BC V1V 1Z6

Email: glenmore.ellison@shaw.ca

Website: www.glenmoreellison.com

Phone: (250) 763-6506

Fax: (250) 763-5688

January 22, 2008

The City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4

Attention: Don Degen

Dear Don:

Re: Latecomer Agreement

Further to our letters of July 3, 2007 and November 8, 2007 and subsequent emails, please advise the status of the Latecomer Agreement for the construction of the UBCO Reservoir.

GEID is unable to collect these funds until this Agreement and subsequent Bylaw are registered with the Ministry of Community Services. As this outstanding agreement pertains to both UBCO and Pier Mac they are also unable to recoup any funds that may be owing to them.

Please contact me if you have any questions or concerns regarding this issue.

Sincerely,

**GLENMORE-ELLISON
IMPROVEMENT DISTRICT**

Nancy Howlett
General Manager

Encl.

RECEIVED
JAN 25 2008
City of Kelowna
Works & Utilities
Department



Glenmore-Ellison Improvement District

445 Glenmore Road
Kelowna, BC V1V 1Z6

Email: glenmore.ellison@shaw.ca

Website: www.glenmoreellison.com

Phone: (250) 763-6506

Fax: (250) 763-5688

July 3, 2007

The City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4

Attention: Don Degen

Dear Don:

Re: Latecomer Agreement

The Glenmore-Ellison Improvement District (GEID) confirms that through the joint agreement and construction of the UBCO Reservoir, the City of Kelowna has accrued Latecomer credits in the amount of \$107,195 with GEID. Attached is the Latecomer Agreement for your review and signature.

Upon receipt of the executed document GEID will register this Agreement along with a Bylaw to allow the District to recover these funds. GEID will maintain a complete accounting of these Latecomer credits and will forward payment to City of Kelowna as received from the various developers.

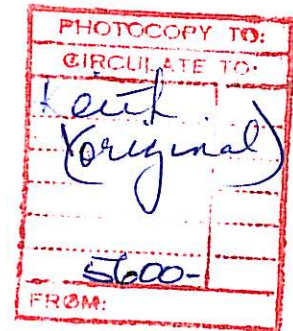
Please contact me if you have any questions or concerns regarding this issue.

Sincerely,

**GLENMORE-ELLISON
IMPROVEMENT DISTRICT**

Nancy Howlett
General Manager

Encl.



GLENMORE-ELLISON IMPROVEMENT DISTRICT

Latecomer Agreement

Latecomer Agreement

THIS AGREEMENT made this day of , 2007.

BETWEEN: Glenmore-Ellison Improvement District
 445 Glenmore Road
 Kelowna, BC, V1V 1Z6
 (the "District");

AND: The City of Kelowna
 1435 Water Street
 Kelowna, BC, V1Y 1J4
 (the "City");

AND: Pier Mac Petroleum Installations Ltd.
 Box 2460, Station R
 Kelowna, BC, V1X 6A5
 ("Pier Mac");

AND: The University Of British Columbia
 3333 University Way
 Kelowna, BC, V1V 1V7
 ("UBC");

WHEREAS:

- A. The City, Pier Mac, and UBC (collectively referred to as the "Developers") propose to subdivide/develop certain lands within the District, more particularly described in Schedule "A" to this Agreement (the "Land");
- B. The District has required that the Developers pay for the design, construction and

installation of certain infrastructure to provide water servicing to the Land, including a reservoir, pipeline and water system, (hereafter referred to as the "Service"). A portion of the Service will be excess or extended servicing capacity as contemplated under section 747.2(1) of the *Local Government Act*, as more particularly set out in Schedule "B" hereto (the Excess Capacity), and will serve land other than the Land;

- C. The District considers that its costs to provide the Excess Capacity in whole or in part are excessive, and has required the Developers, as owners of the Land, to pay the costs of the Excess Capacity;
- D. This Agreement is authorized and contemplated pursuant to section 747.2 of the *Local Government Act*; and
- E. The Board of Trustees of the District has by Latecomer Charge Interest Rate Bylaw No. #101 set the rate of interest referred to in paragraph 5(b).

