

**AMENDING AGREEMENT  
TO PACHEEDAHT FIRST NATION INCREMENTAL TREATY AGREEMENT**

THIS AGREEMENT is dated for reference the \_\_\_\_ day of November, 2020.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the Minister of Indigenous Relations and Reconciliation, Parliament Buildings, Victoria, British Columbia V8V 1X4

(the “**Province**”)

AND:

**PACHEEDAHT FIRST NATION**, on behalf of itself and its Members, as represented by the Hereditary Chiefs and their Chief and Council

(the “**Pacheedaht First Nation**”)

WHEREAS:

- A. The Parties entered into the Incremental Treaty Agreement dated March 26, 2013 and which was amended on August 1, 2019 (the “ITA”);
- B. Under the ITA, the following statutory rights of way were negotiated, which formed schedules to the ITA:
  - i. Schedule 4: Statutory Right of Way – Industrial Roads (“Schedule 4”);
  - ii. Schedule 5: Express Charge Terms Statutory Right of Way Agreement (“Schedule 5”); and
  - iii. Schedule 6: Statutory Right of Way – Gravel (“Schedule 6”).
- C. The Parties have agreed that Schedule 4, Schedule 5, and Schedule 6 are to be revised; and
- D. Article 11.11 of the ITA provides that it may be amended from time to time by the parties by written agreement.

**NOW THEREFORE** in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**Article 1 – Interpretation**

**1.1 Definitions.** In this Agreement:

“Agreement” means this second amending agreement between Pacheedaht First Nation and the Province;

“DL247 A and B” means, collectively, District Lot 247 Block A and District Lot 247 Block B (as those district lots are defined in the ITA);

“Effective Date” means the date of this Agreement; and

“Parties” means each of Pacheedaht First Nation and the Province and “Party” means either one of them.

- 1.2 **Other Words and Expressions.** Words and expressions not defined in this Agreement but defined in the ITA have the meaning ascribed to them in the ITA.

## **Article 2 - Amendments**

- 2.1 The Parties agree that the ITA shall be amended as follows:
- a) deleting in its entirety “Schedule A” of Schedule 4 and replacing it with the schedule titled “Industrial Roads SRW – Schedule A”, a copy of which is attached to this Agreement as Schedule A;
  - b) deleting in its entirety Schedule 5 and replacing it with the schedule titled “Schedule 5 - Express Charge Terms SRW”, a copy of which is attached to this Agreement as Schedule B; and
  - c) deleting in its entirety Schedule 6 and replacing it with the schedule titled “Schedule 6: Statutory Right of Way Agreement – Gravel”, a copy of which is attached to this Agreement as Schedule C.

## **Article 3 – DL 247**


- 3.1 The Parties acknowledge that:
- a) the parcel shown as “Block A” on Plan EPP100557, a copy of which is attached to this Agreement as Schedule D, is a legal survey that depicts DL247 A and B; and
  - b) the Crown Corridor described as “Block B” on Plan EPP100557 does not form part of DL247 A and B.

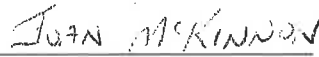
## **Article 4 – Miscellaneous**

- 4.1 **Entire Agreement.** This Agreement together with the ITA is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement and the ITA, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement.
- 4.2 **Execution in Counterparts.** This Agreement may be executed in counterparts and delivered by facsimile or electronic transmission. Each signature is deemed to be an original signature and all executed documents together will constitute one and the same document.
- 4.3 **Coming Into Effect.** This Agreement comes into effect on the date first written above.

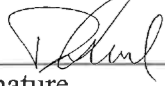
IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:


Signed on behalf of the **PACHEEDAHT FIRST NATION**  
this \_\_\_\_ day of \_\_\_\_\_, 2020:

  
\_\_\_\_\_  
Signature  
Print Name:

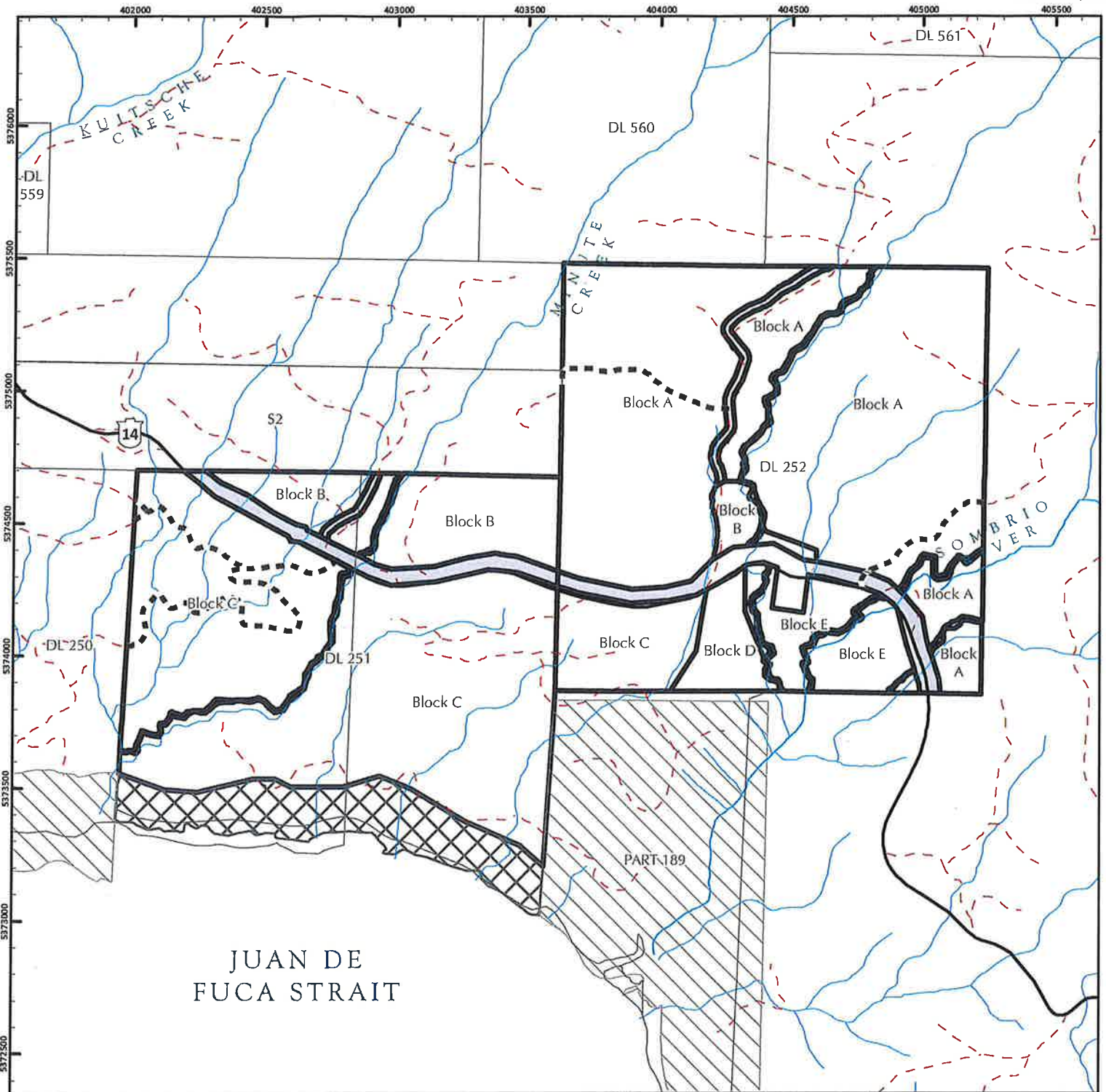
  
\_\_\_\_\_  
Witness  
Print Name:

Signed by behalf of **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** as represented by the authorized signatory for the Ministry of Indigenous Relations and Reconciliation  
this 18 day of Nov., 2020:

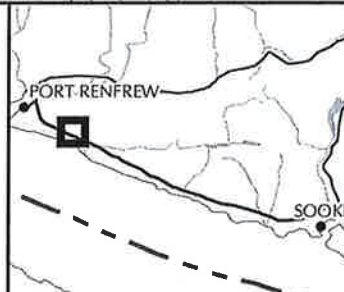
  
\_\_\_\_\_  
Signature  
Print Name:

  
\_\_\_\_\_  
Witness  
Print Name:

