



Date: September 28, 2015 **File No:**
To: Eric Sorensen, City Manager
From: Mitch Moroziuk, Director of Operations
Subject: **Two Year Materials and Workmanship Warranty Agreement Skaha Hills Sanitary Sewer**

Staff recommendation

THAT Council Authorize the Mayor and Corporate Officer to execute the City / Penticton Indian Band Materials and Workmanship Warranty Agreement as contained in Attachment "A".

Strategic priority objective

N/A

Background

The City and the Penticton Indian Band entered into a Sewage Treatment Service Agreement dated May 20, 2008, a Supplementary Agreement dated June 9, 2014 and an Amendment Agreement dated June 19, 2014 pursuant to which the City agreed to provide sanitary sewage treatment services to the Penticton Indian Band. As part of the Supplementary Agreement the Band provided a sewage pipeline along the north side of Highway 97 to connect its residential development to the existing City sewage treatment lines. Construction was completed in mid 2015 and the City and the Band would now like to execute a two year Materials and Workmanship Warranty Agreement. The agreement sees the Penticton Indian Band providing a warranty for Materials and Workmanship for a two year period.

Financial implications

N/A

Analysis

Passing of the resolution will provide the City with a two year workmanship and material warranty for the sanitary sewer line constructed by the Band along Highway 97 connecting the Skaha Hills development to the City Sanitary Sewer Line.

Should Council elect they could provide alternate direction to staff.

Alternate recommendations

1. THAT Council provide alternative direction on how they would like to see this issue addressed.

Attachments

Attachment "A" – City / Penticton Indian Band Materials and Workmanship Warranty Agreement

Respectfully submitted

Mitch Moroziuk P.Eng. MBA
Director of Operations
Approvals

City Manager

MATERIALS AND WORKMANSHIP WARRANTY

THIS AGREEMENT made on the 24th day of September, 2015.

BETWEEN:

THE CITY OF PENTICTON, a municipality incorporated pursuant to the *Local Government Act*, having its offices at 171 Main Street, Penticton, British Columbia, V2A 5A9

(hereinafter called the "City")

AND:

THE PENTICTON INDIAN BAND, being a band pursuant to the *Indian Act*, represented by its Chief and Council, and having a postal address at RR#2, Site 80, Comp. 19, Penticton, British Columbia, V2A 6J7

(hereinafter called the "Band")

WHEREAS:

A. The Band entered into a Sewage Treatment Service Agreement with the City dated May 20, 2008, a Supplementary Agreement dated June 9, 2014 and an Amendment Agreement dated June 19, 2014 pursuant to which the City agreed to provide sanitary sewage treatment services in accordance with the terms thereof.

B. The Band supplied and installed a sewage pipeline along the north side of Highway 97 to connect its residential development to the existing City sewage treatment lines pursuant to Permit to Construct, Use and Maintain Works within the Right-of-Way of a Provincial Highway number 2014-03440 (the "Permit"), attached as Schedule 1 to this Agreement.

C. The City agreed to pay \$220,783.18 for a transfer of ownership of the Works from the Band to the City (the "Payment").

D. The Permit was transferred from the Band to the City on September 8, 2015, in exchange for the Payment.

F. The City wishes to have protection against defects in materials or workmanship in the Works.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties, it is agreed between the Parties hereto as follows:

1. DEFINITIONS

1.1 The following definitions apply in this Agreement:

- (a) "Warranty" means a two party agreement which provides an assurance by a seller of goods (warrantor), to a purchaser, e.g. the owner, that the warrantor will assume stipulated responsibilities for correction of defects in the goods within a stated period of time.
- (b) "Works" are defined and limited to the works identified in the Permit which were supplied and installed by the Band along the North side of highway 97 which connects the Band's residential developments to the City's sewage treatment infrastructure.

2. WARRANTY

2.1 It is a condition precedent to the Warranty provided under this Agreement that the City provide the Payment in full to the Band.

