

APPENDIX

M LETTERS OF SUPPORT





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September 27, 2022

Dear CAO Russell Dyson,
Comox Valley Regional District
770 Harmston Avenue, Courtenay, BC V9N 0G8
Tel: 1-250-334-6055

Re: Comox Valley Regional District Liquid Waste Management Plan - Stage 1 and 2 Report

The current and planned sewer infrastructure impacted by the Comox Valley Sewer Service's Liquid Waste Management Plan (LWMP) is located in the unceded traditional territory of the K'ómoks First Nation (K'ómoks). K'ómoks supports the LWMP process undertaken to date, the Stage 1 and 2 LWMP Report and is in agreement with the preferred solution selected through the LWMP process for levels of treatment and resource recovery at the Comox Valley Water Pollution Control Center.

A key highlight of the Liquid Waste Management Plan is the addition of effluent disinfection at the treatment plant. K'ómoks supports the efforts of the Comox Valley Regional District (CVRD) to implement secondary treatment of all wastewaters flows and inclusion of effluent **disinfection** to reduce the pathogen loading in the marine receiving environment, and the corresponding risk to shellfish operations in the surrounding area.

Through the established processes between K'ómoks and the CVRD, K'ómoks looks forward to regular updates from the CVRD and continued collaboration on future components of the LWMP. In parallel, K'ómoks looks forward to continued collaboration with the CVRD on delivery of the Comox Valley's Sewer Conveyance Project and the Sewer Extension South Project as guided by the Community Benefit Agreement that was ratified by both parties in February 2021.

Should you have any questions regarding the above noted matter, please contact the undersigned.

Chief Nicole Rempel

Councillor Richard Hardy

Councillor Katherine Frank

Councillor Charlene Everson

APPENDIX

N COMMUNITY BENEFITS AGREEMENT

COMMUNITY BENEFIT AND ACCOMMODATION AGREEMENT

Dated for reference this 15th day of December, 2020.

BETWEEN:

K'ÓMOKS FIRST NATION

3330 Comox Road
Courtenay, BC V9N 3P8

("K'ómoks First Nation")

OF THE FIRST PART

AND:

COMOX VALLEY REGIONAL DISTRICT

600 Comox Road
Courtenay, BC V9N 3P6

(the "Regional District")

OF THE SECOND PART

W H E R E A S:

- A. The K'ómoks First Nation holds certain aboriginal rights and title in its traditional territory in the Province of British Columbia.
- B. Under the authority of the *Local Government Act* and the Regional District's *Comox Valley Sewerage Service Establishment Bylaw No. 2541, 2003*, the Regional District operates a service that provides sewage interception, treatment and disposal facilities for the City of Courtenay and the Town of Comox, and which also provides, through agreement, similar services to the Department of National Defence, and to certain lands of the K'ómoks First Nation (the "Comox Valley Sewerage Service").
- C. Pursuant to section 263 of the *Local Government Act*, the Regional District has the authority to make agreements with a public authority (including a First Nation) respecting activities, works and services within the powers of a party to the agreement, including the undertaking, provision and operation of activities, works and services.
- D. The Regional District holds a right of way for a sewer pipeline over that part of K'ómoks Reserve No. 1 shown as a right of way on Plan 68885, which is registered in the Canada Lands Surveys Records (the "Sewer ROW").

- E. The Regional District holds a right of way for a sewer lift station over that part of K'ómoks Reserve No. 1 shown as a right of way on Plan 69255, which is registered in the Canada Lands Surveys Records (the "Lift Station ROW").
- F. The Sewer ROW and the Lift Station ROW were granted to the Regional District by Her Majesty the Queen in Right of Canada ("Canada"), under authority of Letters Patent issued on February 22, 1990, pursuant to section 35(1) of the *Indian Act*.
- G. In connection with the operation of the Comox Valley Sewerage Service, the Regional District wishes to construct a new large diameter sewer forcemain, that will extend through K'ómoks Reserve No. 1, within the boundaries of the Provincial highway known as Comox Road (the "Project").
- H. The K'ómoks First Nation has adopted the K'ómoks First Nation Land Code (the "Land Code") pursuant to the Framework Agreement on First Nation Land Management, as ratified by Canada under the *First Nations Land Management Act*.
- I. The Regional District acknowledges that it is the position of the K'ómoks First Nation that the Sewer ROW and the Lift Station ROW were granted by Canada without sufficient consultation with the K'ómoks First Nation, and without sufficient accommodation of the interests of the K'ómoks First Nation. The Regional District wishes to enter into an agreement with the K'ómoks First Nation that will provide sufficient accommodation from the Regional District of the interests of the K'ómoks First Nation, and compensation, as they relate to the Regional District, in relation to the past grant of the Sewer ROW and the Lift Station ROW, and for the continued existence of those interests in K'ómoks First Nation lands.
- J. The Regional District acknowledges that, the construction of the Project will require approvals from senior levels of government that will in turn engage the constitutional duty of the Crown to consult with and accommodate the interests of the K'ómoks First Nation.
- K. The Regional District is committed to carrying out the Project in a manner that furthers its cooperative and respectful relationship with the K'ómoks First Nation, and the Regional District wishes to obtain assurances from K'ómoks First Nation that its legal rights and interests, as they relate to the Project, have been satisfactorily addressed and accommodated by the Regional District in a manner that will allow the K'ómoks First Nation to consent to the Project.
- L. The K'ómoks First Nation is likely to conclude treaty negotiations within the 2020/21 fiscal year and such negotiations could result in approximately 12,000 acres of land being transferred to K'ómoks as Treaty Settlement Lands, on the Effective Date of a K'ómoks Treaty, which will also require federal and provincial settlement legislation. Approximately half of those lands will be in the area south of Royston, and north of Union Bay, and over which the K'ómoks First Nation will have law making authority, including taxation jurisdiction. The K'ómoks First Nation will require water and wastewater services for those lands.

- M. The Comox Valley Sewerage Service has the potential to provide wastewater service to K'ómoks South Lands (as hereafter defined) including lands currently owned by the K'ómoks First Nation in fee simple, and lands that will be transferred to the K'ómoks First Nation as Treaty Settlement Lands. The Regional District's Electoral Area "A" also has a strong interest in receiving sewer services from the Comox Valley Sewer Service.
- N. The Regional District has submitted Grant Applications to assist in financing the extension of Regional District wastewater services to the K'ómoks South Lands and other lands within Electoral Area "A".
- O. Under the terms of a Memorandum of Understanding dated for February 25, 2020, a copy of which is attached hereto for reference as Schedule "A", the Regional District and the K'ómoks First Nation committed to the negotiation of a Community Benefit and Accommodation Agreement concerning the matters addressed in this Agreement.
- P. The Regional District and the K'ómoks First Nation now wish to enter into this Community Benefit and Accommodation Agreement in order to confirm:
 - (1) The Regional District's commitment to provide the K'ómoks First Nation, and/or to secure for the benefit of the K'ómoks First Nation, reasonable and sufficient community benefits and other compensation from and on behalf of the Regional District, and no other person, for the impacts of the Project, as well as for the historical grants, and continued presence, of the Sewer ROW and the Lift Station ROW, on K'ómoks First Nation, its members and its lands;
 - (2) K'ómoks First Nation's consent to and support for the Project;
 - (3) The Regional District's commitment to the use of additional mitigation measures that will reduce the risk of loss of or damage to KFN heritage objects and KFN heritage sites that are within the boundaries of K'ómoks Reserve No. 1, during the construction of the Project; and
 - (4) The Regional District's commitment to extend wastewater services to the K'ómoks South Lands.

NOW THEREFORE the parties agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement the following terms shall have the following meanings:

- (a) **"Agreement"** means this Community Benefit and Accommodation Agreement and its Schedules;

- (b) **“Bayside Road Drainage Issue”** means the intermittent stormwater drainage issues that have resulted in flooding of properties along the north side of Bayside Road;
- (c) **“Board”** the elected board of the Comox Valley Regional District;
- (d) **“CICC’s”** means capital improvement cost charges imposed by the Regional District as a condition of admission of lands to a service area for the purpose of assisting the Regional District in paying the capital costs of providing, constructing, altering or expanding the service infrastructure;
- (e) **“CICC Bylaw”** means the *Comox Valley Water Sewerage System Capital Improvement Cost Charge Bylaw No. 3008, 2071*, as amended or replaced from time to time;
- (f) **“DCC’s”** means development cost charges imposed by Regional District bylaw as a condition of the subdivision or development of land, for the purpose of assisting the Regional District in paying the capital costs of providing, constructing, altering or expanding the water infrastructure of the Comox Valley Sewerage Service;
- (g) **“DCC Bylaw”** means the *Comox Valley Sewerage Service Development Cost Charge Bylaw No. 572, 2019*, as amended or replaced from time to time;
- (h) **“Crown”** means Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of British Columbia, and any agency, board or representative of either of them;
- (i) **“Governance Review”** means the governance review of the Comox Valley Sewerage Service to be conducted by the Regional District as referred to in section 4.0 of this Agreement;
- (j) **“Grant Application”** means the application for provincial and federal funding for extension of Regional District wastewater services to the K’ómoks South Lands, that has been submitted by the Regional District in accordance with section 4.0 of this Agreement;
- (k) **“KFN Sewer System”** means the works, services and facilities to be constructed, maintained and operated by the K’ómoks First Nation for the purpose of collecting wastewater from properties within the K’ómoks South Lands and conveying that wastewater to a sewer main operated by the Comox Valley Sewerage Service;
- (l) **“K’ómoks South Lands”** means, collectively:
 - (i) lands held in fee simple by or on behalf of K’ómoks First Nation; and

- (ii) the additional lands that the K'ómoks First Nation anticipates acquiring through the treaty negotiation process referred to in Recital L to this Agreement;

as outlined on the plan that is attached to this Agreement as Schedule "D";

- (m) **"Liquid Waste Management Plan"** or **"LWMP"** means the Regional District's new liquid waste management plan, planning for which is in process as of the date of this Agreement, and which is anticipated to include statements and other provisions concerning the construction and operation of the Project as part of the Regional District's plan for the management of liquid waste. It is anticipated that the Liquid Waste Management Plan will be submitted to the Minister responsible for the *Environmental Management Act* for his or her approval in three separate phases, and a reference in this Agreement to "Stage 2" of the Liquid Waste Management Plan means the phase of the LWMP that will deal with the planning of new sewage conveyance infrastructure, including all aspects of the Project;
- (n) **"Memorandum of Understanding"** has the meaning set out in Paragraph O of the Recitals to this Agreement;
- (o) **"Parties"** when used in the plural means both parties to this Agreement, and when used in the singular means one of them;
- (p) **"Phase"** means a phase of construction of the Project or a portion of the Project, as determined by the Regional District from time to time, in its discretion;
- (q) **"Pre-dig"** means the process of excavating and then backfilling along the Project alignment through K'ómoks Reserve No. 1 to the required depth and width during the design and procurement stage of the Project, under the supervision of a professional archaeologist, for the purpose of locating, documenting and removing K'ómoks First Nation heritage objects in accordance with the protocol to be established under section 6.1 of this Community Benefit and Accommodation Agreement, before Project construction commences;
- (r) **"Project"** means, collectively, the following sewage conveyance infrastructure, further details of which are set out in Schedule "C", to be delivered in separate phases as funding is secured:
 - (i) the construction of a large diameter sewer forcemain for the Comox Valley Sewer Service, that is anticipated to extend through K'ómoks Reserve No. 1, along the Project route shown on Schedule "B" to this Agreement, and also includes removal of the existing sewer pipe once the new one is in place; and
 - (ii) the Sewer Service (South) Extension;

- (s) **“Service Commencement Date”** means the date determined in accordance with section 4.7 of this Agreement, on which the Regional District will begin to provide wastewater services to the K’ómoks First Nation for the development and servicing of the K’ómoks South Lands;
- (t) **“Sewage Commission”** means the Comox Valley Sewage Commission, as established under the Regional District’s *Sewage Commission By-law, No. 650*;
- (u) **“Sewer Service (South) Extension”** means the sewer main and other related infrastructure required to extend wastewater services to the K’ómoks South Lands and other lands within Electoral Area “A”, the anticipated route for which is illustrated in Schedule “E”;
- (v) **“Wastewater Service Agreement”** means the Regional District’s agreement to provide wastewater services to the K’ómoks First Nation for the development and servicing of the K’ómoks South Lands, on terms and conditions similar to those set out in Schedule “F” to this Agreement, subject to final negotiation as contemplated in section 4.7.