**SCHEDULE A**  
**“Industrial Roads SRW – Schedule A”**



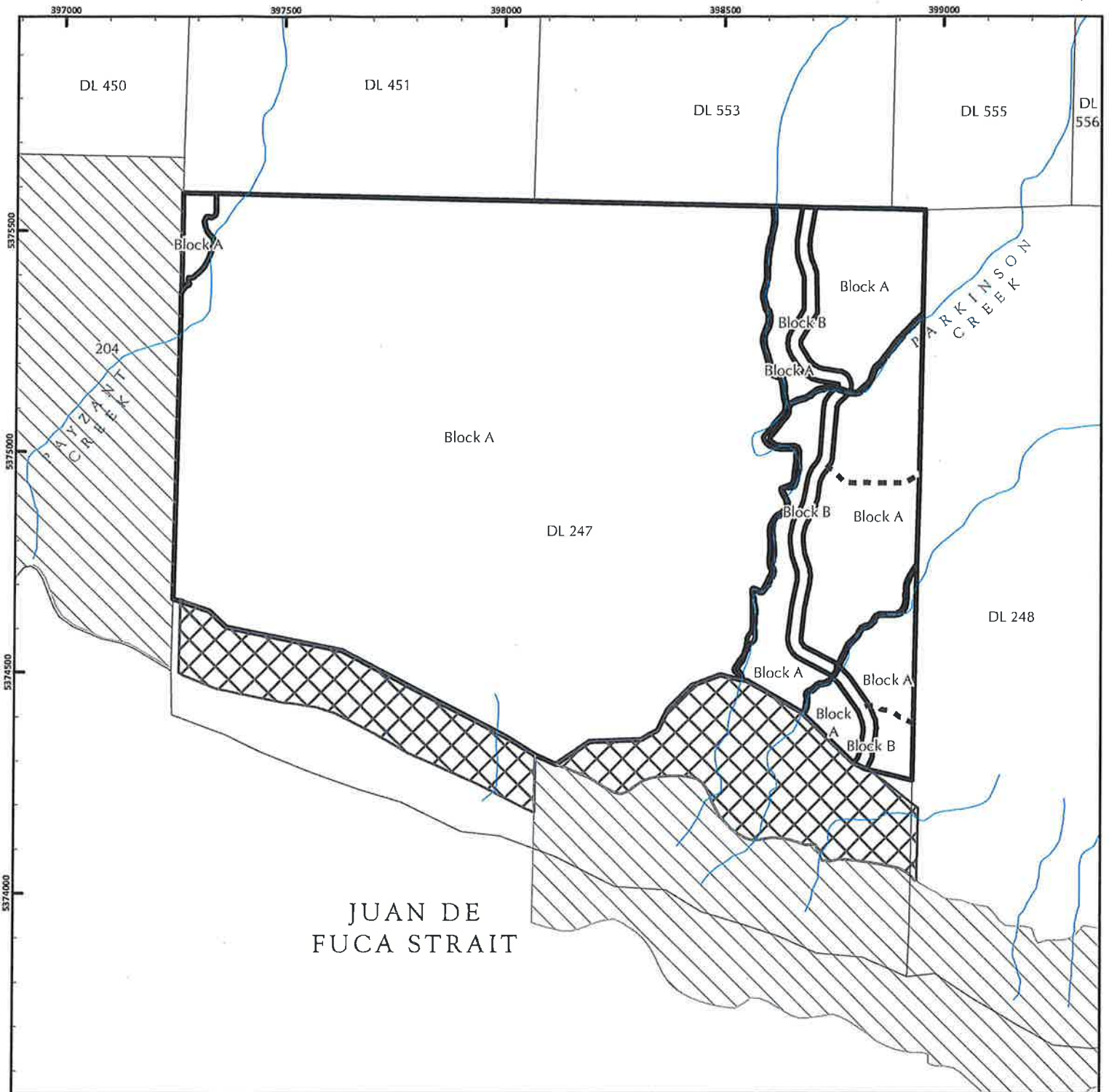
- Pacheedaht ITA Lands
- Trail / Park Corridor
- Crown Corridor
- Right of Way Agreement Road
- Parks and Protected Areas








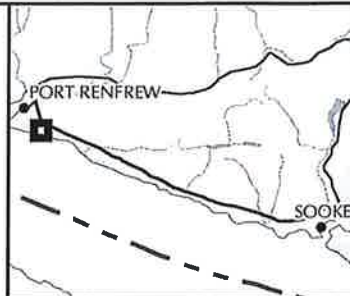
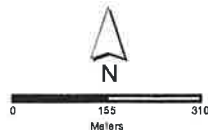
Point of Commencement  
Not Required

Cadastre derived from Crown Land Registry  
Services and Land Title Office  
Land District: Renfrew Land District  
BCGS Mapsheet No.: 92G.062  
Projection: NAD 1983 UTM Zone 10N

Pacheedaht ITA Lands  
Schedule A Map 1



-  Pacheedaht ITA Lands
-  Trail / Park Corridor
-  Crown Corridor
-  Right of Way Agreement Road
-  Parks and Protected Areas



Cadastre derived from Crown Land Registry  
Services and Land Title Office  
Land District: Renfrew Land District  
BCGS Mapsheet No.: 92G.062  
Projection: NAD 1983 UTM Zone 10N



Point of Commencement  
Not Required

Pacheedaht ITA Lands  
Schedule A Map 2

**SCHEDULE B**  
**“Schedule 5 - Express Charge Terms SRW”**



**LAND TITLE ACT**  
**FORM C (Section 233) CHARGE**  
**GENERAL INSTRUMENT - PART 1 Province of British Columbia**

PAGE 1 OF 22 PAGES

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

**RATCLIFF & COMPANY LLP**

500 - 221 West Esplanade

North Vancouver

BC V7M 3J3

Attn: Craig Empson  
 File No. 13-1356-003  
 Tel: 604-988-5201

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
 [PID] [LEGAL DESCRIPTION]

**SEE SCHEDULE**

STC? YES ☐

- | 3. NATURE OF INTEREST         | CHARGE NO. | ADDITIONAL INFORMATION |
|-------------------------------|------------|------------------------|
| <b>Statutory Right of Way</b> |            | BC Hydro; s. 218 LTA   |
| <b>Statutory Right of Way</b> |            | TELUS; s. 218 LTA      |

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.

(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

**PACHEEDAHT ENTERPRISES INC. (BC0688295)**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

**SEE SCHEDULE**

7. ADDITIONAL OR MODIFIED TERMS:

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

See Affidavit of Execution

Execution Date		
Y	M	D

Transferor(s) Signature(s)

**PACHEEDAHT ENTERPRISES  
 INC. by its authorized signatory**

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.



**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

PAGE 2 of 22 PAGES

Officer Signature(s)

**Execution Date**

Transferor / Borrower / Party Signature(s)

**Y M D**

\_\_\_\_\_  
  
(as to all signatures for British  
Columbia Hydro and Power Authority  
only)

BRITISH COLUMBIA HYDRO AND  
POWER AUTHORITY, by its authorized  
signatory(ies):

\_\_\_\_\_  
  
(as to all signatures for TELUS  
Communications Inc. only)

TELUS COMMUNICATIONS INC., by  
its authorized signatory(ies):

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM E****SCHEDULE**

PAGE 3 OF 22 PAGES

**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:**

[PID]

[LEGAL DESCRIPTION]

**NO PID NMBR BLOCK A DISTRICT LOT 247 RENFREW DISTRICT AS SHOWN ON PLAN  
EPP100557**

STC?

YES

[Related Plan Number]

**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:**

[PID]

[LEGAL DESCRIPTION]

**NO PID NMBR BLOCK B DISTRICT LOT 251 RENFREW DISTRICT AS SHOWN ON PLAN  
EPP100555**

STC?

YES

[Related Plan Number]

**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:**

[PID]

[LEGAL DESCRIPTION]

**NO PID NMBR BLOCK C DISTRICT LOT 251 RENFREW DISTRICT AS SHOWN ON PLAN  
EPP100555**

STC?

YES

[Related Plan Number]

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 4 OF 22 PAGES**

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

**TRANSFEREES:**

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**  
12th Floor - 333 Dunsmuir Street  
Vancouver, BC  
V6B 5R3

and

**TELUS COMMUNICATIONS INC. (Registration No. A055547)**  
15079 - 64th Avenue, First Floor  
Surrey, BC  
V3S 1X9

## Terms of Instrument – Part 2

### STATUTORY RIGHT OF WAY AGREEMENT – DISTRIBUTION

**BETWEEN:**

**PACHEEDAHT ENTERPRISES INC (BC0688295)**

**("the Grantor")**

**AND:**

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**

**("Hydro")**

**AND:**

**TELUS COMMUNICATIONS INC.**

**("TELUS")**

**WHEREAS:**

- A.** Hydro and TELUS wish to obtain from the Grantor a statutory right of way for certain rights on, over and under the Lands, as hereinafter defined;
- B.** The Grantor has agreed to grant each of Hydro and TELUS a statutory right of way in respect of the Lands; and
- C.** The statutory right of way herein granted is necessary for the operation and maintenance of each of Hydro's and TELUS's undertaking.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties hereto covenant and agree as follows:

#### **1. Definitions**

**1.1** In this Agreement:

- (a) **"Affiliate"** has the meaning ascribed to it in the *Business Corporations Act*, S.B.C. 2002, c. 57, as amended or replaced from time to time and, in the case of TELUS, includes an affiliate (as defined in that Act) of TELUS and any partnership or other unincorporated association in which TELUS or any affiliate (as defined in that Act) of TELUS has a controlling interest;
- (b) **"Agreement"** means the General Instrument and any attached schedule, and includes these Express Terms;