2.2 The Warranty period under this Agreement is twenty four (24) months from September 8, 2015.

2.2 The Band shall be responsible for correcting any defects in the Works during the Warranty period provided such defects are due to the Band's use of faulty materials or workmanship.

2.3 The City shall promptly give the Band notice in writing of observed defects which occur during the Warranty period.

2.4 Subject to paragraph 2.3, the Band shall correct promptly, at the Band's expense, defects or deficiencies in the Works which appear prior to and during the warranty period.

3. NOTICES

3.1 Any notices which may be or are required to be given will be in writing and will be delivered or sent by facsimile to:

- (a) the City at:

171 Main Street
Penticton, British Columbia
V2A 5A9

Attention: General Manager of Infrastructure

Facsimile No.: 250-490-2402

(b) the Band at:

R.R. #2, Site 80, Comp. 19
Penticton, British Columbia
V2A 6J7

Attention: Band Administrator

Facsimile No.: 250-493-2882

or at such other address or facsimile number as the Parties may designate in writing. Any such notice is conclusively deemed to have been given or made on the day upon which such notice is delivered or if sent by facsimile, the first business day following the date of receipt is confirmed, as the case may be.

4. ASSIGNMENT

4.1 Neither Party may assign this Agreement without the prior written consent of the other Party.

5. COUNTERPARTS

5.1 This Agreement may be executed and delivered in any number of counterparts with the same effect as if all Parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

6. TIME OF ESSENCE

6.1 Time is of the essence in this Agreement.

7. GOVERNING LAW

7.1 This Agreement will be governed by and construed in accordance with the laws of Canada and British Columbia, as applicable.

8. ENTIRE AGREEMENT

8.1 The provisions of this Agreement contain the entire agreement of the Parties with respect to the subject matter of this Agreement and supersede all prior negotiations, correspondence or agreements.

IN WITNESS WHEREOF THE PARTIES HERETO have executed this agreement at Penticton, British Columbia, this 24th day of September, 2015.

THE CORPORATION OF THE CITY OF PENTICTON,
by its authorized signatories

Mayor

Corporate Officer

THE PENTICTON INDIAN BAND,
by its authorized signatories



Chief Jonathan Kruger, as authorized by a quorum of Council

SCHEDULE 1



BRITISH
COLUMBIA

Ministry of Transportation
and Infrastructure

Permit/File Number: 2014-03440

Office: Penticton Area Office

**PERMIT TO CONSTRUCT, USE, AND MAINTAIN WORKS WITHIN THE RIGHT-OF-WAY
OF A PROVINCIAL PUBLIC HIGHWAY**

**PURSUANT TO TRANSPORTATION ACT AND/OR THE INDUSTRIAL ROADS ACT AND/OR THE
MOTOR VEHICLE ACT AND/OR AS DEFINED IN THE NISGA'A FINAL AGREEMENT AND THE
NISGA'A FINAL AGREEMENT ACT.**

BETWEEN:

The Minister of Transportation and Infrastructure
Penticton Area Office
102 Industrial Place
Penticton, BC V2A 7C8
Canada

("The Minister")

AND:

City of Penticton
171 Main Street
Penticton, BC V2A 5A9
Canada

("The Permittee")

WHEREAS:

A. The Minister has the authority to grant permits for the auxiliary use of highway right of way, which authority is pursuant to both the Transportation Act and the Industrial Roads Act, the Motor Vehicle Act, as defined in the Nisga'a Final Agreement and the Nisga'a Final Agreement Act;

B. The Permittee has requested the Minister to issue a permit pursuant to this authority for the following purpose:

The maintenance and use of approximately 975 metres of 200mm DR17 HDPE sanitary forcemain - by DIRECTIONAL DRILLING ONLY - along the north side of Highway 97, located between Skaha Lake Road and Penticton Indian Reserve Road, (to serve the Skaha Hills development), as shown on True Consulting Record Drawing 1009-012-007, Revision 4, dated November 28, 2014.

