

Memo



Date: March 16, 2011
File: 0912-20-279-001
To: City Manager
From: Manager, Real Estate Services
Subject: Lease and Licence - RCMP Communications Tower (2501 Selkirk Drive)
Report Prepared by: J. Grant, Property Officer Specialist

Recommendation:

THAT Council approve the City entering into a lease and licence between the City of Kelowna and the Her Majesty the Queen, in right of Canada, as represented by the Minister responsible for the Royal Canadian Mounted Police for a twenty (20) year term commencing January 1st, 2011, as per the terms and conditions outlined in the Agreement to Grant Lease and Licence dated March 31st, 2011 attached to the Report of the Manager, Real Estate Services dated March 16, 2011;

AND THAT Council approve a Statutory Right of Way, in the City's standard format, over Lot A, Plan 31716 to Fortis Inc., to accommodate the proposed communications tower's electrical service to the leased area;

AND FURTHER THAT the Mayor and City Clerk be authorized to execute the Agreement to Grant Lease and Licence.

Purpose:

To enter into a 20-year lease with the Royal Canadian Mounted Police ("RCMP") for a communications tower and shelter building on Dilworth Mountain.

Background:

The City acquired 2501 Selkirk Drive through a Land Use Contact agreement for the Dilworth Mountain Development. This property is occupied by a water reservoir and a fire department communications tower, both of which are operated by the City of Kelowna.

The Agreement to Grant Lease and Licence to the RCMP is being granted in exchange for the RCMP installing the City's Traffic Transmitters at their cost. The lease agreement also includes a licence to use the existing City access road, to access the tower site.

The RCMP will be installing an electrical service to the lease area, once the proposed route is determined.

The proposed lease meets with the City's leasing practice and does not contradict any legal or statutory requirements.

A handwritten signature in black ink, appearing to be the initials "R" or "N".

Internal Circulation:

Manager, Parks & Public Places
Manager, Risk Management
Director, Design & Construction Services

Legal/Statutory Authority:

Section 26(3) of the Community Charter

Legal/Statutory Procedural Requirements:

Disposition must be published in a weekly newspaper for two (2) consecutive weeks and posted on the public notice posting place

Considerations not applicable to this report:

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

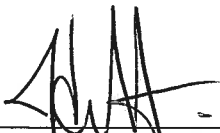
External Agency/Public Comments:

Community & Media Relations Comments:

Alternate Recommendation:

In light of the above, the Real Estate Services branch of the Real Estate & Building Services department request Council's support of this lease.

Submitted by:



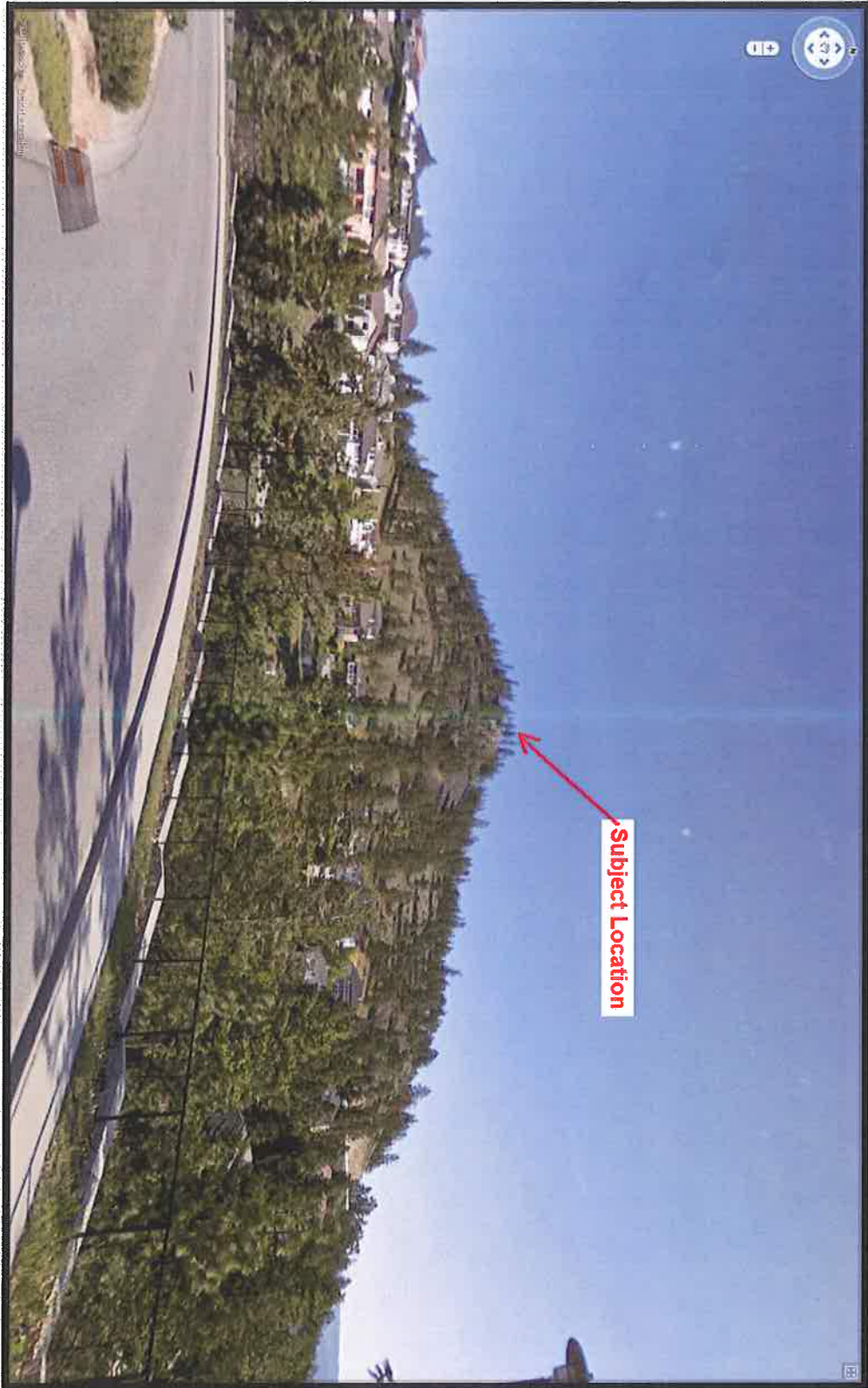
Jordan Hettinga
Manager, Real Estate Services

Approved for inclusion:



Doug Gilchrist, Director, Real Estate & Building Services

cc: Director, Financial Services
Manager, Parks & Public Places
Manager, Risk Management





AGREEMENT TO GRANT LEASE AND LICENCE

BETWEEN: THE CITY OF KELOWNA
1435 Water Street
Kelowna, BC V1Y 1J4

(the "Owners")