- (c) **"Area of the Works"** means those portions of the Lands located within 6 metres of either side of the center of the alignment of the Works and includes the Right of Way Area;
- (d) **"Environment"** means all the components of the earth including, without limitation, all layers of the atmosphere, air, land (including, without limitation, all underground spaces and cavities and all lands submerged under water), soil, water (including, without limitation, surface and underground water), organic and inorganic matter and living organisms, the interacting natural systems that include the foregoing and all other external conditions or influences under which humans, animals and plants live or are developed;
- (e) **"Excluded Right of Way Area"** means any right of way area or corridor that is not part of the Lands but in whole or in part passes through the Lands or is adjacent to such Lands;
- (f) **"ExpressTerms"** means these express charge terms;
- (g) **"General Instrument"** means the Form C General Instrument – Part 1, which refers to these Express Terms and any other pages attached thereto;
- (h) **"Grantor"** means the person named as the transferor in Item 5 of the General Instrument;
- (i) **"Hydro"** means British Columbia Hydro and Power Authority;
- (j) **"Lands"** means the lands and premises legally described in Item 2 of the General Instrument;
- (k) **"Right of Way Area"** means those portions of the Lands more particularly described in Section 3 of this Agreement, as may be modified under this Agreement;
- (l) **"TELUS"** means TELUS Communications Inc.; and
- (m) **"Works"** means:
  - (i) as it relates to the rights and responsibilities of Hydro, all things and components, using any type of technology from time to time, necessary or convenient for the purposes of transmitting and distributing electricity and for the purpose of telecommunications related to the business of Hydro, including: poles, towers, antennae (except for monopole free standing antennae), guy wires, brackets, crossarms, insulators, above ground or underground transformers, anchors, attachments, lines, access nodes and cables, including underground or fibre optic cables, underground conduits, lines and pipes of every kind, cabinets, all ancillary appliances and fittings, reasonably required associated protective installations and related works such as fencing for safety or security, devices and identifying colours for aircraft warning, and utility services for the operation of any of the foregoing, but does not include transmission towers or any electrical works operated at a voltage of 69 kV or higher;

- (ii) as it relates to the rights and responsibilities of TELUS, all things and components, using any type of technology from time to time, necessary or convenient for the purpose of telecommunications, including: poles, towers, guy wires, brackets, crossarms, insulators, transformers, anchors, attachments, lines, access nodes, public pay telephone equipment and enclosures, and cables, including fibre optic cables, in whole or in part and underground conduits, lines and pipes of every kind, underground cables, including fibre optic cables, together with all ancillary appliances, fittings and cabinets and above ground or underground equipment shelters.

- 1.2 With respect to any obligation on the part of Hydro or TELUS under this Agreement, any reference to Hydro or TELUS includes their respective servants, officers, employees, agents, contractors, sub-contractors, invitees, licensees, successors, permitted assigns, and those for whom either or both of them is responsible in law.

## **2. Grant of Right of Way**

- 2.1 The Grantor grants over the Lands separately to each of Hydro and TELUS and their respective employees, representatives, contractors, agents, licensees, successors and assigns, for so long as required, the uninterrupted right, liberty and right of way to:

- (a) use the Right of Way Area as follows:

- (i) excavate for, construct, install, erect, abandon, replace, extend, upgrade, operate, maintain, alter, remove and repair the Works on, over, in, under, across and through the Right of Way Area; and
- (ii) clear the Right of Way Area and keep it cleared (including pruning or removal) of any trees or growth at any time located therein;

- (b) use the Area of the Works as follows:

- (i) enter, work, pass and repass upon, on, and along the Area of the Works;
- (ii) construct, maintain, repair, replace and use trails, roads, lanes, and bridges on the Area of the Works including, in addition, any portions reasonably required adjacent to the Area of the Works for the sake of continuity, with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro or TELUS in relation to this Agreement;
- (iii) clear the Area of the Works and keep it cleared of all or any part of any obstruction, improvement or other matter which, in the reasonable opinion of Hydro or TELUS, does or might interfere with or endanger the Works, disrupt service to Hydro's or TELUS's customers, or pose a hazard to persons or property in relation to the Works; and
- (iv) clear the Area of the Works and keep it cleared (including pruning or removal) of all or any part of any trees or growth which do or might, in the opinion of Hydro or TELUS, interfere with or endanger the Works, disrupt service to Hydro's or TELUS's customers, or pose a hazard to persons or property in relation to the Works;

and Hydro or TELUS, as the case may be, must compensate the owner of any obstruction, improvement or other matter removed under paragraph 2.1(b)(iii) above that was in existence before the affected Works were installed;

(c) to enjoy further rights as follows:

- (i) Hydro and TELUS may, with the prior approval of the Grantor and any party with a registered interest in the affected areas, such approval not to be unreasonably withheld, delayed or conditioned, cut trees or growth outside the Area of the Works, if in the opinion of Hydro or TELUS such trees or growth might interfere with or endanger the Works (whether on or off the Lands) or pose a hazard to persons or property in relation to the Works. Hydro and TELUS, as the case may be, will, except in an emergency, give the Grantor written notice prior to exercising their rights under this Section;
- (ii) Hydro and TELUS may pass and repass over, and maintain, repair, replace and use, all trails, roads, lanes, and bridges on the Lands outside of the Area of the Works with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro or TELUS in relation to this Agreement;
- (iii) if there are no suitable trails, roads, lanes, or bridges under paragraph 2.1(c)(ii), Hydro and TELUS may either:
  - (A) construct, maintain, repair, replace and pass and repass over trails, roads, lanes or bridges on the Lands; or
  - (B) pass and repass over the Lands elsewhere than on trails, roads, lanes and bridges, with or without equipment, machinery and materials to such extent as may reasonably be required by Hydro or TELUS in relation to this Agreement, subject to prior approval of the route by the Grantor, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Hydro and TELUS do not require such approval if there is an emergency or a reasonably apprehended emergency or for the determination of electricity consumption, but will report to the Grantor the purpose and extent of the access as soon as practicable;
- (iv) to conduct vegetation management upon the Area of the Works, such as the planting of vegetation compatible with the undertakings of Hydro or TELUS, and the application of herbicides and pesticides with the consent of the Grantor, provided that Hydro and TELUS will not conduct any aerial application of herbicides or pesticides on the Lands;
- (v) to install, maintain and use gates in all fences which are now or hereafter shall be on the Right of Way Area and in fences affecting access to the Area of the Works;
- (vi) to ground any structures, installation or things, by whomsoever owned, from time to time situated anywhere on the Right of Way Area or adjacent



Lands where, in the reasonable opinion of Hydro and TELUS, such grounding will eliminate or reduce hazards to persons or property in relation to the Works;

- (vii) Hydro and TELUS may enter onto the Lands outside the Area of the Works for the purpose of undertaking works to protect any Works located within the Lands or within an Excluded Right of Way Area or to protect persons or property that may be at risk from such Works, provided that:
  - (A) Hydro or TELUS will before commencing such works deliver to the Grantor for approval a written work plan describing the proposed work on the Lands;
  - (B) the Grantor will not unreasonably withhold, condition or delay approval of such work plan, and shall take into consideration the effect of the proposed work, the cost of the proposed work compared to the cost of alternate solutions and the extent of the risk of not undertaking the work. If Hydro or TELUS, as the case may be, and the Grantor cannot agree on a work plan requested by Hydro or TELUS within 30 days of receipt by the Grantor of the proposed work plan, then either party may refer the disagreement to dispute resolution under Section 18.1 of this Agreement;
  - (C) Hydro or TELUS, as the case may be, will pay compensation for any damage to the Lands resulting from the implementation of the work plan;
  - (D) if Hydro or TELUS, as the case may be, determines in its reasonable judgment that an emergency situation exists or there are imminent safety concerns, Hydro and TELUS may, without approval of the Grantor, undertake works and take such steps on the Lands as are reasonably required to be taken immediately in order to protect the Works, or to protect persons or property that may be at risk from the Works, and in that event Hydro or TELUS will as soon as reasonably possible thereafter notify the Grantor; and
  - (E) generally, do all such other acts or things as may reasonably be necessary or incidental to the business of Hydro or TELUS in connection with any of the above.

### **3. Right of Way Area**

#### **3.1 The Right of Way Area consists of:**

- (a) all portions of the Lands reasonably required for the following:
  - (i) those Works existing at the date of this Agreement;

- (ii) any additional Works constructed adjacent to, along the sides of or across any roads, lanes or bridges from time to time existing on or through the Lands;
  - (iii) any additional Works that provide service to any lands adjacent to any roads, lanes, or bridges from time to time existing on or through the Lands;
  - (iv) any additional Works that provide service to any lands or customers where either the Grantor or a lessee of any intervening parcel of the Lands consents to the installation of any such Works; and
- (b) any such other portions of the Lands as may from time to time be consented to in writing by the Grantor, or by any delegate appointed by the Grantor.

3.2 The parties agree that the sketch plan attached to this Agreement as Schedule "A" reasonably represents the approximate location of the Works existing as of the date of this Agreement. Hydro and TELUS agree to provide the Grantor on request with an updated sketch of the Works if the Works have been extended in the previous calendar year, unless such information is available to the Grantor on line. The Parties confirm that this Agreement, and all of its terms and provisions, shall apply to such new works in their entirety.

3.3 Nothing in this Article 3 is intended to affect the rights of Hydro or TELUS to make arrangements directly with a person in legal possession of any lands for the construction, operation and maintenance of the Works and all matters incidental thereto.

#### **4. Non-Exclusive Use**

4.1 Notwithstanding anything else in this Agreement, Hydro and TELUS acknowledge and agree that:

- (a) this Agreement does not grant a fee simple interest in the Lands, but rather grants a non-exclusive use over the Area of the Works; and
- (b) subject to the rights granted to Hydro and TELUS in this Agreement, the Grantor may grant to third parties other interests on the Area of the Works, provided that any such grant or other interests shall not compromise or, by action of the Grantor or the Grantee, damage, disrupt, adversely affect or interfere with the use by Hydro and TELUS of the Works or Area of the Works.