C. The Minister is prepared to issue a permit on certain terms and conditions;

ACCORDINGLY, the Minister hereby grants to the Permittee a permit for the Use (as hereinafter defined) of highway right of way on the following terms and conditions:

1. That the construction and maintenance of the said works is carried out to the satisfaction of the Regional Director, Transportation.
2. That, before opening up any highway or interfering with any public work, intimation in writing of the intention to do so must be given to the District Official at least seven days before the work is begun.
3. That any person appointed by the Regional Director, Transportation, for the purpose shall have free access to all parts of the works for the purpose of inspecting the same.
4. That the construction of the said works shall be commenced on or before the N/A and shall be prosecuted with due diligence and to the satisfaction of the Regional Director, Transportation, and shall be completed on or before the N/A.
5. (a) The highway must at all times be kept open to traffic. The roadway must be completely restored for traffic as soon as possible. At all times the permittee must safeguard the traveling public.
(b) That, unless with the consent of the Regional Director, Transportation, no more than forty-five (45) metres of pipe-track or other excavation in any public highway is to be kept open at one time.



(c) All excavation work must be carried out in accordance with the BC Occupational Health and Safety Regulation. Care shall be taken to protect adjacent property.

(d) That all excavations shall be carefully back-filled with suitable material, which is to be tamped into place, and that the permittee shall restore the surface of the road and shoulders and ditches at his own expense. All surplus material is to be removed from the Provincial Crown lands, or deposited where and as required by the District Official of the Ministry of Transportation and Infrastructure. The permittee is financially responsible for any maintenance works required on said ditch for a period of one year. The Ministry will carry out the necessary remedial work and invoice the permittee monthly.

(e) The pipeline crossing installation is to be placed by drilling and (or) jacking in such a manner as to afford minimum grade settlement. No water jetting will be permitted. That where, in the opinion of the District Official, an excavation or opening for a pipeline crossing installation could be made which would not be detrimental to the highway or its users, permission will be granted for said works. On throughways, freeways, and main highways no open cuts will be allowed.

(f) That all pipelines in excess of a nominal diameter of 5 cm., whether gas, oil, water, pressure sewers, conduits, etc., shall be installed where indicated by the District Official, encased in a steel casing-pipe or conduit-pipe of sufficient strength to withstand all stresses and strains resulting from the location, such casing to extend the full width of the highway right-of-way if deemed necessary to the District Official. The ends of the casing-pipe shall be suitably sealed and, if required, properly vented above the ground with vent-pipes not less than 5 cm. in diameter, and extending not less than 1.2 metres above ground surface. Vent-pipes shall be connected 30 cm. from the ends of the casing-pipe, and the top of each vent shall be fitted with a turn-down elbow, properly screened and equipped with identification markers.

All pipelines of non-rigid material, i.e., plastic or copper, of any diameter, shall be cased, or embedded in sand.

The inside diameter of the casing-pipe shall be at least 25 percent larger than the outside diameter of the pipeline. The casing-pipe shall be installed with an even bearing throughout its length, and in such a manner so as to prevent leakage, except through the vents.

The top of the casing-pipe, or the pipeline where casing is not required, shall be located as directed by the District Official, and shall in no case be less than 1.2 metres below the surface of the highway and not less than 75 cm below the highway ditches. Pipelines must not obstruct drainage structures or ditches or interfere with traffic on the highway or with highway maintenance.