NOW THEREFORE in consideration of the mutual covenants and agreements made by each of the parties to the other as set out below, and for other valuable consideration, the receipt and sufficiency of which is acknowledged, the District and the Developers covenant and agree as follows:

- 1. The District has caused the Service to be designed, constructed and installed in compliance with the plans and specifications set out as Table B-1 on Schedule "B" attached to this Agreement, to service the proposed subdivision/development of the Land.
- 2. The District acknowledges and agrees that a portion of the Service has been designed with Excess Capacity as more particularly described in Schedule "B".
- 3. The portion of the total cost of providing the Service allocated to the Excess Capacity is the sum of Three Hundred and Thirty One Thousand Eight Hundred Seventy Seven Dollars (\$331,877.00). The Developers have paid the foregoing costs to the District in the following proportions:
 - (a) The City - 36.57 % or \$107,195.00;

- (b) Pier Mac - 33.08% or \$121,458; and
- (c) UBC - 30.35% or \$103,224.

4. The parties agree that for the purposes of this Agreement, a "Qualified Property" means lands within the District's Pressure Zone 515 which:

- (a) obtain a new connection to the District's water system; and
- (b) do not develop and supply their own reservoir capacity;

whether such lands are within Pressure Zone 515 as set out in Schedule "C" attached to this Agreement, or as such pressure zone is revised during the Term (as hereinafter defined).

5. During the Term, the District will, under Section 747.2(4) of the *Local Government Act* impose a Latecomer Charge against each Qualified Property as a condition of an owner using or connecting to the District's water services. The Latecomer Charge will be equal to the aggregate of:

- (a) the unit charge per SFE set out in Schedule "C" attached to this Agreement; and
- (b) interest calculated on such charge at the rate prescribed by Latecomer Charge Interest Rate Bylaw No. #101, being two and one half percent (2.5%), compounded annually, and calculated from October 16, 2006, up to the date that the connection is made or the use commences.

6. The District will pay the Developers any Latecomer Charges collected under paragraph 5 in accordance with the proportions set out in Paragraph 3 of this Agreement at the addresses of the Developers as set forth in this Agreement or at such other address as the Developers may each provide. The District shall only be obligated to pay the Developers pursuant to this Agreement for Latecomer Charges which are payable by an owner of a Qualified Property during the Term, once such Latecomer Charges have been paid to the District by such owner. If the said payments are returned to the District, the District shall hold such funds for one (1) year from the date of such return. If the said funds are not claimed by the respective one of the Developers within such time period, the District shall retain all sums so held for its own use absolutely.


7. No Latecomer Charges under paragraph 5 of this Agreement will be charged beyond a period which commences on October 16, 2006 and terminates on the earlier of:
 - (a) October 15, 2021; or
 - (b) The date on which all Latecomer Charges collected from owners of a Qualified Property equals Three Hundred and Thirty One Thousand Eight Hundred Seventy Seven Dollars (\$331,877.00), and interest calculated on such sum at the rate set out in Paragraph 5(b) of this Agreement;

(the "Term").
8. Wherever the singular or the masculine are used in this Agreement, they shall be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties require.
9. In the event of any assignment or transfer of the rights of the Developers under this Agreement, or any of them, voluntarily, involuntarily or by operation of law, the District shall pay any benefits accruing hereunder, after notice, to such successor of each of the Developers as the General Manager of the District, in their sole judgment, deems entitled to such benefits; and in the event that conflicting demands are made upon the District for benefits accruing under this Agreement, then the District may, at its option, commence an action in interpleader, joining any other party claiming rights under this Agreement, or other parties which the District believes to be necessary or proper, and the District's liability therefore shall be fully extinguished upon paying the person or persons whom any court having jurisdiction of such interpleader action shall determine. In such action the District shall be entitled to recover its reasonable legal fees and costs, which fees and costs shall constitute a lien upon all funds accrued or accruing pursuant to this Agreement.
10. The District acknowledges its statutory duty pursuant to Section 747.2(4) of the *Local Government Act* and will use its commercially reasonable efforts to collect the Latecomer Charges, provided that, if after using its commercially reasonable efforts to collect the Latecomer Charges the District cannot collect such charges, the District shall not be liable to the Developers for such Latecomer Charges.

