

**REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN**  
**WORKS AND SERVICING AGREEMENT**

THIS AGREEMENT made the \_\_\_ day of \_\_\_\_\_ November \_\_\_\_\_, 20 \_\_20\_\_.

RDOS File No.: I2020.002-WSA

BETWEEN:

REGIONAL DISTRICT of OKANAGAN-SIMILKAMEEN

101 Martin Street

Penticton, British Columbia, V2A 5J9

(hereinafter called the “**Regional District**”)

OF THE FIRST PART

AND:

TWIN LAKES GOLF RESORT LTD.

920 - 475 West Georgia Street

Vancouver, BC V6B 4M9

(hereinafter called the “**Owner**”)

OF THE SECOND PART

**WHEREAS:**

- A. The Owner is the registered Owner of those Lands in the Regional District of Okanagan-Similkameen legally described as

Lot A, Plan KAP46761, District Lot 228s 2169 4098s, Land District  
Similkameen Division of Yale

(the “**Lands**”);

- B. The Owner has submitted a zoning amendment application, D2017.069-Zone with the Regional District and subdivision application with the Ministry of Transportation and Infrastructure, eDAS 2017-01483, and Regional District file Sub-D17-02342.001 for the Lands as shown in “**Schedule 1 - Subject Lands**”;
- C. Regional District of Okanagan-Similkameen Subdivision and Development Bylaw No. 2000, 2002, (the “**Subdivision Bylaw**”) requires the provision of various works and services upon the subdivision of land and regulates the standards to which such works and services must be constructed and installed;

- D. Regional District adopted a development variance permit D2016.051-DVP that varied requirement of the Subdivision Bylaw, Schedule A, Section 3.2.1 Per Capita Flows, Fire Flows Demands of the Subdivision Bylaw for the Lands. Specifically the Maximum Daily Domestic flow, Average Daily Demand and Peak Hour domestic flow.
- E. The Owner has applied to subdivide the Lands and has under section 506 of the Local Government Act, R.S.B.C, 2015, c.1 requested the Regional District to enter into this Agreement prior to the construction and installation of all works and services required by the Subdivision Bylaw for community water treatment and distribution and, Sanitary sewer collection and treatment and to deposit the irrevocable letter of credit or cash herein specified;
- F. The Owner has agreed to submit a petition to the Regional District under section 337 of the *Local Government Act*, R.S.B.C, 2015, c.1 for the creation of water and sanitary sewer service areas prior to the Regional District issuing a Letter of Compliance for subdivision.
- G. The Owner has agreed to grant and transfer to the Regional District all its right, title and interest in and to the works and services required to be constructed and installed by the Subdivision Bylaw to the Regional District and the Regional District has agreed to accept such transfer of the works and services on the terms of this Agreement.

NOW THEREFORE in consideration of the mutual promises contained in this Agreement and in consideration of the Regional District entering into this Agreement to allow the construction and installation of the works and services after the approval of the subdivision of the Lands, the Owner covenants and agrees with the Regional District as follows:

1. In this Agreement:

“Board” means the board of directors for the Regional District of Okanagan-Similkameen

“Complete” or “Completion” with respect to the Works means completion to the satisfaction of the Manager evidenced by the Owner’s Engineer’s certificate under section 10(b);

“Manager” means the Regional District’s Chief Administrative Officer and his or her duly authorized assistants and such consulting or professional engineers as may be appointed to act for the Regional District;

“Takeover” means the future date of transition with the Regional District assuming the operations of the community water and sanitary sewer Works from the Owner;

“Works” means all those works and services required for the community water and sanitary sewer systems, including treatment facilities, to be provided under the Subdivision Bylaw and without limitation, those works and services described in the Schedules to this Agreement.

