

**LICENCE OF OCCUPATION – DALLAS ROAD FORCE MAIN**

THIS LICENCE AGREEMENT dated for reference the 22<sup>nd</sup> day of February, 2017

BETWEEN:

**THE CORPORATION OF THE CITY OF VICTORIA**

#1 Centennial Square  
Victoria, BC  
V8W 1P6

(the "City")

OF THE FIRST PART

AND:

**CAPITAL REGIONAL DISTRICT**

625 Fisgard Street  
Victoria, BC  
V8W 1R7

(the "CRD")

OF THE SECOND PART

**WHEREAS:**

- A. The City owns or has the right of possession and control of the lands situated in the City of Victoria, in the Province of British Columbia, more particularly described in Schedule "A" attached hereto (the "Lands");
- B. The CRD and participating municipalities, including the City, are undertaking a major upgrade of the regional wastewater collection and treatment infrastructure, including an upgrade of sanitary sewer works within the Licence Area under the CRD's Core Area Liquid Waste Management Plan (the "CALWMP"), approved by the Minister of Environment under the *Environmental Management Act*, as amended from time to time,
- C. CALWMP was amended by Amendment No. 11 and conditionally approved by the Provincial Minister of Environment in November, 2016 and further revised in the letter from the Minister of Environment on November 18, 2016;
- D. The CRD wishes to acquire the right by way of a non-exclusive licence of occupation to install, entrench, construct, operate, maintain, repair and replace one or more systems of sanitary sewer works as conceptually shown on the CRD drawings attached hereto as Schedule "B" (the "Works") upon, over, under and across that part of the Lands

identified in Schedule "C" (the "**Licence Area**") and the City has agreed to grant a licence on the terms outlined herein; and

- E. As part of the expansion and upgrade, the CRD has agreed to construct the Cycle Track (as defined below) substantially within the Licence Area.

**NOW THEREFORE** this Licence Agreement witnesses that in consideration of the mutual promises herein contained, the parties agree as follows:

## **1.0 DEFINITIONS**

### **1.1** In this Licence Agreement:

- a) "**CALWMP**" has the meaning set out in Recital B;
- b) "**City**" means The Corporation of the City of Victoria;
- c) "**City Council**" means the Council of the City of Victoria, as duly constituted from time to time;
- d) "**CRD**" means the Capital Regional District;
- e) "**Cycle Track**" means the public bicycle path to be installed in accordance with Part 10;
- f) "**Design Guidelines**" means the City's design specifications for the Cycle Track as outlined in Schedule "E";
- g) "**Design Proposal**" means drawings, plans, and a description of sufficient detail to show the agreed upon design for the Cycle Track to be procured using the design-bid-build method;
- h) "**Director of Engineering**" means the person appointed by the City to perform the duties and functions of the position of the Director of Engineering and Public Works, as that position title is amended from time to time, and persons acting under the authority of the Director of Engineering;
- i) "**Director of Parks**" means the person appointed by the City to perform the duties and functions of the position of the Director of Parks, Recreation, and Facilities, as that position title is amended from time to time, and persons acting under the authority of the Director of Parks;
- j) "**Directors**" means the Director of Engineering and the Director of Parks;
- k) "**Environmental Law**" means all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules,

regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;

- l) **“Grant”** means the right of entry EB118155 and EB118156 and the terms of the federal grant dated November 4, 1968 as outlined in Schedule “D” to this Licence Agreement;
- m) **“Hazardous Substance”** means a contaminant, pollutant, dangerous good, waste, toxic substance, special waste or hazardous substance as defined in or pursuant to any Environmental Law;
- n) **“Investigations”** includes searches, testing, drilling, and sampling;
- o) **“Lands”** has the meaning set out in Recital A;
- p) **“Licence”** means the grant of licence detailed in section 3.1;
- q) **“Licence Area”** has the meaning set out in Recital D;
- r) **“Notice”** means any citation, directive, order, claim, litigation, investigation, proceedings, judgment, letter or other communication, written or oral, actual or threatened, from any person, including any governmental agency;
- s) **“Permit”** means any authorization, permit licence, approval or administrative consent issued pursuant to Environmental Law;
- t) **“Project”** means the upgrade of the Works and the construction of the Cycle Track;
- u) **“Term”** means the term of this Licence Agreement set forth in section 5.1;
- v) **“Trust”** means the terms of the trust contained in the *Public Parks Act, 1876*, as amended in 1881, attached as Schedule “D”;
- w) **“Warranty Period”** means a period of one year from completion of the Cycle Track; and
- x) **“Works”** has the meaning set out in Recital D.

## **2.0 CONDITIONS PRECEDENT**

- 2.1 The obligation of the City and the CRD to perform their respective obligations as contemplated herein is subject to the City rezoning the public right-of-way known as Clover Point pursuant to proposed Bylaw no. 17-001, Zoning Regulation Bylaw, Amendment Bylaw (No. 1086) on or before April 1, 2017.
- 2.2 If the CRD has not received a development permit and the rezoning required for the

construction of a regional sewage treatment facility at the site referred to as McLoughlin Point in the municipality of Esquimalt within one (1) year from the date this Licence Agreement is executed by both parties, then this Licence Agreement and the Licence granted will automatically terminate and be of no further force or effect.

### **3.0 GRANT OF LICENCE**

- 3.1** Subject to the terms and conditions of this Licence Agreement, the City hereby grants to the CRD a non-exclusive licence of occupation to install, entrench, construct, operate, maintain, repair, replace and relocate the Works within the Licence Area, for the Term.
- 3.2** The CRD together with its employees, agents, contractors and all other licensees and invitees of the CRD may enter upon, pass and repass over and use the Lands and may bring onto the Lands such machinery, vehicles, equipment, materials and all other such things as may be reasonably necessary to carry out the purposes set out in section 3.1 and for no other purpose, unless agreed to in writing by the City, subject always to the terms and conditions contained herein.
- 3.3** Subject to the terms of this Licence Agreement, the CRD, together with its employees, agents, contractors and all other licensees and invitees of the CRD, will have the right to carry away soil and other subsurface materials, clear off trees, growth, or other obstructions now or hereafter in existence on, in or under the Licence Area, as may be necessary in connection with the operations of the CRD in relation to the Works and provided that:
  - (a) the CRD will make all reasonable efforts to retain mature trees; and
  - (b) clearing the subsurface materials, trees, and growth is in accordance with the tree protection plan approved under section 11.2.
- 3.4** The City and the CRD agree that upon completion of the construction and installation of the Works the CRD shall, at its sole cost and expense, cause a British Columbia Land Surveyor to prepare an explanatory or reference plan defining the actual as built boundaries of the Licence Area, being an area that is 6 metres on both sides measured from the centerline of the as built Works and thereafter any reference in this Licence Agreement to the "Licence Area" shall be interpreted as a reference to the Licence Area as surveyed pursuant to this section 3.4.
- 3.5** While exercising any rights under this Licence Agreement, the CRD will comply with the City's policies, protocol and practices in effect from time to time regarding the discovery or disturbance of human remains.

#### **4.0 PARAMOUNTCY OF BEACON HILL TRUST AND FEDERAL GRANT**

- 4.1 The CRD acknowledges and agrees that any interest in the Licence Area is subject always to the City's obligations as trustee under the terms of the Trust and the Grant. To the extent that any right or benefit conferred by this Licence Agreement contravenes or is incompatible with the Trust or Grant, such right or benefit will be amended or modified so as not to contravene or be incompatible with the Trust or Grant (as the case may be).

#### **5.0 TERM**

- 5.1 The term of this Licence Agreement is for a period of 99 years commencing on the 1st day of June, 2017 and ending on the 31st day of May, 2116, unless otherwise terminated in accordance with this Licence Agreement.
- 5.2 Notwithstanding any other provision of this Licence Agreement to the contrary, the City or the CRD may terminate this Licence Agreement upon 60 days written notice to the other party if the Works are, in the sole opinion of the CRD, no longer required by the CRD as part of the regional wastewater collection and treatment infrastructure.
- 5.3 At the end of the Term, the City and the CRD may, by mutual agreement, renew this Licence Agreement on such terms and conditions as the City and the CRD may agree upon.

#### **6.0 LICENCE FEE AND OTHER PAYMENTS**

- 6.1 In addition to the CRD's obligations under Part 10, the CRD has paid a licence fee of ten (\$10.00) dollars for the Term.
- 6.2 The CRD shall pay all charges, impositions, taxes, and costs of every nature and kind in any way relating to its use of the Licence Area and the Works during the Term and any renewal, whether or not referred to in this Licence Agreement and whether or not of a nature or kind now existing or within the contemplation of the parties hereto.
- 6.3 Without limiting section 6.2, the CRD will pay as and when due during the Term and any renewal, to the applicable utilities suppliers or to the City if the City so directs, all costs for water, sewer, gas, electricity, telephone, telecommunications and all other utilities supplied to the Licence Area, or the Works. If paid or payable directly to the utilities suppliers, the CRD will, upon each request by the City from time to time, acting reasonably, furnish to the City satisfactory written proof of full payment of all such costs. In no event will the City be liable for or have any obligation in respect of an interruption or failure in the supply of utilities to the Licence Area or the Works.
- 6.4 In constructing the Works and the Cycle Track, the CRD will pay for all necessary costs that are incurred in upgrading any utilities that require upgrades in order to operate the Works and the Cycle Track.