AND: HER MAJESTY THE QUEEN, IN RIGHT OF CANADA
as represented by the Minister responsible for the ROYAL CANADIAN MOUNTED POLICE
657 West 37th Avenue,
Vancouver, BC
V5Z 1K6

(the "RCMP")

WHEREAS:

- A. The Owners are the registered owners of lands located at 2501 Selkirk Drive and more particularly described as:
- PID: 003-613-275
Lot A Sections 28 & 33, Township 26, Osoyoos Division Yale District, Plan 31716 except Plans 33462, 39791, 40570, 42232, 42525, 43480, KAP46337, KAP48179, KAP57037, KAP50742, KAP50743, KAP60291, KAP67806, KAP72143, KAP72643, KAP74074, KAP74435, KAP76874, KAP78448, KAP81236, KAP83469, and KAP88030
(the "Lands")
- B. The RCMP wishes to construct a communication tower and shelter building on a portion of the Lands (the "Works") and wishes to obtain a lease over a portion of the Lands for construction and related works (the "Lease");
- C. During and after construction of the Works, the RCMP wishes to obtain a licence over a portion of the Lands for access to and from the Works and Lease area (the "Licence");
- D. The Owners wish to have transmitters installed on the Works (the "Owners' Transmitters"). The RCMP wish to install the Owners' Transmitters at their cost in return for the City granting both the Lease and Licence to the RCMP for \$1.00;
- E. This is an agreement between the Owners and the RCMP on granting of the Lease and Licence to the RCMP and installation of the Owners' Transmitters by the RCMP.

NOW THEREFORE the Owners and the RCMP agree as follows:

1. The Owners agree to execute and deliver to the RCMP a Lease and Licence Agreement (the "Lease Agreement") substantially in the form annexed hereto as "Schedule C" in consideration of the RCMP providing and installing the Owners' transmitters on the Works at no cost to the City.
2. The Lease area is 46.5 square metres, located as shown outlined in bold dark-blue line on the plan attached as "Schedule A".
3. The Licence area is 2586.5 square metres, located as shown outlined in bold black line, highlighted in yellow and labelled as "Parcel B" on the plan attached as "Schedule B".

- 4. The Owners will deliver the fully executed Lease and the Agreement to Grant Lease and Licence to the RCMP. As soon as possible after receipt of the above noted documents from the Owners as practicable, the RCMP will present the Lease for registration in the Land Title Office.
- 5. The RCMP will be responsible for all registration costs and project related costs.
- 6. Subject to Council approval as outlined in Clause 7, permission is hereby granted to the RCMP, its agents and contractors to enter the Lands for the purpose of surveying and engineering the Works.
- 7. This agreement is subject to the approval of City of Kelowna Council.
- 8. This agreement will be void unless signed by all of the parties by 4:00 PM on the 31 day of MARCH, 2011.

IN WITNESS WHEREOF the parties have executed this agreement this _____ day of _____, 2011.

Signature of Witness

Signature of the Owners - City of Kelowna Authorized Signatories:

(as to both signatures)

Per: _____

Name: _____

Print Name

Per: _____

Name: _____

Signature of Witness

RCMP Authorized Signatories

Armida Ting
(as to both signatures)

Per: Irene Win

Armida Ting
Procurement Specialist
Procurement & Contracting
Pacific Region

Name: IRENE WIN

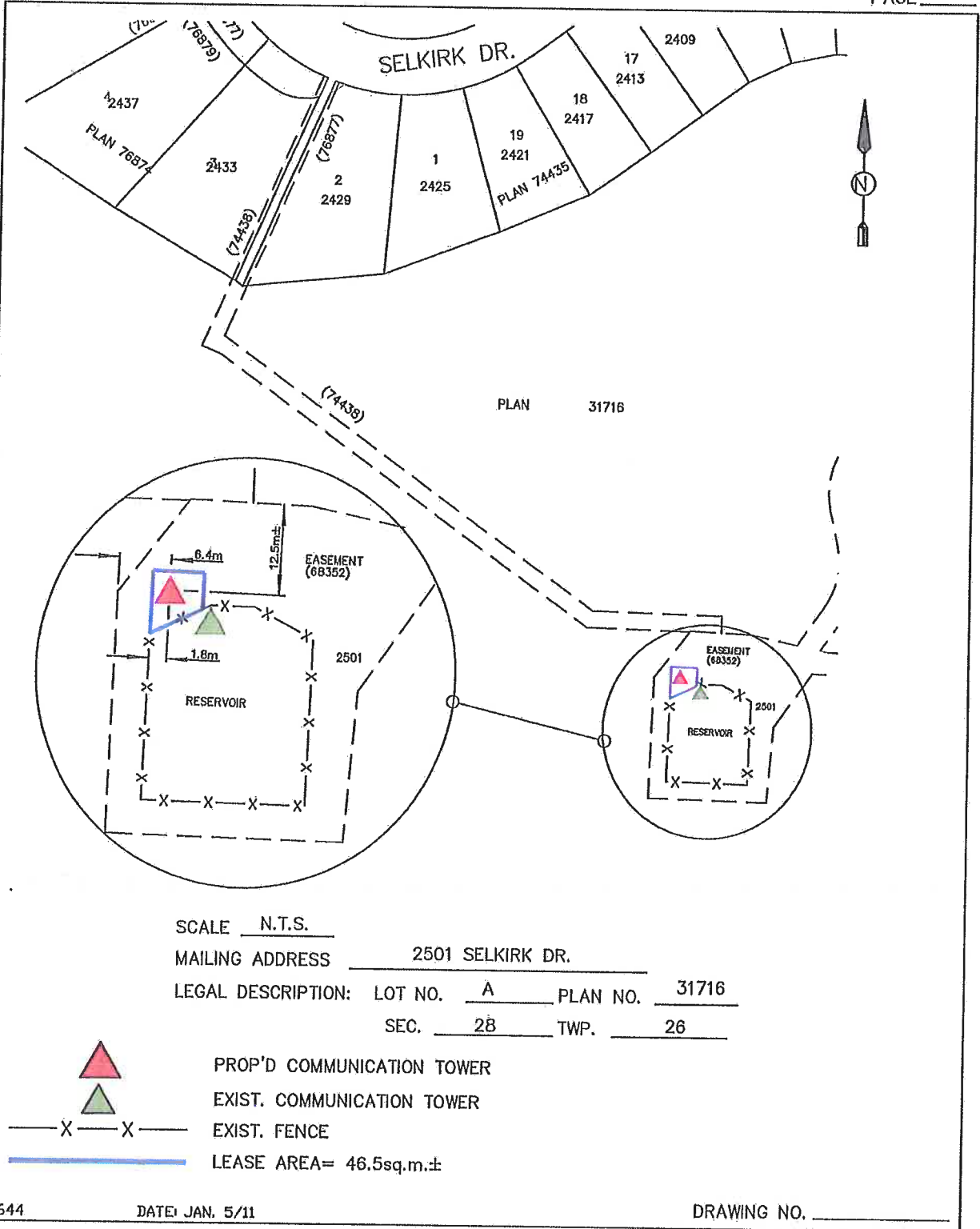
Regional Director
Assets and Procurement, Pacific Region