6. That where the work for which permission is hereby granted comes in contact with any bridge, culvert, ditch, or other existing work, such existing work must be properly maintained and supported in such manner as not to interfere with its proper function during the construction of the new work, and on the completion of the new work the bridge, culvert, ditch, or other existing work interfered with shall be completely restored to its original good condition.
7. That when necessary all excavations, materials, or other obstructions are to be efficiently fenced, lit, and watched, and at all times every possible precaution is to be taken to ensure the safety of the public.
8. That the person or persons for whom these works are being constructed, or by whom these works are maintained, shall at all times accept full responsibility for any accident that may occur or damage that may be done to any person or property whatsoever caused directly or indirectly by these works, and shall save harmless and keep indemnified the Crown from all claims and demands whatsoever in respect of the works.
9. That the permission herein granted to use and maintain the works is only granted for such times as the land or public work in, upon, or over which the said works are constructed is under the jurisdiction of the Minister of Transportation and Infrastructure. This permission is not to be construed as being granted for all time, and shall not be deemed to vest in the permittee any right, title or interest whatsoever in or to the lands upon which the works are constructed. Should the lands affected at any time be included within that of an incorporated municipality or city, this permission shall become void, unless the works are on a highway duly classified as an arterial highway pursuant to Section 45 of the Transportation Act.
10. That after receiving notice in writing of the intention on the part of the Provincial Government to construct, extend, alter, or improve any public work, the person or persons responsible for the maintenance of the works for which permission is hereby granted shall within six weeks move or alter such work at his or their own expense to such new positions or in such manner as may be necessitated by the construction, extension, alteration, or improvement proposed to be carried out by the Provincial Government.
11. That while reasonable care will be taken on the part of the Provincial Government to do as little damage as possible to any private work in the carrying-out of the construction, extension, alterations, improvement, repair, or maintenance of any public work adjacent thereto, the Provincial Government can accept no responsibility for any kind of such damage.
12. That the permission hereby granted to construct, use, and maintain work is granted without prejudice to the provisions of the Transportation Act, or other Acts governing Crown lands and public works or their use by the public.
13. That this permission shall be in force only during such time as the said works are operated and maintained by the applicants, to the entire satisfaction of the Regional Director, Transportation.
14. That the Ministry will not be responsible for grade changes on accesses caused by reconstruction of any Provincial highway.



15. This permit is valid only for the specific works stated herein. Any alterations or additions must be covered by a separate permit.
16. This permit may be canceled, at the discretion of the Minister, without recourse, should the permittee fail to comply with all the terms of the permit. Thirty days' notice will be given before cancellation.
17. When the requirements of the Ministry necessitate use of the said lands for Provincial purposes, at the discretion of the Minister, this permit may be canceled.
18. That these works shall be identified with this permit number in a manner satisfactory to the District Official of the Ministry of Transportation and Infrastructure.
19. As a condition of this permit, the permittee unconditionally agrees with the Ministry of Transportation and Infrastructure that the permittee is the prime contractor or will appoint a qualified prime contractor, as described in Section 118 of the Workers Compensation Act, for the purposes of the work described by this permit, at the work location described in this permit, and that the permittee or designated prime contractor will observe and perform all of the duties and obligations which fall to be discharged by the prime contractor pursuant to the Workers Compensation Act and the Occupational Health and Safety Regulation.
20. The permittee is advised and acknowledges that the following hazards may be present at the work location and need to be considered in co-ordinating site safety: overhead hazards, particularly electrical or telecommunications lines; buried utilities, particularly electrical, telecommunication, and gas lines; traffic, danger trees, falling rocks, and sharp or infectious litter.
21. Any works within the Ministry right-of-way that fall within the scope of "engineering" under the Engineers and Geoscientists Act will be performed by a Professional Engineer, and shall comply with this Ministry's "Engineer of Record and Field Review Guidelines". The Guidelines can be viewed on the Ministry's website at http://www.th.gov.bc.ca/publications/Circulars/Ali/T_Circ/2009/t06-09.pdf
22. The permittee is responsible for preventing the introduction and spread of noxious weeds on the highway right-of-way as defined by the British Columbia Weed Control Act and Weed Control Regulation.
23. **Protection of Survey Monuments**
The Permittee shall be responsible for the preservation during construction of all geodetic benchmarks, survey monuments and property markers on the right-of-way. The Permittee shall use, at no expense to the Ministry, a British Columbia Land Surveyor to replace any survey monuments destroyed or damaged as a result of the Permittee's negligence. At locations where construction work will cover or destroy such markers, the Permittee shall not move or remove them until written direction is received from the Ministry Representative.
24. **Protection of Roads**
The Permittee shall ensure all equipment working on or hauling material on to and from the Site does not damage or deposit material onto any part of an existing roadway. Materials spilled onto the public roadways or driveways opened to public traffic shall be cleaned up immediately. The Permittee has the full responsibility to repair any damage to existing highways, local roads and driveways caused by its construction equipment and/or operations.
25. **Traffic Control Plan**
The Permittee shall take all reasonable precautions to attempt to ensure the safety of the public in connection with the Use. In particular, but not so as to limit this obligation, the Permittee shall, if so required by the Designated Ministry Official on reasonable grounds, prepare and implement a traffic control plan. The contents of the plan and the manner in which it is implemented must meet the reasonable satisfaction of the Designated Ministry Official.
26. **Accommodation of Traffic**
The Permittee shall, at his cost, supply, erect, and maintain standard traffic control devices in accordance with the Ministry of Transportation and Infrastructure Traffic Control Manual for Works on Roadways and Occupational Health and Safety Regulation.
27. **Trenching Standards**
Pavement must be cut by hand or approved mechanical means in straight lines parallel to the trench centreline.
Distance from a pavement cut to the edge of the trench must be at least 150 mm or sufficient to ensure the pavement will not be undermined by sloughing.
Except where trenching is well clear of the road shoulder, all excavated material must be removed from the site immediately.
Stockpiling of native material adjacent to the trench is not permitted.
Trenches must be backfilled or adequately covered at the end of the work day
Trench shoring must conform to WorkSafe BC standards and is to be used where soil conditions warrant. Extreme care must be taken to avoid sloughing of the trench sides to minimize damage to the subgrade beyond the limits of excavation.