2.0 COMMUNITY BENEFITS AND COMPENSATION

2.1 The Regional District hereby agrees to provide the monetary benefits and other community benefits referred to in this Agreement, to and for the benefit of K’ómoks First Nation. The Parties both agree that such monetary benefits and community benefits provide reasonable and sufficient compensation for the impacts on the K’ómoks First Nation, its members and its lands, and that, as regards to the Regional District and no other person, fully accommodates the interests of K’ómoks First Nation, in respect of:

- (a) the Project; and
- (b) the historical grants and continued presence of the Sewer ROW and the Lift Station ROW, and the Regional District’s continued and ongoing use of those ROW’s.

2.2 The monetary benefits to be provided by the Regional District are summarized as follows:

	Item	Value
(a)	Anticipated in-kind CVRD costs to be incurred in providing community benefits	\$0.2 M

(b)	One-time cash payment to K'ómoks First Nation, to cover items previously described in the Memorandum of Understanding as: <ul style="list-style-type: none">• Funding for IR 1 improvements during construction• KFN IR1 conveyance borrowing exclusion And to include a new item as follows: <ul style="list-style-type: none">• Resolving Bayside Road Drainage Issue	\$3 M
(c)	K'ómoks First Nation will not be required to pay a proportional share (based on population) of the non-depreciated value of the Comox Valley Sewerage Service assets as a pre-condition of extending wastewater services to K'ómoks South Lands	\$1 M
	Total Monetary Benefits	\$4.2 M

- 2.3 The in-kind Regional District costs referred to in section 2.2(a) consist of internal Regional District administrative and staff costs for planning and administration work related to the Project.
- 2.4 The payment referred to in section 2.2(b) shall be paid by the Regional District to the K'ómoks First Nation within 30 days of the following having been obtained:
- (a) all letters of support from the K'ómoks First Nation necessary to support the conveyance component of the Project having been provided; and
 - (b) the Minister having approved the Stage 2 Liquid Waste Management Plan.
- 2.5 The payment referred to in section 2.2(b) includes \$500,000.00 which is intended to assist K'ómoks First Nation in resolving ongoing drainage issues along Bayside Road, which are alleged to be caused at least in part by the presence of the existing forcemain. The inclusion of this payment as part of the monetary benefits provided under this Agreement is not an admission of any liability or responsibility on the part of the Regional District or its directors, officers and employees, and in exchange for the Regional District's payment of this amount, the K'ómoks First Nation will at the time of such payment execute an agreement, in a form satisfactory to the Regional District, under which K'ómoks First Nation will release, indemnify and save harmless the Regional District from and against any claims, damages, costs or liabilities whatsoever connected with the Bayside Road

Drainage Issue, whether existing as of the date of the payment, or that may arise in future.

- 2.6 The monetary values set out in section 2.2(b) will be increased by an amount equal to the increase in the Consumer Price Index (All Items) for British Columbia from the date of this Agreement to the date the benefit is provided.
- 2.7 The Regional District may approach the Crown with a request that it contribute to the monetary benefits and other community benefits to be provided under this Agreement. For greater certainty, any contributions that the Crown may make under this section will not be considered as a fulfillment either in whole or in part of any of the Crown's obligations to the K'ómoks First Nation and will not be considered in lieu of funds that have been requested from the Crown by the K'ómoks First Nation for the extension of the Regional District wastewater treatment services to the K'ómoks South Lands as well as to other lands in Electoral Area "A".
- 2.8 The Parties acknowledge that while the provision of sewer services to the K'ómoks South Lands, and the Sewer Service (South) Extension, are not included in this Agreement as part of the community benefits and compensation to be provided to K'ómoks First Nation, the Regional District's commitment to those aspects of the Project is essential to the K'ómoks First Nation's support for the Project under this Agreement.

3.0 GRANT APPLICATION AND FUNDING OF SEWER EXTENSION

- 3.1 The Regional District has, at its sole cost, prepared a Grant Application to provincial and federal orders of government for funding to assist with the construction of infrastructure required to extend the Regional District's wastewater services to the K'ómoks South Lands and other lands in Electoral Area "A", with the Regional District and the K'ómoks First Nation as co-applicants.
- 3.2 Notwithstanding that K'ómoks First Nation is listed as a co-applicant on grant communications and applications, all grant funding awarded pursuant to a Grant Application shall be payable solely to the Regional District, on behalf of both the Regional District and the K'ómoks First Nation, for the purpose of extension of wastewater services to the K'ómoks South Lands and other lands in Electoral Area "A".
- 3.3 The Regional District, its staff and its members will work with the K'ómoks First Nation to strategize and use all possible means to promote the Grant Application currently underway, including at the political and staff level, to maximize the probability of success for this round of funding. This effort has and will continue to include meeting with key provincial and federal elected officials, and arranging letters of support from influential ministries and other key stakeholders.
- 3.4 While the success of the Grant Application is important to the success of extension of wastewater services to the K'ómoks South Lands and other lands in Electoral Area "A", the Regional District hereby confirms its good faith commitment to make

reasonable efforts on an ongoing basis to identify and secure additional grants, partnerships and funding opportunities to help fund the extension of sewer services in the event that the current Grant Application is unsuccessful.

- 3.5 The Regional District, its staff and its members will closely monitor all grant funding announcements and submit applications to all programs whose criteria overlap with the Sewer Service (South) Extension, and acting in good faith will make reasonable efforts on an ongoing basis to explore potential partnerships with developers and local governments to help increase the viability and accelerate the timing of this phase of the Project.
- 3.6 The Regional District shall retain full control over all aspects of the design and construction of the infrastructure projects required to extend the Regional District's wastewater services to the K'ómoks South Lands and other lands in Electoral Area "A", including without limitation:
- (a) design and specifications for the said infrastructure projects;
 - (b) project budgets;
 - (c) procurement and award of contracts; and
 - (d) timing of the commencement of construction;

however, the Regional District shall consult and work closely with the K'ómoks First Nation as to those aspects of the foregoing matters that affect the provision of wastewater services to the K'ómoks South Lands.

4.0 AGREEMENT TO EXTEND WASTEWATER SERVICES

- 4.1 Subject to the fulfillment of the conditions set out in section 4.2, the Regional District agrees to provide Comox Valley Sewerage Service wastewater services to the K'ómoks South Lands.
- 4.2 The Regional District's agreement under section 4.1 is subject to and conditional upon the following conditions being met:
- (a) *Comox Valley Sewerage Service Establishment Bylaw No. 2541, 2003* having been amended in accordance with the *Local Government Act* to permit the extension of wastewater services to the K'ómoks South Lands and other lands in Electoral Area "A";
 - (b) all funding required for the capital works necessary for the Sewer Service (South) Extension having been secured through grants, and through funding agreements between the Regional District, K'ómoks First Nation, and other land developers and owners who will benefit from the extension; and
 - (c) construction of the Sewer Service (South) Extension having been completed.

- 4.3 The Sewer Service (South) Extension will include a new sewer forcemain and other infrastructure that extends south from the Courtney River siphon to a point where a connection to the KFN Sewer System may be established (the "Point of Connection") in proximity to the intersection of Argyle Road and Island Highway. The Parties will work cooperatively to determine the Point of Connection, but in the event the Parties cannot reach an agreement, the Sewer Commission, acting reasonably, will determine the Point of Connection.
- 4.4 The Regional District will initiate construction of the Sewer Service (South) Extension once all necessary funding has been secured. The Parties agree that all costs required for the design and construction of the Sewer Service (South) Extension, after utilization of available grant funding, shall be funded by property owners and developers that will benefit from the Sewer Service (South) Extension. The Parties acknowledge that the implementation of this part of the Project will be conditional upon the Regional District's ability to negotiate and enter into funding agreements with the K'ómoks First Nation and other owners and developers, which agreements may include provision for the recovery of costs through latecomer arrangements as referred to in section 4.5, and through development cost charge front-end agreements and phased development agreements with developers, as applicable. For certainty, nothing in this Agreement shall be interpreted as requiring the Regional District to contribute funds towards the construction of the Sewer Service (South) Extension, or as creating any liability on the Regional District's part if sufficient funding cannot be secured through grants, or through into funding agreements with the K'ómoks First Nation and other owners and developers.
- 4.5 The Regional District agrees that funding agreements negotiated pursuant to section 4.4 may include provisions under which the Regional District shall make reasonable efforts to recover, by means of a "latecomer" arrangement, a financial contribution towards the costs paid by K'ómoks First Nation, and other contributing partners under section 4.4 of this Agreement (collectively, the "Contributors"), from developers ("Latecomers") that make application to connect to and use the Sewer Service (South) Extension following the completion of construction, and who have not otherwise contributed, directly or indirectly, towards the cost of construction. The amount of the financial contributions collected from Latecomers shall be determined in a manner that is consistent with the determination of latecomer charges under section 508 of the *Local Government Act*, and shall also be distributed to Contributors in a manner that is consistent with that legislation. For certainty, the "latecomer" arrangements contemplated under this section 4.5 may include the imposition of latecomer charges under section 508 of the *Local Government Act*, where that legislation applies, and may also include negotiated arrangements for financial contributions from Latecomers in cases where a Contributor was not subject to a requirement for excess and extended services under section 507 of the *Local Government Act*.
- 4.6 Once the following conditions have been fulfilled, K'ómoks First Nation may provide notice in writing to the Regional District requesting the commencement of wastewater services to the K'ómoks South Lands:

- (a) the Sewer Service (South) Extension has been completed to the satisfaction of the Regional District;
- (b) K'ómoks First Nation has completed construction of all works and facilities necessary to establish a connection between the Comox Valley Sewerage System and the KFN Sewer System, on the terms and conditions set out in the Wastewater Service Agreement.