- 6.5 The CRD acknowledges and agrees that under no circumstances or conditions shall the City be expected or obligated by virtue of this Licence or its ownership or right to possess the Licence Area (including any improvements or building thereon) or otherwise, to make any payment of any kind whatsoever or be under any obligation or liability in respect of the Licence Area or the Works and that all costs, expenses, obligations and liabilities of every kind and nature whatsoever relating to the Works or the CRD's use of the Licence Area which may arise or become due during or in respect of the Term and any renewal shall be payable and shall be paid by the CRD and the CRD covenants to indemnify the City from and in respect of any and all such costs, expenses, obligations and liabilities, except if due to the negligence of the City, its servants, agents, employees, contractors or any others for whom the City is responsible at law.. For greater certainty and without limiting the foregoing, the City shall not be under any obligation to provide, maintain or repair any third party services or utilities in respect of the Licence Area including without limitation gas, electricity, telephone and telecommunications.
- 6.6 In accordance with the licence of occupation dated February 22, 2017 between the CRD and the City (the "**Clover Point Licence Agreement**"), the CRD will make a one-time payment of \$100,000.00. For clarity, the CRD will only be responsible for paying \$100,000.00 in respect of both this Licence Agreement and the Clover Point Licence Agreement.

#### 7.0 USE OF THE LICENCE AREA

- 7.1 The CRD covenants and agrees that the Licence Area will be used only for the installation, construction, operation, maintenance, repair and replacement of the Works and that the CRD will not use the Licence Area or allow the Licence Area to be used for any other purposes, except as otherwise permitted by this Agreement. For certainty, the CRD covenants and agrees the Licence Area and the Works may not and will not be used for the purposes of wastewater treatment, beyond the conveyance of wastewater. The parties hereto agree that the provisions of this Licence Agreement are to be interpreted and applied in a manner consistent with such purposes.
- 7.2 The CRD will provide the City with a minimum of fifteen (15) working days' written notice prior to entering upon the Lands or the Licence Area to commence construction of the Works, or any substantive replacement or upgrade of the Works.
- 7.3 The CRD will make all reasonable efforts to coordinate construction of the Cycle Track or the Works or any replacement of, or substantive upgrade to, the Works to mitigate the impact of construction work on the surrounding neighborhoods and residents and so as not to unduly interfere with or disrupt any public event scheduled or permitted by the City that may be impacted by the construction of the Works or the Cycle Track, and the City will provide the CRD with a schedule of such events to take place within the planned period of construction of the Works and the Cycle Track.

- 7.4 The City will not be obliged to furnish any services or facilities or to make any repairs or alterations in or to, any of the Works and the CRD hereby assume the full and sole responsibility for the repair, maintenance and operation of the Works.

## **8.0 PUBLIC ENGAGEMENT**

- 8.1 Prior to commencing construction of the Works, the CRD will provide the Director of Engineering with a public engagement plan that outlines how the CRD will manage inquiries, complaints, and correspondence from the public that are directed to the City regarding the Project.
- 8.2 As part of the public engagement plan in section 8.1, the CRD must at a minimum, provide to the public, a project information line phone number and email address for the sole purpose of enabling the CRD to respond to inquiries and complaints from the public in relation to the Project.
- 8.3 The project information line phone number and email address in section 8.2 shall be monitored by a CRD staff person on a daily basis during construction of the Works and Cycle Track.

## **9.0 DESIGN DEVELOPMENT**

- 9.1 The final alignment of the Works within the Licence Area will be subject to approval by City Council, with such approval not to be unreasonably withheld given the design requirements and geotechnical, archaeological and environmental considerations.
- 9.2 The CRD will, or will cause its proponents to, provide the City with copies of the Design Proposal and at the 30%, 50% and 90% design completion stages for the review, comment and acceptance by the City. The City, will not withhold its approval of the Design Proposal provided the Design Proposal is, in the opinion of the City, acting reasonably, consistent with the Design Guidelines and proposals reviewed at the design completion stages.
- 9.3 The CRD will provide the City with a minimum of fifteen (15) working days for the purposes of the review in section 9.2.
- 9.4 The CRD will, and will cause its proponents to, present the alignment of the Works and Cycle Track and the Design Proposal, to City Council in a public meeting prior to the commencement of the detailed design and prior to the commencement of the construction on the Licence Area. The CRD, or its proponents, will amend the Design Proposal in accordance with any reasonable recommendations or resolutions of City Council, provided that such recommendations are consistent with the Design Guidelines, including, without limitation, the alignment of the Cycle Track being generally consistent

with the alignment of the Works, subject to any variance required by the CRD due to design requirements or for geotechnical, archaeological and environmental reasons.

- 9.5** At the 50% design stage, the CRD will, or will cause its proponents, to present the 50% design and alignment of the Cycle Track and alignment of the Works to City Council at a public meeting and to the James Bay Neighbourhood Association and Fairfield-Gonzales Community Association in a separate presentation. The CRD, or its proponents, will amend the 50% Design Proposal in accordance with any recommendations or resolutions of the City Council, provided that they are consistent with the Design Guidelines, including, without limitation, the alignment of the Cycle Track being generally consistent with the alignment of the Works, subject to any variance required by the CRD due to design requirements or for geotechnical, archaeological and environmental reasons.
- 9.6** The CRD will invite the Songhees First Nation and the Esquimalt First Nation to nominate a representative to participate in the meetings set out in Sections 9.2 and 9.4 in order to provide meaningful opportunities to consider the Songhees and the Esquimalt's input in the final design of the Cycle Track, provided that the recommendations are consistent with the Design Proposal and meet the Design Guidelines.
- 9.7** The final design and alignment of the Cycle Track must be to the satisfaction of the City. The City will not withhold its approval provided the final design:
- (a) is consistent with the Design Proposal and Design Guidelines;
  - (b) is consistent with the design approved by the Directors, at each design completion stage pursuant to section 9.2;
  - (c) incorporates all recommendations received from City Council pursuant to sections 9.1, 9.4 and 9.5, provided that such recommendations are consistent with the Design Guidelines; and
  - (d) does not include design details not presented to the City and not otherwise approved by the City.
- 9.8** For certainty, no review or acceptance of the Works or the Cycle Track by the City, its elected officials, officers, employees or agents will in any way create a duty of care of the City or otherwise relieve the CRD of its obligations for all aspects of the Works and the Cycle Track.
- 10.0** **CYCLE TRACK**
- 10.1** In consideration of, and as a condition of, the City granting the CRD this Licence, the CRD agrees that, within 12 months following installation of the Works, it will construct at its sole cost and expense, a public bike track connecting Clover Point to Dock Street



according to the conceptual plans and sketch plan at Schedules "A" and "B", the Design Guidelines, and otherwise in accordance with section 9.6.

**10.2** Upon completion, the Cycle Track shall become the sole and absolute property of the City at no cost to the City, and thereafter the operation, maintenance and repair of the Cycle Track shall be the sole responsibility of the City, and subject to section 10.4, the CRD shall not be liable to the City or to any other person for any loss, liabilities, claims, costs or expenses whatsoever arising out of or in connection with the ownership, use, operation, maintenance or repair of the Cycle Track. For greater certainty, the Cycle Track does not form a part of the "Works" for the purposes of this Licence Agreement.

**10.3** The CRD covenants and agrees to:

- (a) repair any deficiencies in design, materials or workmanship in the Cycle Track that may arise during the Warranty Period; and
- (b) remedy any deficiencies in design, materials or workmanship appearing within the Warranty Period and pay for any damage to other works or property resulting therefrom, save and except for defects caused by reasonable wear and tear, or by the negligence of the City, its servants, agents, employees, contractors or any others for whom the City is responsible at law.

**10.4** Completion of the Cycle Track shall be deemed to have occurred upon the CRD giving written notice of completion to the City, and the City giving written notice of acceptance to the CRD. If ten (10) days elapse without a written response from the City, following the giving of notice of completion by the CRD, completion shall be deemed to have occurred on the tenth day.

**10.5** Until such time as the Cycle Track is deemed to be completed pursuant to section 10.5, the Cycle Track shall be the sole responsibility of the CRD, and the City shall not be liable to the CRD or to any other person for any loss, liability, claims, costs or expense whatsoever arising out of or in connection with the ownership, use, operation, maintenance or repair of the Cycle Track, unless due to the negligence or misconduct of the City, its servants or agents.