Print Name

Per: _____

Name: _____

SCHEDULE A



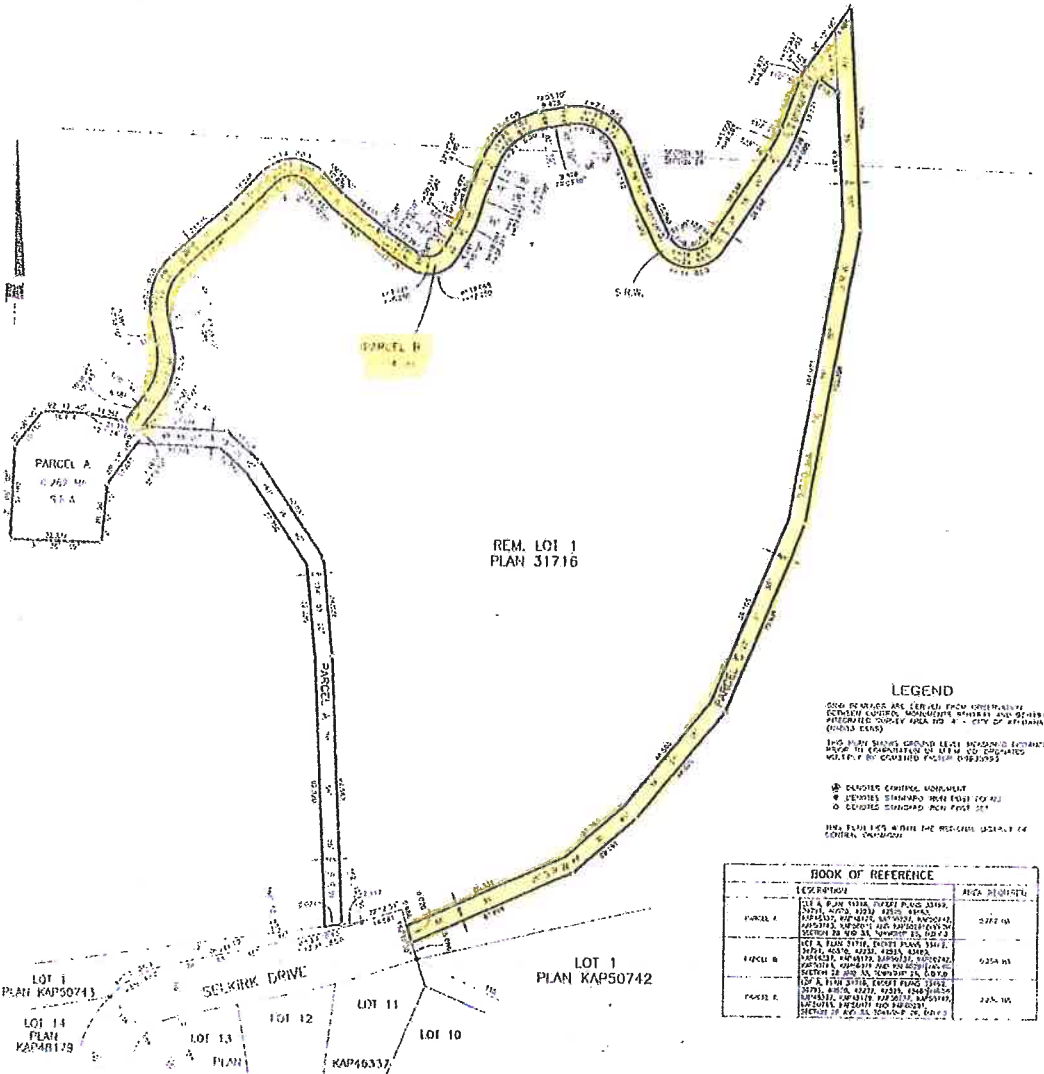
HEREINAFTER CALLED THE "PREMISES"

SCHEDULE B

PLAN OF STATUTORY RIGHT OF WAY FOR UTILITY AND ACCESS PURPOSES OVER LOT A. PLAN 31716, EXCEPT PLANS 33462, 39791, 40570, 42232, 42525, 43480, KAP46337, KAP48179, KAP50737, KAP50742, KAP50743, KAP56071 AND KAP60291, SECTION 28 AND 33, TOWNSHIP 26, O.D.Y.D.

PLAN KAP 48152
REGISTERED AS THE PLAN OF THE SURVEY OF PARCELS IN
BOOK OF REFERENCE

O.C.G.S. 82L.093
SCALE: 1:750 METRES



LEGEND
 SING. PARCELS ARE DENOTED BY BOUNDARIES OF
 EITHER COURSE, MONUMENTS, BEARINGS AND DISTANCES
 REFERRED TO IN THE PLAN OF THE SURVEY (O.D.Y.D.)
 THIS PLAN BEING A STATUTORY RIGHT OF WAY FOR UTILITY AND ACCESS
 PURPOSES OVER LOT A. PLAN 31716, EXCEPT PLANS 33462,
 39791, 40570, 42232, 42525, 43480, KAP46337, KAP48179,
 KAP50737, KAP50742, KAP50743, KAP56071 AND KAP60291,
 SECTION 28 AND 33, TOWNSHIP 26, O.D.Y.D.
 * DENOTES CORNER MONUMENT
 * DENOTES STANDARD BEARING TO NE
 * DENOTES STANDARD BEARING TO S
 THE PLAN IS IN THE RECORDS OF THE
 O.D.Y.D.

BOOK OF REFERENCE		
DESCRIPTION	AREA (SQ. METRES)	AREA (ACRES)
PARCEL A LOT A. PLAN 31716, EXCEPT PLANS 33462, 39791, 40570, 42232, 42525, 43480, KAP46337, KAP48179, KAP50737, KAP50742, KAP50743, KAP56071 AND KAP60291, SECTION 28 AND 33, TOWNSHIP 26, O.D.Y.D.	2772.00	0.685
PARCEL B LOT B. PLAN 31716, EXCEPT PLANS 33462, 39791, 40570, 42232, 42525, 43480, KAP46337, KAP48179, KAP50737, KAP50742, KAP50743, KAP56071 AND KAP60291, SECTION 28 AND 33, TOWNSHIP 26, O.D.Y.D.	6254.00	1.550
PARCEL C LOT C. PLAN 31716, EXCEPT PLANS 33462, 39791, 40570, 42232, 42525, 43480, KAP46337, KAP48179, KAP50737, KAP50742, KAP50743, KAP56071 AND KAP60291, SECTION 28 AND 33, TOWNSHIP 26, O.D.Y.D.	226.00	0.056

I, THOMAS B. FERGUSON & BRUNSON CO. SURV.
 LAND SURVEYORS OF THE CITY OF REGINA, AS
 SURVEYORS, HEREBY CERTIFY THAT I AM
 THE SURVEYOR WHO HAS SURVEYED
 THE SURVEY REPRESENTED BY THIS PLAN, AND
 THAT THE BEARINGS AND DISTANCES SHOWN
 THEREON ARE CORRECT AND ACCURATE
 ACCORDING TO THE BEST OF MY KNOWLEDGE
 AND BELIEF.