4.7 As of the Service Commencement Date, the Regional District will provide wastewater services for the development and servicing of the K'ómoks South Lands on the terms and conditions set out in a Wastewater Service Agreement. The terms of the Wastewater Service Agreement will be similar to those set out in Schedule "E", attached to and forming part of this Agreement, but the final terms of the said agreement are subject to further discussion and negotiation between the Regional District and K'ómoks First Nation.

5.0 GOVERNANCE REVIEW

5.1 The Parties agree to work towards the K'ómoks First Nation becoming a full member of the Sewage Commission, through the following process.

5.2 The Regional District has commissioned a review of the governance structure of the Comox Valley Sewer Service, the terms of reference for which include:

- (a) review of the existing governance of the Comox Valley Sewer Service;
- (b) consultation with stakeholders including K'ómoks First Nation;
- (c) recommendations for changes to the governance structure of the Comox Valley Sewer Service, including any amendments to Regional District Bylaw No. 650 that may be necessary or advisable.

5.3 Following the Board's review and consideration of the Governance Review, the Parties will engage in further discussions concerning the future role of the K'ómoks First Nation in the operation and administration of the Comox Valley Sewer Service, which may include K'ómoks First Nation membership on the Sewage Commission as a full member.

6.0 ARCHAEOLOGICAL MITIGATION MEASURES

6.1 The Regional District will undertake an Archeological Impact Assessment for the entire Project alignment in advance of construction.

6.2 The Regional District will use the following mitigation measures when constructing the Project, in order to minimize the risk of loss of or damage to K'ómoks First Nation heritage objects and K'ómoks First Nation heritage sites that are within the boundaries of K'ómoks Reserve No. 1:

- (a) the Regional District shall work with the K'ómoks First Nation and a professional archaeologist, retained at the expense of the Regional District, to develop a mutually acceptable Project protocol for excavation and construction along the portions of the Project's alignment that are within the boundaries of K'ómoks Reserve No. 1;
- (b) in developing the Protocol the parties will consider, and as much as reasonably possible incorporate into the Protocol the terms of any K'ómoks First Nation archaeological policy then in effect;
- (c) the Project protocol shall establish procedures for excavating and constructing the Project so as to minimize disturbance of and damage to K'ómoks First Nation heritage objects and K'ómoks First Nation heritage sites;
- (d) the Project protocol shall also establish procedures for recognizing, documenting, removing and preserving any K'ómoks First Nation heritage objects that are discovered or encountered during excavation or construction; and
- (e) where excavation along the Project alignment through K'ómoks Reserve No. 1 is likely to interfere with a known K'ómoks First Nation heritage site, the Regional District shall pre-dig the Project route, using the procedures agreed to under the Project protocol.

7.0 CONSENT TO AND APPROVAL OF THE PROJECT

- 7.1 K'ómoks First Nation hereby confirms its support for the Project, and confirms its commitment to provide its support on an ongoing basis for any further and additional permits and approvals that are required from the Crown for any aspect of the Project. K'ómoks First Nation hereby consents to the construction of the Project through K'ómoks Reserve No. 1 along the Project route shown on Schedule "B" to this Agreement.
- 7.2 K'ómoks First Nation's will provide the Regional District with any letters of support the Regional District reasonably requires for the Project, including but not limited to letters of support for any necessary permits or approvals from the Crown, all to be provided within 10 business days of a request for a letter of support being submitted by the Regional District to K'ómoks First Nation. The letters of support will include a high level reference to K'ómoks First Nation's support being conditional upon the fulfillment of the commitments made in this Agreement, and shall be in a form that is reasonably required by the Regional District to secure any necessary permits and approvals for those aspects of the Project.
- 7.3 K'ómoks First Nation hereby confirms that the monetary benefits and other community benefits provided under this Agreement, including the Sewer Service (South) Extension, provide reasonable and sufficient compensation from the Regional District for the impacts of the Project, as well as for the historical grants

and continued presence of the Sewer ROW and the Lift Station ROW, on the K'ómoks First Nation, its members and its lands, and that:

- (a) the interests of the K'ómoks First Nation in respect of those matters have been fully accommodated by the Regional District;
- (b) the Regional District is fully released from any further claim or requirement for consultation or accommodation in respect of such matters;
- (c) the K'ómoks First Nation will not assert any claim or demand against the Crown, in respect of the impacts of the Project, or the historical grants and continued presence of the Sewer ROW and the Lift Station ROW, that would negate or limit the Regional District's continued use of the Sewer ROW and the Lift Station ROW, the use of K'ómoks First Nation lands for the Project, or the K'ómoks First Nation's support for the Project, or that would give rise to any claim for contribution or indemnity by the Crown against the Regional District in relation to those matters.

7.4 For certainty, this Agreement does not constitute the K'ómoks First Nation's consent to or support of any activity within K'ómoks Reserve No. 1, or elsewhere, other than as required for completion of the Project.

8.0 PROJECT TIMING, PHASING AND COMMENCEMENT

8.1 The Regional District and K'ómoks First Nation both acknowledge and agree that the Project may be constructed in Phases, over a period of up to thirty years, and that the phasing and timing of the construction of the Project through K'ómoks Reserve No. 1 will depend upon which of the Project Options (as referred to in Schedule "C" to this Agreement) the Regional District eventually selects through the Liquid Waste Management Plan.

8.2 The Regional District shall provide regular reports to K'ómoks First Nation as to the Regional District's progress in implementing and undertaking the Project and with respect to the funding of the Sewer Service (South) Extension. Such reports will be provided at such intervals and times as are necessary to keep K'ómoks First Nation informed of significant developments and milestones in implementing the Project.

8.3 The Regional District shall provide:

- (a) notice in writing following selection of the preferred Project Option, together with a preliminary schedule for Project construction showing, to the best of the Regional District's ability, the anticipated timing and completion of each proposed phase of the Project, and the anticipated timing and completion of the Phase of the Project that will extend through K'ómoks Reserve No. 1;
- (b) one hundred and eighty days' notice in writing before the commencement of any pre-digging or Project construction on K'ómoks Reserve No. 1.

9.0 FURTHER ASSURANCES

- 9.1 Given that the Project may be constructed in one or more Phases, K'ómoks First Nation agrees to provide such further approvals or assurances over time as the Project proceeds, in order to give effect to the intention of the Parties, if required due to changes in any applicable law.

10.0 LIQUID WASTE MANAGEMENT PLAN

- 10.1 Following execution of this Agreement, the Regional District will continue with its development of the new Liquid Waste Management Plan, and with the associated consultation process. The Regional District will continue to consult with K'ómoks First Nation in regard to the Liquid Waste Management Plan, including with respect to the Project Options, and the Sewer Service (South) Extension, and the K'ómoks First Nation agrees to provide letters of support as needed to secure provincial approval of those aspects of the Project.
- 10.2 The Regional District will include a commitment within the Liquid Waste Management Plan to deliver the Sewer Service (South) Extension within the 10 year Plan horizon, subject to funding for that part of the Project being secured from third parties (as referred to in section 4.4 of this Agreement).

11.0 LEGISLATIVE DECISIONS AND THIRD PARTY APPROVALS

- 11.1 The Parties both agree and acknowledge that the implementation of certain aspects of this Agreement depend on the exercise of the legislative functions of the Parties which cannot be fettered by agreement, and also depend on approvals of the Provincial and Federal governments which are beyond the control of the Parties. Accordingly, the Parties agree that if any of the following are not obtained or concluded within a reasonable time (having regard to the complexity of the matter) following the execution of this Agreement, and without invalidating any decisions or actions that have been taken by a Party under this Agreement to that point, they will attempt in good faith to negotiate such changes or amendments to this Agreement as may be necessary to achieve the intention of the Parties:
- (a) approval of grant applications to provincial and federal orders of government for the extension of Regional District wastewater services to the K'ómoks South Lands;
 - (b) *Comox Valley Sewerage Service Establishment Bylaw No. 2541, 2003* having been amended in accordance with the *Local Government Act* to permit the extension of wastewater services to the K'ómoks South Lands and other lands in Electoral Area "A";
 - (c) any necessary amendments to the terms of the *Sewage Commission By-law, 1983*, and *Comox Valley Sewerage Service Establishment Bylaw No. 2541, 2003* in relation to the governance structure of the Sewage Commission; and

- (d) conclusion of K'ómoks First Nation's treaty negotiations and K'ómoks First Nation's acquisition of the balance of the K'ómoks South Lands not held by KFN as of the date of this Agreement.

11.2 In the event that one or more of the approvals or matters referred to in section 11.1 are not obtained or concluded within a reasonable time following the execution of this Agreement, and if as a result either Party is prevented from performing their remaining obligations under this Agreement, and if the Parties are unable to agree upon any necessary changes or amendments to this Agreement, then either Party may refer the matter to dispute resolution under Part 12 of this Agreement.

12.0 DISPUTES

12.1 If there is a dispute in respect of this Agreement between the Regional District and K'ómoks First Nation the dispute will be resolved as set forth in this Part.

12.2 The Parties will make all reasonable efforts to resolve any dispute that arise under this Agreement by amicable discussions and negotiations before resorting to the dispute resolution processes referred to in sections 12.4 to 12.7, and shall provide timely disclosure of all relevant and facts, information and documents to facilitate those discussions and negotiations.

12.3 If the Parties disagree as to the interpretation of this Agreement, or as to their respective rights or obligations under this Agreement, and if they are unable to resolve the disagreement within a reasonable time by the informal discussions and negotiations contemplated under section 12.2, they will resolve the dispute by following the steps outlined in sections 12.4 to 12.7.

12.4 Negotiation:

- (a) A Party that wishes a dispute to be resolved will give a written notice (the "Dispute Notice") to the other Party whereupon each Party will promptly designate a senior officer or senior representative and such designated officers and representatives will attempt in good faith to resolve the dispute by negotiation. All reasonable requests for relevant information relating to the dispute made by a party will be honoured.
- (b) If the senior officers and senior representatives of the Parties are unable to resolve the dispute by negotiation under section 12.4(a), the representatives of the Parties shall each refer the dispute to (in the case of the Regional District's representatives) the Board and to (in the case of the K'ómoks First Nation) the elected Council of the K'ómoks First Nation, for further direction as to the potential resolution of the dispute by negotiation.

12.5 Mediation:

- (a) If the parties are unable to resolve the dispute through negotiation within ninety (90) days of the date that the Dispute Notice was delivered as provided in section 12.4, either party may give notice to the other party

requesting mediation of the dispute. Following such notice being given, the parties will jointly appoint a qualified and impartial individual with experience in local government and First Nations relations and service agreements (the "Mediator") to serve as a mediator in connection with the dispute. In the event the parties are unable to agree on the appointment of a Mediator, the Mediator will be appointed by the British Columbia International Commercial Arbitration Centre. The costs of mediation shall be borne equally by the Parties.