#### **5. Protection of the Environment**

5.1 Hydro and TELUS will undertake activities permitted under this Agreement having regard for the impact on the Environment, and will take prudent measures to minimize any danger or disruption to the Environment. Hydro and TELUS, as the case may be, will remediate in accordance with applicable provincial or federal environmental legislation any damage they respectively may cause to the Environment.

#### **6. Covenants of Hydro and TELUS**

6.1 Hydro and TELUS each covenant separately with the Grantor to:

- (a) pay and discharge when due all applicable taxes, levies, charges and assessments now or hereafter assessed, levied or charged to the account of Hydro or TELUS, as the case may be, which relate to the Right of Way Area and which Hydro or TELUS is liable to pay;
- (b) keep the portions of the Lands used by Hydro or TELUS under this Agreement in a safe, clean and sanitary condition to the extent the condition relates to the use or occupation by Hydro or TELUS of such Lands, as the case may be, provided that Hydro and TELUS have no obligation to keep any roads within the Area of the Works suitable for use by anyone except Hydro and TELUS;
- (c) bury and maintain all underground Works as may be required so as not to unduly interfere with the drainage of the Lands;
- (d) if any human remains, burial pit or grave are unearthed or discovered on the Lands by either Hydro or TELUS, immediately notify the Grantor, cease any further activity that could affect the site until permitted by the Grantor to resume activity and take such reasonable steps and precautions to protect the site as may be directed by the Grantor;
- (e) if any archaeological material is unearthed or discovered on the Lands by either Hydro or TELUS, immediately notify the Grantor, cease any further activity that could affect the site until permitted by the Grantor to resume activity, and take such reasonable steps and precautions to protect the site as may be directed by the Grantor. At the request of the Grantor, Hydro or TELUS, as the case may be, will deliver such artifact to a location on the Lands as directed by the Grantor, at the expense of the Grantor if such expense is significant;
- (f) not bury debris or rubbish of any kind on the Lands in excavations or backfill, and to remove shoring and similar temporary structures as backfilling proceeds; and
- (g) not commit or suffer any willful or voluntary waste, spoil or destruction on the Right of Way Area, or do or suffer to be done thereon anything that may be or become a nuisance to the Grantor, except to the extent required by Hydro or TELUS, acting reasonably, to exercise the rights granted under this Agreement.

## **7. New Works Constructed by Hydro or TELUS**

- 7.1 Prior to undertaking construction on the Lands of any new Works which are not alterations, extensions or additions to existing Works, Hydro or TELUS, as the case may be, will deliver to the Grantor, for prior approval, a sketch plan showing with reasonable accuracy the location of such proposed Works, which approval will not be unreasonably withheld, delayed or conditioned.

## **8. Relocation of Hydro and TELUS Works Due to Change**

- 8.1 If a material change occurs to the Lands, such as erosion, which for any reason makes the continued use of any portion of the Right of Way Area or an Excluded Right of Way Area unsuitable for any of the Works, then the Grantor will, at no cost to Hydro and TELUS, consent to the relocation and replacement of such Works to a new location on the Lands, as follows:

- (a) Hydro or TELUS, as the case may be, will, before undertaking any work, deliver a sketch plan to the Grantor indicating the contemplated relocation of the Works for approval by the Grantor, which approval will not be unreasonably withheld, delayed or conditioned;
- (b) Hydro or TELUS, as the case may be, will take into account any likely material effect of the relocated Works on adjacent lands, and the Grantor will take into account the cost efficiencies of the location selected by Hydro or TELUS for the relocated Works in relation to alternative locations;
- (c) the relocated Works will be subject to the terms and conditions of this Agreement; and
- (d) subject to the foregoing, the cost of such relocation will be borne by Hydro, or TELUS, as the case may be.

**9. Relocation of Hydro Works at the Request of the Grantor**

9.1 If the Grantor requires a portion of the Right of Way Area for other purposes, then upon written request by the Grantor, Hydro will relocate any Works in the Right of Way Area to a new location on the Lands, provided that:

- (a) the new location is, in the reasonable opinion of Hydro, suitable for use for the relocated Works considering construction, maintenance and operation, and cost factors;
- (b) the Grantor gives Hydro reasonable notice to permit proper design, planning and construction of the Works to be relocated;
- (c) before any relocation, the Grantor has paid the reasonable costs and expenses of the relocation, including costs of design, supervision and construction as estimated by Hydro, with appropriate adjustments based on actuals after the relocation is complete; and
- (d) the relocated Hydro Works will be subject to the terms and conditions of this Agreement.

**10. Relocation of TELUS Works at the Request of the Grantor**

10.1 If the Grantor requires a portion of the Right of Way Area for other purposes, then upon written request by the Grantor, TELUS will relocate any Works in the Right of Way Area to a new location on the Lands, provided that:

- (a) the new location is, in the reasonable opinion of TELUS, suitable for use for the relocated Works considering construction, maintenance and operation, and cost factors;
- (b) the Grantor gives TELUS reasonable notice to permit proper design, planning and construction of the Works to be relocated;

- (c) before any relocation, the Grantor has paid the reasonable costs and expenses of the relocation as estimated by TELUS, including costs of design, supervision and construction with appropriate adjustments based on actuals after the relocation is complete; and
- (d) the relocated TELUS Works will be subject to the terms and conditions of this Agreement.

## **11. Fencing**

- 11.1 With the exception of transformer stations and equipment shelters, Hydro and TELUS will not fence the Area of the Works without the prior consent of the Grantor, such consent not to be unreasonably withheld, delayed or conditioned.

## **12. Inspections**

- 12.1 It will be lawful for the Grantor at all reasonable times to enter upon the Right of Way Area for the purposes of visually inspecting the Right of Way Area and the Works, or carrying out tests, surveys and inspections at its own expense that do not interfere with the Works. If the Grantor requires access to any Area of the Works that has been fenced off or enclosed, the Grantor will notify Hydro and TELUS, who will provide such safe access as may be reasonably required by the Grantor for visual inspection.

## **13. Restoration**

- 13.1 When a portion of the Right of Way Area is no longer required for the Works, Hydro or TELUS, as the case may be, will restore the ground surface of the affected portion of the Right of Way Area, as near as is reasonably practicable to its condition prior to the installation of the Works, including the removal of any above ground Works, underground transformers and, where practicable and at the request of the Grantor, any cables located within underground ducts in such portion of the Right of Way Area.
- 13.2 Section 13.1 will survive the expiration or any termination of this Agreement.

## **14. Removal of Works**

- 14.1 If certain Works are no longer required by Hydro and TELUS under this Agreement:
  - (a) Hydro or TELUS, as the case may be, may, subject to the consent of the Grantor, abandon the Works and transfer to the Grantor all ownership, right and interest in the whole or part of the Works. If the consent of the Grantor is not obtained within one year after the date of the expiration of the Agreement, Hydro or TELUS, as the case may be, will remove the above ground Works, underground transformers and, where practicable and at the request of the Grantor, any cables located within underground ducts as soon as reasonably possible in the circumstances; and
  - (b) Hydro or TELUS, as the case may be, will decommission any roads constructed by either Hydro or TELUS pursuant to paragraph 2.1(c)(iii), which are no longer required in relation to such Works, unless otherwise requested by the Grantor.

- 14.2 Hydro will remain liable for any damage to the Environment arising from any below ground Works that remain on or in the Right of Way Area after the expiration of this Agreement, except that if the Grantor uses or authorizes the use of the remaining below ground Works for any purpose, then Hydro will not be liable for any damage to the Environment caused by the Grantor's use, or authorized use.
- 14.3 TELUS will remain liable for any damage to the Environment arising from any below ground Works that remain on or in the Right of Way Area after the expiration of this Agreement, except that if the Grantor uses or authorizes the use of the remaining below ground Works for any purpose, then TELUS will not be liable for any damage to the Environment caused by the Grantor's use, or authorized use.
- 14.4 Sections 14.1, 14.2, 14.3 and 14.4 will survive the expiration or any termination of this Agreement.

## **15. Covenants of the Grantor**

- 15.1 The Grantor covenants with Hydro and TELUS that:
- (a) Hydro and TELUS shall and may peaceably enjoy and hold the rights granted in this Agreement without interruption, disturbance, molestation or hindrance whatsoever from the Grantor or any other person lawfully claiming from or under the Grantor, provided however that nothing in this section 15.1 shall limit the Grantor's right of inspection pursuant to section 12.1;
  - (b) the Grantor will not permit or make, place, erect, operate, use or maintain any building, structure, foundation, pavement, excavation, well, pile of material, fill, obstruction, equipment, thing or inflammable substance, or plant any growth upon the Area of the Works, if any such action or thing, in the reasonable opinion of Hydro or TELUS:
    - (i) may interfere with or endanger the Works or any part thereof or the installation, operation, maintenance, removal or replacement of the Works or any part thereof;
    - (ii) may obstruct access to the Works or any part thereof by those authorized by Hydro or TELUS; or
    - (iii) may by its operation, use, maintenance or existence on the Area of the Works create or increase any hazard to persons or property in relation to the Works;
  - (c) the Grantor will not carry out blasting or aerial logging operations on or adjacent to the Area of the Works without prior written permission from Hydro and TELUS, which permission will not be unreasonably withheld, conditioned or delayed; and
  - (d) the Grantor will not diminish or increase the ground elevation in the Area of the Works by any method, including piling any material or creating any excavation, drain, or ditch in the Area of the Works, unless permission in writing from Hydro and TELUS has first been received, which permission will not be unreasonably withheld, conditioned or delayed.