D. Ferguson
 T.B. Ferguson Land Surveying Ltd.
 P.O. BOX 1000, REGINA, SASK. S4P 1A2
 TEL: (306) 342-1111
 FAX: (306) 342-1112

JOB NO. 14524

(HEREINAFTER CALLED THE "LICENCE AREA")

SCHEDULE C

DOCUMENT APPROVAL			
Document No. @			
Cir.	Department	Date	Init.
	Risk Manager		
	REBS		

THIS AGREEMENT made the _____ day of _____

BETWEEN:

CITY OF KELOWNA, a municipal corporation having its offices at 1435 Water Street, in the City of Kelowna, in the Province of British Columbia

(hereinafter called the "City")

OF THE FIRST PART,

AND:

HER MAJESTY THE QUEEN, IN RIGHT OF CANADA, as represented by the Minister responsible for the ROYAL CANADIAN MOUNTED POLICE
657 West 37th Avenue,
Vancouver, BC
V5Z 1K6

(hereinafter called the "Tenant")

OF THE SECOND PART,

WITNESSETH that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant, to be paid, observed and performed, the City hereby demises and leases unto the Tenant the premises hereinafter described all on the terms, conditions and covenants as hereinafter set forth for the purpose of a communications tower and shelter building.

The City furthermore grants a license (the "License") to the Tenant to use the paved access road and parking area outlined in bold black, highlighted in yellow and labelled as Parcel B on survey plan KAP68352 a reduced copy of which is attached as Schedule B, for the purpose of access to and from the Premises (the "Licence Area").

- 1.01 THE PREMISES. The Premises and Licence Area hereby leased comprise that portion of property shown outlined in bold blue and labelled as as "lease area" on the sketch plan attached as Schedule "A"; the said portion of property is hereinafter referred to as the "Premises".
- 2.01 TERM OF THE LEASE. TO HAVE AND TO HOLD the said Premises for Twenty (20) years from the 1 day of January, 2011 to and including the 31 of December, 2030 A.D.
- 3.01 RENT. YIELDING AND PAYING to the City rental for the Premises, the sum of one dollar (\$1.00) .

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- 4.00 TENANT'S COVENANTS. The Tenant covenants with the City:
- 4.01 RENT. To pay rent.
- 4.02 TAXES. That it will pay promptly as the same becomes due all rates, taxes, property taxes and assessments, of whatsoever description, that may at any time during the existence of this Agreement be lawfully imposed, or become due and payable upon, or in respect of the business of the Tenant, the said leased premises and the operations of the Tenant hereunder, or any part thereof.
- 4.03 BUSINESS LICENCES AND PERMITS. That it will procure and maintain, at the cost and expense of the Tenant, such licences, permits or approvals from any Federal, Provincial, Municipal or other Government authorities, including water permits and/or licences required in connection with the business of operating a communication tower, and such private permits as may be necessary in respect of the business of the Tenant, the said leased premises and the operations of the Tenant hereunder, or any part thereof. The tenant further agrees that it will construct and maintain the communication tower in compliance with the requirements of Industry Canada and the Canada Safety Standards section "CSA-S37".
- 4.04 ALL UTILITIES. That it will pay promptly as the same becomes due all utility rates, charges and assessment, of whatsoever description, that may at any time during the existence of this Agreement be lawfully imposed, or become due and payable, upon, or in respect of the business of the Tenant, the said leased premises and the operations of the Tenant hereunder, or any part thereof.
- 5.00 INSURANCE. The Tenant agrees to carry all insurance or other means of protection necessary, including self-funded insurance, to cover the terms of this Agreement.

LIABILITY INSURANCE. Liability coverage for the Tenant is provided by the Government of Canada in accordance with the "*Crown Liability and Proceedings Act*".

PROPERTY INSURANCE. The Tenant agrees that the Tenant shall be responsible to carry insurance or other means of protection necessary, including self-funded insurance to cover the communications tower and shelter building at full replacement value of the portion occupied by the Tenant against loss from physical damage including fire.

AUTOMOTIVE INSURANCE. The Tenant both agree to carry all insurance or other means of protection necessary, including self-funded insurance, to cover the licence and insure for business purposes to a minimum of Two Million Dollars (\$2,000,000.00) public liability and property damage, all automotive equipment used by the Tenant in the conduct of the business provided for in this agreement:

- 6.00 HYDRO-SEEDING. To hydro-seed any disturbed land with a native grass mix to reduce the proliferation of noxious weeds.
- 6.02 AS BUILT DRAWINGS. To provide the City with record drawings that indicate what utilities were installed as well as the location of those utilities both vertical and horizontal.
- 6.03 ACCESS ROAD MAINTENANCE AND SNOW CLEARING. To maintain the access road and to conduct snow clearing of the access road within the Licence Area, to the standards deemed necessary by the Tenant over & above the City's intermittent maintenance level as described in clauses 6.02 & 6.03.