**10.6** The CRD will provide as-built drawings of the Cycle Track within a reasonable period of time following substantial completion of the Cycle Track.

## **11.0** **NUISANCE**

**11.1** The CRD will not carry on or do or allow to be carried on or done on the Lands or the Licence Area anything that:

- (a) in the opinion of the City, acting reasonably, may be a nuisance to the City or the public;

- (b) increases the hazard of fire or liability of any kind;
- (c) creates or results in odours that pose a risk to public health or the environment or constitutes a public nuisance; or
- (d) exceeds, during the nighttime, when measured with a sound meter approved by the City, over a representative time period, an equivalent sound level of 45 dBA when received at a point of reception outside the Licence Area.

**11.2** Prior to commencing construction of the Works, the CRD will provide to the reasonable satisfaction of the Director of Engineering, a construction management plan that specifies how the CRD will manage and mitigate impacts to the public during construction of the Works and the Cycle Track, including:

- (a) mitigation measures to reduce impacts to traffic flow and traffic infrastructure;
- (b) timing and method of communication to impacted neighbouring parcel owners to notify affected residents of construction activity timing and noise levels;
- (c) mitigation measures to reduce or prevent noise impacts;
- (d) parking management for construction crews;
- (e) areas to be used for construction lay down sites for temporary storage of materials and mitigation measures to reduce impacts to residents and businesses as a result of this use; and
- (f) a tree protection plan, subject to the reasonable satisfaction of the Director of Parks.

**11.3** The CRD will not at any time make or cause sound or noise resulting from construction of the Works or the Cycle Track, the equivalent sound level of which exceeds 85 dBA on a sound meter approved by the City, over a representative time period, when measured at the greater of the following distances from that source of sound or noise:

- (a) at the point of reception; and
- (b) 15.2 m (50 ft.).

**11.4** Subject to Section 12.3, the CRD may carry out construction of the Works and the Cycle Track:

- (a) between 7:00 a.m. and 7:00 p.m. on a weekday that is not a holiday; and
- (b) between 10:00 a.m. and 7:00 p.m. on a Saturday that is not a holiday,

except in the event of an emergency or if otherwise required due to operational requirements, as determined by the CRD, acting reasonably, or as otherwise agreed to by the City and the CRD, each acting reasonably.

## **12.0 LAWS, BYLAWS, RULES AND REGULATIONS**

- 12.1** The CRD will comply with all laws, bylaws, rules and regulations of every municipal, governmental or other authority which affect its use and occupation of the Licence Area and the construction of the Works. The CRD acknowledges that this Licence does not excuse the CRD from obtaining building permits, development permits, business licences or other required permissions.

## **13.0 SAFE CONDITION**

- 13.1** The CRD is responsible to repair, maintain and keep its Works within the Licence Area in a good and safe condition at all times and will carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands as possible.
- 13.2** The CRD will take all necessary steps, including the installation of fencing, barriers and signage, to ensure that the public does not access those portions of the Licence Area, which are under construction or are unsafe for public use. In that regard, the CRD will ensure that the City and the public will be able to access the other portions of the Licence Area that are safe for public access.

## **14.0 DAMAGE AND RESTORATION**

- 14.1** The CRD will not, nor will it knowingly permit any other person to, do or permit anything to be done which damages any of the Lands, any improvements thereon, the subsurface thereof or the subsoil structure thereof and will make good at its own expense any such damage or disturbance which may be caused in the exercise by the CRD of its rights under this Licence Agreement.
- 14.2** The CRD will not, nor permit any other person to, bury any debris or rubbish of any kind in excavations or backfill and will remove shoring and like temporary structures as backfilling proceeds, ensuring the Lands will remain tidy and safe.
- 14.3** The CRD will, upon completion of any work undertaken pursuant to this Licence Agreement:
- (a) thoroughly clean the Lands to which it has access, of all rubbish and construction debris created or placed thereon by the CRD; and
  - (b) leave the Lands in a neat and clean condition.
- 14.4** Notwithstanding the foregoing, at the expiry or earlier termination of this Licence Agreement, the CRD will decommission the Works in accordance with a

decommissioning and restoration plan submitted to and approved by the Director of Engineering but will not be required to, remove all or part of the Works or the Cycle Track.

**15.0 ENVIRONMENTAL**

**15.1** The CRD will conduct its business and operation on the Lands in compliance with all Environmental Laws and all Permits.

**15.2** The CRD will forthwith notify the City of the occurrence of any of the following and will provide the City with copies of all relevant documentation in connection therewith:

- (a) a release of a Hazardous Substance on the Lands, except as is authorized under Environmental Law;
- (b) the receipt by the CRD of a Notice from any governmental agency of non-compliance pursuant to any Environmental Law, including a Notice of non-compliance respecting a Permit;
- (c) the receipt by the CRD of a Notice of a claim by a third party relating to environmental concerns; or
- (d) the receipt by the CRD of information which indicates that Hazardous Substances are present in or on the Lands.

**15.3** The CRD will not permit the storage, treatment or disposal of Hazardous Substances on the Lands except in accordance with all Environmental Laws.

**15.4** The CRD will conduct Investigations as may be required by the City, acting reasonably, where any reasonable evidence exists that the CRD's current or prior use or occupation of the Lands may be introducing or increasing the existence of any Hazardous Substance on the Lands. If the CRD does not complete the Investigations to the satisfaction of the City, acting reasonably, the City may enter on the Lands and take any actions necessary to complete the Investigations, the cost of which actions will be borne by the CRD.

**15.5** If Hazardous Substances are present on or in the Licence Area as a result of the CRD's use or occupation of the Lands, other than authorized by Environmental Laws, the CRD will take all necessary action, at the cost of the CRD to remediate the Lands in the manner required by Environmental Law.

**15.6** Prior to the termination of the Licence, the CRD will conduct all Investigations required by the City where any reasonable evidence exists that the CRD's use or occupation of the Licence Area introduced or increased the existence of any Hazardous Substance on, in or initiated from the Licence Area. The CRD will provide the result of all Investigations

to the City. Where any Hazardous Substance is found on, in or from the Lands as a result of the CRD's use or occupation of the Licence Area, the CRD will take all necessary action, at the cost of the CRD, to remediate the Lands in the manner required by Environmental Law.

- 15.7** The CRD will provide to the City satisfactory documentary evidence that all Permits are valid and in good standing as requested by the City, acting reasonably, from time to time.

**16.0 INDEMNIFICATION**

- 16.1** The CRD hereby releases the City and will at all times indemnify and save harmless the City and each of its elected and appointed officials, employees and agents, and their respective administrators, successors and permitted assigns, from and against any and all loss, liabilities, claims, costs or expenses whatsoever arising out of, resulting from or in connection with:

- (a) any breach or non-performance of any covenant or agreement herein on the part of the CRD to be fulfilled, observed or performed;
- (b) any act, omission, or negligence of the CRD, its elected officials or appointed officials, employees, agents, contractors, subcontractors, licencees, invitees or others for whom it is responsible;
- (c) any damage to property or any injury to any person(s), including death, occasioned by any act or omission of the CRD or the CRD's use and occupation of the Lands, including the Licence Area; and
- (d) the exercise of any rights or the fulfillment of any obligation hereunder or the granting of this Licence,

except to the extent that the loss, damage, injury or expense was caused or contributed to by the negligence of the City, its servants, agents, employees, contractors or any others for whom the City is responsible at law.

**17.0 NO ASSIGNMENT**

- 17.1** The CRD will not assign this Licence Agreement without the prior written consent of the City, such consent not to be unreasonably withheld.
- 17.2** The City will not dispose of the Lands or the Licence Area or any part of them, or assign or transfer this Licence or any interest in it, unless the City first does one of the following:

- (a) Grants in favour of the CRD, and at the expense of the CRD registers in the Victoria Land Title Office, a statutory right of way in a form satisfactory to the CRD, acting reasonably, providing the CRD with substantially the same rights as those enjoyed by the CRD pursuant to this Licence; or
- (b) Causes the transferee or assignee of the Lands or the Licence Area, or this Licence, as the case may be, to execute in favour of the CRD an agreement in substantially the same form as this Licence, and providing the CRD with substantially the same rights as those enjoyed by the CRD pursuant to this Licence.

**18.0 NOTICES**

- 18.1** Any notice or demand required to be served upon or given to the parties shall be sufficiently served upon or given if the same is delivered to the parties or mailed by prepaid post addressed as follows:

If to the CRD:

P.O. Box 1000  
Victoria, BC V8W 2S6  
Attn: Real Estate Services

If to the City:

#1 Centennial Square  
Victoria, BC V8W 1P6  
Attn: Director of Engineering and Public Works

Notices mailed as aforesaid shall be deemed to be delivered four (4) days after mailing unless there is a disruption in postal delivery resulting from strike or lock-out. In the event of such disruption Notice may only be given by actual delivery.