2. The Owner covenants and agrees:

- a) to install, construct and complete the Works;
  - b) to pay to the Regional District in advance upon execution of this Agreement a non-refundable administration fee representing 1% of the estimated cost of construction of the Works as shown in “**Schedule 3 – Conceptual Design Construction Estimate**” or to a maximum of \$10,000.00 at the time of signing this agreement;
  - c) as security for the due and proper performance by the Owner of all of the covenants, agreements and obligations of the Owner in this Agreement:
    - (i) the Owner will deposit with the Regional District either by cash or letter of credit the sum of \$ 1,754,000.00 (the “**Security Deposit**”), representing 120% of the estimated cost of the conceptual Works, as shown in Schedule 3 and the on the conceptual design drawings of the Works, as shown in “**Schedule 2 - Conceptual Design**”, prior to the issuance of a Building Permit on the Lands being subdivided by Regional District application Sub-D17-02342.001, shown on Schedule 1; or
    - (ii) if the estimated cost of construction of the Works as shown in the Issued for Construction Drawings, referred to in Section 3)(a), is greater than the estimate in Schedule 3, the required cost estimate in Section 3)(b) will apply, and the Owner will deposit with the Regional District either by cash or letter of credit the sum determined in the cost estimate for the Works as shown in the Issued for Construction Drawings in Section 3)(a) (the “**Security Deposit**”), representing 120% of the estimated cost of the Works to be shown in the Issued for Construction Drawings.
  - d) that the Security Deposit, less the amount required by section 6 (the “**Warranty Deposit**”) to be maintained, will only be returned to the Owner upon one year after the Takeover of the operations and assets of the Works by the Regional District and in strict conformance with this Agreement;
  - e) that the Schedule 2 will be the starting point to complete the detailed design and specifications needed prior to the Regional District approval of the Issued for Construction Drawings and construction of the Works; and
  - f) that no interest on the Security Deposit or Warranty Deposit shall be paid to the Owner.
3. In carrying out the Works after the signing of this agreement the Owner covenants and agrees:
- (a) to complete, and receive approval from the Regional District, engineered design drawings and specifications for construction (the “**Issued for Construction Drawings**”) showing the approved detailed design of the Works needed for the subdivided Lands and subsequent Building Permit(s). The Issued for Construction Drawings, completed after the execution of this agreement, shall be designed in accordance with Schedule 2;

- (b) to complete, and receive approval from the Regional District a revised cost estimate reflecting the estimated cost of construction of the Works shown on the Final Construction Drawings.
- (c) not to commence the construction or installation of the Works without first advising the Manager in writing at least five business days before commencement and receiving written approval by the Manager;
- (d) to receive and supply copies to the Manager of any Provincial approvals of the Issued for Construction Drawings;
- (e) to construct, install and complete the Works as designed and to the specifications of the Issued for Construction Drawings and in conformance with the Subdivision Bylaw and other Regional District approved specifications not included in the Subdivision Bylaw;
- (f) to obtain the prior written approval of the Manager for any changes or revisions to the Issued for Construction Drawings;
- (g) to comply with any changes, in writing, to the Issued for Construction Drawings required by the Manager as necessary to satisfy the Manager that the Works will function and operate in a manner satisfactory to the Manager;
- (h) to pay the cost of all necessary connections of the Works to water distribution, and sewerage systems as the case may be;
- (i) not to damage any works, services or property of the Regional District, or remove, alter or destroy any survey, pins, posts or monuments, and if in default to replace, repair and restore any damage of whatever nature to the reasonable satisfaction of the Manager;
- (j) to comply with all statutes, laws, regulations and orders of any authority having jurisdiction and without limiting the generality of the foregoing all bylaws of the Regional District;
- (k) to not deposit or permit the deposit of any material or debris upon any public highways or lands of the Regional District;
- (l) to retain at all times a professional engineer to provide competent survey, layout and onsite supervision to ensure that the Works strictly conform to the approved design and specifications, and to record the details of any field design or construction changes to the approved design and specifications and to record all of the geometric information for preparation of "**Record Drawings**";
- (m) to advise the Manager of the name and address of the professional engineer retained by the Owner and to ensure that such professional engineer maintains professional liability and errors and omissions insurance of not less than \$500,000 per occurrence during the term of his or her engagement. The Owner's engineer shall provide proof of such insurance before the Owner commences the construction and installation of the Works;