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- 6.04 CITY USE OF COMMUNICATIONS TOWER. The Tenant agrees that the City will be permitted to install and use antennas on the communications tower and equipment within the shelter building, subject to the mutual satisfaction of the Tenant and City.
- 7.00 CITY'S COVENANTS. The City covenants with the Tenant:
- 7.01 QUIET ENJOYMENT. For quiet enjoyment of the Premises.
- 7.02 ACCESS ROAD MAINTENANCE. to maintain the access road within the Licence Area to the standards deemed necessary by the City, at the City's sole discretion, to access the property for the City's needs.
- 7.03 ACCESS ROAD SNOW CLEARING. To conduct, on an intermittent basis, snow clearing of the access road within the Licence Area, to the standards deemed necessary by the City, at the City's sole discretion, to access for the City's needs.
- 7.04 RADIO OPERATIONS.
- (a) The City agrees to eliminate any interference caused by the installation and operation of the City's radio equipment and that no expense will accrue to the Tenant by reason of such installation and operation of the radio equipment. Without limiting the generality of the foregoing, the City shall, at its own expense, use all possible means and/or precautions to mitigate and if possible, to prevent physical or electromagnetic interference between its installations and those of the Tenant and/or any other person now or hereafter or from time to time contracted upon the Licensed Area.
- (b) In the event that such ways, means and/or precautions are insufficient, in the opinion of the Tenant, to eliminate or sufficiently reduce the interference of the City's installations, the City shall, at its own risk and expense, and within thirty (30) days of a notice in writing to do so sent by the Tenant to the City, remove from the Licensed Area all such installations or parts thereof, which, in the opinion of the Tenant cause such interference.
- (c) The said radio equipment shall at all times remain the property of the City and the Tenant shall not become liable to the City for loss and/or damage to such radio equipment unless such loss or damage is due to the negligence of an employee of the Tenant or any person working under the direction or request of an employee of the Tenant.
- (c) The City shall, at its own risk and expense, obtain and keep in force all necessary licences and permits of any competent authority having jurisdiction respecting the installation of the radio equipment as herein contemplated, and shall comply in all respects with all rules, regulations and/or statutes now or hereafter enforced and affecting the installation of such radio equipment.
- 8.00 PROVIDED ALWAYS AND IT IS HEREBY AGREED AS FOLLOWS:
- 8.01 PROVISO FOR RE-ENTRY ON DEFAULT. If and whenever the rent is not paid in full when due or in case of breach of, or non-observance or non-performance by the Tenant of any of the provisions of this Agreement, and if the default continues for TEN (10) days after written notice thereof to the Tenant, or if the Premises are vacated or remain unoccupied for TEN (10) days or if the term shall be taken in execution or attachment for any cause whatever, then, in every such case, the City, in addition to any other remedy now or hereafter provided by law may, at its option, cancel this Agreement and re-enter and take possession of the Premises or any part thereof by force if necessary, without any previous notice of intention to re-enter and may remove all persons and property therefrom and may use such force and assistance in making

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- such removal as the City may deem advisable and such re-entry shall not operate as a waiver or satisfaction in whole or in part of any right, claim, or demand arising out of or connected with any breach or violation by the Tenant of any covenant or agreement on its part to be performed.
- 8.02 ALTERATIONS BY TENANT. The Tenant agrees not to make any alterations, additions or improvements in or to the Premises without obtaining the City's prior written consent and all such work shall be done only by contractor's or tradesmen or mechanics approved in writing by the City and at the Tenant's sole expense and at such time, in such manner as the City may approve.
- 8.03 REMOVAL OF ALTERATIONS BY TENANT. If any alterations, additions or improvements are made to the Premises by the Tenant, it shall, on the written request of the City, restore the Premises to their condition at the commencement of the term of this Agreement not later than FIFTEEN (15) days prior to the termination or expiration of this Agreement or, if the City would prefer that any alterations, additions and improvements remain, the City may require the Tenant to restore the Premises to such extent as the City may deem expedient although retaining as far as possible the alteration, additions and improvements, without any compensation to the Tenant.
- 8.04 REMOVAL OF TENANT'S PROPERTY. All articles of personal property and all business and trade fixtures, machinery and equipment and furniture owned by the Tenant or installed by the Tenant on the Premises at the Tenant's expense shall remain the property of the Tenant and may be removed by the Tenant at any time during the term of this Agreement, PROVIDED that the Tenant, at its own expense, shall repair any damage to the Premises caused by such removal or by the original installation.
- 8.05 NO WARRANTY OF SERVICES BY CITY. The City does not warrant that any service or facility provided by it in accordance with the provisions of this Agreement will be free from interruption caused by any cause beyond the City's reasonable care and control. No such interruption shall be deemed to be a disturbance of the Tenant's enjoyment of the Premises nor render the City liable for injury to or in damages to the Tenant nor relieve the parties from their obligations under this Agreement. The City shall without delay take all reasonable steps to remove the cause of any such interruption.
- 8.06 CITY NOT LIABLE FOR INTERFERENCE. The City shall not be liable to the Tenant for any interference or inconvenience cause by any labour dispute or by damage to the Premises or by repairs, alterations, improvements or construction in or adjacent to the Premises, or by failure or interruption of any supply of any utility.
- 8.07 CITY NOT LIABLE FOR INJURY TO TENANT. The City shall not be liable for any injury or damage to the Tenant, his agents, employees, customers or invitees as to any of their property while on the Premises, regardless of the cause of such injury or damage, except such injury or damage which may be caused by the negligence of the City, its agents, servants or employees.
- 8.08 INDEMNIFICATION. The Tenant agrees to reimburse the City for all expense, damages, loss or fines incurred or suffered by the City by reason of any breach, violation or non-performance by the Tenant of any covenant or provision of this Agreement or by reason of damage to the premises, persons or property caused by the Tenant, its employees or agents or persons visiting or doing business with the Tenant. The Tenant further covenants and agrees to save and hold harmless the City, its officers, agents, servants and employees, from and against any and all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the course of the term of this Agreement, whether such claim shall be made by an employee of the Tenant, or by a third person and whether or not it shall be claimed that the alleged damage or injury (including death) was caused through a wilful or negligent act or omission of the Tenant, its officers, servants, agents

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or employees; and at its own expense, the Tenant shall defend any and all such actions and pay all legal charges, costs, and other costs arising therefrom.

- 8.09 **NO REPRESENTATION.** The Tenant agrees that it has leased the Premises after examining the same and that no representations, warranties or conditions have been made other than those expressed herein, and that no agreement collateral hereto shall be binding upon the City unless it be made in writing and signed on behalf of the City.
- 8.10 **ABATEMENT OF RENT.** If the Premises are damaged by any cause for which the City is responsible by virtue of some act or neglect by the City, its servants or agents, then the rent shall be abated in whole or in part according to the portion of the Premises which is not usable by the Tenant until such damage is repaired.
- 8.11 **DAMAGE OR DESTRUCTION OF PREMISES.** Subject to the provisions of clause 8.12, if the Premises shall be damaged by fire or other casualty against which the City is insured, the damage to the Premises shall be repaired by the City with reasonable diligence at its expense except that repairs to alterations, additions or improvements made by the Tenant shall be performed by the City at the expense of the Tenant and the Tenant shall, at its own expense, make all repairs and replacements of property which belongs to the Tenant.
- 8.12 **PREMISES RENDERED UNTENABLE.** If the Premises are rendered untenable by fire or other casualty against which the City is insured and if the City shall decide not to restore the same, the City shall, within NINETY (90) days after such fire or other casualty, give to the Tenant a notice in writing of such decision and thereupon the term of this Agreement shall expire forthwith and the Tenant shall vacate the Premises and surrender the same to the City. Upon the termination of this Agreement under the provisions of this clause, the Tenant's liability for rent shall cease as of the day following the fire or other casualty.
- 8.13 **RIGHT OF ENTRY TO MAKE REPAIRS.** The Tenant agrees that the City shall have the right to enter the Premises at all reasonable times to examine the same and make such repairs, alterations, improvements or additions as the City may deem necessary or desirable or as the City may be required to make by law. The City shall be allowed to take onto the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs, alterations, improvements or additions are being made by reason of interruption of the business of the Tenant. The City will exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operations.
- 8.14 **DISTRAINT.** If the City levies distress against the goods and chattels of the Tenant, such force as may be deemed necessary for the purpose and for gaining admission to the Premises may be used without the City being liable to any action in respect thereof or for any loss or damage occasioned thereby and the Tenant hereby expressly releases the City, its employees and agents from all actions, proceedings, claims or demands whatsoever for or on account or in respect of any such forcible entry or any loss or damage sustained by the Tenant in connection therewith.
- 8.15 **COSTS OF RECOVERY OF RENT.** If the City shall consider it desirable to retain the services of a lawyer or any other person reasonably necessary for the purpose of assisting the City in enforcing any of its rights hereunder in the event of default on the part of the Tenant, it shall be entitled to collect from the Tenant the cost of all such services as if the same were rent.
- 8.16 **INTEREST ADDED TO COSTS OF DEFAULT** Without prejudice to any other remedy of the City, any money payable by the Tenant to the City hereunder, other than the rent referred to in clause 3 of this Agreement, shall be deemed to be rent and shall be subject to "Interest Penalty on Overdue Rent" as outlined in clause 8.17 of this Agreement from the date due or the date the City shall have paid out the same, and shall be paid as additional rent and shall be