**19.0 SPECIFIC PERFORMANCE**

- 19.1** The CRD acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Licence Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Licence Agreement.

**20.0 BINDING EFFECT**

- 20.1** This Licence Agreement will be binding on the successors and permitted assigns of the CRD and enure to the benefit of the successors and assigns of the City.

**20.2** If any part of this Licence Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, then such part will be considered separate and severable from this Licence Agreement and the remainder of this Licence Agreement will remain in full force and effect and will be binding on the parties as though such illegal or unenforceable part had never been included.

**21.0 TIME**

**21.0** Time is of the essence of this Licence Agreement.

**22.0 NO DEEMED WAIVER**

**22.1** The failure of either of the parties hereto to insist upon performance of any covenant or condition contained in this Licence Agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition, right or option and no waiver shall be inferred from or implied by anything done or omitted by any of the parties hereto save only an express waiver in writing.

**23.0 INTERPRETATION**

**23.1** This Licence Agreement shall be construed in accordance with the laws of British Columbia. All provisions of this Licence Agreement are to be construed as covenants and agreements as though the words importing covenants and agreements were used in each separate paragraph.

**23.2** The definition of any words used in any article of this Licence Agreement shall apply to such words when used in any other article hereof whenever the context is consistent.

**24.0 NON-DEROGATION**

**24.1** Nothing contained or implied in this Licence Agreement will derogate from the obligations of the CRD under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to the Lands as if this Licence Agreement had not been executed and delivered by the CRD and the City, provided that the foregoing shall not restrict or limit the rights and remedies of the CRD resulting or arising from a breach of this Licence Agreement by the City.

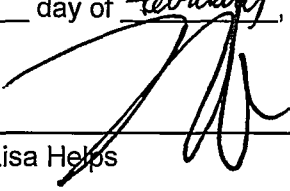
**25.0 COUNTERPARTS**

**25.1** This Agreement may be executed and delivered in several counterparts, including by facsimile (or other similar electronic means, including via pdf), each of which when so executed and delivered will be deemed to be an original and such counterparts together

will be one and the same instrument.

**IN WITNESS WHEREOF** the parties have hereunto have executed this Licence Agreement.

**THE CORPORATION OF THE CITY OF VICTORIA** by its authorized signatories  
this 24<sup>th</sup> day of February, 2017:

  
\_\_\_\_\_  
Mayor Lisa Helps

  
\_\_\_\_\_  
Chris Coates, Corporate Administrator

**CAPITAL REGIONAL DISTRICT** by its  
authorized signatories  
this 23<sup>rd</sup> day of February, 2017:

  
\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:



**Schedule "A"****The Lands**

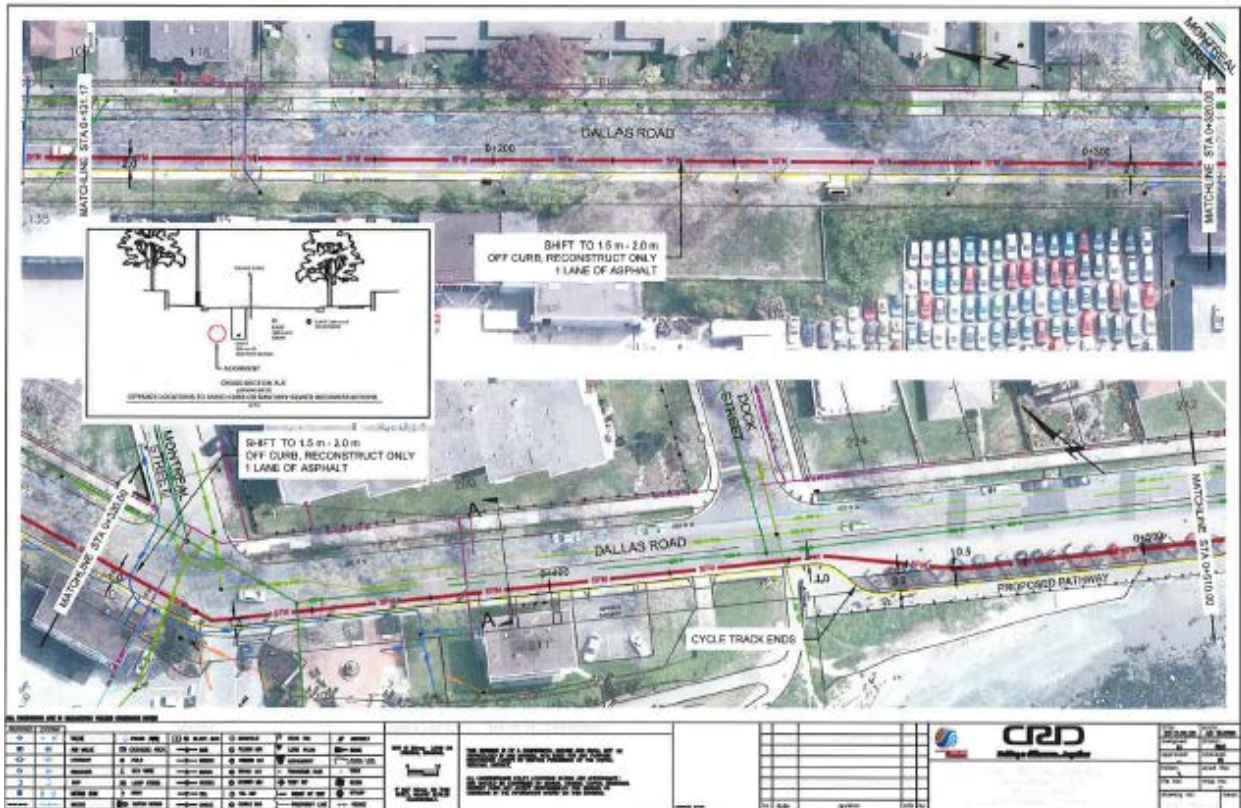
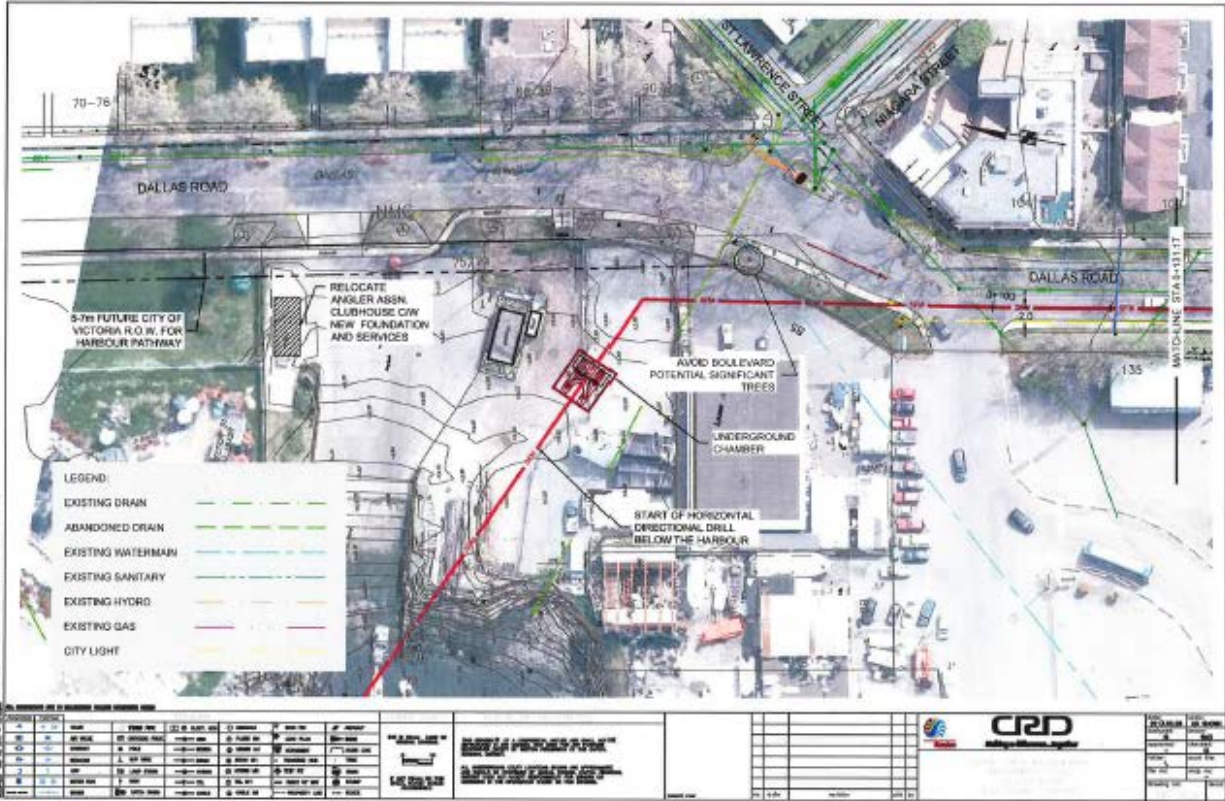
## DESCRIPTIONS