- (b) For certainty, the final report or recommendations of the Mediator shall not be binding on either Party.
- (c) If either or both Parties reject the final report or recommendations of the Mediator, then before resorting to binding dispute resolution by arbitration or litigation, the Chair of the Board and the Chief of the K'ómoks First Nation shall meet together to discuss the dispute and, if they both consider this advisable, may refer the dispute to the Board and the elected Council of the K'ómoks First Nation for further discussion as to the potential resolution of the dispute.

12.6 Arbitration:

- (a) If a dispute is not resolved within one hundred and twenty (120) days after the appointment of the Mediator then either Party may deliver to the other Party a notice (an "Arbitration Notice") that the dispute is to be resolved by a single arbitrator (the "Arbitrator") pursuant to the *Arbitration Act (British Columbia)* under the Shorter Rules of Procedure of the British Columbia International Commercial Arbitration Centre.
- (b) If the dispute referred to in the Arbitration Notice is in relation to any of sections 4.1 through 4.4 of this Agreement, and the Party in receipt of an Arbitration Notice objects to the dispute being referred to arbitration, that Party may give written notice of its objection to the other Party, with reasons for the objection, within thirty days of delivery of the Arbitration Notice, in which case the dispute shall not be determined through arbitration except by agreement of both Parties. In the absence of delivery of a written notice of objection under this section 12.6(b), both Parties shall be deemed to have agreed to refer the dispute to binding arbitration in accordance with this section 12.6.
- (c) The costs of the Arbitrator shall be borne equally by the Parties unless the Arbitrator determines otherwise.
- (d) The decision of the Arbitrator may be appealed to the Supreme Court of British Columbia on any question of law, and both Parties confirm that they have consented to an appeal on a question of law, in accordance with section 31(1)(a) of the *Arbitration Act*.

- 12.7 **Litigation** - If the Parties do not mutually agree to refer a dispute to binding arbitration, either party may initiate court proceedings to settle the dispute.

13.0 GENERAL PROVISIONS

13.1 Time

Time is of the essence of this Agreement and the transactions contemplated in this Agreement notwithstanding the extension of any of the dates under this Agreement.

13.2 Relationship of the Parties

No provision of this Agreement shall be construed as to create a partnership, joint venture relationship or a principal-agent relationship between the Parties.

13.3 Notices

- (a) Each notice sent pursuant to this Agreement ("**Notice**") shall be in writing and shall be sent to the applicable Party at the relevant address, facsimile number or e-mail address set out below. Each such Notice may be sent by registered mail, by commercial courier, by facsimile transmission, or by electronic mail.
- (b) The Contact Information for the parties is:

K'ómoks First Nation Attention:	Comox Valley Regional District Attention:
3330 Comox Road Courtenay, BC V9N 3P8	770 Harmston Ave. Courtenay, BC V9N 0G8
Tel: Fax: Email:	Tel: Fax: Email:

- (c) Each Notice sent by electronic mail ("**E-Mail Notice**") must show the e-mail address of the sender, the name or e-mail address of the recipient, and the date and time of transmission, must be fully accessible by the recipient, and unless receipt is acknowledged, must be followed within twenty-four (24) hours by a true copy of such Notice, including all addressing and transmission details, delivered (including by commercial courier) or sent by facsimile transmission.
- (d) Subject to sections 13.3 (e) through (h) each Notice shall be deemed to have been given or made at the following times:

- (i) if delivered to the address (including by commercial courier), on the day the Notice is delivered;
 - (ii) if sent by registered mail, seven (7) days following the date of such mailing by sender;
 - (iii) if sent by facsimile transmission, on the date the Notice is sent by facsimile transmission; or
 - (iv) if sent by electronic mail, on the date the E-Mail Notice is sent electronically by e-mail by the sender.
- (e) If a Notice is delivered, sent by facsimile transmission or sent by electronic mail after 4:00 p.m., or if the date of deemed receipt of a Notice falls upon a day that is not a Business Day, then the Notice shall be deemed to have been given or made on the next Business Day following.
- (f) Notice given by facsimile transmission in accordance with the terms of this section 13.3 will only be deemed to be received by the recipient if the sender's facsimile machine generates written confirmation indicating that the facsimile transmission was sent.
- (g) If normal mail service, facsimile or electronic mail is interrupted by strike, slow down, force majeure or other cause beyond the control of the parties, then a Notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the Notice shall utilize any other such services which have not been so interrupted or shall personally deliver such Notice in order to ensure prompt receipt thereof.
- (h) Each Party shall provide Notice to the other Party of any change of address, facsimile number, or e-mail address of such Party within a reasonable time of such change.

13.4 Further Assurances

Each of the parties shall, at the expense of the other party, execute and deliver all such further documents and do such further acts and things as the other party may reasonably request from time to time to give full effect to this Agreement

13.5 Assignment

Neither Party may assign its rights under this Agreement without the prior written consent of the other Party.

13.6 Binding Effect

This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, and other legal representatives and, to the extent permitted in this Agreement, their respective successors and assigns.

13.7 No Derogation from Statutory Powers

Nothing in this Agreement shall be interpreted as prejudicing or impairing the Regional District in the exercise of any statutory legislative powers under the *Local Government Act*, the *Community Charter* or any other enactment all of which may be executed as if this Agreement had not been exercised.

Nothing in this Agreement shall be interpreted as prejudicing or impairing K'ómoks First Nation in the exercise of any statutory legislative powers under the *Indian Act*, the *First Nations Land Management Act* or any other enactment all of which may be executed as if this Agreement had not been exercised.

Nothing in this Agreement shall be interpreted as amending, abrogating or derogating from any Treaty or Aboriginal rights of K'ómoks First Nation which are recognized and affirmed by Section 35 (1) of the *Constitution Act, 1982*.

13.8 Extended Meanings

Words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine and neuter genders.

13.9 Headings

The headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

13.10 Articles

For the purposes of this Agreement, except as otherwise expressly provided herein, all references in this Agreement to an article, section, subsection, paragraph, or other subdivision, or to a schedule, is to the article, section, subsection, paragraph or other subdivision of or schedule to this Agreement unless otherwise specifically stated.

13.11 Applicable Law

This Agreement shall be interpreted in accordance with the laws of British Columbia and Canada.

13.12 Waiver

Except as may be specifically agreed in writing, no action or failure to act by a party to this Agreement shall constitute a waiver of any right or duty afforded any of them

under this Agreement nor shall any such action or failure to act constitute an approval of or acquiescence in any breach of this Agreement.

13.13 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and contains all of the representations, warranties, covenants and agreements of the respective parties, and may not be amended or modified except by an instrument in writing executed by all parties. This Agreement supersedes all prior agreements, memoranda, and negotiations between the parties.

13.14 Schedules

Schedules "B" through "F" as attached to this Agreement form part of this Agreement. Schedule "A" is attached for reference only, for the purpose of providing context to the provisions of section 2.2(b), and both parties confirm that the Memorandum of Understanding has been superseded and replaced by this Agreement.

The remainder of this page is left intentionally blank.

13.15 Counterpart

This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement.

SIGNED, SEALED AND DELIVERED)
on behalf of the **K'ÓMOKS FIRST NATION**)
pursuant to the consent of the majority)
of the Councillors present at a Council meeting)
duly convened at which)
authority was given for the)
K'ÓMOKS FIRST NATION)
to enter into this Agreement:)

Witness)

Address)


Occupation)



Chief



Councillor



Councillor



Councillor

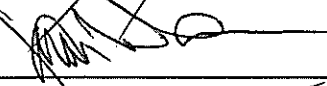
Councillor

COMOX VALLEY REGIONAL DISTRICT)
by its authorized signatory(ies):)



Chair)

JESSE KELLER



Corporate Secretary JAMES WARREN.)

MEMORANDUM OF UNDERSTANDING

Dated this 25th day of February 2020.

BETWEEN:

K'ÓMOKS FIRST NATION

3330 Comox Road
Courtenay, BC V9N 3P8

("K'ómoks First Nation")

OF THE FIRST PART

AND:

COMOX VALLEY REGIONAL DISTRICT

770 Harmston Avenue
Courtenay, BC V9N 0G8

(the "Regional District")

OF THE SECOND PART

WHEREAS:

- A. The K'ómoks First Nation holds certain aboriginal rights and title in its traditional territory in the Province of British Columbia.
- B. Under the authority of the *Local Government Act* and the Regional District's *Comox Valley Sewerage Service Establishment Bylaw No. 2541, 2003*, the Regional District operates a service that provides sewage interception, treatment and disposal facilities for the City of Courtenay and the Town of Comox, and which also provides, through agreement, similar services to the Department of National Defence, and to certain lands of the K'ómoks First Nation (the "Comox Valley Sewer Service").
- C. The Regional District holds a right of way for a sewer pipeline over that part of K'ómoks Reserve No. 1 shown as a right of way on Plan 68885, which is registered in the Canada Lands Surveys Records (the "Sewer ROW").
- D. The Regional District holds a right of way for a sewer lift station over that part of K'ómoks Reserve No. 1 shown as a right of way on Plan 69255, which is registered in the Canada Lands Surveys Records (the "Lift Station ROW").
- E. The Sewer ROW and the Lift Station ROW were granted to the Regional District by Her Majesty the Queen in Right of Canada ("Canada"), under authority of

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Letters Patent issued on February 22, 1990, pursuant to section 35(1) of the *Indian Act*.

- F. In connection with the operation of the Comox Valley Sewer Service, the Regional District wishes to construct a large diameter sewer forcemain, that will extend through K'ómoks Reserve No. 1, partly within the boundaries of the Provincial highway known as Comox Road, and partly within the areas of K'ómoks Reserve No. 1 over which the Regional District holds the Sewer ROW and the Lift Station ROW (the "Project").
- G. The K'ómoks First Nation has adopted the K'ómoks First Nation Land Code (the "Land Code") pursuant to the Framework Agreement on First Nation Land Management, as ratified by Canada under the *First Nations Land Management Act*.
- H. The Regional District acknowledges that it is the position of the K'ómoks First Nation that the Sewer ROW and the Lift Station ROW were granted by Canada without sufficient consultation with the K'ómoks First Nation, and without sufficient accommodation of the interests of the K'ómoks First Nation. The Regional District wishes to enter into an agreement with the K'ómoks First Nation that will provide sufficient accommodation from the Regional District of the interests of the K'ómoks First Nation, and compensation, as they relate to the Regional District, in relation to the past grant of the Sewer ROW and the Lift Station ROW, and for the continued existence of those interests in K'ómoks First Nation lands.
- I. The Regional District acknowledges that while the portions of Comox Road that traverse K'ómoks Reserve No. 1 are not subject to the Land Code, the construction of the Project will require approvals from senior levels of government that will in turn engage the constitutional duty of the Crown to consult with and accommodate the interests of the K'ómoks First Nation.
- J. The Regional District is committed to carrying out the Project in a manner that furthers its cooperative and respectful relationship with the K'ómoks First Nation, and the Regional District wishes to obtain assurances from K'ómoks First Nation that its legal rights and interests, as they relate to the Project, have been satisfactorily addressed and accommodated by the Regional District in a manner that will allow the K'ómoks First Nation to consent to the Project.
- K. The K'ómoks First Nation is likely to conclude treaty negotiations within the 2020/21 fiscal year and such negotiations could result in approximately 12,000 acres of land being transferred to K'ómoks as Treaty Settlement Lands, on the Effective Date of a K'ómoks Treaty, which will also require federal and provincial settlement legislation. Approximately half of those lands will be in the area south of Royston, and north of Union Bay, and over which the K'ómoks First Nation will have law making authority, including taxation jurisdiction. The K'ómoks First Nation will require water and wastewater services for those lands.
- L. The Project has the potential to provide wastewater service to K'ómoks South Lands (as hereafter defined) including lands currently owned by the K'ómoks First

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Nation in fee simple, and lands which will be transferred to the K'ómoks First Nation as Treaty Settlement Lands. The Regional District's Electoral Area "A" also has a strong interest in receiving sewer services from the Comox Valley Sewer Service.