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collectable as rent and unless otherwise provided in this Agreement, shall be payable with the next ensuing instalment of rent.

8.17 INTEREST PENALTY ON OVERDUE RENT Without waiving any right of action of the City in event of late payment or default of payment of rents due herein, the Tenant shall pay a penalty of two percent (2%) per month or any portion thereof compounded monthly (26.82% per annum) effective from the day the amount is due. In order to reflect prevailing interest rates, the City may review and adjust the penalty rate from time to time.

8.18 NO WAIVER The failure of the City to insist upon strict performance of any covenant or condition in this Agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of such covenant, condition or option and no waiver shall be inferred from or implied by anything done or omitted by the City save only express waiver in writing. The acceptance of any rent or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the City of any right, title, or interest of such person as a sub-tenant, assignee, transferee or otherwise in the place and stead of the Tenant.

8.19 OVERHOLDING. If the Tenant shall continue to occupy the Premises after the expiration of the term hereby granted and the City shall accept rent, the new tenancy thereby created shall be deemed to be a monthly tenancy and shall be subject to the covenants and conditions contained in this Agreement insofar as the same are applicable to a tenancy from month to month save and except that the rental payable shall be as determined by the City.

9.00 ENVIRONMENT

9.01 Definitions - For the purposes of this Agreement:

- (a) "Contaminants" means any pollutants, contaminants, deleterious substances, underground or above ground tanks, asbestos materials, urea formaldehyde, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance which is now or hereafter prohibited, controlled or regulated under Environmental Laws; and
- (b) "Environmental Laws" means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any governmental authority having jurisdiction over the Premises now or hereafter in force relating in any way to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity.

9.02. Tenant's Covenants and Indemnity - The Tenant covenants and agrees as follows:

- (a) not to use or permit to be used all or any part of the Premises for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with any Contaminants, without the prior written consent of the City, which may be unreasonably withheld. Without limiting the generality of the foregoing, the Tenant shall in no event use, and does not plan or intend to use, the Premises to dispose of, handle or treat any Contaminants in a manner that, in whole or in part, would cause the Premises or any adjacent property to become a contaminated site under Environmental Laws;
- (b) to strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises;
- (c) The Tenant shall not be held responsible for assessment, remediation, risk management and/or any other mitigating costs or liabilities associated with any potential or actual environmental impact, contamination, pollution or hazards associated with the

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Premises and Licence area which were not caused by any act or omission of the Tenant, its employees, agents, contractors, and all those for whom the Tenant may in law be responsible.

- (d) to promptly provide to the City a copy of any environmental site investigation, assessment, audit or report relating to the Premises conducted by or for the Tenant at any time before, during or after the Term (or any renewal thereof). The Tenant shall, at its own cost at the City's request from time to time, obtain from an independent environmental consultant approved by the City an environmental site investigation of the Premises or an environmental audit of the operations at the Premises, the scope of which shall be satisfactory to the City and shall include any additional investigations that the environmental consultant may recommend. [Where the Term, including renewals, is 30 or more years - The Tenant hereby waives the requirement for the City to provide a site profile for the Premises under the *Waste Management Act* or any regulations pursuant thereto];
- (e) to maintain all environmental site investigations, assessments, audits and reports relating to the Premises in strict confidence and not to disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the Tenant's professional advisers and lenders on a need to know basis or with the prior written consent of the City, which consent may be unreasonably withheld;
- (f) to promptly provide to the City on request such written authorizations as the City may require from time to time to make inquiries of any governmental authorities regarding the Tenant's compliance with Environmental Laws;
- (g) to promptly notify the City in writing of any release of a Contaminant or any other occurrence or condition at the Premises, or any adjacent property which could contaminate the Premises, or subject the City or the Tenant to any fines, penalties, orders, investigations or proceedings under Environmental Laws;
- (h) prior to the expiry or earlier termination of this Agreement or at any time if requested by the City or required by any governmental authority pursuant to Environmental Laws, to remove from the Premises all Contaminants, and to remediate any contamination of the Premises, or any adjacent property resulting from Contaminants, in either case brought onto, used at or released from the Premises by the Tenant or any person for whom it is in law responsible. The Tenant shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. The Tenant shall provide to the City full information with respect to any remedial work performed pursuant to this section and shall comply with the City's requirements with respect to such work. The Tenant shall use a qualified environmental consultant approved by the City to perform the remediation. The Tenant shall, at its own cost, obtain such approvals and certificates from the B.C. Ministry of Environment, Lands & Parks in respect of the remediation as are required under Environmental Laws or required by the City, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry. All such Contaminants shall remain the property of the Tenant, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding the degree of their affixation to the Premises; and
- (i) to indemnify the City and its directors, officers, shareholders, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis and the cost of remediation of the Premises, and any adjacent property) arising from or in connection with:

- 8 -

- (i) any breach of or non-compliance with the provisions of this Agreement by the Tenant; or
- (ii) any release or alleged release of any Contaminants at or from the Premises related to or as a result of the use and occupation of the Premises or any act or omission of the Tenant or any person for whom it is in law responsible.

The obligations of the Tenant under this clause shall survive the expiry or earlier termination of this Agreement. The obligations of the Tenant under this clause are in addition to, and shall not limit, the obligations of the Tenant contained in other provisions of this Agreement.