## 16. Compensation for Damages

16.1 Subject to the rights granted in this Agreement, Hydro and TELUS covenant with the Grantor that if Hydro or TELUS, or their respective contractors, damage any structures, buildings, fixtures, improvements, or chattels outside the Area of the Works, or damage any crops, merchantable timber, livestock, drains, ditches, culverts, fences, trails, bridges, or roads on the Lands, or contaminate the Lands in the exercise of vegetation management rights under paragraph 2.1(c)(iv), and such damage is not caused as a result of the Grantor's breach of the terms of this Agreement, or the negligence or willful act of the Grantor or its contractors, agents or permittees, then Hydro or TELUS, as the case may be, will:

- (a) compensate the Grantor for such damages, to the extent caused by Hydro or TELUS;
- (b) compensate the Grantor for, and remediate the Lands from, such contamination, to the extent caused by Hydro or TELUS; or
- (c) within a reasonable period of time, repair in a good and workman-like manner any damaged structure, building or improvement, as closely as is practicable to its condition immediately prior to the damage.

16.2 Compensation paid to the Grantor for merchantable timber pursuant to Section 16.1 will be in accordance with generally accepted principles of timber valuation and the parties agree that on payment, title to any timber cut on the Lands under this Agreement will vest in Hydro or TELUS, as the case may be.

## 17. Indemnity

17.1 Hydro will at all times save harmless and indemnify the Grantor from and against all claims, demands, actions, suits or other legal proceedings by whomsoever made or brought against the Grantor by reason of or arising out of:

- (a) any breach, violation or non-performance by Hydro of any of Hydro's covenants, conditions or obligations under this Agreement; and
- (b) any act or omission on the part of Hydro in respect of or in relation to its Works including the construction, maintenance, operation or decommissioning of its Works, and the exercise of vegetation management rights pursuant to paragraph 2.1(c)(iv) herein, but only to the extent any such matter is found to be the responsibility of Hydro, and was not contributed to by the negligence, breach, violation or non-performance of the Grantor, and not for any matters based on nuisance or the rule in *Rylands v. Fletcher* unless Hydro was negligent.

17.2 TELUS will at all times save harmless and indemnify the Grantor from and against all claims, demands, actions, suits or other legal proceedings by whomsoever made or brought against the Grantor by reason of or arising out of:

- (a) any breach, violation or non-performance by TELUS of any of TELUS' covenants, conditions or obligations under this Agreement; or



- (b) any act or omission on the part of TELUS in respect of or in relation to its Works including the construction, maintenance, operation or decommissioning of its Works, but only to the extent any such matter is found to be the responsibility of TELUS and was not contributed to by the negligence, breach, violation or non-performance of the Grantor.

## **18. Dispute Resolution**

18.1 Any dispute arising out of or in connection with this Agreement will be resolved as follows:

- (a) the parties will attempt to resolve disputes by negotiations, including timely disclosure of all relevant facts, information and documents;
- (b) either party may, at any time, by written notice request that the dispute be referred to mediation, conducted by a mediator, knowledgeable about the matters in dispute;
- (c) if the dispute is not resolved within 30 days of the notice to mediate under subsection (b), or any further period of time agreed to by the parties, then, on the agreement of the parties, the dispute may be referred to a single arbitrator for final resolution in accordance with the *Arbitration Act*, S.B.C. 2020, c 2. If the parties do not agree to arbitration, then any party may refer the matter to a court of competent jurisdiction; except that it is not incompatible with this Section 18.1 for a party to apply to a court of competent jurisdiction at any time for interim or conservatory relief and for the court to grant that relief; and
- (d) for the purposes of this Section 18.1, Hydro and TELUS will only be considered as one party where the dispute arises between the Grantor, on the one hand, and Hydro and TELUS jointly, on the other.

## **19. Runs With the Land**

19.1 This Agreement runs with and binds the Lands to the extent necessary to give full force and effect to this Agreement.

## **20. Assignment**

20.1 This Agreement:

- (a) may not be assigned in part or in whole or otherwise transferred without the prior written consent of the Grantor, which consent will not be unreasonably withheld, conditioned or delayed; but
- (b) may be assigned or otherwise transferred to an Affiliate without consent.

20.2 During any time that TELUS carries on business as a telecommunications services provider in partnership with one or more Affiliates of TELUS, TELUS may allow that partnership and its members to exercise some or all of the rights granted to TELUS in this Agreement, provided that TELUS ensures that the partnership and its members comply with TELUS' obligations in this Agreement. For greater certainty, TELUS shall remain fully liable for all of its obligations under this Agreement in such circumstances.

- 20.3 Hydro and TELUS's rights hereunder may be exercised by their respective employees, officers, representatives, contractors, subcontractors, agents, invitees and licensees. For greater certainty, Hydro or TELUS, as the case may be, remains fully liable for all of its obligations in this Agreement despite the exercise of such rights by such other persons.

## **21. Notice**

- 21.1 Whenever it is required or permitted that notice or demand be given by any party to the other, the same will be in writing and will be forwarded to the following addresses:

To the Grantor:       Pacheedaht Enterprises Inc.  
                              350 Kalaid Street, Box 170 GD  
                              Port Renfrew, BC  
                              V0S 1K0

To Hydro:               Manager, Properties  
                              B.C. Hydro  
                              12th Floor – 333 Dunsmuir Street  
                              Vancouver, BC  
                              V6B 5R3

                              Fax: (604) 623-3951

To TELUS:              Manager, Real Estate  
                              TELUS  
                              15079 – 64th Avenue, First Floor  
                              Surrey, BC  
                              V3S 1X9

                              Fax: (604) 599-0396

- 21.2 If any question arises as to the date on which such notice was communicated to any party, it will be deemed to have been given on the earlier of:
- (a) if it was delivered personally or by courier, on the next business day;
  - (b) if it was sent by fax, on the next business day; or
  - (c) if it was sent by mail, on the sixth day after the notice was mailed.

In the event of postal disruption or an anticipated postal disruption, notices may not be given by mail.

- 21.3 A change of address by any party may be given to the others in accordance with this provision.

## **22. General**

- 22.1 A breach of any term, condition, covenant or other provision of this Agreement may only be waived in writing, and any waiver will not be construed as a waiver of any subsequent

breach. Consent to or approval of any act, where consent or approval is required under this Agreement, will not be construed as consent to or approval of any subsequent act.

- 22.2 No remedy set out in this Agreement is exclusive of any other remedy provided by law, but will be in addition to any other remedy existing at law, in equity, or by statute.
- 22.3 The terms and provisions of this Agreement will extend to, be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.
- 22.4 The parties agree that this Agreement will be registered in the provincial Land Title Office. At the request of any party to this Agreement, all parties will cooperate in executing any documents or plans required to accomplish the registration of this Agreement and to preserve the substance and priority of this Agreement in relation to those portions of the Lands affected by this Agreement.
- 22.5 Hydro or TELUS may grant licences respecting their rights under this Agreement to anyone, in whole or in part, without the prior written consent of the Grantor provided that no licence will act as a release of any of Hydro's or TELUS's obligations set out in this Agreement.
- 22.6 A delegate appointed by the Grantor may provide Hydro and TELUS with all commentary, authorizations and approvals required pursuant to this Agreement including without limitation, all commentary, authorizations or approvals required in relation to sketch plans, access to the Area of the Works, and relocations or replacements of any Works.
- 22.7 This Agreement may not be amended except by written agreement signed by all parties to this Agreement.

### **23. Interpretation**

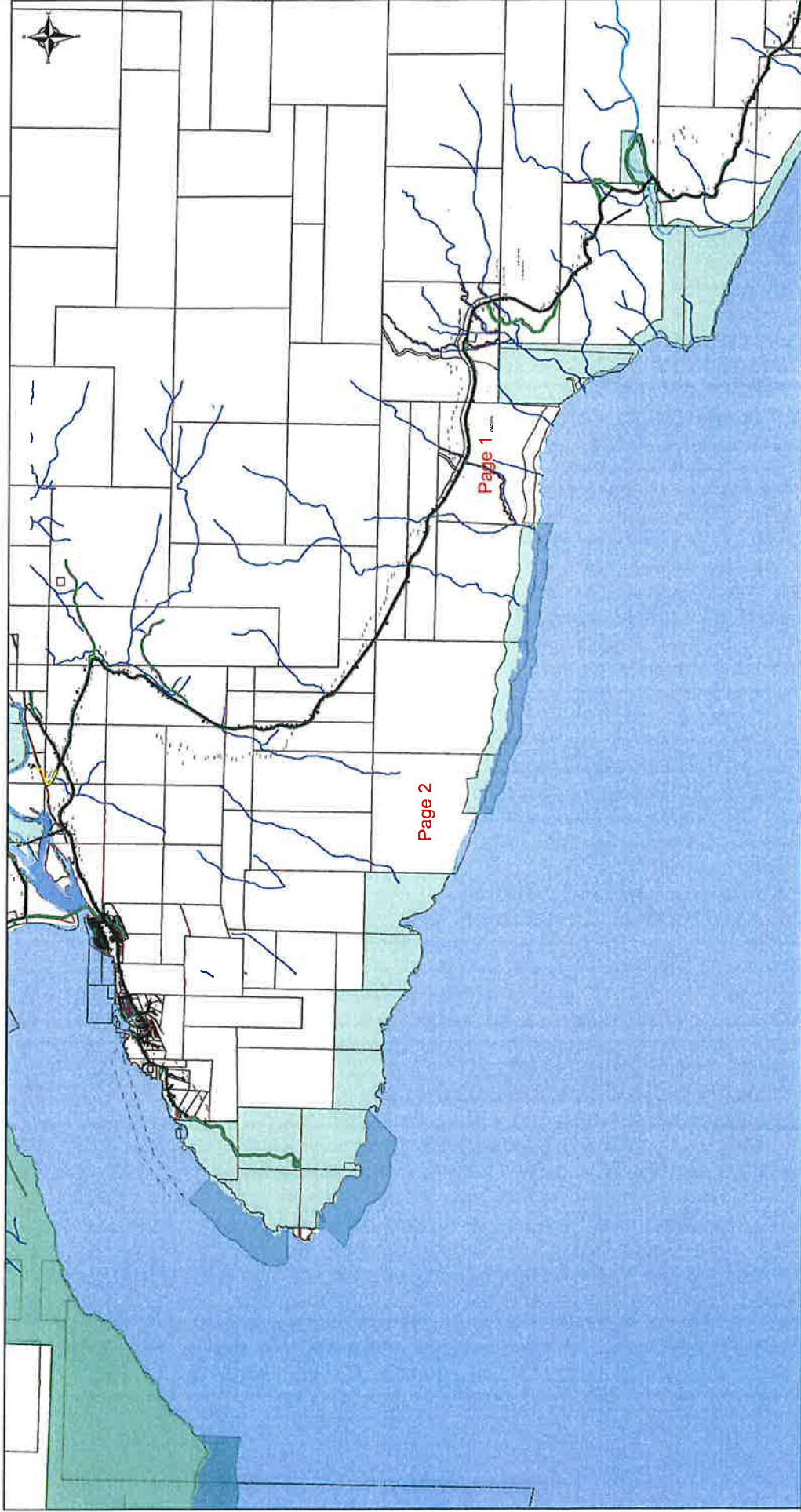
23.1 In this Agreement:

- (a) all schedules attached to these Express Terms or the General Instrument form an integral part of this Agreement;
- (b) the headings are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of this Agreement;
- (c) if any provision is determined by a court or arbitrator of competent jurisdiction to be illegal or unenforceable, that provision will be considered separate and severable, and the legality or enforceability of the remaining provisions will not be affected by that determination; and
- (d) any reference to a statute includes any regulations made pursuant to that statute and, unless otherwise expressly provided herein, includes a reference to all amendments made thereto and in force from time to time and any statute or regulation that may be passed which has the effect of supplementing or superseding that statute or those regulations.

IN WITNESS WHEREOF the Parties have executed this Agreement on Form C attached.

**SCHEDULE "A"**

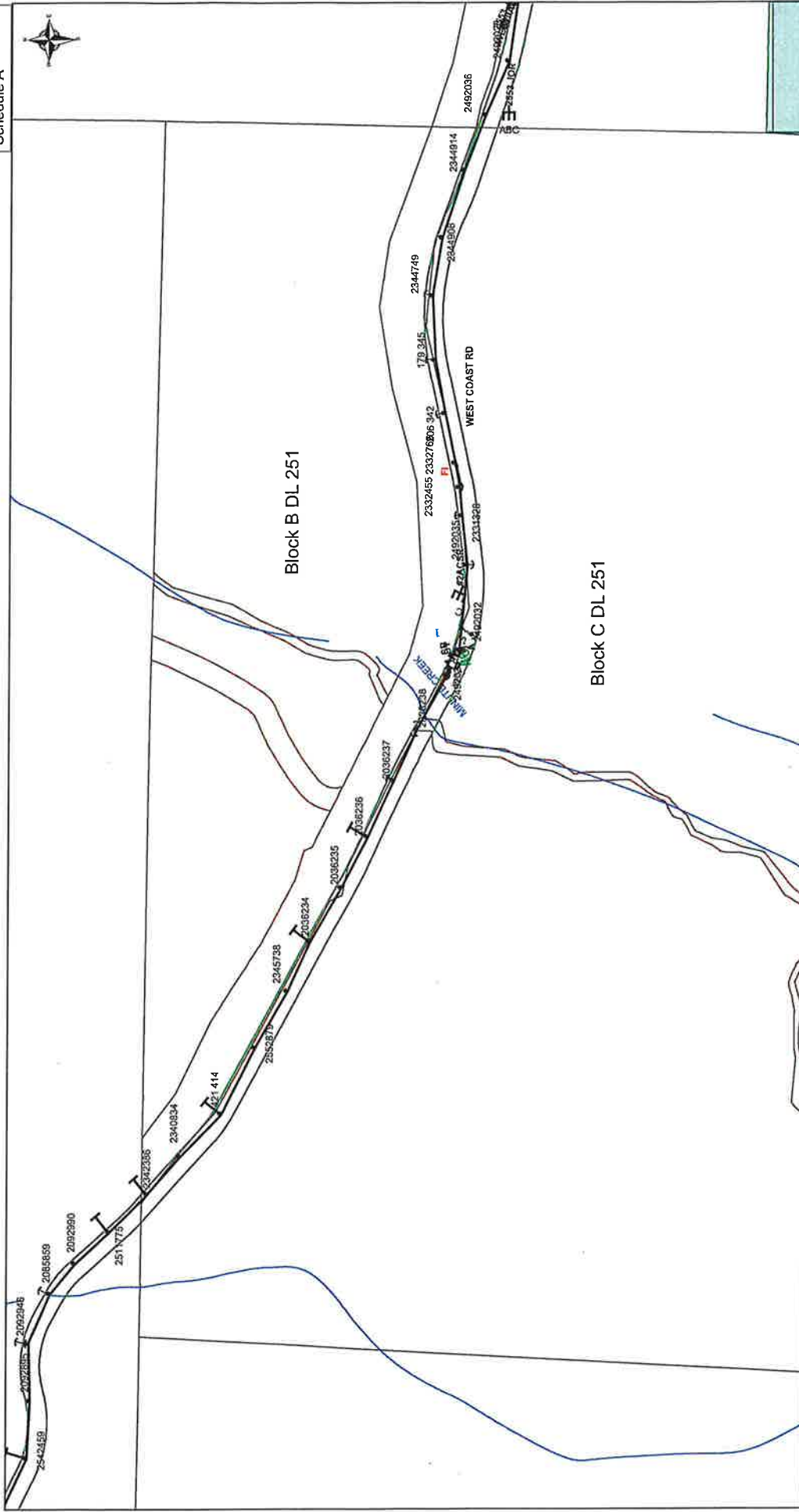
(Sketch Plan of Works, pursuant to Section 3.2 of the Agreement)



Boundary Outlines for Reference Only.  
For Reference Only. Positional Accuracy  
Unknown.