28. Trench Backfill

Where sloughing of trench sides has undermined the pavement, the pavement must be marked with a painted line showing the extent of the damaged area. Pavement must be removed from this area and the voids filled and compacted in accordance with backfill requirements.

Trenches must be backfilled with granular material that meets Ministry standards as set out in Section 202.02 (Table 202-C), 2009 Standard Specifications for Highway Construction and all subsequent interim revisions and updates, in accordance with the following minimum requirements:

(a) Sub-base material must meet or exceed specified requirements for Select Granular Sub Base aggregates.

(b) Crushed Base Course depth is to match existing depth, but must not be less than 300 mm compacted thickness and consist of "25 mm minus" WGB (or IGB) crushed aggregate.

Backfill must be placed in layers not exceeding 150 mm compacted thickness and shall be compacted with approved tamping equipment to a minimum of 95 percent Proctor density to within 300 mm of the surface and 100 percent for the final 300 mm.

29. Temporary Patching

As soon as any portion of the highway can be re-opened to traffic, a temporary asphalt patch must be applied.

30. Permanent Patching

Pavement edges must be cut, made true and straight, cleaned, and primed before installing a final patch.

Asphalt concrete must be restored to the same thickness as the existing surface or to a minimum of 75 mm thickness, whichever is greater. Asphaltic concrete must meet Ministry standards as set out in Section 502, Standard Specifications for Highway Construction.

Asphalt concrete is to be laid in two or more lifts or layers. Each lift is to be thoroughly compacted before successive lifts are applied.

The Permittee will ensure that the permanent pavement patch is to Ministry standards for one year from the date that the patch is installed.

31. Highest Standards Apply

Where the Ministry and a regulator both set a standard or requirement in a particular area, the highest or most stringent of the two will apply to any installation on highway right-of-way.

32. Excavations across entrances

Excavations across entrances, whether private or commercial, must be backfilled and thoroughly compacted by the end of the current working day. The surface must be restored, whether paved or gravel, to its original condition within 48 hours.