11. Subject to the District's contractual obligation to the Developers as provided herein, nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the District in the exercise of its functions under any letters patent, statute, by-law, order and regulation.
12. This Agreement shall constitute the entire agreement between these parties in regards to the collection and reimbursement of Latecomer Charges and shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors and successors and permitted assignees.
13. The headings in this Agreement are inserted for convenience only and shall not be construed as part of this Agreement for the purpose of interpretation.
14. Time is of the essence of this Agreement.

IN WITNESS WHEREOF the parties have signed and sealed this Agreement on the day it was made.

THE CORPORATE SEAL of
The Glenmore-Ellison Improvement District
Was affixed in the present of:



LINDA O'NEIL - ADMINISTRATIVE TREASURER



JOE BULLACH - CHAIRMAN OF BOARD

THE CORPORATE SEAL of
The City of Kelowna
Was affixed in the presence of:

THE CORPORATE SEAL of
Pier Mac Petroleum Installations Ltd.
Was affixed in the presence of:

THE CORPORATE SEAL of
The University Of British Columbia
Was affixed in the presence of:

SCHEDULE "A"

THE LAND TO BE SUBDIVIDED OR DEVELOPED

Location of Lands

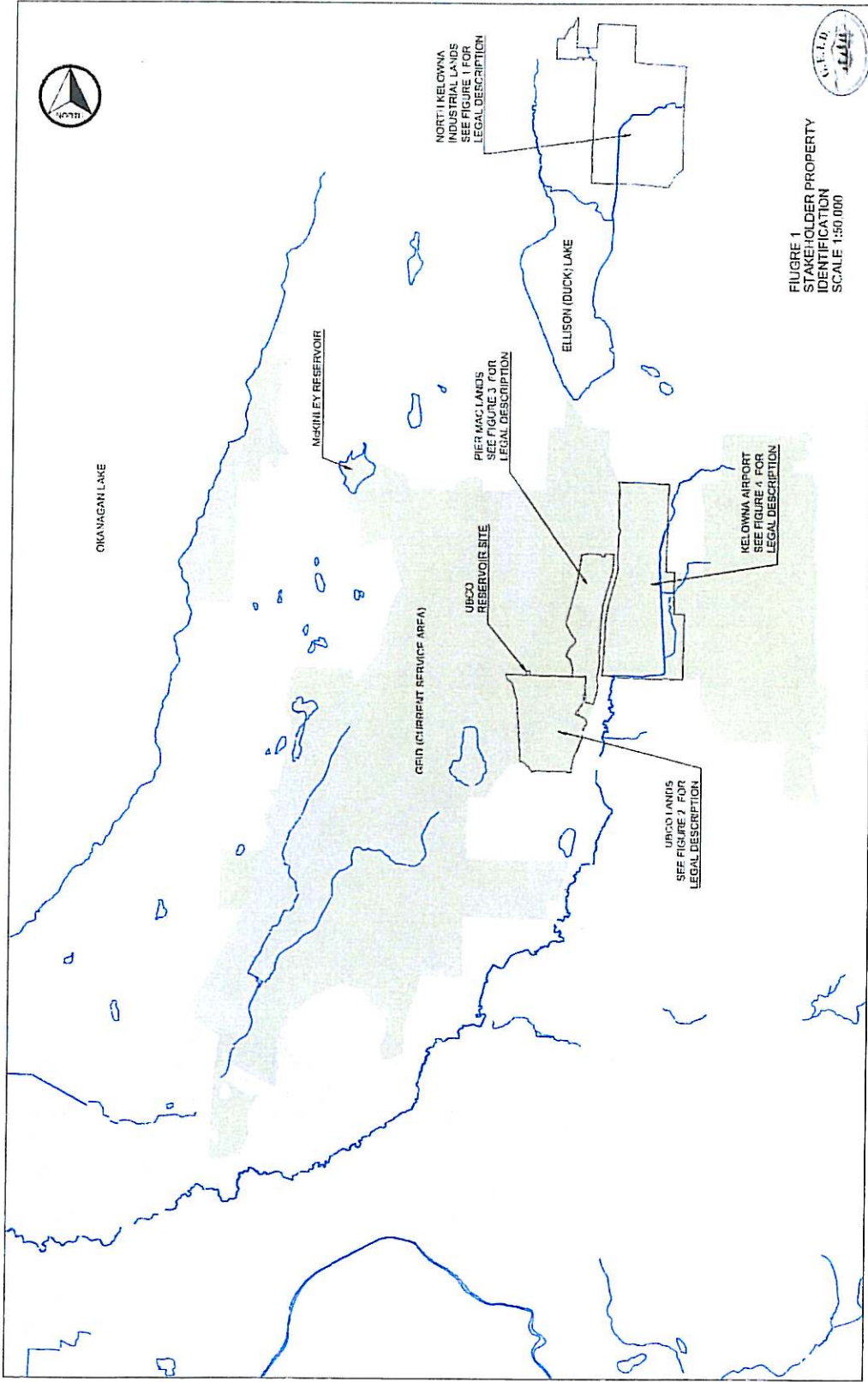
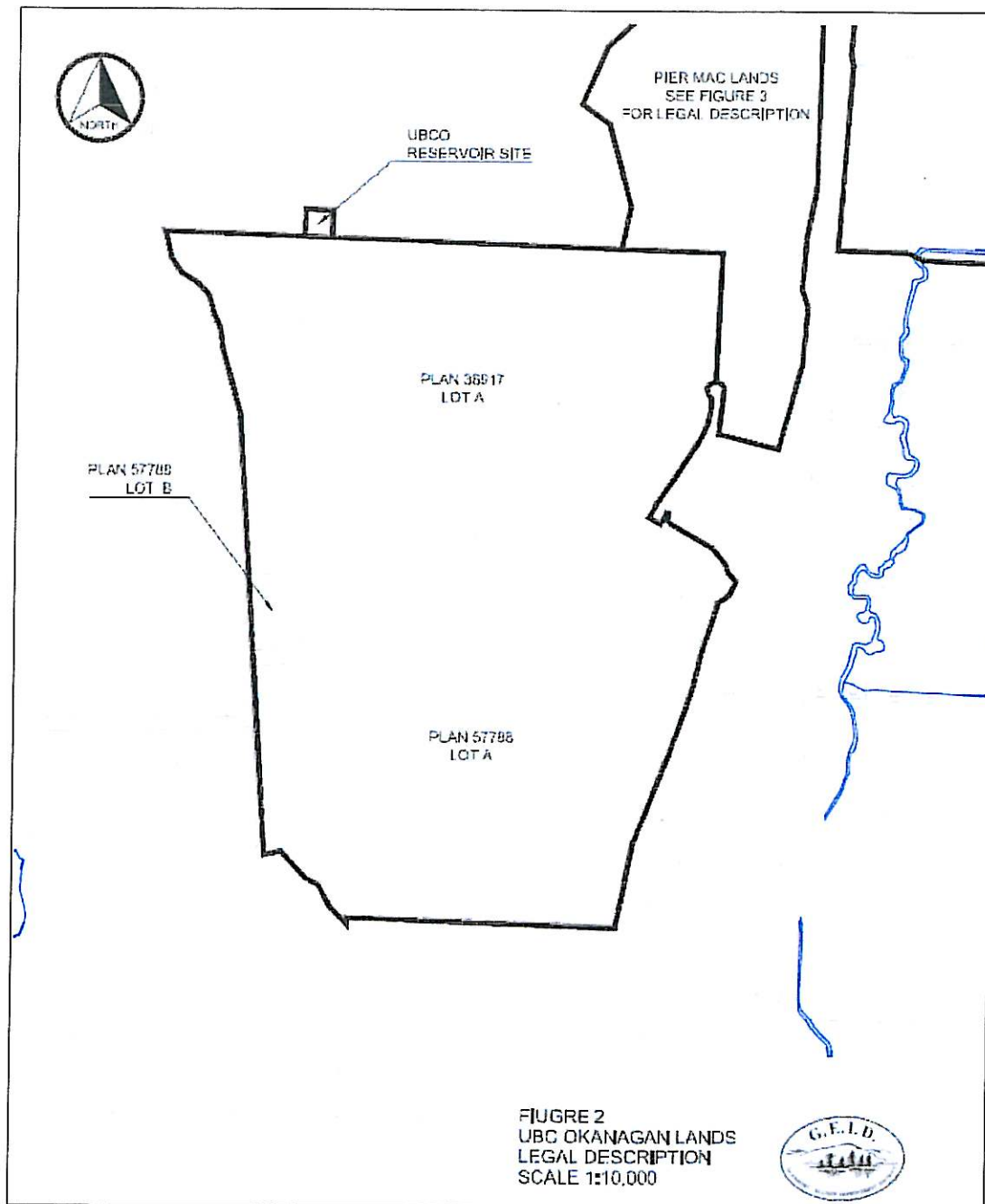
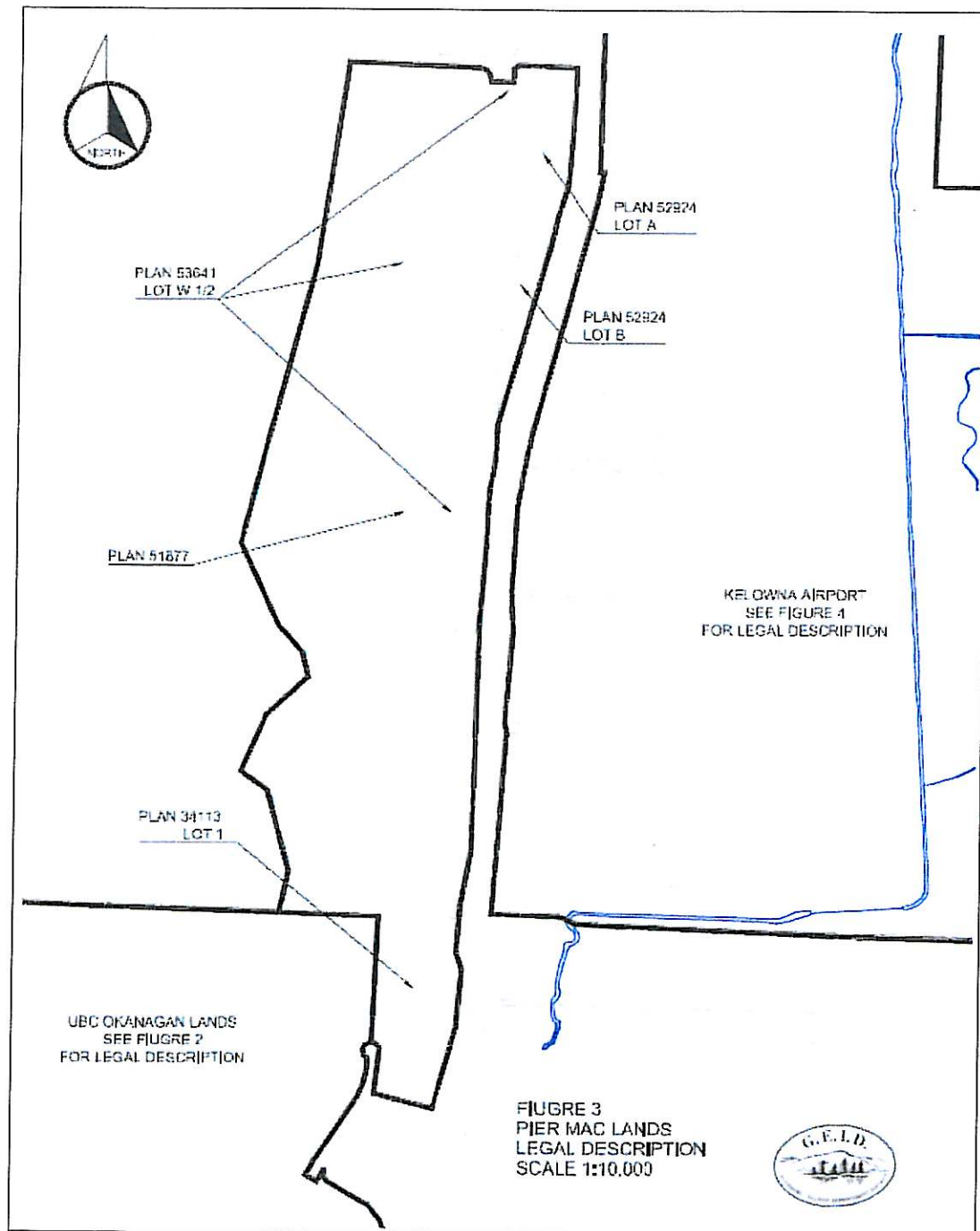