## Pacheedaht ITA Parcels

DWG: # PACH/ITA/INDEX

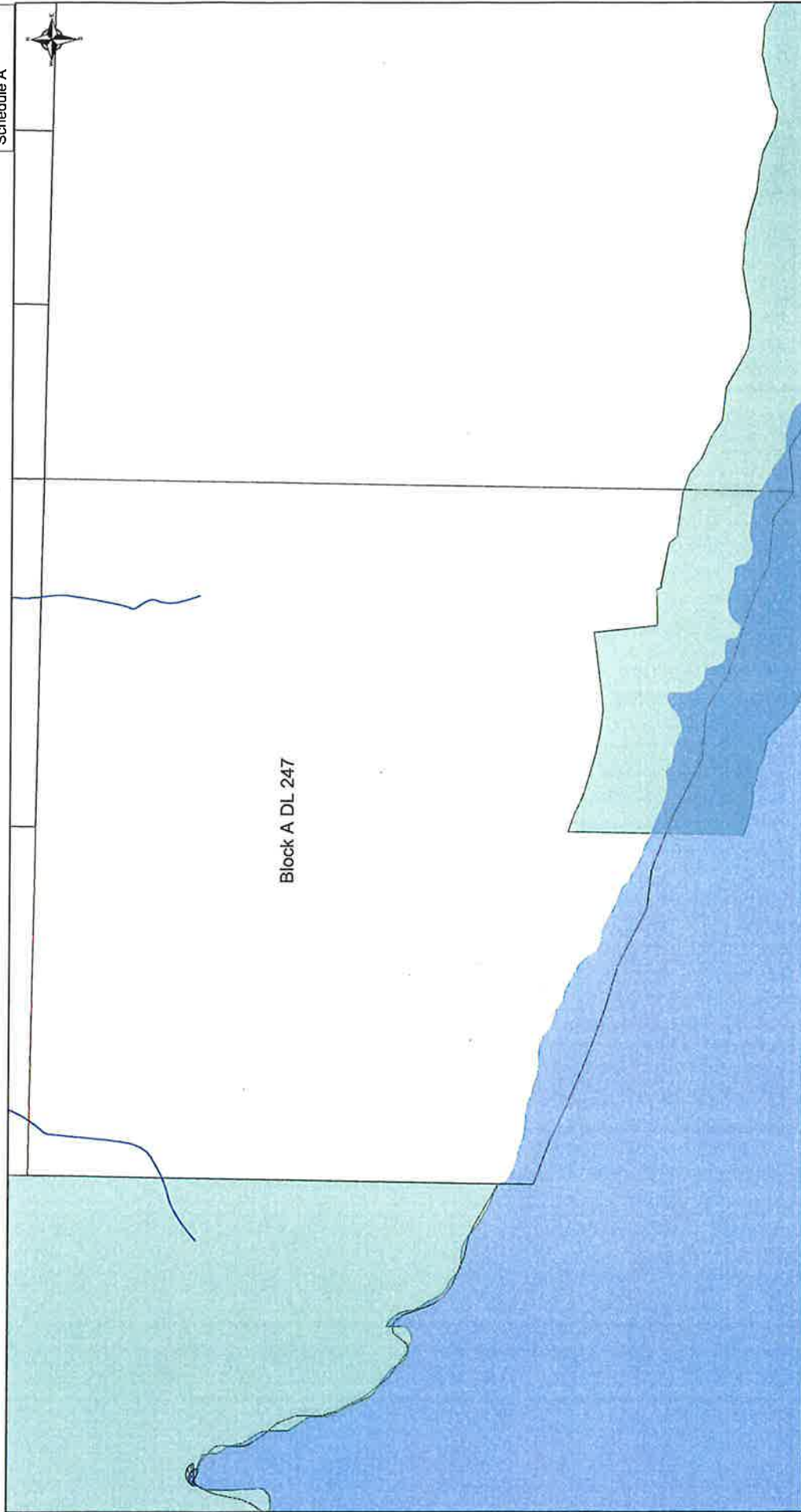


Pacheedaht ITA Parcels  
BLK B & BLK C DL 251

DWG: # PACH/ITA/DL251/001



Schedule A



Block A DL 247

Boundary Outlines for Reference Only.  
For Reference Only. Positional Accuracy  
Unknown.

Pacheedaht ITA Parcels  
BLK A DL 247

DWG: # PACH/ITA/DL247/002



**SCHEDULE C**

**“Schedule 6: Statutory Right of Way Agreement – Gravel”**

**LAND TITLE ACT**  
**FORM C (Section 233) CHARGE**  
**GENERAL INSTRUMENT - PART 1 Province of British Columbia**

PAGE 1 OF 11 PAGES

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

--

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

**RATCLIFF & COMPANY LLP**

**500 - 221 West Esplanade**

**North Vancouver**

**BC V7M 3J3**

**Attn: Craig Empson**  
**File No. 13-1356-003**  
**Tel: 604-988-5201**

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
 [PID] [LEGAL DESCRIPTION]

**SEE SCHEDULE**

STC? YES

- | 3. NATURE OF INTEREST         | CHARGE NO. | ADDITIONAL INFORMATION                           |
|-------------------------------|------------|--|
| <b>Statutory Right of Way</b> |            | <b>s. 218 Entire Agmt except Parts 2 &amp; 3</b> |

4. TERMS: Part 2 of this instrument consists of (select one only)  
 (a) ☐ Filed Standard Charge Terms D.F. No. (b) ☒ Express Charge Terms Annexed as Part 2  
 A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):  
**PACHEEDAHT ENTERPRISES INC. (BC0688295)**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))  
**SEE SCHEDULE**

7. ADDITIONAL OR MODIFIED TERMS:

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

**See Affidavit of Execution**

Execution Date		
Y	M	D

Transferor(s) Signature(s)

**PACHEEDAHT ENTERPRISES**  
**INC. by its authorized signatory**

(Print Name)

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM E****SCHEDULE**

PAGE 2 OF 11 PAGES

**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:**

[PID]

[LEGAL DESCRIPTION]

**NO PID NMBR BLOCK B DISTRICT LOT 251 RENFEW DISTRICT AS SHOWN ON PLAN  
EPP100555**

STC?

YES ☐

[Related Plan Number]

**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:**

[PID]

[LEGAL DESCRIPTION]

**NO PID NMBR BLOCK C DISTRICT LOT 251 RENFEW DISTRICT AS SHOWN ON PLAN  
EPP100555**

STC?

YES

[Related Plan Number]

**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:**

[PID]

[LEGAL DESCRIPTION]

STC?

YES ☐

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

PAGE 3 OF 11 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

**TRANSFeree:**

**HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA**  
as represented by the Minister responsible for the Transportation Act

Properties and Land Management Branch  
Ministry of Transportation and Infrastructure  
940 Blanshard Street  
Victoria, BC  
V8W 9T5

## Terms of Instrument – Part 2

### STATUTORY RIGHT OF WAY AGREEMENT – GRAVEL

**BETWEEN:**

**PACHEEDAHT ENTERPRISES INC. (BC0688295)**

**(the "Grantor")**

**AND:**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA  
as represented by the Minister Responsible for the *Transportation Act***

**(the "Province")**

**WHEREAS:**

**A.** The Grantor is the registered owner of land legally described as follows

Block B District Lot 251 Renfrew District as shown on Plan EPP100555  
Block C District Lot 251 Renfrew District as shown on Plan EPP100555

(the "**Lands**").

**B.** There are several deposits of Gravel on the Lands.

**C.** The Province carries out highway works in the vicinity of the Lands that require a considerable amount of Gravel.

**D.** The Grantor has agreed to grant to the Province, on terms and conditions herein set out, the right to use the Lands to access and remove Gravel.

ACCORDINGLY, in consideration of the sum of \$10.00 (Ten Dollars) paid by the Province to the Grantor, the Grantor and the Province agree as follows:

#### **Definitions**

In this agreement:

**"Grantor's Users"** means the Grantor and its employees, agents, invitees, licensees, permittees and contractors;

**"Gravel"** means gravel, quarry rock, random borrow materials, and sand, and any other granular materials;

**"Gravel Access" or "Gravel Accesses"** means:

- a) the access shown in dashed lines on the map attached hereto as Schedule "1"; and
- b) any other access that is built or relocated pursuant to the Province's authority in Part 2.

or any part or parts thereof;

**"Province's Users"** means the Province and its employees, agents, invitees, licensees, permittees and contractors;

**"Provincial Road"** means a road or highway under the administration and control of British Columbia adjacent to or nearby the Lands or a road or highway maintained by the Province;

**"Reference Date"** means this agreement was accepted for registration in the Land Title Office; and

**"Right-of-Way"** means the rights granted to the Province in Part 1.

#### **Part 1. Grant of Right-of-Way**

**1.01** The Grantor hereby grants to the Province's Users a Right-of-Way along and over the Lands for the following:

- a) to pass and repass for the purposes of constructing accesses;
- b) to pass and repass for the purposes of obtaining Gravel on the Lands and Gravel beyond the Lands;
- c) to use, maintain, upgrade, relocate and construct accesses; and
- d) to access, process and remove Gravel from the Lands.

**1.02** This Right-of-Way shall be perpetual.

**1.03** This Right-of-Way is granted pursuant to 218 of the *Land Title Act* and is necessary for the operation and maintenance of the Province's undertaking.

**1.04** Subject to Part 3, the Province will have no liability associated with any access or Gravel Access and no obligation to maintain it.

**1.05** The parties intend that this agreement shall constitute a charge running with the Lands and shall be registered in the Land Title Office.

#### **Part 2. Limitation on Use**

- 2.01** The Province covenants with the Designate Company that, despite that this Right-of-Way is granted over the entire Lands, the Province will limit its exercise of the rights granted in Part 1 to the extent of the covenants set out in this part.
- 2.02** The covenants in Part 2 and Part 3 shall be deemed to be personal covenants of a contractual nature between Designate Company and the Province rather than part of the grant made in Part 1.
- 2.03** The Province shall not remove Gravel from the Lands unless authorized in writing to do so by the Designate Company.
- 2.04** With respect to Gravel Accesses:
- a) the Province shall limit the exercise of the rights granted in Part 1 to the Gravel Access or Gravel Accesses;
  - b) the Province may construct new Gravel Accesses or relocate existing Gravel Accesses if
    - i. a new or relocated Gravel Access is the only reasonable way to provide the Province access to Gravel deposits outside the boundaries of the Lands, or
    - ii. a material change shall occur to the condition of a Gravel Access as a result of erosion, flooding, rock fall, slope failure or any other environmental condition which for any reason makes the continued use of the access unsuitable for the purposes described in Part 1;
  - c) before building a new Gravel Access, the Province shall deliver a sketch plan to the Grantor indicating the contemplated relocation of the Gravel Access for approval by the Grantor, which approval will not be unreasonably withheld, delayed or made subject to compensation or to any unreasonable conditions;
  - d) the Province, in proposing a new or relocated Gravel Access, will take into account any likely material effect of the new or relocated Gravel Access on adjacent parts of the Lands, and the Grantor, in considering whether or not to approve the proposal, will take into account the cost efficiencies of the location selected by the Province for the relocated Gravel Access in relation to alternative locations;
  - e) all Gravel Accesses shall be deemed to be 20 metres wide centred on the centre line of the Gravel Access; provided, however, that, if, in the reasonable opinion of the Province, more width is required for any portion (or portions) of the Gravel Access to deal with either of the following:
    - iii. a risk to the integrity of the roadbed of the Gravel Access, or
    - iv. an extraordinary hazard to the safe operation and use of the Gravel Access under this agreement,



then the Gravel Access shall be deemed to be wide enough to deal with the conditions and the Province will have the right to enter on the Lands and to make the necessary improvements; and

- f) the Province shall design, prepare and construct the relocated Gravel Access at no cost to the Grantor.

**2.05** Provided that the Grantor does not interfere with the exercise by the Province's Users of rights granted under this agreement nothing in this agreement shall exclude the Grantor's use of the Gravel Access.