Affected property owners must be notified at least 48 hours in advance before excavating a driveway.

33. Removal

The Minister may order the removal or alteration of utility installations, if necessary, for the protection of the highway or highway users. If the utility owner does not respond to an order to remove or alter a utility installation, the Minister may carry out that work and recover costs from the utility.

34. Permittee is responsible for ensuring that all works are contained to the highway right of way. Any works located within private property must have the owner's permission.

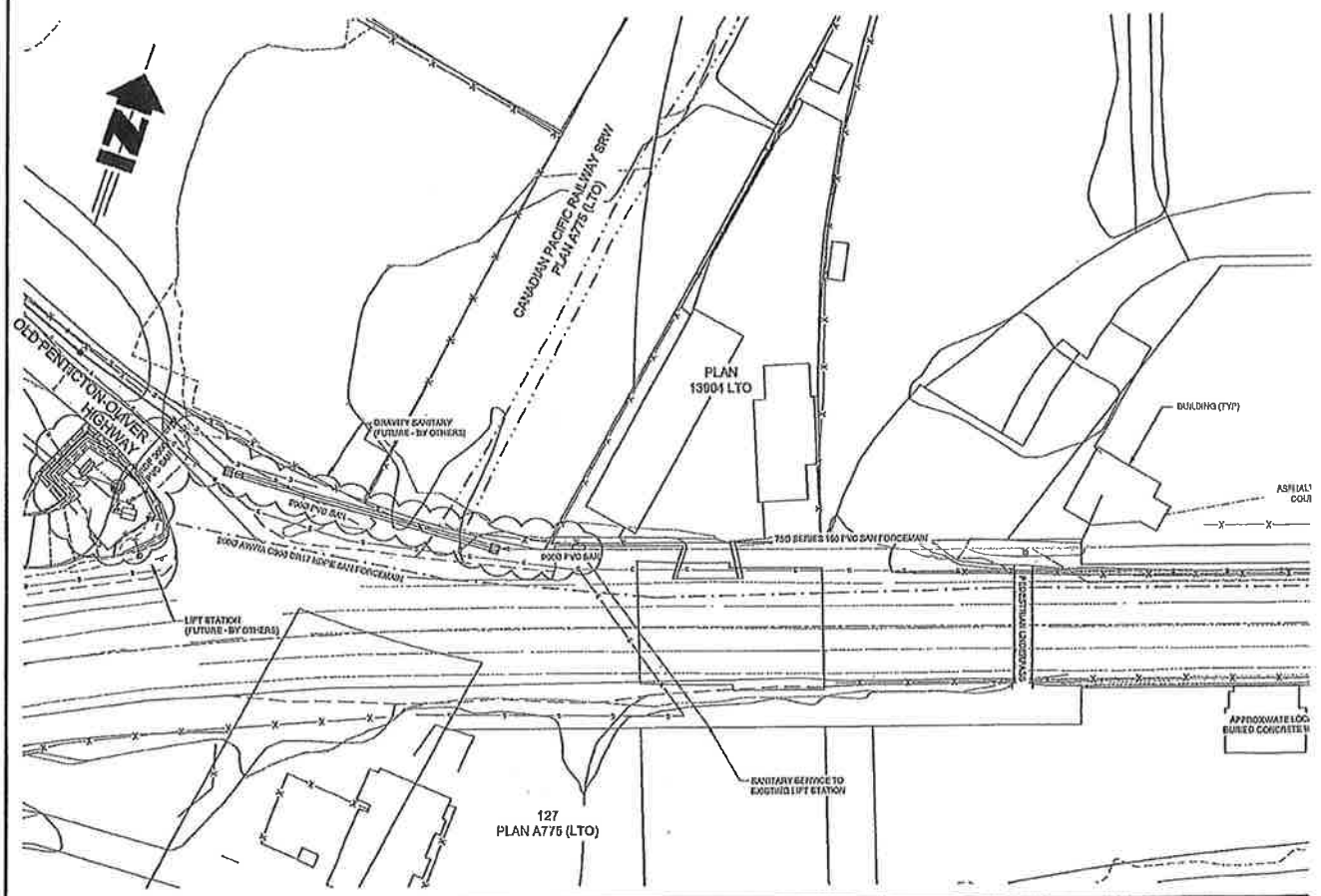
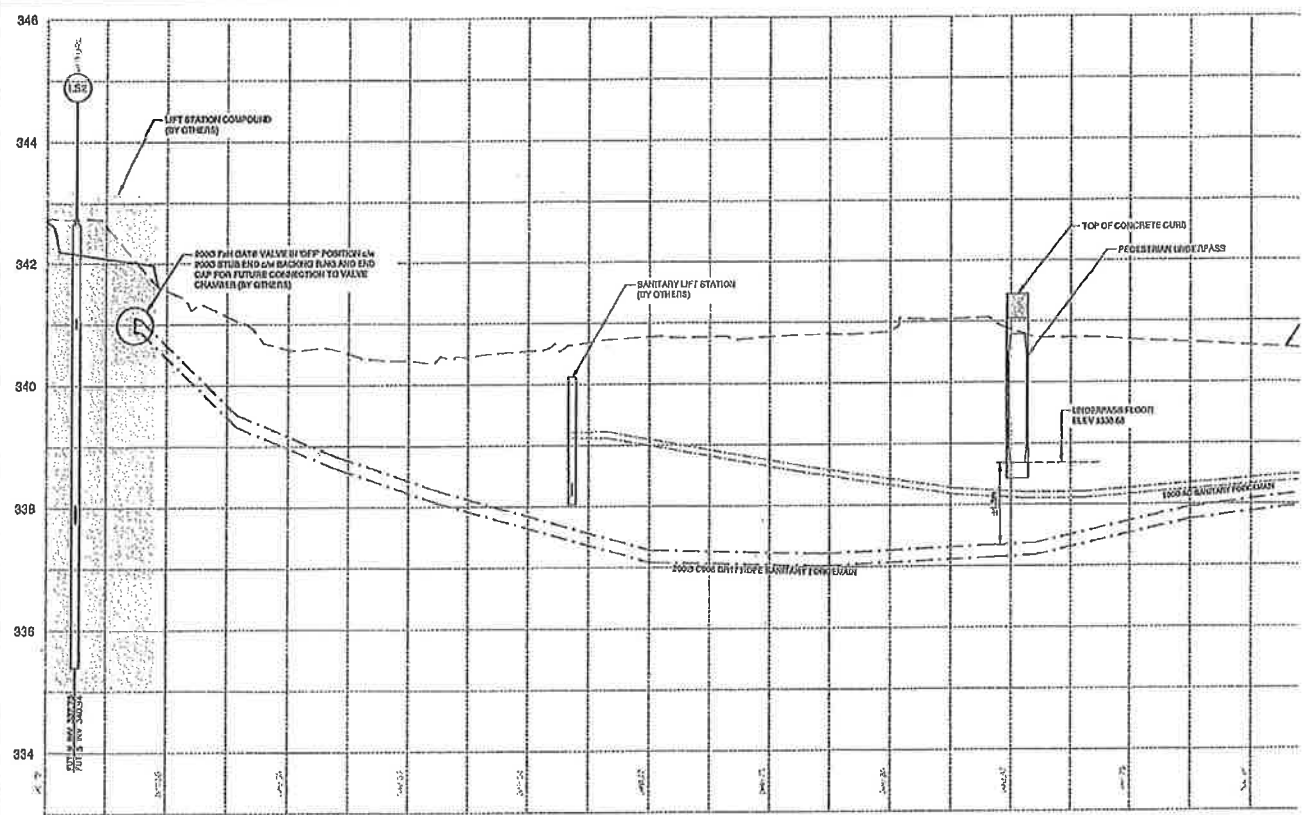
35. A copy of the permit is to be kept by the field supervisor, in order that he is aware of all permit conditions.