FIGURE 1
STAKEHOLDER PROPERTY
IDENTIFICATION
SCALE 1:50 000

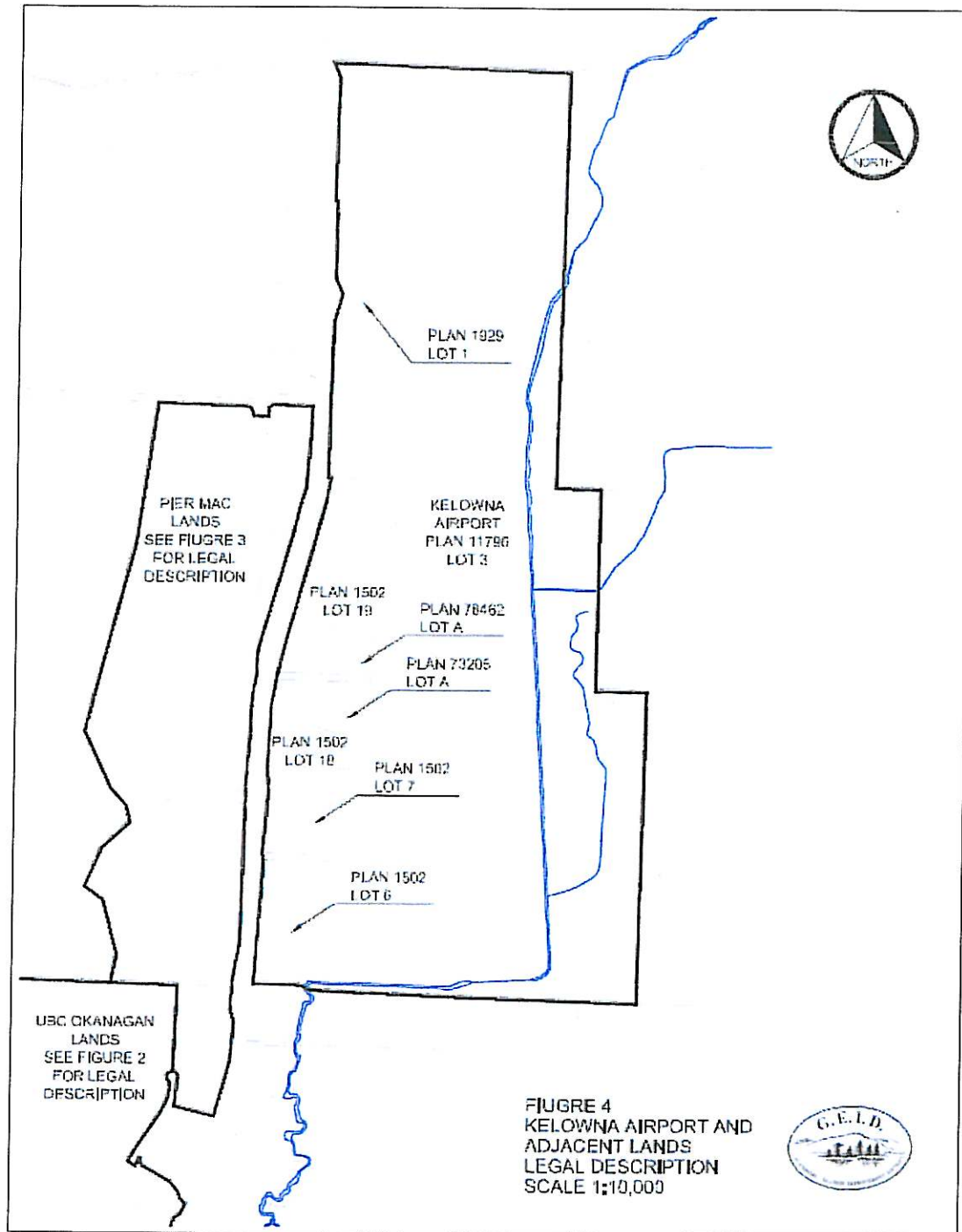
University Of British Columbia – Okanagan lands