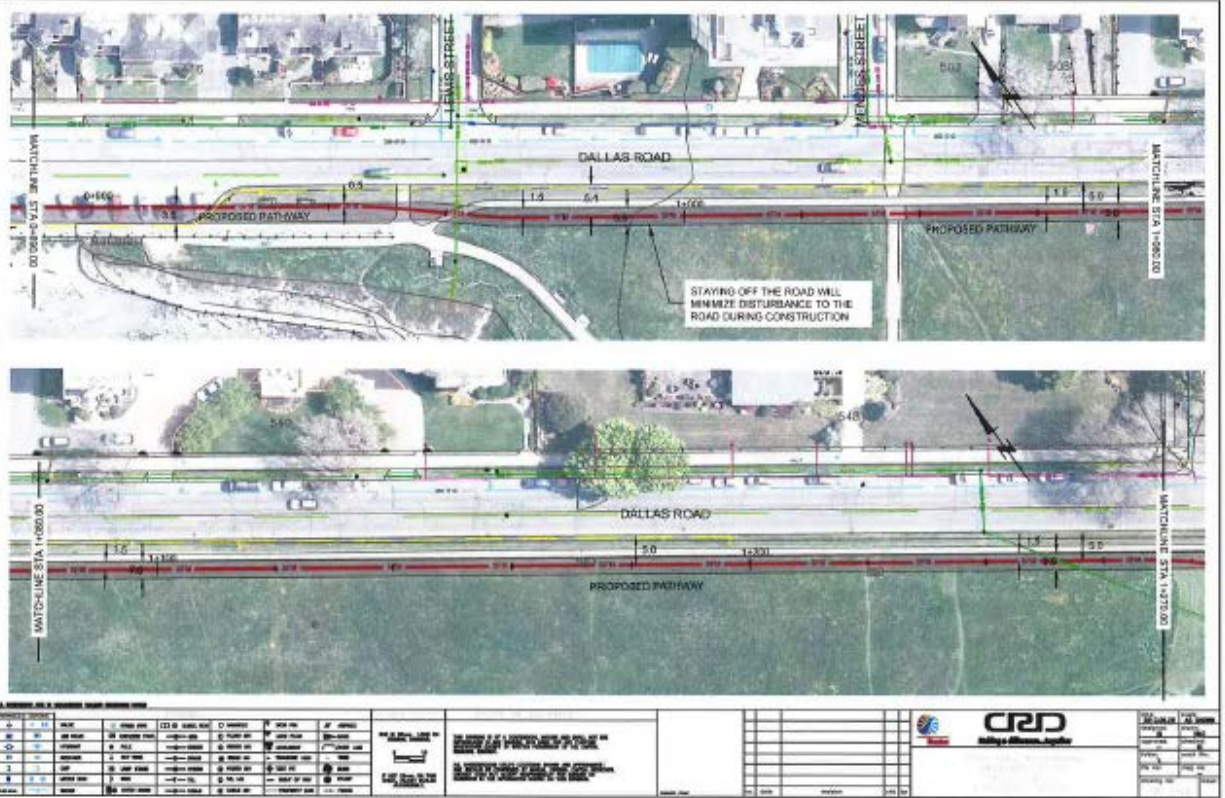
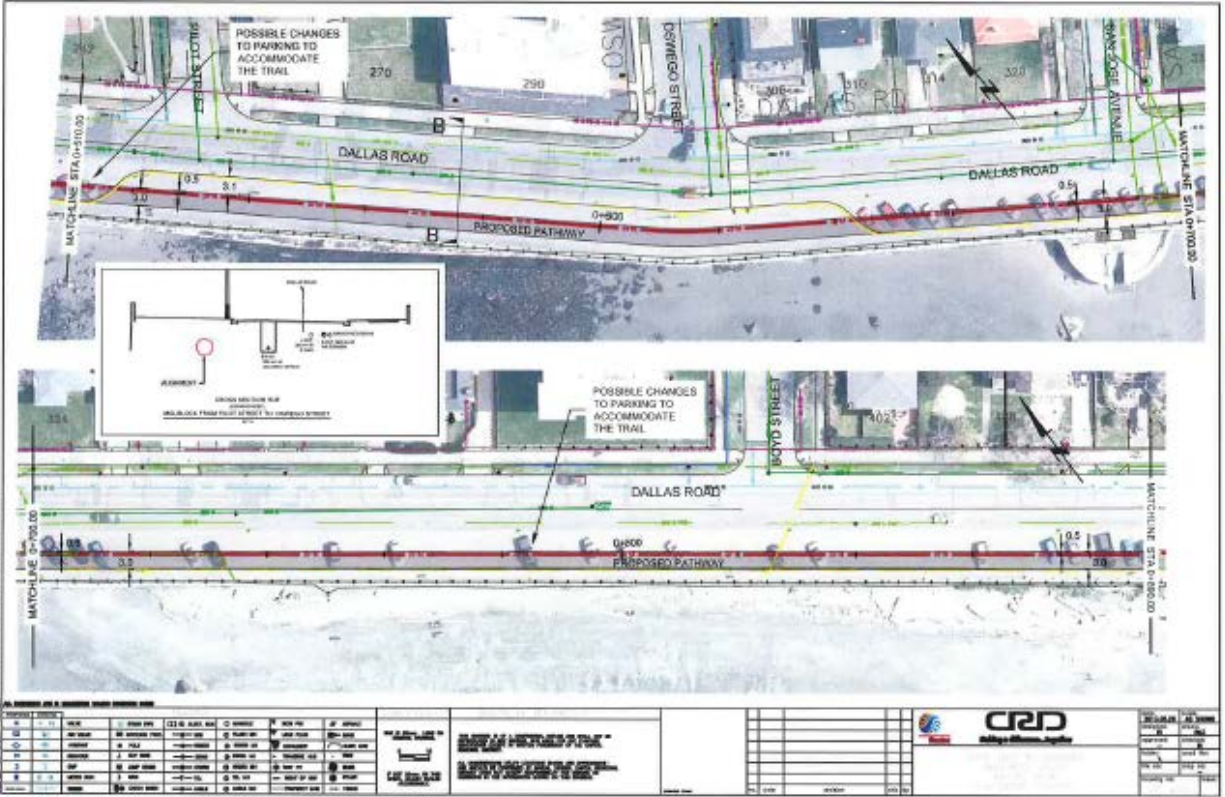
PID: 013-026-020	THOSE PARTS OF SECTIONS 15, 16, 33, 34, 51, AND 82, FAIRFIELD FARM ESTATE, VICTORIA CITY, PLAN 13, AS SHOWN OUTLINED IN RED ON PLAN 5240S INCLUDING THE AREA KNOWN AS CLOVER POINT PARK
PID: 010-503-587	SECTION 87, VICTORIA DISTRICT SHOWN COLOURED RED ON A PLAN ATTACHED TO DD15937 AND DESCRIBED IN THE CROWN GRANT DATED 21.02.1882 AS "THE PUBLIC PARK OR PLEASURE GROUND KNOWN AS BEACON HILL".
FORESHORE	DISTRICT LOT 250, VICTORIA DISTRICT AS SHOWN OUTLINED IN RED ON SKETCH PLAN ATTACHED TO LEASE NO. 10539 KNOWN AS "DALLAS ROAD BEACH"
PID: 017-797-047	SECTION 33, BECKLEY FARM, VICTORIA CITY, PLAN 4 FORMING PART OF HOLLAND POINT PARK (DALLAS ROAD)
UNDEVELOPED ROAD	ROAD RIGHT OF WAY BETWEEN SECTION 33, BECKLEY FARM, VICTORIA CITY, PLAN 4 AND SECTION 32, BECKLEY FARM, VICTORIA CITY, PLAN 4
PID: 017-797-039	SECTION 32, BECKLEY FARM, VICTORIA CITY, PLAN 4 – FORMING PART OF HOLLAND POINT PARK (DALLAS ROAD)
DALLAS ROAD	DEDICATED ROAD – CITY OF VICTORIA ROAD RIGHT OF WAY