**2.06** Before initiating any development in the proximity of a Gravel Access, the Grantor shall deliver a sketch plan to the Province indicating the contemplated location of the development for confirmation by the Province that the development is consistent with the Province's exercise of rights granted under this agreement, which confirmation will not be unreasonably withheld, delayed or made subject to compensation or to any unreasonable conditions.

### **Part 3. Liability for the Accesses**

**3.01** When the Province wishes to use a Gravel Access, (for rights granted under this agreement) it will first give written notice to the Grantor containing the following information:

- a) the nature of the proposed use;
- b) when the use will commence and when it will end; and
- c) what condition the Province expects to leave the Gravel Access in.

**3.02** When the Province starts to use a Gravel Access, the Province becomes liable, whether or not the notice required in 3.01 has been given, to indemnify and save harmless the Grantor from and against any and all losses, claims, damages, actions, causes of actions, costs and expenses ("**Losses**") that the Grantor may sustain, incur, suffer or be put to as a result of any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Lands by virtue of and during the Province's use of the Gravel Access under this agreement, except to the extent that any such Losses are contributed to or caused by the acts or omissions of the Grantor's Users.

**3.03** When the Province no longer requires the use of a Gravel Access:

- a) the Province will approach the Grantor to discuss options for closing the Gravel Access;
- b) unless otherwise agreed to by the parties, the Province may remove any improvements (including bridges) which the Province made or installed on the Gravel Access after the Reference Date;

- c) if the Gravel Access was in existence as of the Reference Date, or if the Gravel Access was built after the Reference Date and the Province has decided not to decommission the Gravel Access, the Province will leave the Gravel Access:
  - i. in the same or better condition that it was in when the Province commenced use, and
  - ii. in a condition that meets or exceeds the duty of care required of an occupier of similar premises as set out in the British Columbia *Occupiers Liability Act*; and
- d) when the conditions in 3.03(c) have been met, the Province
  - i. will have no obligation to maintain the Gravel Access thereafter (unless and until the Province wishes to use Gravel Access again), and
  - ii. will thenceforth have no liability associated with the Gravel Access except liability for breach of any of the Province's covenants in this agreement.

#### **Part 4. Covenants**

- 4.01** Both parties shall comply with any laws, regulations, bylaws, standards, policies, directions, permits or orders of any duly constituted authority governing, affecting, or in any way related to the activities contemplated herein.
- 4.02** Both parties shall ensure that their respective resource extraction activities conducted on the Lands comply with all applicable laws and regulations in effect at the time.
- 4.03** Neither party shall assign its rights under this agreement without the prior written approval of the other.

#### **Part 5. Notice**

- 5.01** Any notice, document or communication required or permitted to be given under this agreement:
  - a) must be in writing; and
  - b) may be given by delivery by hand, by courier, or by double-registered mail to the following addresses:

##### **To the Province:**

Properties and Land Management Branch  
Ministry of Transportation and Infrastructure  
940 Blanshard Street  
Victoria, BC  
V8W 9T5

**To the Grantor:**

Pacheedaht Enterprises Inc.  
350 Kalaid Street, Box 170 GD  
Port Renfrew, BC  
V0S 1K0

or to such other address as the parties may from time to time designate in writing.

**Part 6. Entire Agreement**

- 6.01** This agreement constitutes the entire agreement between the Grantor and the Province regarding the Right-of-Way and supersedes all prior agreements and understandings between them. There are no representations, promises, agreements or understandings between the Grantor and the Province concerning the Right-of-Way that are not expressly set out in this agreement.

**Part 7. Enurement**

- 7.01** This agreement will enure to the benefit of and be binding upon the Grantor and the Province and their respective successors and permitted assigns. The word *Grantor* is deemed to include the heirs, executors, administrators, successors, and assigns, wherever the context so admits.

**Part 8. Governing Law**

- 8.01** This agreement will be governed by and construed in accordance with the laws in force from time to time in British Columbia.

**Part 9. Arbitration**

- 9.01** Any dispute between the parties concerning the rights and obligations contained in this agreement that cannot be resolved by agreement, will be resolved pursuant to the *Arbitration Act* of the Province of British Columbia.

**Part 10. Access not highway**

- 10.01** Any accesses or Gravel Access used, maintained, upgraded, relocated and constructed under this agreement are in the nature of private easements without dominant tenements in favour of the Province's Users created pursuant to section 218 of the *Land Title Act* and for the purposes described in Parts 1 and 2 of this agreement. The accesses and Gravel Accesses are not highways for the use and passage of the general public over the Lands.

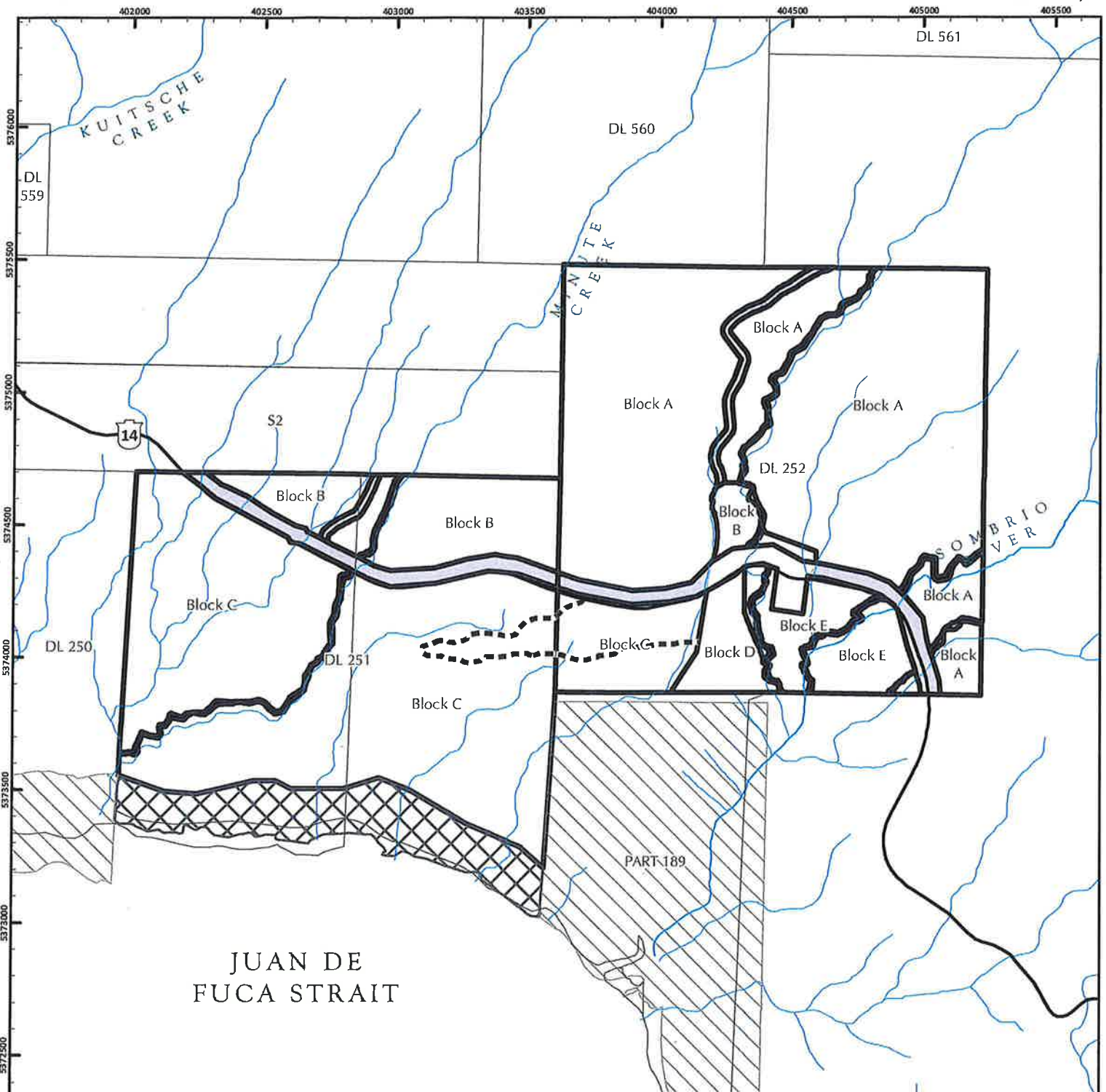
IN WITNESS WHEREOF the Parties have executed this Agreement on Form C attached.

**SCHEDULE "1"**

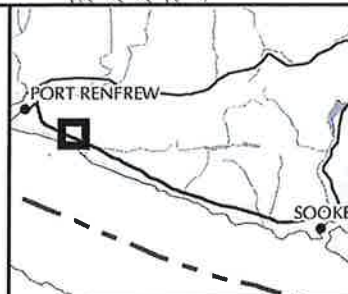
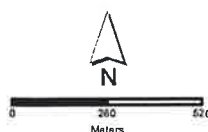
**See attached**

# Pacheedaht First Nation - ITA

October 30, 2020



- Pacheedaht ITA Lands
- Trail / Park Corridor
- Crown Corridor
- Gravel Access
- Parks and Protected Areas



Point of Commencement  
Not Required

Cadastre derived from Crown Land Registry  
Services and Land Title Office  
Land District: Renfrew Land District  
BCGS Mapsheet No.: 92G/062  
Projection: NAD 1983 UTM Zone 10N

Pacheedaht ITA Lands  
Schedule 1

**SCHEDULE D**  
**Plan EPP100557**