Pier Mac Petroleum Installations Ltd. Lands



The City of Kelowna, Kelowna Airport Lands



The UBC O Reservoir is an in-ground concrete reservoir consists of two - 3,000 cubic metre cells for water storage. There is room for future additional expansion of a third 3,000 cubic meter storage cell. Of the total currently available volume of 6,000 cubic meters, 706 cubic metres was constructed over and above the volumes that were required by the developers. This 706 m³ portion of the total volume and total cost is considered to be Excess Capacity.

Schedule B
Latecomers Agreement
UBCO Reservoir

Table B-1 provides a cost summary table of the total reservoir cost, balancing and fire components and apportionment of responsibility of the developers.

The bottom line of Table B-1 sets out the maximum potential monies that can be recovered by each of the developers through this Latecomers Agreement.

Table B-1 - Reservoir Cost Summary (at project completion)

#	PROJECT COMPONENT	Total Component	Available	Total Paid			
		Cost	Latecomers	NKIL	KIA	UBCO	Pier Mac
1	UBCO Reservoir Contract B, Pier Mac	\$ 1,752,057	\$ 214,402	\$ 98,407	\$ 542,272	\$ 531,921	\$ 579,457
2	UBCO Reservoir Contract A, City	\$ 874,048	\$ 106,959	\$ 49,092	\$ 270,523	\$ 265,359	\$ 289,074
3	UBCO Reservoir Engineering	\$ 85,938	\$ 10,516	\$ 4,827	\$ 26,598	\$ 26,091	\$ 28,422
4	GEID Admin Costs	\$ 108,439		\$ 6,091	\$ 33,562	\$ 32,922	\$ 35,864
AVAILABLE CEC CREDITS (GST excl.)		\$ 2,820,483	\$ 331,877	\$ 158,417	\$ 872,956	\$ 856,293	\$ 932,817
Percentages			100%		32.30%	31.10%	36.60%
Volumes			706		228.03	219.59	258.38
LATECOMERS TOTAL (RESERVOIR ONLY)			\$ 331,877	\$ -	\$ (107,195)	\$ (103,224)	\$ (121,458)

SCHEDULE "C"

CHARGES PRESCRIBED FOR EACH BENEFITING PARCEL

1 Parcels that will Benefit from Excess Capacity

Only future development located within the GEID service pressure zone PZ 515 will benefit from the Excess Capacity of the reservoir in the form of balancing storage. Balancing storage in the amount of 706 cubic meters is available for servicing future development.

Future development is dependant on there being sufficient balancing storage in place. The charge per single family equivalent development unit is issued at a rate of \$470.08 per cubic meter of storage utilized. In accordance with GEID servicing guidelines and the City of Kelowna subdivision bylaw, the volume of balancing storage per Single family Equivalent (SFE) development unit is 2.25 m^3 (including the 25% emergency storage component). This works out to a unit charge per SFE of \$1,057.68.

The area designated as pressure zone PZ 515 is illustrated of FigureC-1.