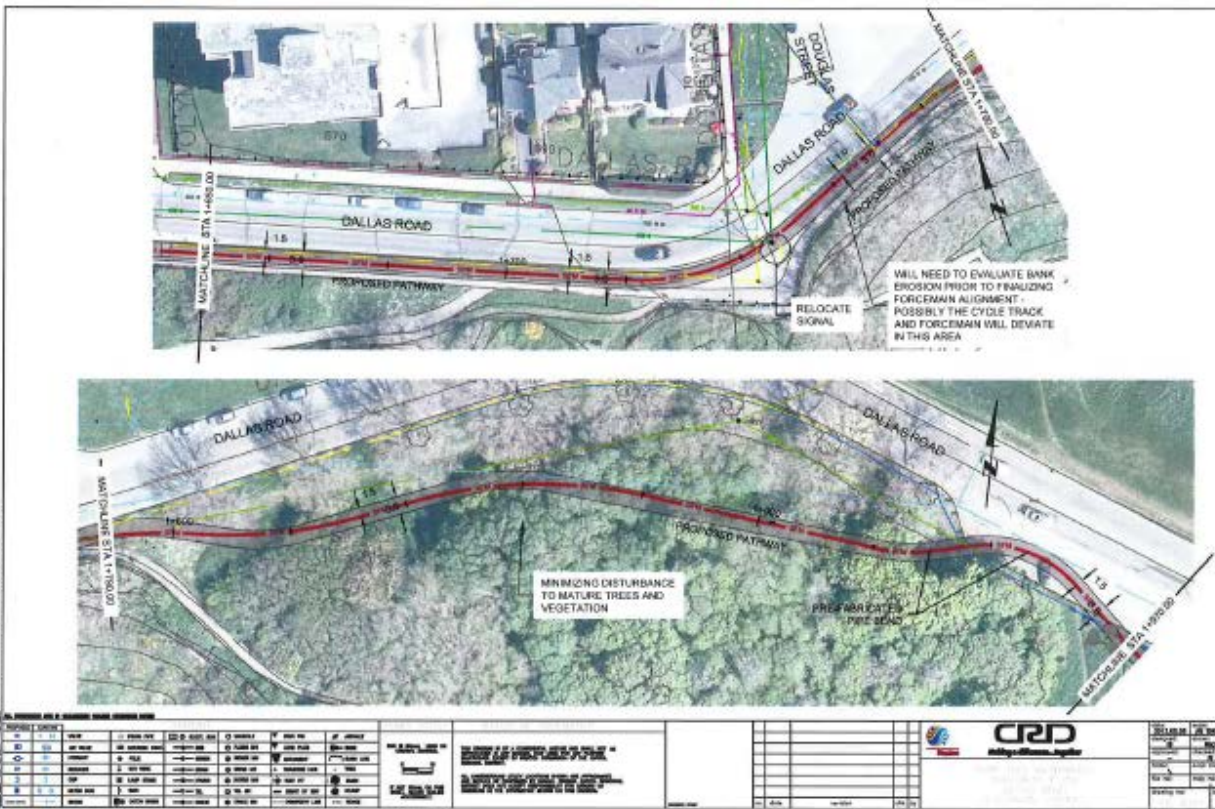
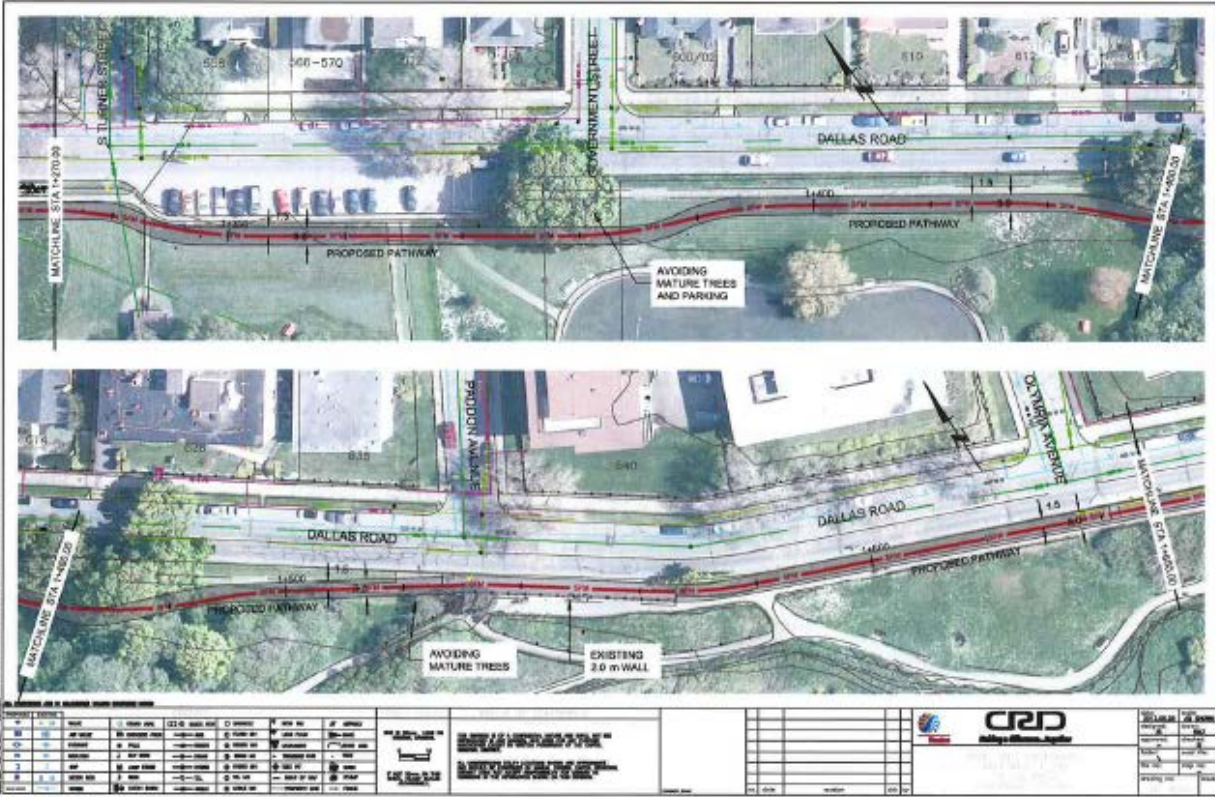
**Schedule "B"**