- (n) not to employ any person or contractor in the construction of the Works who, in the reasonable opinion of the Manager is unfit, incapable or unskilled, and at all times, in connection with the execution of the Works, to employ and keep on site a competent general works superintendent capable of speaking, reading and writing the English language. Any explanations, directions and requests given by the Manager to the superintendent shall be conclusively deemed to have been given to the Owner; and
  - (o) not to engage any contractor in respect of the Works unless approved by the Regional District and or the Manager.
- 4. The Owner shall prosecute the Works diligently without interruptions and shall complete the construction and installation of the Works prior to issuance of Occupancy for Building Permit on the subdivided lands for Phase One.
- 5. Upon completion of the Works, the Owner covenants and agrees:
  - (a) to assign to the Regional District all of its right, title and interest in and to the Works free and clear of all encumbrances;
  - (b) to grant or cause to be granted to the Regional District in registrable form all statutory rights-of-way reasonably required by the Manager for the operation, maintenance, repair and replacement of the Works, on such terms as are satisfactory to the Manager;
  - (c) to execute and deliver or cause to be executed and delivered at the request of the Regional District all such further transfers, instruments, agreements, documents and plans and to perform all such acts as may be necessary to give full effect to this Agreement;
  - (d) to deliver within 90 days of Completion of the Works to the Regional District final Record Drawings of the Works which drawings shall be prepared by the Owner's engineer in accordance with good engineering practice and be in a form satisfactory to the Manager; as well as any Regional District "utility service connection cards"; and,
  - (e) to operate the Works as a contractor to the Regional District and under the supervision and guidance of the Regional District until such time the Takeover of the Works by the Regional District is completed. An operational contract for the Works will be agreed upon by the Owner and Regional District that is exclusive from this Agreement.
- 6. The Owner covenants and agrees to:
  - (a) allow the Regional District to initiate the Takeover of the operations of the Works, the time of which would be at the Regional District's discretion, following the time period at which 36 units of the multi-family development (Phase 1) on the Lands under subdivision, eDAS 2017-01483 of Lands, shown in Schedule 1, have been issued a building permit and complete occupancy;

- (b) have the Works maintained by the Regional District in complete repair for a period of one year from the time of Takeover of the Works;
  - (c) remedy any defects appearing within a period of one year from the date of Takeover and pay for any damage to the Works or property resulting therefrom, save and except negligence of the Regional District, its servants or agents, or acts creed during the one year; and
  - (d) keep deposited with the Regional District for a period of one year from Takeover of the Works, **the sum yet to determined**, which will equate to 15% (Warranty Deposit) of the Security Deposit amount, given in Section 2., by cash or letter of credit,
7. The Owner shall release, and does hereby indemnify and save the Regional District harmless from and against:
- (a) all costs, expenses, damages, claims, demands, actions, suits and liability by whomever brought or made and however arising whether directly or indirectly, from the construction or installation of the Works and any injury or damage thereby caused to person or property (including death) except that arising from the exclusive negligence or other fault of the Regional District;
  - (b) all costs and expenses incurred by the Regional District arising directly or indirectly from any engineering operation, construction, repair, replacement or maintenance by the Regional District to or on any real or personal property which is affected by the Works and which the Regional District either owns or is by duty or custom obliged, directly or indirectly to construct, repair, replace or maintain; and
  - (c) all expenses and costs incurred by reason of liens for nonpayment of labour or material, workers' compensation assessments, unemployment insurance, federal or provincial tax check off in relation to Works and for unlawful encroachments by the Works.
8. The Owner shall take out and maintain at all times from commencement of construction and installation of the Works until the Manager issues a certificate of acceptance, insurance at its sole expense. Such insurance shall include comprehensive general liability insurance against claims for bodily injury including death and property damage or loss arising from its operations in or about the Lands, highways or other Lands in carrying out the construction and installation of the Works and in performing its obligations under this Agreement. Such insurance shall name the Regional District as a co-insured and shall contain a cross-liability or severability of interest clause so that the Regional District and the Owner may be insured in the same manner and to the same extent as if individual policies had been issued to each. Such insurance shall be for the amount of not less than \$2,000,000 combined single limit or such other amount as the Manager may reasonably require. The Owner shall provide to the Manager proof in writing of such insurance before commencing the Works and again before the issuance of any certificate of Completion. The policy of insurance shall contain a provision

requiring the insurer to give to the Regional District 30 days prior written notice before any alteration of or cancellation of the policy shall be effective.