- M. The Regional District and the K'ómoks First Nation intend to submit Grant Applications to assist in financing the extension of Regional District wastewater services to the K'ómoks South Lands and other lands within Electoral Area "A".
- N. The Regional District and the K'ómoks First Nation wish to outline in this Memorandum of Understanding ("MOU") their mutual commitment to the negotiation of a Community Benefit and Accommodation Agreement that will include the following matters:
 - (1) The Regional District's commitment to provide the K'ómoks First Nation, and/or to secure for the benefit of the K'ómoks First Nation, reasonable and sufficient community benefits and other compensation from and on behalf of the Regional District, and no other person, for the impacts of the Project, as well as for the historical grants, and continued presence, of the Sewer ROW and the Lift Station ROW, on K'ómoks First Nation, its members and its lands;
 - (2) K'ómoks First Nation's consent to, support for and participation in the Project, including support for provincial approval of the Comox Valley sewer system liquid waste management plan;
 - (3) The Regional District's commitment to the use of mitigation measures that will reduce the risk of loss of or damage to KFN heritage objects and KFN heritage sites that are within the boundaries of K'ómoks Reserve No. 1, during the construction of the Project; and
 - (4) A commitment by the Regional District to extend wastewater services to the K'ómoks South Lands.

NOW THEREFORE the parties express their mutual intention and understanding as follows:

1.0 DEFINITIONS

- 1.1 In this Memorandum of Understanding the following terms shall have the following meanings:
 - (a) **"Board"** the elected board of the Comox Valley Regional District;
 - (b) **"Community Benefit and Accommodation Agreement"** means the binding agreement respecting the matters referred to in this MOU that the Parties wish to negotiate;

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- (c) **"Crown"** means Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of British Columbia, and any agency, board or representative of either of them;
- (d) **"Grant Applications"** means the applications for provincial and federal funding for extension of Regional District wastewater services to the K'ómoks South Lands, as referred to in section 4.0 of this MOU.
- (e) **"K'ómoks South Lands"** means the lands owned in fee simple by the K'ómoks First Nation between Union Bay and Royston, together with other lands in that same area that are transferred to K'ómoks as Treaty Settlement Lands;
- (f) **"Liquid Waste Management Plan"** means the Regional District's new liquid waste management plan, planning for which is in process as of the date of this MOU, and which is anticipated to include statements and other provisions concerning the construction and operation of the Project as part of the Regional District's plan for the management of liquid waste;
- (g) **"MOU"** means this Memorandum of Understanding;
- (h) **"Parties"** when used in the plural means both parties to this MOU, and when used in the singular means one of them;
- (i) **"Phase"** means a phase of construction of the Project or a portion of the Project, as determined by the Regional District from time to time, in its discretion;
- (j) **"pre-dig"** means the process of excavating and then backfilling along the Project alignment through K'ómoks Reserve No. 1 to the required depth and width during the design and procurement stage of the Project, under the supervision of a professional archaeologist, for the purpose of locating, documenting and removing K'ómoks First Nation heritage objects in accordance with the protocol to be established under the Community Benefit and Accommodation Agreement, before Project construction commences;
- (k) **"Project"** means the construction of a large diameter sewer force main for the Comox Valley Sewer Service, that is anticipated to extend through K'ómoks Reserve No. 1, along the Project route shown on Schedule "A" to this MOU; and
- (l) **"Sewage Commission"** means the Comox Valley Sewage Commission, as established by Regional District Bylaw No. 650.

2.0 PURPOSE

2.1 The purpose of this MOU is to outline:

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- (a) a framework for negotiation of a final Community Benefit and Accommodation Agreement between the Regional District and K'ómoks First Nation that will address the matters referred to in Recital N to this MOU; and
 - (b) the role of the Parties respecting the Grant Applications and other matters required to extend the Regional District wastewater services to the K'ómoks South Lands.
- 2.2 Subject to section 10.4, this MOU is not a binding legal agreement and does not create any binding obligations on either of the Parties.
- 3.0 COMMUNITY BENEFITS AND COMPENSATION/EXTENSION OF WASTEWATER SERVICES**
- 3.1 The Community Benefit and Accommodation Agreement will set out the terms and conditions for the Regional District's payment and/or securement of compensation, and provision of other community benefits, to and for the benefit of K'ómoks First Nation. The Parties intend that such compensation and community benefits will be in an amount and kind that provides reasonable and sufficient compensation for the impacts on the K'ómoks First Nation, its members and its lands, and that, as regards to the Regional District and no other person, fully accommodates the interests of K'ómoks First Nation, in respect of:
 - (a) the Project; and
 - (b) the historical grants and continued presence of the Sewer ROW and the Lift Station ROW, and the Regional District's continued and ongoing use of those ROW's.
- 3.2 Further to section 3.1 of this MOU, the Community Benefit and Accommodation Agreement will provide for payment of financial compensation and the provision of other community benefits to the K'ómoks First Nation, the nature and amount of which remains subject to the final negotiation and approval of both parties. Schedule "B" to this MOU provides a draft outline of the proposed compensation and community benefits package.
- 3.3 It is anticipated that under the Community Benefit and Accommodation Agreement, payment of financial compensation to the K'ómoks First Nation may be phased as follows:
 - (a) an amount to be paid within a specified time following the execution of the Community Benefit and Accommodation Agreement;
 - (b) an amount to be paid within a specified time following the date on which all the following approvals have been obtained:
 - (i) the approval of the Minister of Environment and Climate Change Strategy to the Liquid Waste Management Plan;

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- (ii) the Board of the Regional District having approved and adopted the Liquid Waste Management Plan;
- (iii) the Board of the Regional District having adopted a loan authorization bylaw, authorizing the borrowing of funds necessary for the completion of the first Phase of the Project; and
- (iv) the contract for the construction of the first Phase having been approved by the Board of the Regional District and having been executed by the contractor and by the Regional District.

3.4 The Regional District may approach the Crown with a request that it contribute to the financial compensation payable to K'ómoks First Nation under sections 3.1 and 3.2. If the Crown agrees to contribute to the financial compensation payable to K'ómoks First Nation under the Consultation and Accommodation Agreement, the agreement will include any provisions necessary to reflect the Crown's contribution. For greater certainty, any contributions that the Crown may make under this section will not be considered as a fulfillment either in whole or in part of any of the Crown's obligations to the K'ómoks First Nation, and will not be considered in lieu of funds that have been requested from the Crown by the K'ómoks First Nation for the extension of the Regional District wastewater treatment services to the K'ómoks South Lands as well as to other lands in Electoral Area "A".

3.5 Further to section 2.1(b) of this MOU, , the Parties will develop provisions or agreements respecting the extension of Regional District wastewater services to the K'ómoks South Lands comprising the "Southlands" development, near Union Bay, British Columbia, as well to as other lands in Electoral Area "A" requiring sewer services, including:

- (a) the process by which the necessary approvals of the Board and the Sewage Commission to that extension will be sought and obtained (including the necessary amendments to *Comox Valley Sewerage Service Establishment Bylaw No. 2541, 2003*);
- (b) submission of Grant Applications for funding for the extension of Regional District wastewater services to the K'ómoks South Lands and other lands in Electoral Area "A";
- (c) the Regional District's enduring resolve to identify and secure other means of financial support for the extension of Regional District wastewater services should the Grant Applications contemplated under this MOU not be successful;
- (d) cost sharing and partnering between the Regional District, K'ómoks First Nation, and other potential partners, for the expansion of the infrastructure

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required to extend the Regional District's wastewater infrastructure to those lands;

- (e) the payment of fees and charges for the Regional District's delivery of wastewater treatment services to K'ómoks South Lands; and
 - (f) the negotiation of further agreements to implement the objectives of the Parties under section 2.1(b) of this MOU and this section 3.5.
- 3.6 The provisions or agreement respecting the extension of Regional District wastewater services to the K'ómoks South Lands will also include provisions for the review of the governance structure of the Comox Valley Sewer Service, which could include discussion of the inclusion of a representative of K'ómoks First Nation as a member of the Sewage Commission.
- 3.7 Following the execution of this MOU and until completion of negotiation and execution of the Community Benefit and Accommodation Agreement and other related agreements the Parties consider necessary respecting the extension of Regional District wastewater services to the K'ómoks South Lands, the parties will work cooperatively in the preparation and submission of Grant Applications to provincial and federal orders of government, for funding of wastewater infrastructure that is of mutual benefit to the Parties.

4.0 GRANT APPLICATIONS AND FUNDING OF SEWER EXTENSION

- 4.1 It is expected that under the Community Benefit and Accommodation Agreement, the Regional District will commit to preparing Grant Applications to provincial and federal orders of government for funding for extension of wastewater services to the K'ómoks South Lands, and the Regional District with the K'ómoks First Nation as co-applicants shall submit the applications.
- 4.2 Notwithstanding that K'ómoks First Nation is listed as a co-applicant on grant communications and applications, all grant funding awarded pursuant to a Grant Application shall be payable solely to the Regional District, on behalf of both the Regional District and the K'ómoks First Nation, for the purpose of extension of wastewater services to the K'ómoks South Lands.
- 4.3 While CVRD's agreement to the extension of wastewater services to the K'ómoks South Lands will be conditional on the availability of funding and the Board's adoption of the necessary amendments to the *Comox Valley Sewerage Service Establishment Bylaw No. 2541, 2003*, and while the success of the Grant Applications is important to the success of that extension project, the Regional District's agreement to extend sewer services to the K'ómoks South Lands will include its enduring resolve to identify and secure other funding opportunities to help fund the extension of sewer services in the event that the Grant Applications are unsuccessful.