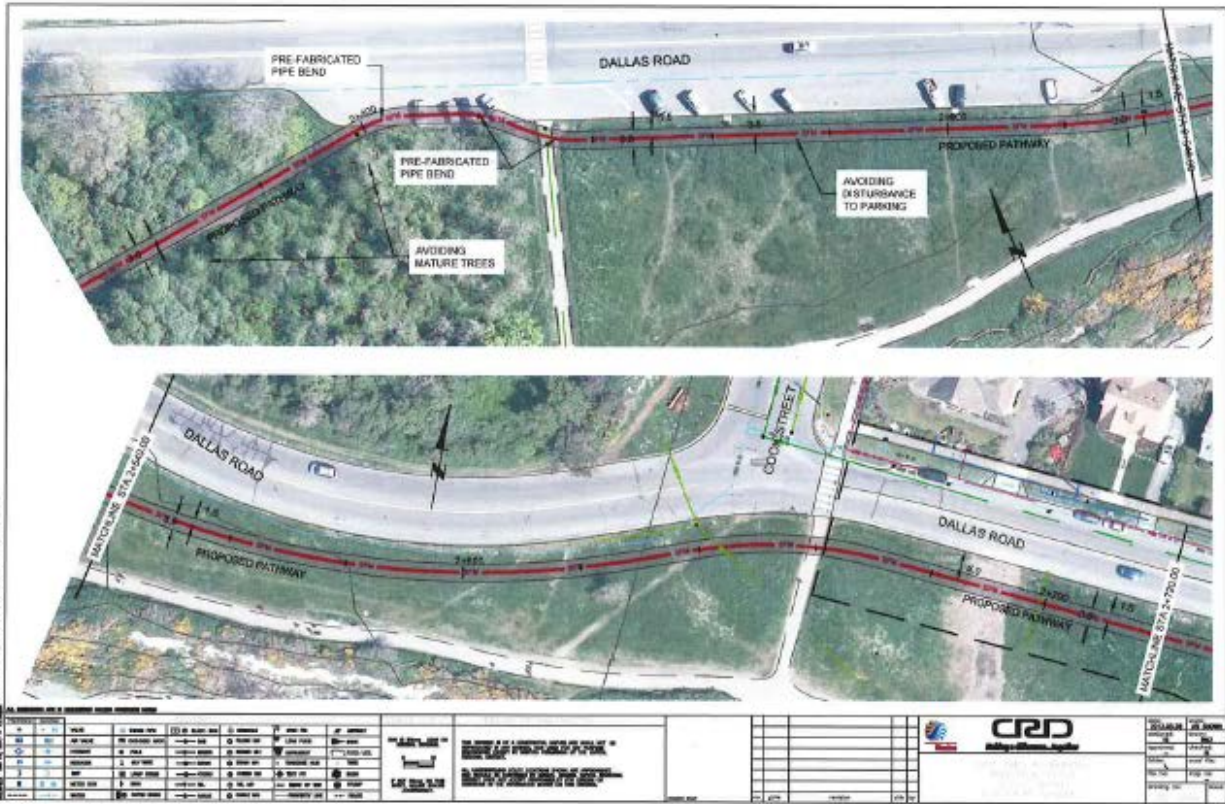
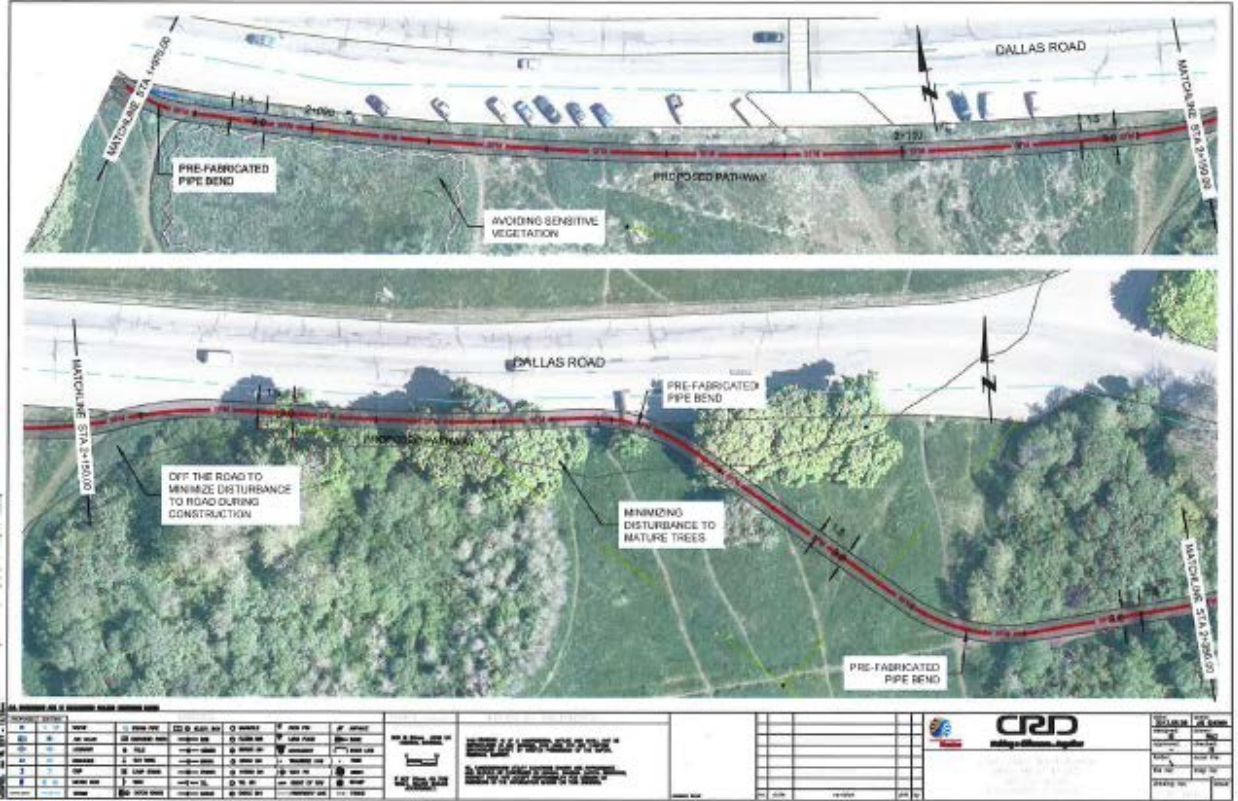
**Conceptual Drawings of the Works**













**Schedule “C”****The Licence Area**

The Licence Area means the area along the proposed alignment of the Works shown in conceptual drawings at Schedule “B” subject to any changes in the alignment of the Works approved by the parties in accordance with this Licence Agreement, until an explanatory plan prepared pursuant to section 3.4 is inserted in this Schedule “C” showing the as-built drawings at completion of the Works.



**Schedule "D"**  
**The Grant**

DD 15937

SEAL

Signature of Clement J. Cornwall

**PROVINCE OF BRITISH COLUMBIA**

Approved  
Feb. 20<sup>th</sup>, 1882  
Geo. A. W ...  
Attorney General

**VICTORIA** by the Grace of God of the United Kingdom of Great Britain and Ireland and of the Colonies and Dependencies thereof in Europe Asia Africa America and Australasia Queen Defender of the Faith and so forth.

**TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING**

**WHEREAS** BY Section One of An Act passed in the Session of the Legislative Assembly of British Columbia held in the forty fourth year of Her Majesty's reign intituled "An Act to amend the Public Parks Act 1876" it is declared that it shall be lawful for the Lieutenant Governor in Council from time to time to grant and convey any public park or pleasure ground set apart or reserved out of any Crown lands of the Province for the recreation and enjoyment of the public to the Municipal Council or Corporation of any City or Town within the Province upon trust to maintain and preserve the same for the use recreation and enjoyment of the public and any such Corporation to whom such grant or conveyance shall be made shall have power to hold the lands thereby conveyed upon the trusts and for the purposes aforesaid **AND WHEREAS** the hereditaments and premises hereinafter more particularly described being the public park or pleasure ground known as Beacon Hill have been set apart and reserved out of the Crown Lands of the Province for the recreation and enjoyment of the public **AND WHEREAS** we have agreed to give and grant the said hereditaments and premises unto the Corporation of the City of Victoria upon and for the hereditaments and purposes herein mentioned **NOW KNOW YE** that we do by these presents for Us our Heirs and Successors in consideration of the premises and for effectuating the intent and purpose herein mentioned give and grant unto the said Corporation of the City of Victoria their successors and Assigns ALL that piece or parcel of land known as Beacon Hill Park situate in the District of Victoria known upon the Official Map of the said District as Section 87 (Eighty seven). The said piece or

parcel of land being delineated and colored red on the Map or Plan thereof hereunto annexed **TO HAVE and TO HOLD** the said piece or parcel of land and all singular the premises hereby granted with their appurtenances unto the said Corporation and their successors to and for the several uses intents and purposes and upon the several trusts and with under and subject to the several powers provisos agreements and declarations expressed and declared of and concerning the same that is to say **UPON TRUST** to the express use intent and purpose that the said hereditaments and premises hereby granted shall be maintained and preserved by the said Corporation and their successors for the use recreation and enjoyment of the public under the provisions of the Public Parks Act 1876 and the said Act to amend the Public Parks Act 1876 **PROVIDED ALWAYS** that nothing herein contained shall be construed as purporting to derogate from the powers of the Lieutenant Governor in Council given under the aforesaid Acts.

**IN TESTIMONY WHEREOF** We have caused these Our Letters to be made Patent and Great Seal of Our Province of British Columbia to be hereunto affixed Witness the Honourable Clement Francis Cornwall Lieutenant Governor of our Province of British Columbia in our City of Victoria this twenty-first day of February in the year of Our Lord One thousand eight hundred and eighty two and written forty fifth year of our Reign

By Command

T. R. Humphreys (signature)

Provincial Secretary

These 2 pages are an exact extract of the original Grant of Beacon Hill Park to the Corporation of the City of Victoria. Copies of the documents have been scanned under DD15937. The original document and plan are filed in the vault under DD 15937. Date of extract 28 January 2005

*M. Frantzen*

M. Frantzen, Deputy Registrar per: mj  
Victoria Land Title Office



*Roll 181 E*  
*LIKELY REGISTERED UNDER*  
*TITLE # EB118155*

G R A N T

by

HER MAJESTY THE QUEEN

to

THE CORPORATION OF THE  
CITY OF VICTORIA

Lands in the City of Victoria,  
Province of British Columbia.

DATED ..... 4th November, 1988

RECORDED ... 4th November, 1988

Film 607 Document 136

*David D. Kirchmayer*  
DEPUTY REGISTRAR GENERAL OF CANADA



*Anthony M. Smith*  
DEPUTY OF THE GOVERNOR GENERAL

# Canada

ELIZABETH THE SECOND, by the Grace of  
God of the United Kingdom, Canada and Her  
other Realms and Territories QUEEN, Head of  
the Commonwealth, Defender of the Faith.

*Reg. L. Brown*  
FOR DEPUTY ATTORNEY GENERAL

TO ALL TO WHOM these Presents shall come,

GREETING:

WHEREAS the lands hereinafter described are vested in Us in right of Canada.

AND WHEREAS the said lands are not required for public purposes, and under and by virtue of the statutes in that behalf and pursuant to authority duly granted by Our Governor in Council, the said lands or the interest therein that is or may be vested in Us for the uses of Canada have been disposed of to THE CORPORATION OF THE CITY OF VICTORIA, a municipality duly incorporated under the laws of Our Province of British Columbia, hereinafter called the grantee, at and for the price or sum of One Dollar.