36. As constructed drawings shall be provided, to Regional and District Highways offices, covering all works permitted within our right-of-way.

The rights granted to the Permittee in this permit are to be exercised only for the purpose as defined in Recital B on page 1.

Dated at Penticton, British Columbia, this 8th day of September, 2015

On Behalf of the Minister of Transportation & Infrastructure



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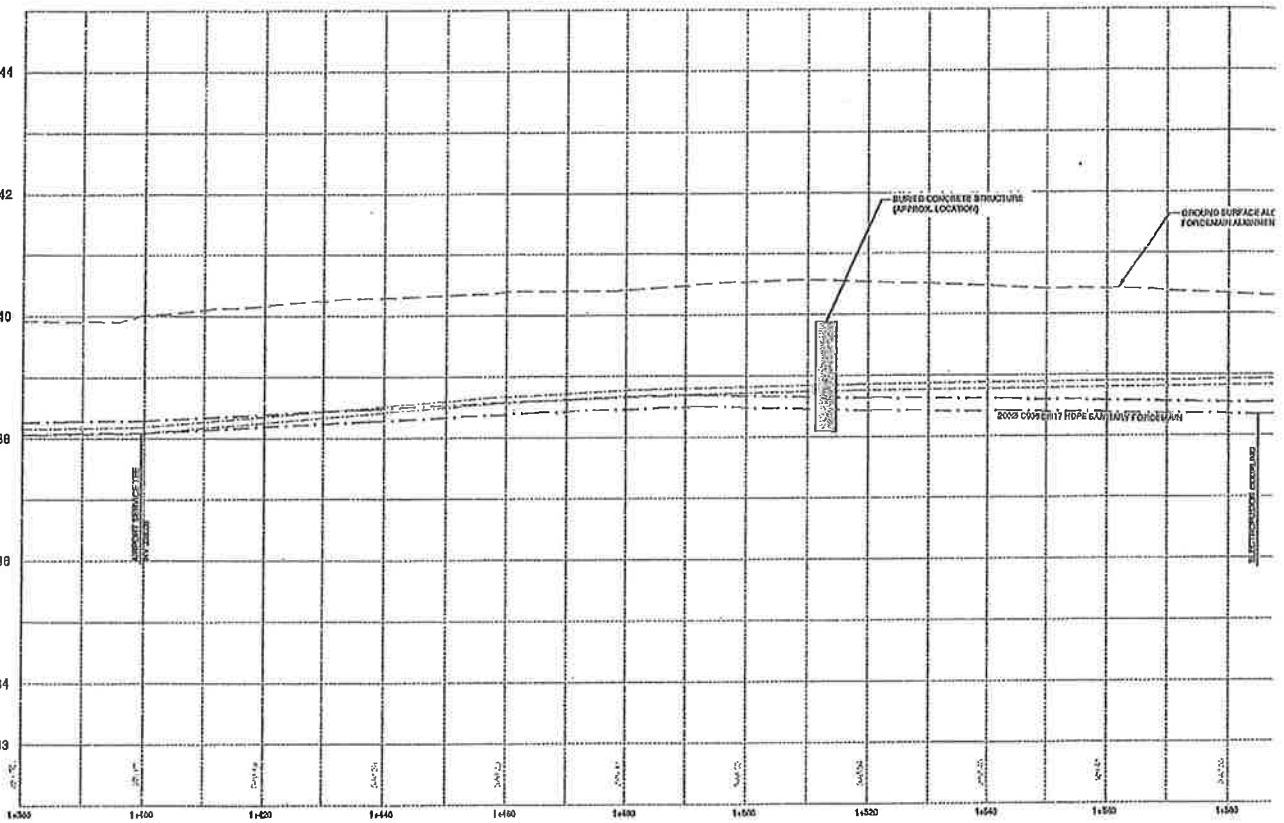
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