9. The Owner acknowledges and agrees that the Owner relies exclusively on its own engineer and contractor and that the Regional District does not, by its approvals, inspections or acceptance of the Works, warrant or represent that the Works are without fault or defect and that all approvals and inspection of the Works given or made by the Regional District are for the sole benefit of the Regional District and shall in no way relieve or excuse the Owner from constructing and installing the Works in strict compliance with the provisions of this Agreement.
10. The Regional District covenants and agrees that;
  - (a) it will permit the Owner to perform the Works on the terms and conditions contained in this Agreement and to occupy Lands of the Regional District as necessary for the Works subject to such terms and conditions in any case and from time to time as the Manager may impose;
  - (b) it will issue a Certificate of Substantial Completion signed by the Manager and the Owner's engineer upon the Owner satisfactorily completing the Works and performing all other requirements of this Agreement except the requirements of section 6; and
  - (c) the Owner will be under contract to operate the Works until the Takeover is initiated by the Regional District ;
  - (d) upon the satisfactory completion by the Owner of all the covenants and conditions in this Agreement, and without limiting the generality of the foregoing, including the maintenance of the Works constructed under this Agreement in complete repair for a period of one year, it shall provide to the Owner a Certificate of Acceptance of the Works, signed by the Manager, together with the remaining Warranty Deposit and a release and discharge of the restrictive covenant granted under section 12 of this Agreement.
11. Nothing in this Agreement shall exempt the Owner or the Lands from the ordinary jurisdiction of the council of the Regional District, its bylaws and regulations, and without limitation the construction of the Works shall not confer directly or indirectly any exemption or right of set-off from development cost charges, connection charges, application fees, user fees or other fee or charge, except as statutorily required.
12. Pursuant to section 219 of the *Land Title Act*, R.S.B.C. 1996, c.250, the Owner covenants that no buildings or structures, except the Works, shall be placed, built or constructed upon the Lands until the Manager has issued to the Owner the certificate of Completion provided for in section 10(b) of this Agreement. All amounts of money due and owing to the Regional District from the Owners provided for in this Agreement and without limiting the generality of the foregoing due and owing under section 15 of this Agreement shall constitute a rent charge charging the Lands.

13. Any letter of credit provided by the Owner to the Regional District shall be a clean unconditional and irrevocable letter of credit in favour of the Regional District drawn on a Canadian chartered bank or such other financial institution satisfactory to the Manager. Such letter of credit shall be maintained as good and valid security by the Owner at all times as required by this Agreement, and if the Owner fails or omits to renew any letter of credit and deliver such renewal to the Regional District within 14 days before the expiry of any letter of credit then held by the Regional District, the Regional District may draw down on the then current letter of credit without notice or restriction, and hold the monies in lieu thereof.
14. If the Owner shall fail to observe, perform or keep any of the provisions of this Agreement to be observed, performed or kept by the Owner, the Regional District may at its sole discretion and without prejudice to any other remedy rectify the default of the Owner, at the Owner's expense and without limiting the generality of the foregoing may:
  - (a) enter onto the Lands and do or cause to be done through its servants, contractors and others, all such things as may be required to fulfil the obligations of the Owner including without limitation, the completion of the Works; and
  - (b) make any payments required to be made for and on behalf of the Owner.And for such purposes may without notice or limitation deduct from either Deposits all costs, and expenses incurred, payment and expenditures made, and monies due and owing to the Regional District.
15. If the Regional District incurs any costs and expenses or makes payments all as either provided in section 14 of this Agreement or otherwise in this Agreement, or if the Owner is otherwise indebted to the Regional District under this Agreement, and the Deposit is not sufficient to fully recompense the Regional District, the Owner shall forthwith upon notice from the Regional District pay to the Regional District the amount of such deficiency together with interest thereon at 12 % per annum calculated and compounded monthly from the date such cost or expense was incurred or payment or expenditure was made by the Regional District. Such amounts required to be paid by the owner shall constitute a debt due and owing to the Regional District and shall be charged to the Lands under section 12 of this Agreement.
16. Wherever in this Agreement the approval of the Manager is required or some act or thing is to be done to the satisfaction of the Manager:
  - (a) such provisions shall not be deemed to have been fulfilled or waived unless the approval or expression of satisfaction is in writing signed by the Manager and no prior approval or expression of satisfaction and no condoning, excusing or overlooking by the Regional District or the Manager on previous occasions when such approval or satisfaction was required shall be taken to operate as a waiver of the necessity for such approval or satisfaction wherever required by this Agreement; and