9.03 City's Covenants and Indemnity - The City covenants and agrees as follows:

- a) The Premises and Licence Area, in their existing and prior uses comply with, and the City, to the best of it's knowledge, is not in violation of and has not violated, in relation to its ownership, use, maintenance or operation, any applicable federal, provincial, municipal or local laws, regulations, orders or approvals relating to environmental matters;
- b) To the knowledge of the City, no hazardous or toxic materials, substances, pollutants, contaminants or wastes have been discharged into the environment, or deposited, discharged, placed or disposed of at, on or near the Premises or Licence Area;
- c) The City shall indemnify and save harmless the Tenant, its employees, agents, contractors, and all those for whom the Tenant may in law be responsible, from and against all claims, demands, losses, costs, damages, actions, suits or proceedings by whosoever made, brought or prosecuted in any manner based upon, arising out of, related to, occasioned by or attributable to the breach of any representation and warranty contained herein.

10.00 ENUREMENT. This Agreement and everything herein contained shall enure to the benefit of and be binding upon the parties and their heirs, executors, administrators, successors and permitted assigns. Wherever the singular or masculine is used the same shall be construed as meaning the plural or feminine or body corporate or politic as the context may require.

10.01 SEVERABILITY

If any term or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Agreement and the application of that term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

10.02 TERMINATION. It is agreed that this Agreement may be terminated by either party, giving one to the other ninety (90) days written notice of such termination provided.

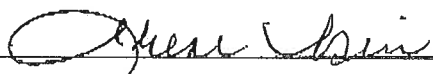
10.03 THIRD PARTY USERS That the City and Tenant shall not enter into any agreements to sublicense the Premises or Licence Area without the prior mutual consent of the City and Tenant.

Should the Tenant subsequently permit any other party or parties to install radio equipment within a reasonable distance of the Site, it will be the responsibility of the Tenant to ensure that such party or parties correct any interference caused to the City's equipment by the

operation of their equipment to the satisfaction of the City. Also, the other party or parties shall operate such equipment in accordance with the "Radio Act" and the regulations pursuant thereto.

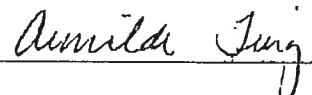
IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals in the presence of their officers duly authorized in that behalf, or have hereunto set their hands and seals, as the case may be, on the day and year first above written.

Signed on behalf of the
CITY OF KELOWNA:)
)
)
)
)
Mayor: _____)
)
)
City Clerk: _____)

Signed, Sealed and Delivered by
HER MAJESTY THE QUEEN, IN RIGHT OF
CANADA, as represented by the Minister
responsible for the ROYAL CANADIAN
MOUNTED POLICE)
)
)
)
)


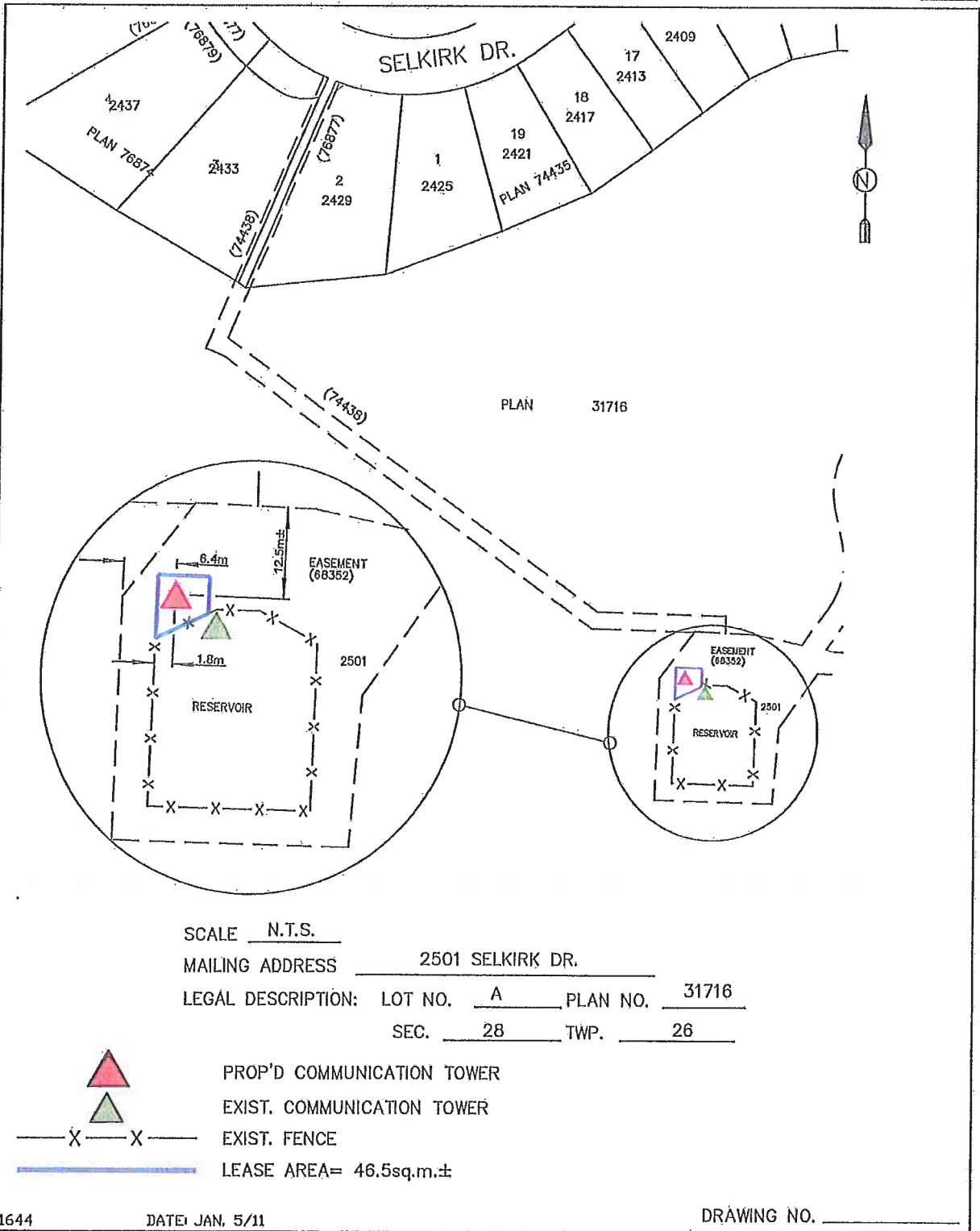
Print Name: IRENE WIN)
REGIONAL DIRECTOR)
ASSETS & PROCUREMENT, PACIFIC REGION)

in the presence of:)
)
)
ARMILDA TING
Name)
)
4449 HEATHER ST, VANCOUVER BC
Address)
)
Arnila Ting
Procurement Specialist
Procurement & Contracting
Occupation **Pacific Region**)