5.0 CONSENT TO AND APPROVAL OF THE PROJECT

- 5.1 The Community Benefit and Accommodation Agreement will include a statement of K'ómoks First Nation's support for the Project, and for any Project approvals that are required from the Crown including the liquid waste management plan. Without limiting the foregoing, under the Community Benefit and Accommodation Agreement K'ómoks First Nation will consent to the construction of the Project through K'ómoks Reserve No. 1 along the Project route shown on Schedule "A" to this MOU. K'ómoks First Nation's support for the Project will be conditional on the Regional District entering into an agreement to extend wastewater services to the K'ómoks South Lands, and will also be conditional upon funding being available for the extension of wastewater services to the K'ómoks South Lands, whether through the Grant Applications or other sources of funding the parties have access to.
- 5.2 The Community Benefit and Accommodation Agreement will include a statement of K'ómoks First Nation's agreement to provide the Regional District with any letters of support the Regional District reasonably requires for the Project, including but not limited to letters of support for any necessary permits or approvals from the Crown, all to be provided within 10 business days of a request for a letter of support being submitted by the Regional District to K'ómoks First Nation.
- 5.3 The Community Benefit and Accommodation Agreement will also include an acknowledgement by K'ómoks First Nation that the compensation and community benefits provided under the agreement provide reasonable and sufficient compensation from the Regional District for the impacts of the Project, as well as for the historical grants and continued presence of the Sewer ROW and the Lift Station ROW, on the K'ómoks First Nation, its members and its lands, and that:
- (a) the interests of the K'ómoks First Nation in respect of those matters have been fully accommodated by the Regional District;
 - (b) the Regional District is fully released from any further claim or requirement for consultation or accommodation in respect of such matters;
 - (c) the K'ómoks First Nation will not assert any claim or demand against the Crown, in respect of the impacts of the Project, or the historical grants and continued presence of the Sewer ROW and the Lift Station ROW, that would negate or limit the Regional District's continued use of the Sewer ROW and the Lift Station ROW, the use of K'ómoks First Nation lands for the Project, or the K'ómoks First Nation's support for the Project, or that would give rise to any claim for contribution or indemnity by the Crown against the Regional District in relation to those matters.
- 5.4 For certainty, the Community Benefit and Accommodation Agreement will not constitute the K'ómoks First Nation's consent to or support of any activity within K'ómoks Reserve No. 1, other than as required for completion of the Project.

6.0 PROJECT TIMING, PHASING AND COMMENCEMENT

- 6.1 In addition to the matters set out in section 3.2, and agreement by the Regional District to extend the wastewater services to the K'ómoks South Lands, the Community Benefit and Accommodation Agreement will also include the acknowledgement of both the Regional District and K'ómoks First Nation that the Project may be constructed through K'ómoks Reserve No. 1 in Phases, over a period of up to twenty years, and that the phasing and timing of the construction of the Project through K'ómoks Reserve No. 1 will depend upon which of the Project Options (as referred to in Schedule "B" to this MOU) the Regional District eventually selects.
- 6.2 The Community Benefit and Accommodation Agreement will include K'ómoks First Nation's confirmation that any delay in the commencement of the construction of the Project through K'ómoks Reserve No. 1 will not affect K'ómoks First Nation's consent to and approval of the Project, provided that such delay does not result in the loss of funding committed for the extension of the Regional District water treatment services to the K'ómoks South Lands.
- 6.3 The Community Benefit and Accommodation Agreement will require the Regional District to provide updates to K'ómoks First Nation from time to time as planning for the Project progresses. In particular, the Regional District will agree to provide:
- (a) notice in writing following selection of the preferred Project Option, together with a preliminary schedule for Project construction showing, to the best of the Regional District's ability, the anticipated timing and completion of each proposed phase of the Project, and the anticipated timing and completion of the Phase of the Project that will extend through K'ómoks Reserve No. 1;
 - (b) one hundred and eighty days' notice in writing before the commencement of any pre-digging or Project construction on K'ómoks Reserve No. 1.

7.0 MITIGATION MEASURES

- 7.1 The Community Benefit and Accommodation Agreement will set out the Regional District's agreement to use the following mitigation measures when constructing the Project in order to minimize the risk of loss of or damage to K'ómoks First Nation heritage objects and K'ómoks First Nation heritage sites that are within the boundaries of K'ómoks Reserve No. 1:
- (a) the Regional District shall work with the K'ómoks First Nation and a professional archaeologist, retained at the expense of the Regional District, to develop a mutually acceptable Project protocol for excavation and construction along the portions of the Project's alignment that are within the boundaries of K'ómoks Reserve No. 1;
 - (b) the Project protocol shall establish procedures for excavating and constructing the Project so as to minimize disturbance of and damage to

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K'ómoks First Nation heritage objects and K'ómoks First Nation heritage sites;

- (c) the Project protocol shall also establish procedures for recognizing, documenting, removing and preserving any K'ómoks First Nation heritage objects that are discovered or encountered during excavation or construction; and
- (d) where excavation along the Project alignment through K'ómoks Reserve No. 1 is likely to interfere with a known K'ómoks First Nation heritage site, the Regional District shall pre-dig the Project route, using the procedures agreed to under the Project protocol.

8.0 FURTHER ASSURANCES

- 8.1 Given that the Project may be constructed in one or more Phases, the Community Benefit and Accommodation Agreement will include provision for the granting of further approvals or assurances in order to give effect to the intention of the Parties, if required due to changes in any applicable law.

9.0 LIQUID WASTE MANAGEMENT PLAN

- 9.1 Following execution of this MOU, the Regional District will continue with its development of the new Liquid Waste Management Plan, and with the associated consultation process. The Regional District will continue to consult with K'ómoks First Nation in regards to the Liquid Waste Management Plan, including with respect to the Project Options.
- 9.2 While the Regional District intends to continue with its evaluation of Project Options in order to make a recommendation to the Sewage Commission and the Board for incorporation of a preferred Option into the Liquid Waste Management Plan, the Regional District does not intend to make that recommendation until the Community Benefit and Accommodation Agreement has been finalized, and until the Sewage Commission and the Board have approved in principle the extension of Regional District wastewater services to the K'ómoks South Lands. The Parties will make all reasonable efforts to conclude the Community Benefit and Accommodation Agreement before June of 2020, so that the Regional District's selection of the preferred Option is not delayed.

10.0 GENERAL PROVISIONS

10.1 Further Negotiations

In order to proceed with the negotiations contemplated hereunder, within 90 days of the execution of this MOU senior representatives of the parties will meet to establish a mutually agreeable schedule of future meetings and negotiations.

10.2 Notices

- (a) All communications between the parties pursuant to this Memorandum of Understanding ("**Notice**") may be in writing and shall be sent to the relevant Party at the relevant address, facsimile number or e-mail address set out below.
- (b) Neither party will use or reference the existence of this Memorandum of Understanding to pursue licenses, permits or funding with other levels of government, without the prior consent of the other party.
- (c) The Contact Information for the parties is:

K'ómoks First Nation	Comox Valley Regional District
Attention:	Attention:
3330 Comox Road Courtenay, BC V9N 3P8	770 Harmston Avenue Courtenay, BC V9N 0G8
Tel:	Tel:
Fax:	Fax:
Email:	Email:

10.3 Non-Derogation

- (a) Nothing in this Memorandum of Understanding shall be interpreted as prejudicing or impairing the Regional District in the exercise of any statutory legislative powers under the *Local Government Act*, the *Community Charter* or any other enactment all of which may be exercised as if this Agreement had not been executed.
- (b) Nothing in this Memorandum of Understanding shall be interpreted as prejudicing or impairing the K'ómoks Indian Band in the exercise of any statutory legislative powers under the *Indian Act* or any other enactment all of which may be exercised as if this Agreement had not been executed.
- (c) This Memorandum of Understanding does not amend, abrogate or derogate from any Treaty or Aboriginal rights of K'ómoks First Nation which are recognized and affirmed by Section 35 (1) of the *Constitution Act, 1982*.
- (d) For greater certainty, but subject to section 5.3(c), this Memorandum of Understanding is not intended to diminish in any way any of the Crown's obligations with respect to any wrongs committed by the Crown related to any matter, including any matters related to this Memorandum of Understanding.

10.4 Nature and Use of this Agreement

Except for this section, this agreement is a non-binding Memorandum of Understanding that sets out a framework for future discussions and agreement and will not be used in any way to indicate K'ómoks First Nation consent of or support for the Project or any permits or authorizations or other approvals that may be required for the Project. The

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Parties acknowledge that a breach of this clause will result in harm to the K'ómoks First Nations and a claim for compensation or damages.

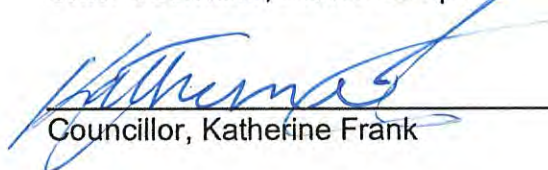
10.5 Counterpart

This Memorandum of Understanding may be executed in counterpart with the same effect as if both parties had signed the same document.

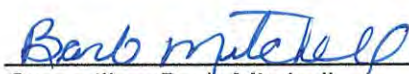
IN WITNESS WHEREOF the parties have executed this Memorandum of Understanding.

K'ÓMOKS FIRST NATION by its authorized signatories:



Chief Councillor, Nicole Rempel

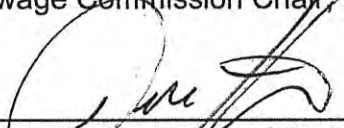

Councillor, Katherine Frank



Councillor, Richard Hardy


Councillor, Barb Mitchell

COMOX VALLEY REGIONAL DISTRICT
by its authorized signatories:


Sewage Commission Chair, David Frisch

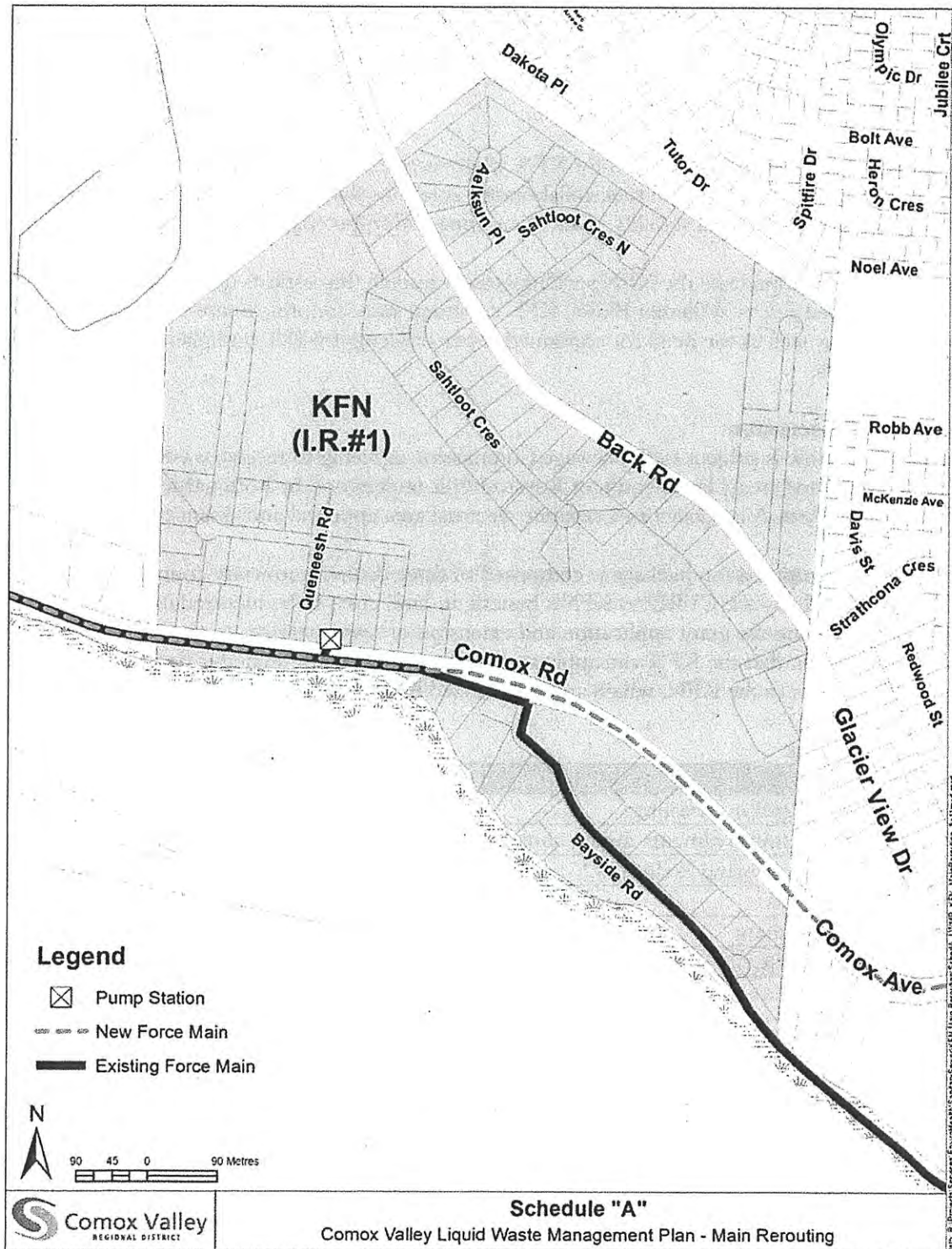

Comox Valley Regional District Board Chair, Jesse Ketler


Corporate Legislative Officer, James Warren

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Schedule "A"

Project Route Through IR No. 1



Schedule "B"

Term Sheet/Proposed compensation package

As stated by Sewage Commission Chair Frisch at the January 7 meeting between the CVRD Board, Sewage Commission and KFN Chief and Council, the Sewage Commission understands the impacts of constructing a new and urgently needed forcemain through IR1. It also acknowledges the past expropriation of the right-of-way for the existing forcemain, installed in the early eighties, was done without appropriate consultation.

This proposal provides compensation for KFN while recognizing the overwhelming benefit for both parties to work together and seek collaborative solutions that lead to sustainable community growth, success and financial stability, while honouring and respecting the autonomy of both parties.

We recognize and appreciate the KFN's willingness to resolve this issue as quickly as possible given the environmental risk to Willemar Bluffs, KFN's cultural and economic interests in the estuary and Baynes Sound, as well as the need for continued sewer servicing for IR1, and planned developments in the southlands.

Proposal for Discussion

The proposal below is subject to the Sewage Commission agreeing to receive wastewater flows from KFN fee simple and treaty lands south of Royston. It is understood by both parties that participation by Area A is subject to a separate electoral area approval and assent processes.

The proposed compensation package is composed of three distinct monetary components: costs to be incurred directly by the CVRD to KFN's benefit, in-kind costs to be incurred indirectly by the CVRD in developing the grant application and extension of sewer services to the KFN southlands and a cash payment that the KFN can apply at their discretion. It also includes significant and harder to quantify benefits to the KFN, which are summarized in the next section.

Monetary Benefits

Item	Value
Archeological mitigation measures	\$1.5 M
IR1 infrastructure improvements during construction*	\$0.5 M
IR1 conveyance borrowing exclusion**	\$0.5 M
In-kind CVRD costs	\$0.2 M
One-time cash payment	\$1.5 M
Total compensation	\$4.2 M

* Credit to KFN for improvements to IR1 drainage, roads, and utilities to be added to the conveyance construction contract

** Insulating the KFN IR1 properties from LWMP conveyance borrowing costs as previously highlighted as non-negotiable by KFN

Additional Benefits

- Sewage Commission approval to extend sewer services to the KFN southlands would allow the KFN to benefit from the enormous investment made by the existing participants.
- The KFN would not be required to make any contribution towards the non-depreciated value of the existing Comox Valley Sewer System infrastructure.

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- Connecting to a regional trunk line to move wastewater from KFN's southlands offers a significant cost advantage over construction of a stand-alone sewage treatment system by KFN.
- The CVRD will lead the application for ICIP grant funding at its own expense, forgoing this grant opportunity for other services. The CVRD also agrees to cooperate in any and all reasonable opportunities for grant funding in future.
- The Sewage Commission will include representation of the K'ómoks First nation as a non-voting member, and will conduct a governance structure review (including timing, structure and mechanisms) to inform decisions respecting K'ómoks participation on the Sewage Commission as a voting member



PROPOSED SEWER CONVEYANCE SOLUTION

Project Options/Permutations

Comox Valley Sewage Service conveyance infrastructure

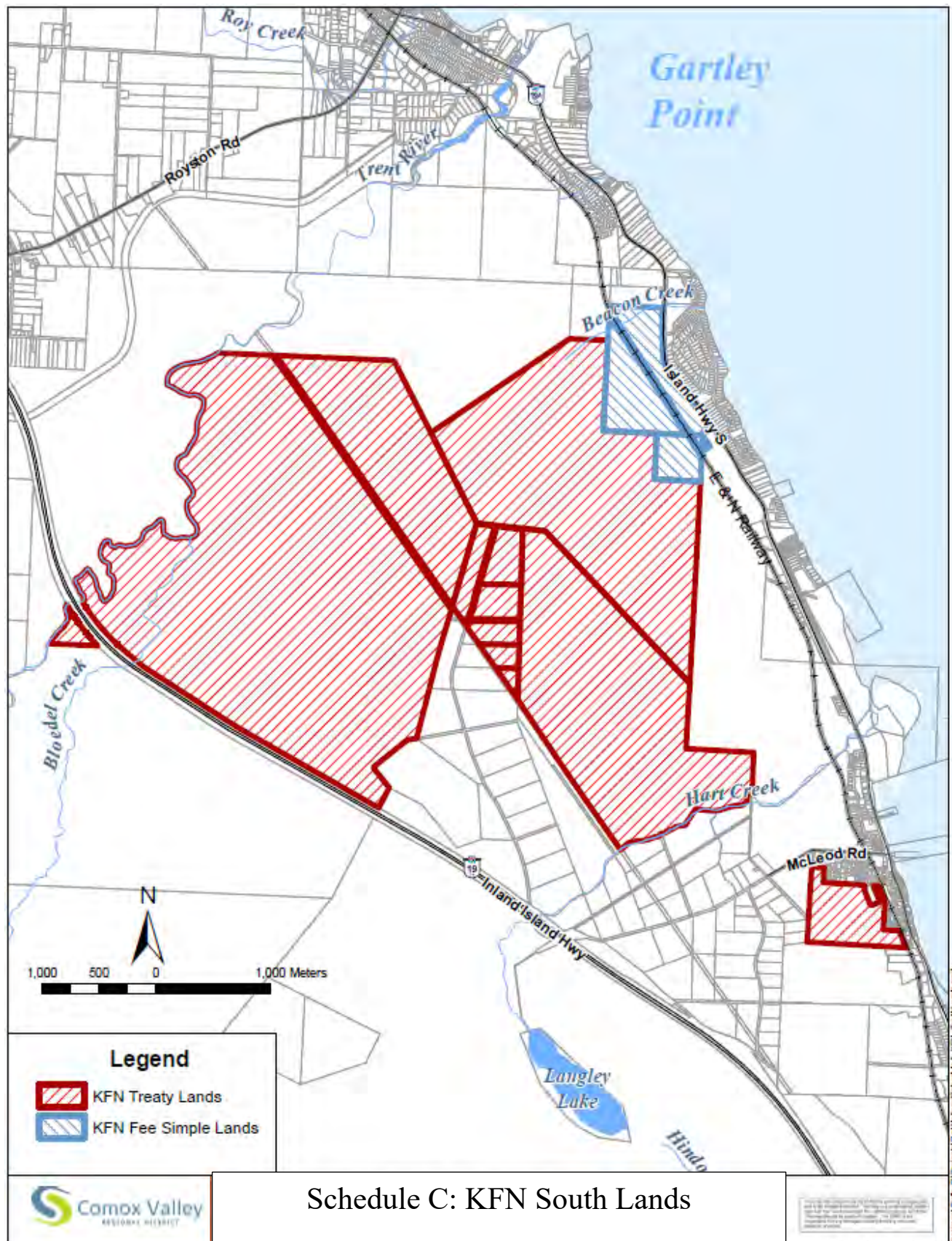
This element of the Project involves the construction of a large diameter (greater than 32 inch) sewer forcemain by the Comox Valley Sewer Service, that will be installed along Comox Road along the provincial road right of way through K'ómoks Reserve No. 1, the Town of Comox, and Electoral Area "B" to the Comox Valley Water Pollution Control Center (CVWPCC), the alignment being shown in Schedule "B". Key aspects of the Project relevant to K'ómoks Reserve No. 1 include:

- pre-digging along the forcemain alignment through K'ómoks Reserve No. 1;
- removal of the existing sewer pipe along Bayside Road once the new sewer main is constructed; and,
- upgrades to the K'ómoks First Nation pump station including new larger pumps, and upgrades to structural, electrical and instrumentation components within the current pump station site.

Permutations to this include an option wherein the project described above is phased, with the first phase involving a new forcemain from Marina Park in the Town of Comox to the CVWPCC occurring immediately, and the second phase involving construction of a new forcemain from the Courtenay pump station along Comox Road, through K'ómoks Reserve No. 1 and the Town of Comox to a tee near Wilcox Street in 15-30 years once the existing forcemain reaches the end of its life.

Sewer Service (South) Extension

This element of the Project means installation of a sewer main and other related infrastructure required to extend wastewater services south from the Courtenay river siphon, through the City of Courtenay and Electoral Area "A" to the K'ómoks South Lands and other lands within Electoral Area 'A'. The alignment of this part of the Project is shown as "Concept 1" on Schedule C.2 to this Agreement. Timing of construction will depend on the pace of development and availability of funding, as per the provisions of this Agreement.