- (b) such approval or satisfaction shall be at the discretion of the Manager acting reasonably in conformance with sound and accepted public municipal engineering practice.
17. Unless otherwise expressly provided in this Agreement, wherever the Owner is obliged or required to do or cause to be done any act matter or thing such act, matter or thing shall be done by the Owner at its sole expense.
  18. Any notice to be given under this Agreement shall be in writing, and any letter may be delivered personally or sent by prepaid mail. The addresses of the parties for the purpose of notice shall be the addresses set out in this Agreement. Any party may at any time give notice in writing to another of any change of address and from and after the third day after the giving of such notice the address specified shall be deemed to be the address of such party for the giving of notice.
  19. The Owner agrees under section 511 of the *Local Government Act* that all bylaws of the Regional District adopted under Part 14 of the *Local Government Act* shall have effect in respect of the Lands and the subdivision of the Lands, provided that they are adopted before commencement of the construction and installation of the Works. The Owner agrees that to the extent that such bylaws modify, alter or add to the requirements or standards for works and services of the type constituting the Works, the Owner shall comply with such modifications, alterations or additions in constructing, installing and carrying out the Works. The Owner shall not, for the purpose of this section, have been deemed to commence construction of the Works until five business days after the notice required by section 3(c) of this Agreement.
  20. The Regional District has made no representations, warranties, guarantees, promises, covenants or agreements to or with the Owner other than those in this Agreement.
  21. Subject only to section 3(f) of this Agreement, no amendment to this Agreement is valid unless in writing and executed by the parties.
  22. Wherever the singular or masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties so require.
  23. If any section or lesser portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the invalidity of such section or portion shall not affect the validity of the remainder.
  24. Time is of the essence of this Agreement.
  25. This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties have set their hands and seals on the day and year first above written.

The signature of the Signing )  
Authority of the )  
**Regional District** )  
**OKANAGAN-SIMILKAMEEN** )  
was hereto affixed: )

\_\_\_\_\_)  
Authorized Signatory )  
\_\_\_\_\_)  
Authorized Signatory )

c / s

THE CORPORATE SEAL of )  
\_\_\_\_\_)  
was hereto affixed in the )  
presence of: )

\_\_\_\_\_)  
Authorized Signatory )  
\_\_\_\_\_)  
Authorized Signatory )

c / s

- Schedule 1 - Subject Lands
- Schedule 2 - Conceptual Design
- Schedule 3 – Conceptual Design Construction Estimate