SCHEDULE A

PAGE _____



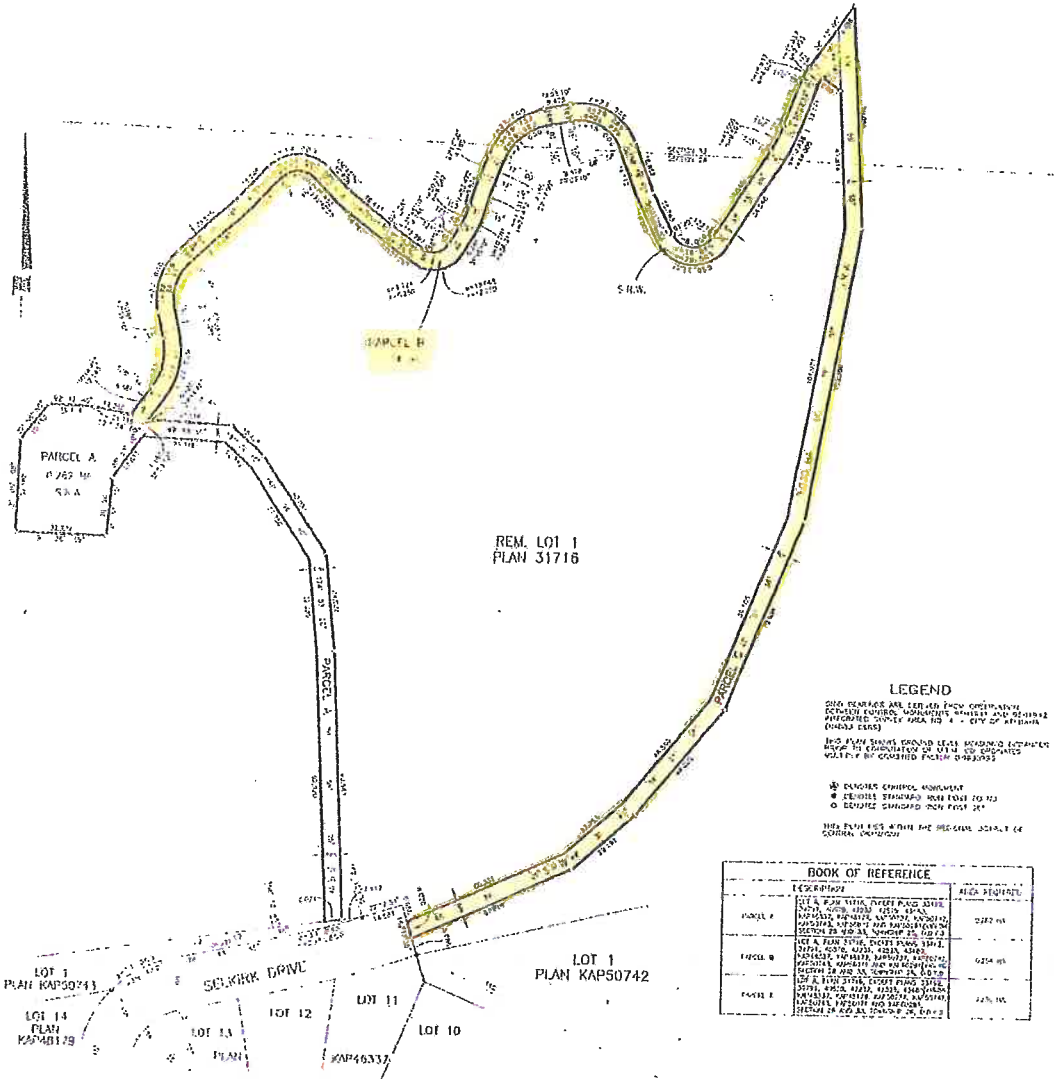
HEREINAFTER CALLED THE "PREMISES"

SCHEDULE B

PLAN OF STATUTORY RIGHT OF WAY FOR UTILITY AND ACCESS PURPOSES OVER LOT A, PLAN 31716, EXCEPT PLANS 33462, 39791, 40570, 42232, 42525, 43480, KAP46337, KAP48179, KAP48200, KAP50737, KAP50742, KAP50743, KAP56071 AND KAP60291, SECTION 28 AND 33, TOWNSHIP 26, O.D.Y.D.

PLAN KAP 14524
REGISTERED IN THE OFFICE OF THE REGISTRAR OF LANDS
ON 11/03/2014

D.C.G.S. 826,093
SCALE: 1:750 METRES



LEGEND

ALL DIMENSIONS ARE GIVEN FROM CORNER TO CORNER UNLESS OTHERWISE SPECIFIED. DIMENSIONS ARE GIVEN IN METRES UNLESS OTHERWISE SPECIFIED. DIMENSIONS ARE GIVEN TO THE CENTRE OF THE ROAD UNLESS OTHERWISE SPECIFIED. DIMENSIONS ARE GIVEN TO THE CENTRE OF THE ROAD UNLESS OTHERWISE SPECIFIED.

- ⊙ DIMENSION TO CORNER
- ⊙ DIMENSION TO CENTRE OF ROAD
- ⊙ DIMENSION TO CENTRE OF ROAD

THIS PLAN IS A PART OF THE RECORD OF THE SURVEY OF SECTION 28 AND 33, TOWNSHIP 26, O.D.Y.D.

BOOK OF REFERENCE		AREA REQUIRED
PARCEL A	LOT 1, PLAN 31716, EXCEPT PLANS 33462, 39791, 40570, 42232, 42525, 43480, KAP46337, KAP48179, KAP48200, KAP50737, KAP50742, KAP50743, KAP56071 AND KAP60291.	0.287 HA
PARCEL B	LOT 1, PLAN 31716, EXCEPT PLANS 33462, 39791, 40570, 42232, 42525, 43480, KAP46337, KAP48179, KAP48200, KAP50737, KAP50742, KAP50743, KAP56071 AND KAP60291.	0.254 HA
PARCEL C	LOT 1, PLAN 31716, EXCEPT PLANS 33462, 39791, 40570, 42232, 42525, 43480, KAP46337, KAP48179, KAP48200, KAP50737, KAP50742, KAP50743, KAP56071 AND KAP60291.	0.276 HA

I, THOMAS E. FERGUSON, A REGISTERED SURVEYOR, HAVE EXAMINED THIS PLAN AND THE BOOKS OF REFERENCE THEREON AND I CERTIFY THAT THE SURVEY IS CORRECT AND THAT THE DIMENSIONS AND BEARINGS ARE CORRECT AND THAT THE AREA REQUIRED IS CORRECT.

T. Ferguson

T.E. Ferguson Land Surveying Ltd.
P.O. BOX 14524
OTTAWA, ONTARIO K1G 0K1
TEL: (613) 735-1111
FAX: (613) 735-1112

JOB NO. 14524

(HEREINAFTER CALLED THE "LICENCE AREA")