NOW KNOW YE that We do by these Presents grant, convey and assure unto the grantee, its successors and assigns, ALL AND SINGULAR:-

All that parcel or tract of land situate in the City of Victoria, in the Province of British Columbia, more particularly known and described as follows:

Part (4.09 acres) of subdivisions 15 (fifteen) 16 (sixteen) 33 (thirty-three) and 34 (thirty-four), Part (.94 acres) of subdivision 51 (fifty-one), Part (5.36 acres) of subdivision 82 (eighty-two), Fairfield Farm Estate, Map 13, Victoria City;

containing a total area of 10.39 acres, more or less.

TO HAVE AND TO HOLD the said lands unto the grantee, its successors and assigns, for so long as the said lands and every part thereof are used for public park purposes; saving, excepting and reserving unto Us, Our Heirs and Successors, the free use, passage and enjoyment of, in, over and upon all navigable waters that now are or may be hereafter found on or under or flowing through or upon any part of the said lands.

AND the grantees by the acceptance and registration of these Letters Patent covenants with us that in the event that the grant of the said lands is determined, it will acknowledge such determination and forthwith surrender the said lands to Us.

GIVEN under the Great Seal of Canada.

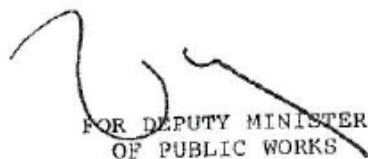
WITNESS:

ANTHONY P. SMYTH, Esquire, Deputy of Our Right Trusty and Well-beloved Jeanne Sauvé, a Member of Our Privy Council for Canada, Chancellor and Principal Companion of Our Order of Canada, Chancellor and Commander of Our Order of Military Merit upon whom We have conferred Our Canadian Forces' Decoration, Governor General and Commander-in-Chief of Canada.

AT OTTAWA, this fourth day of November in the year of Our Lord one thousand nine hundred and eighty-eight and in the thirty-seventh year of Our Reign.

BY COMMAND,

*David D. Kinchman*  
DEPUTY REGISTRAR GENERAL  
OF CANADA

  
FOR DEPUTY MINISTER  
OF PUBLIC WORKS

## Schedule “E”

### The Design Guidelines for the Cycle Track

#### Cycle Track Connectivity

- The Cycle Track will extend from Dock Street at the Ogden Point breakwater to Clover Point.
- A gathering/dismount area for the Cycle Track will be incorporated on the west side of Clover Point Road at Dallas Road as part of the Public Realm Improvements to be constructed under the Licence of Occupation for the Clover Point Pump Station.

#### Alignment

- The Cycle Track will be consistent with the alignment of the Works, subject to any variance required by the CRD due to design requirements or for geotechnical, archaeological and environmental reasons.

#### Pathway Design Specifications

- The Cycle Track must be:
  - three (3) metres wide;
  - physically separated from Dallas Road;
  - constructed in accordance with the attached Typical Trail Section Detail;
  - designed to mitigate public safety concerns and incorporate Crime Prevention Through Environmental Design (CPTED) principles, including lighting;
  - in compliance with Transportation Association of Canada geometric design standards for bikeways;
  - designed to incorporate safety improvements for pedestrian crossings, linkages to existing crosswalks and connections to the Dallas Road waterfront pathway; and
  - constructed in a manner that minimizes loss of parking spaces.

#### Site Furnishings

- All existing in-ground garbage cans located adjacent to Dallas Road must be replaced as part of the Project. Final locations will be determined in consultation with City of Victoria Parks staff.
- The Cycle Track must incorporate a bike rack and a bench at a minimum of six locations at key intersections.
- All site furnishings will be consistent in design, style and quality as the City’s current Park’s standard.
- Barrier-fencing will be located between the dog off-leash area and the Cycle Track east of Cook Street. The specific locations for fencing shall be determined in consultation with the City’s Director of Parks and Director of Engineering during the detailed design process.

- A minimum of ten (10) wayfinding signs will be installed at key intersections and amenities, including washroom facilities.

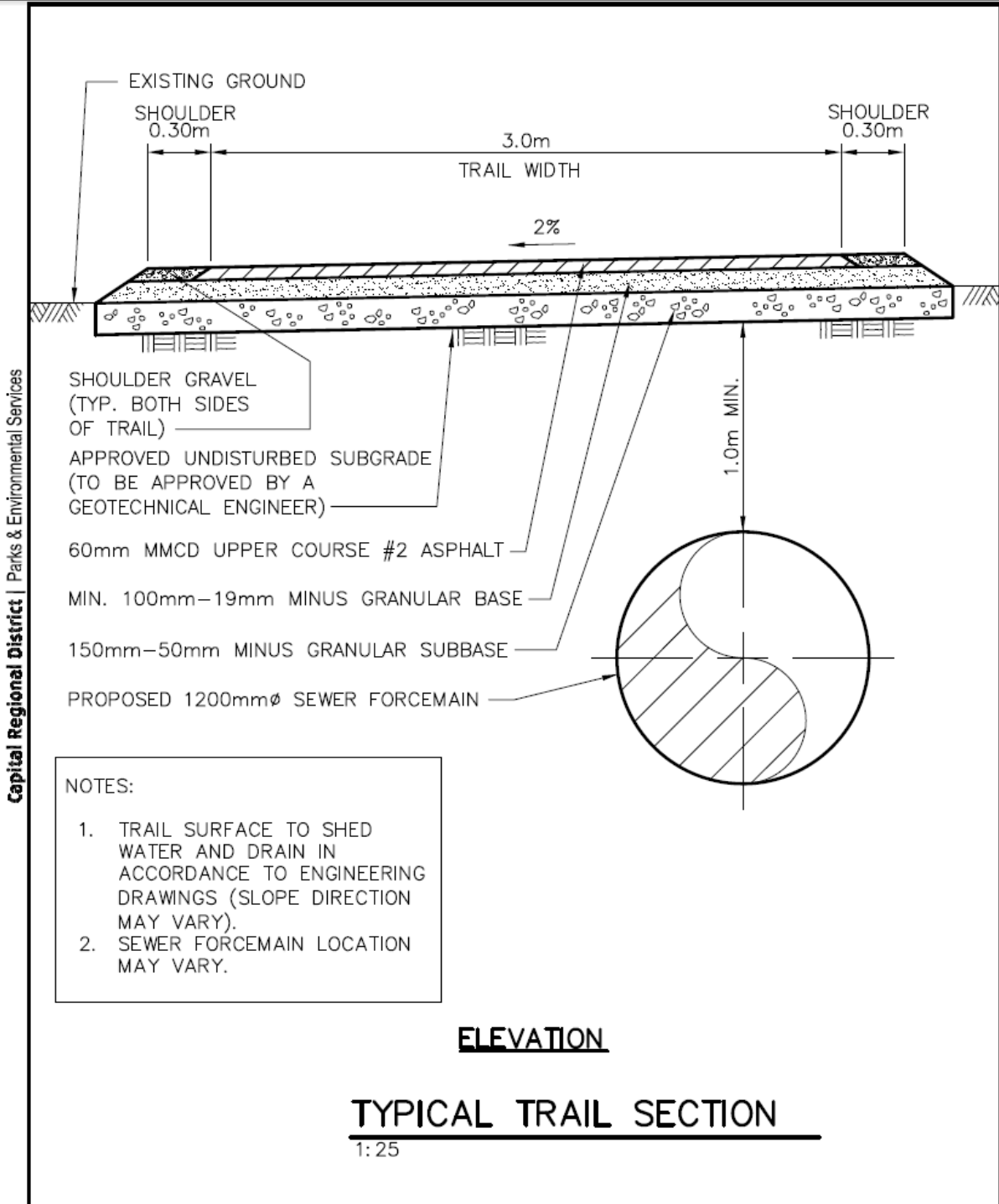
### **Construction Specifications**

- Intersection improvements, roadways, sidewalks, landscaping and any other works or services must be designed and constructed in accordance with the requirements and specifications contained in the City's Subdivision and Development Servicing Bylaw No. 12-042.

### **First Nations Considerations**

- The City and the CRD wish to recognize and celebrate the heritage and culture of the Songhees First Nation and the Esquimalt First Nation. The Cycle Track will complement this desire by, where respectful and appropriate, considering the Songhees First Nation and the Esquimalt First Nation heritage and culture in the Cycle Track, more specifically in the exterior designs of the site furnishings.






Capital Regional District | Parks & Environmental Services

**ELEVATION**

**TYPICAL TRAIL SECTION**

1:25

 Making a difference...together			<b>DALLAS ROAD FORCEMAIN</b>						
			TYPICAL TRAIL SECTION DETAIL						
DESIGNED M.C.	DRAWN L.B.	SCALE AS SHOWN	CHECKED M.C.	APPROVED M.C.	DATE 02/05/14	DWG. NO. <b>5-M110-1</b>	REV.	SHT OF	1 1