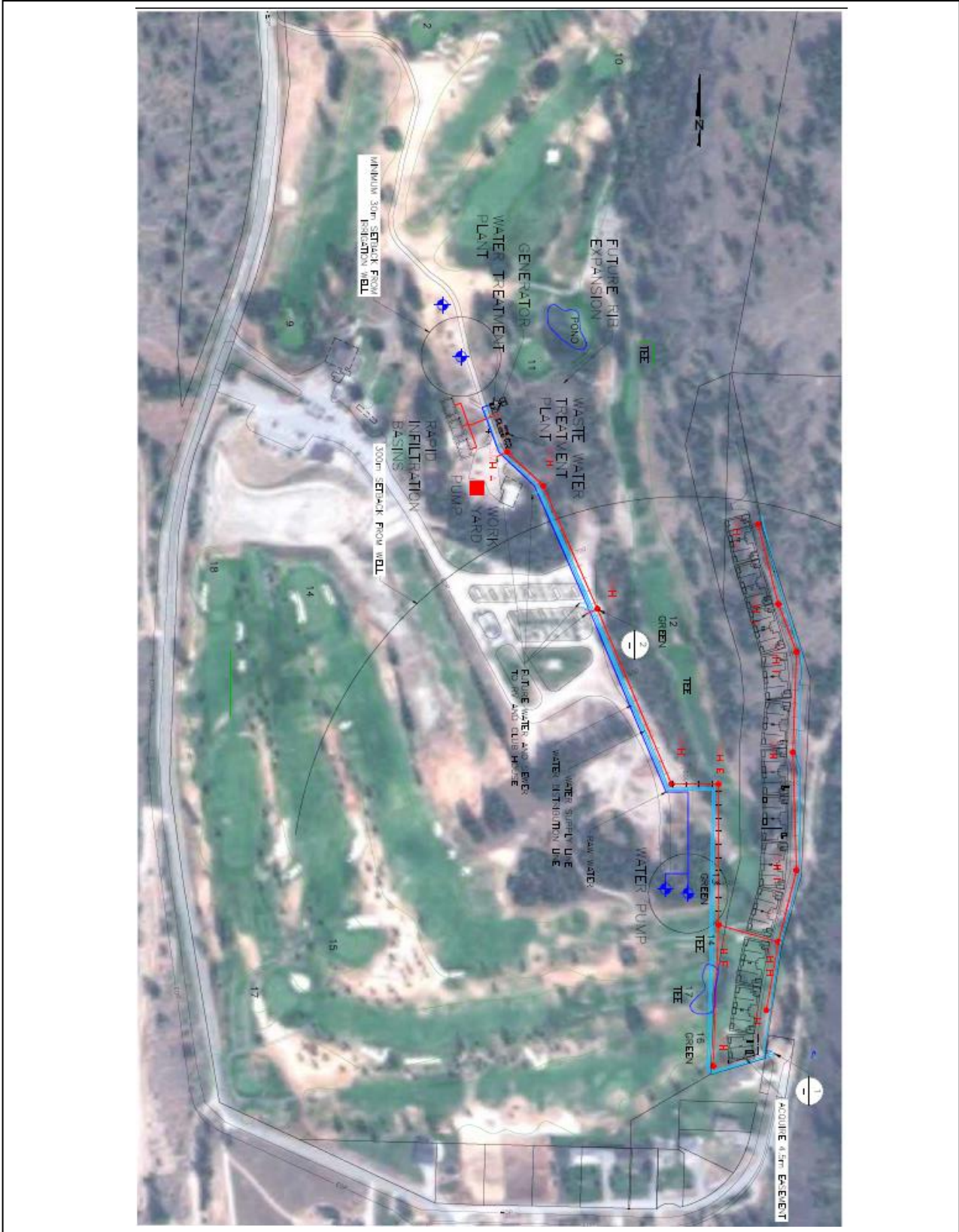
Schedule 1 – Subject Lands



LANDS;  
Lot A, Plan KAP46761, District Lot  
228s 2169 4098s, Land District  
Similkameen Division of Yale

Proposed One Lot Subdivision,  
Phase 1  
Files:  
RDOS, Sub-D17-02342.001  
MoTI, eDAS 2017-01483

# Schedule 2 – Conceptual Design



Schedule 3 – Construction estimate

**Twin Lakes Golf Resort - Phase 1 Estimate of Costs**

Item	Quantity	Unit	Unit Cost	Cost	Notes
<b>Phase 1 Wastewater</b>					
WWTP Supply	1	L.S.	\$125,000	\$125,000	Package MBBR Treatment Train
WWTP Mechanical Installation	1	L.S.	\$30,000	\$30,000	Includes mechanical within building Includes control installation and power to components
WWTP Electrical Installation	1	L.S.	\$30,000	\$30,000	
Auxiliary Power Generator	1	ea	\$75,000	\$75,000	Serves both the WWTP and WTP
<b>Phase 1 Potable Water</b>					
5000 gallon concrete tank	2	ea	\$25,000	\$50,000	Below-grade for freeze protection 2 x Goulds 10SV-05 50 gpm @ 95 psi, or equivalent
Booster Pump	2	ea	\$15,000	\$30,000	1 x Goulds 46SV-2 250 gpm @ 75 psi, or equivalent
Fire Flow Booster Pump	1	ea	\$35,000	\$35,000	
Electrical and Control Equipment	1	L.S.	\$25,000	\$25,000	3-phase power and VFD controls in building
Mechanical Interconnections	1	L.S.	\$25,000	\$25,000	Pump interconnections to storage tanks
Water Treatment Equipment	1	L.S.	\$75,000	\$75,000	Includes greensand filters, chlorination equipment, safety equipment etc.
<b>Common to all Development Phases</b>					
Sewer Piping Collection and Conveyance	800	m	\$160	\$128,000	200 mm (8") DR35 PVC
Sewer Manhole	7	L.S.	\$4,500	\$31,500	Precast bases
Rock Excavation Allowance - Sewer	200	m3	\$250	\$50,000	
Well Pump in Existing Well	1	L.S.	\$40,000	\$40,000	accommodate current demand
Raw Water Supply Main	560	m	\$120	\$67,200	100 mm (4") PVC
Potable Water Supply Main	850	m	\$170	\$144,500	150 mm (6") PVC
RV Site Extension	750	m	\$190	\$142,500	200 mm (8") PVC
Rock Excavation Allowance - Water	200	m3	\$250	\$50,000	
Building for WTP	308	ft2	\$200	\$61,600	
Building for WWTP	120	ft2	\$200	\$24,000	
Engineering				\$223,000	Estimated fees at 18% of Construction include regulatory approvals, detailed design, construction oversight and commissioning oversight
Bonding Requirement				\$292,000	20% of Estimate
<b>Order of Magnitude Estimate</b>				<b>\$1,754,000</b>	<b>Amount of Bonding Required</b>

Prepared by MSR Solutions Inc.