SEWER SERVICING (SOUTH) FORCEMAIN EXTENSION

Schedule “F”

Draft Terms and Conditions for Wastewater Services from K’ómoks South Lands

1.0 Definitions

1.1 In this Schedule:

- (a) “Development” includes the subdivision of land and the construction of a building or other structure;
- (b) “Point of Connection” means the pipes, valves, meters and other works which establish a connection between the Comox Valley Sewerage System and the KFN Sewer System;
- (c) “Regional District Specifications” means the engineering and construction standards and specifications utilized by the Regional District in the design and construction of works and facilities of the Comox Valley Sewerage System, or other technical standards that are otherwise acceptable to the Regional District, acting reasonably;
- (d) “Service” means the interception, treatment and disposal of wastewater from the KFN Sewer System by the Comox Valley Sewerage System under this Wastewater Service Agreement; and
- (e) “Sewer Service Establishment Bylaw” means *Comox Valley Sewerage Service Establishment Bylaw No. 2541, 2003*, as amended or replaced from time to time.

2.0 Interception, Treatment and Disposal of Wastewater

- 2.1 As of the Service Commencement Date, K’ómoks First Nation will be entitled to discharge **XX cubic meters of wastewater** per year from the KFN Sewer System to the Comox Valley Sewerage System, and the Regional District will accept such wastewater for conveyance and treatment through the Comox Valley Sewerage System to the extent the interception, treatment and discharge capacity the Comox Valley Sewerage System allows..
- 2.2 For greater certainty, the Regional District shall not be obliged under this Agreement to convey, treat or discharge more than the **XX cubic meters** of wastewater annually referenced in section 2.1 of this Schedule “F” from the KFN Sewer System, and the interception, treatment and discharge of any additional wastewater from the K’ómoks South Lands will be subject to the availability transmission and treatment requirements of all customers of the Comox Valley Sewerage System including K’ómoks First Nation.

3.0 Establishing a Point of Connection

- 3.1 K'ómoks First Nation must construct at its sole cost, in accordance with Regional District Specifications, any works required for the purpose of connecting the KFN Sewer System to the Comox Valley Sewerage System, whether such works are required to be constructed on or off the K'ómoks South Lands.
- 3.2 Before constructing any points of connection, K'ómoks First Nation must submit to the Regional District for its approval, detailed design drawings and specifications for the works, prepared by a Qualified Professional, and certified by that Qualified Professional to be in accordance with Regional District Specifications.
- 3.3 All work carried out by K'ómoks First Nation for the purpose of establishing a point of connection must be performed by qualified and experienced contractors that are acceptable to the Regional District, acting reasonably.
- 3.4 All works, services and facilities within the KFN Sewer System to be constructed, maintained and operated by the K'ómoks First Nation for the purpose of collecting wastewater from properties within the K'ómoks South Lands and conveying that wastewater to a sewer main operated by the Comox Valley Sewerage Service will remain the property of the K'ómoks First Nation.

4.0 Duration of Wastewater Service Agreement

- 4.1 This Wastewater Service Agreement shall remain in force following the Commencement Date, unless terminated by Agreement of the Parties.

5.0 Fees for Service

- 5.1 K'ómoks First Nation shall pay to the Regional District a fee for the interception, treatment and discharge of wastewater under this Wastewater Service Agreement that is:
 - (a) the portion of the total annual costs of the Regional District in operating the Comox Valley Sewerage System that is proportionate to the metered volume of sewage flows contributed by the KFN Sewer System relative to the sewage flows from other participants and customers of the Comox Valley Sewerage System;
 - (b) payable annually at the times established for payment of sewerage fees by the municipalities under the Sewage Service Establishment Bylaw.
- 5.2 The Regional District shall render an annual invoice to the K'ómoks First Nation in April of year that services under this Wastewater Service Agreement are provided, payable by August 1 of the year the invoice is rendered.

6.0 DCC's and CICC's

6.1 The K'ómoks First Nation agrees that:

- (a) it shall pay DCC's and CICC's to the Regional District in respect of the K'ómoks South Lands and all development on the K'ómoks South Lands, using the DCC rates and CICC rates as set out in the DCC Bylaw and CICC Bylaw;
- (b) that such payments shall be made whether or not, absent this Wastewater Service Agreement, the DCC Bylaw and CICC Bylaw would apply to the K'ómoks South Lands or any part of those lands.

6.2 CICC's shall be payable in respect of the lands held in fee simple by or on behalf of K'ómoks First Nation when the first Point of Connection is established under this Wastewater Service Agreement, and shall be payable in respect of the KFN Southern Treaty Lands when the K'ómoks First Nation acquires title to those lands.

6.3 For the purposes of determining the DCC's and CICC's payable under section 6.1, the DCC Bylaw and CICC Bylaw shall be used to classify portions of the K'ómoks South Lands that are subject to a DCC or CICC, and all developments on the K'ómoks South Lands that connect or are entitled to connect to the KFN Sewer System.

6.4 K'ómoks First Nation shall from time to time prepare a summary of developments on the K'ómoks South Lands that have been or are entitled to be connected to the KFN Sewer System and shall provide that summary to the Regional District according to a schedule that the parties agree to from time to time.

6.5 The summary provided under section 6.4 must be in such a form as to allow the Regional District to apply the rates payable under the DCC Bylaw and CICC Bylaw and determine the equivalent charges that are payable by K'ómoks First Nation. In the event that the K'ómoks First Nation does not provide a development summary as required under this Agreement, the Regional District may enter onto the K'ómoks South Lands for the purpose of determining the extent of all new development on the K'ómoks South Lands during the applicable period.

6.6 All DCC and CICC charges payable under this Wastewater Service Agreement shall be set out in an invoice prepared by the Regional District, following its receipt from K'ómoks First Nation, or the Regional District's preparation (whichever is applicable) of the summary of developments on the K'ómoks South Lands. Each such invoice shall be payable by K'ómoks First Nation within sixty (60) days of its delivery to K'ómoks First Nation.

6.7 For certainty, K'ómoks First Nation shall not be required to pay DCC's in respect of a particular development in circumstances where an exemption under the DCC Bylaw or *Local Government Act* would apply, if that development occurred on other lands within the Regional District that are subject to the DCC Bylaw.

7.0 Standard of Service

- 7.1 The standard of service provided by the Regional District under this Wastewater Service Agreement, in terms of level of wastewater treatment and effluent discharge quality, will be substantially the same as the standard of service provided to municipalities and Participating Areas areas through the Comox Valley Sewerage System.

8.0 Interruptions in Service

- 8.1 Without prejudice to any other right or remedy the Regional District may have, the Regional District may, in its sole discretion, and without terminating this Wastewater Service Agreement, interrupt or reduce the provision of service to the KFN Sewer System if the Regional District, acting reasonably, decides that interruption or reduction is necessary for public health, safety or for the conduct of routine maintenance or repairs.
- 8.2 Except in the case of an emergency, the Regional District shall provide at least 10 days written notice to the K'ómoks First Nation of any planned service interruption or reduction.
- 8.3 The Regional District, its elected and appointed officers and employees shall not be responsible to the K'ómoks First Nation for any losses or damage occurring as a result of interruptions or reductions in service caused by circumstances beyond their control. The K'ómoks First Nation agrees to indemnify and save harmless the Regional District from any and all actions, causes of action, claims, demands, losses and costs of any kind caused by or resulting from an insufficient transmission capacity, or any other interruption or reduction in service under this section 8.3.
- 8.4 In the event that the regulatory bylaws for the Comox Valley Sewerage Service do not apply to the K'ómoks South Lands or any portion thereof, the K'ómoks First Nation shall adopt and make all reasonable efforts to enforce bylaws governing the collection and discharge of wastewater into the KFN Sewer System that are consistent with the bylaws of the Regional District and other participants in the Comox Valley Sewerage Service, including with respect to prohibiting the discharge of any form of waste that is prohibited under the Regional District's bylaws.

9.0 Compliance with Laws and Regulations

- 9.1 The K'ómoks First Nation shall, in the use of the service, comply with all applicable bylaws of the Regional District related to the use by the K'ómoks First Nation of the sewerage service, whether or not such bylaws have legal force or effect on K'ómoks South Lands, and shall take all reasonable measures necessary to secure the compliance of all members of K'ómoks First Nation and all occupiers of the K'ómoks South Lands using the service with such restrictions and prohibitions,

that are consistent with Regional District and K'ómoks First Nation regulatory and enforcement policies.

10.0 Discharge of Wastewater

- 10.1 Wastewater discharged from the KFN Sewer System shall be only from K'ómoks First Nation and occupants of the K'ómoks South Lands solely for domestic, commercial and industrial purposes on the K'ómoks South Lands, and shall not include receiving or discharge of any septage, wastewater from holding tanks or otherwise from outside of the boundaries of the K'ómoks South Lands without the consent of the Regional District, not to be unreasonably withheld.

11.0 Default and Dispute Resolution

- 11.1 If either K'ómoks First Nation or the Regional District (the "Claiming Party") considers that the other party (the "Defaulting Party") is in breach of or has failed to perform any of the material covenants or obligations under this Wastewater Transmission and Treatment Agreement, the Claiming Party may deliver written notice of that breach or non-performance to the Defaulting Party.
- 11.2 Upon receipt of a notice under section 11.1, the Defaulting Party must cure the breach or non-performance within sixty (60) days, or such other reasonable time as the parties agree to. If the Defaulting Party disputes that a breach or non-performance has occurred, the matter will be resolved under the dispute resolution provisions of Section 12.0 of the Community Benefit Agreement.

12.0 Indemnification

- 12.1 K'ómoks First Nation hereby releases and indemnifies the Regional District, its elected officials, officers, agents, contractors and employees from and against all manner of suits, claims, demands and causes of action arising out of or in connection with the provision of services under this Agreement including the construction, operation, repairs and maintenance of such services, provided, however, that such release and indemnity shall not apply in any case where the Regional District, its elected officials, officers, agents, contractors, employees, invitees or other such parties for whom the Regional District is in law responsible have breached this Wastewater Service Agreement, been negligent, have behaved in a manner which amounts to wilful misconduct, or have otherwise acted unlawfully.
- 12.2 The Regional District hereby releases and indemnifies K'ómoks First Nation, its elected officials, officers, contractors and employees from and against all manner of suits, claims, demands and causes of action arising out of or in connection with any breach of this Agreement on the part of the Regional District, its elected officials, officers, agents, contractors, employees and other such parties for whom the Regional District is in law responsible, and their negligence, misconduct or unlawful acts, provided, however, that such release and indemnity shall not apply in any case where K'ómoks First Nation, its elected officials, officers, agents,

contractors, employees, invitees or other such parties have breached this Wastewater Service Agreement, been negligent, have behaved in a manner which amounts to wilful misconduct, or have otherwise acted unlawfully.

13.0 Assignment

- 13.1 K'ómoks First Nation shall not assign its interest in this Wastewater Service Agreement without the prior written consent of the Regional District.

14.0 Treaty First Nation Membership in Regional District

- 14.1 In the event that the K'ómoks First Nation becomes a treaty first nation member of the Regional District, and is a participant in the Comox Valley Sewerage Service, the terms and conditions of service under this Wastewater Service Agreement shall continue in force, but may be modified by agreement of the Parties as the circumstances require.