



BYLAW NO. 428

A BYLAW TO AUTHORIZE ENTERING INTO AGREEMENTS FOR THE CAPITAL FINANCING OF HIGH-SPEED BROADBAND INFRASTRUCTURE

WHEREAS the Regional District may, pursuant to Part 8 of the *Local Government Act*, provide capital financing for high-speed internet services in areas lacking that service;

AND WHEREAS the Regional District has been requested to provide capital financing for the construction of high-speed broadband infrastructure to be owned and operated by City West Cable and Telephone Corporation;

AND WHEREAS the Regional Board operates a service for the provision of broadband infrastructure within the region;

AND WHEREAS the Regional District wishes to enter into agreements to provide the said capital financing upon such terms as are considered appropriate;

AND WHEREAS the requirements of Division 4 of Part 8 of the *Local Government Act* with respect to providing assistance to a business undertaking have been met;

NOW THEREFORE the Board of Directors of the Strathcona Regional District, in open meeting assembled, enacts as follows:

Financing Agreements Authorized

1. The Strathcona Regional District is authorized to enter into agreements with City West Cable and Telephone Corporation for the construction of high-speed broadband infrastructure within the boundaries of the Regional District.

Form and Substance

2. The agreements referenced in section 1 shall substantially comply in form and substance with those shown in Schedules 'A' and 'B', attached to and forming part of this bylaw.

Authority to Execute

3. Following the adoption of this bylaw, the Chair and Corporate Officer shall have full authority to execute the agreements and such further documents as may be necessary to give effect to the agreements.

Effective Date

4. This bylaw shall take effect on the date of adoption.

Citation

5. This bylaw may be cited for all purposes as Bylaw No. 428, being Broadband Infrastructure Capital Financing Agreements Authorization Bylaw 2021.

READ A FIRST TIME ON THE 28TH DAY OF APRIL, 2021

READ A SECOND TIME ON THE 28TH DAY OF APRIL, 2021


READ A THIRD TIME ON THE 28TH DAY OF APRIL, 2021

PUBLIC NOTICE OF INTENTION TO ADOPT BYLAW PUBLISHED ON THE 5TH AND 12TH DAYS OF MAY, 2021

RECONSIDERED, FINALLY PASSED AND ADOPTED ON THE 26TH DAY OF MAY, 2021



Chair



Corporate Officer

Schedule 'A'

INDEBTEDNESS AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 2021.

BETWEEN:

CITY WEST CABLE & TELEPHONE CORP., a British Columbia company having its registered and records office at 510 – 1800 West Georgia Street, Vancouver, BC, V6B 0M3

("CITY WEST")

AND:

STRATHCONA REGIONAL DISTRICT, a British Columbia local government having its principal business office at 990 Cedar Street, Campbell River, BC, V9W 7Z8

("REGIONAL DISTRICT")

WHEREAS:

- A. CITY WEST is a wholly-owned corporation of the City of Prince Rupert that owns and operates an integrated commercial and retail communications network business providing connectivity services including internet, television, home phone and cellular services;
- B. The REGIONAL DISTRICT is a local government responsible for, *inter alia*, providing services necessary or desirable for its community and fostering the economic and social well-being of its community;
- C. The REGIONAL DISTRICT and CITY WEST have entered into a partnering agreement whereby the REGIONAL DISTRICT will provide financial assistance to CITY WEST for it to develop, design, and construct last mile (fibre to the home) infrastructure ("**Last Mile Network Infrastructure**") for residents within the geographic boundaries of the Strathcona Regional District (the "**Project**");
- D. The REGIONAL DISTRICT may, pursuant to the *Local Government Act*, R.S.B.C. 2015, c. 1, operate the service of providing capital financing for high-speed internet service to areas without access to high-speed internet service;
- E. CITY WEST has requested that the REGIONAL DISTRICT borrow, on CITY WEST's behalf, a maximum sum of Twelve Million (\$12,000,000.00) Dollars, pursuant to the partnering agreement and to facilitate the Project; and
- F. CITY WEST desires to provide the REGIONAL DISTRICT with commitments with respect to obtaining such loan, and sufficient security and comfort for undertaking to secure the loan on behalf of CITY WEST.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants and agreements of the parties contained herein, the sum of one dollar paid by each party hereto to each other party hereto, and other good and valuable consideration, (the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto), it is agreed as follows:

ARTICLE ONE – DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions.** In this Agreement unless something in the subject matter or context is inconsistent therewith:
- a) **“Agreement”** means this indebtedness agreement and amendments hereto;
 - b) **“Business Day”** means any day other than a Saturday or Sunday, or a statutory holiday in British Columbia;
 - c) **“City West Group”** means, collectively, CITY WEST and City West Management Corporation and their respective affiliates;
 - d) **“City West’s Separate Business”** means CITY WEST’s separate business carried on independently from time to time by the members of the City West Group, which business is separate and apart from CITY WEST’s provision of the Services to residents within the geographic boundaries of the Strathcona Regional District pursuant to this Agreement and the Partnering Agreement;
 - e) **“Collateral”** means the physical assets that form part of the Network Infrastructure constructed or used by CITY WEST for the Project;
 - f) **“Connected Coast Network”** means the fibre optic communications network comprising approximately 3,400 kilometres of subsea fibre-optic cable and the associated landing site points along the associated coastline, running from Prince Rupert, British Columbia south to Vancouver, British Columbia, and then around Vancouver Island, Haida Gwaii and further north to Lax Kw’alaams;
 - g) **“Indebtedness”** means the obligations of CITY WEST to the REGIONAL DISTRICT, as detailed in Article 2.2 of this Agreement;
 - h) **“Loan”** means the amount that the REGIONAL DISTRICT will borrow from the MFA, which funds it will advance to CITY WEST, to a maximum principal sum of Twelve Million Dollars (\$12,000,000.00), and interest thereon;
 - i) **“Last Mile Network”** means the network of telecommunications infrastructure installed to connect end-users to the Connected Coast Network;
 - j) **“Loan Agreement”** means the agreement between the MFA and the REGIONAL DISTRICT, which sets out the terms and conditions of the Loan;
 - k) **“MFA”** means the Municipal Finance Authority of British Columbia;
 - l) **“Network Infrastructure”** means, collectively, all works and services to be designed, constructed and installed by CITY WEST in connection with the establishment of the Last Mile Network and for certainty, excludes: (i) any communications network assets acquired, built or otherwise created by CITY WEST as a component of City West’s Separate Business to provide communications network services beyond the Last Mile Network; and (ii) any communications infrastructure of the Connected Coast Network;
 - m) **“PPSA”** means the *Personal Property Security Act* (British Columbia), as amended from time to time, and any regulations thereto;

- n) **"Project Areas"** means those areas within the geographic boundaries of the REGIONAL DISTRICT where CITY WEST will construct the Network Infrastructure and provide the Services, specifically Quadra Island, Tahsis, Sayward and Gold River; and
- o) **"Services"** means, collectively, the connectivity services to be provided by CITY WEST utilizing the Network Infrastructure, including high speed internet, television, home phone and mobile phone services, together with all billing and collection services, technology support and customer service required in connection with the supply of such connectivity services.

1.2 Schedules: The following attached schedules are incorporated into this Agreement:

- a) Schedule A – Quadra Island: Project Area Maps and Project Overview
- b) Schedule B – Tahsis: Project Area Maps and Project Overview
- c) Schedule C – Sayward: Project Area Maps and Project Overview
- d) Schedule D – Gold River: Project Area Maps and Project Overview

ARTICLE TWO – THE LOAN AND INDEBTEDNESS

2.1 The Loan. The REGIONAL DISTRICT hereby agrees that, on the terms and subject to the conditions set forth herein, and the terms agreed to with the MFA, it will secure the Loan from the MFA for the benefit of CITY WEST, and then advance the Loan to CITY WEST, for construction required in connection with the Project. The REGIONAL DISTRICT will disburse the proceeds of the Loan as follows following CITY WEST's commitment to proceed with the construction of the Network Infrastructure in each of the applicable Project Areas:

- Quadra Island (\$5,700,000);
- Tahsis (\$800,000);
- Sayward (\$3,000,000); and
- Gold River (\$2,500,000).

2.2 The Indebtedness. CITY WEST agrees to be liable to the REGIONAL DISTRICT for the aggregate of the following obligations:

- a) payment of any and all obligations and liabilities owing by the REGIONAL DISTRICT to the MFA pursuant to the Loan Agreement and any other documents or security granted by the REGIONAL DISTRICT to the MFA pursuant thereto;
- b) payment of any and all costs or outlays, or any nature whatsoever, incurred by the REGIONAL DISTRICT with respect to the negotiation, preparation, execution and delivery of the Loan Agreement and this Agreement, as well as all actions under the Loan Agreement and this Agreement; and
- c) CITY WEST agrees to indemnify and hold the REGIONAL DISTRICT harmless from any costs, claims, outlays, expenses, and liabilities, of any nature whatsoever, that the REGIONAL DISTRICT may be responsible for, arising, directly or indirectly, out of this Agreement, or the negotiation, execution and delivery of the Loan Agreement, or the advancement of the Loan;

(all of which obligations, indebtedness and liabilities are herein collectively called the **"Indebtedness"**).

- 2.3 As a general and continuing security for the payment and performance of the Indebtedness and its obligations under Article 3, CITY WEST hereby grants to the REGIONAL DISTRICT a security interest in the Collateral, including Collateral acquired, created or developed after the date of this Agreement. The parties hereby agree that they intend the security interest to attach to the Collateral upon execution of the Loan Agreement (the "**Security**").
- 2.4 The Security will become enforceable in the event CITY WEST defaults (subject to a thirty day grace period) with respect to its repayment obligations pursuant to section 3.1 (Repayment of the Loan) or section 3.3 (Repayment of Other Indebtedness).
- 2.5 At any time after the happening of any event by which the Security becomes enforceable as a result of CITY WEST's default, the REGIONAL DISTRICT will have the following rights, powers and remedies:
- a) to appoint any person to be an agent or any person to be a receiver, manager or receiver and manager (herein called the "**Receiver**") of the Collateral and to remove any Receiver so appointed and to appoint another if REGIONAL DISTRICT so desires; it being agreed that any Receiver appointed pursuant to the provisions of this agreement shall have all of the powers of the REGIONAL DISTRICT hereunder, and in addition, shall have the power to carry on the business of the CITY WEST with respect to the Collateral;
 - b) to take possession of all or any part of the Collateral and any premises owned by CITY WEST where such Collateral is located;
 - c) to preserve, protect and maintain the Collateral and make such repairs to, replacements thereof and additions thereto as REGIONAL DISTRICT shall deem advisable;
 - d) to carry on all or any part of the business or businesses of CITY WEST with respect to the Collateral and in connection therewith employ or discharge any person on such terms and at such remuneration or compensation as REGIONAL DISTRICT considers proper;
 - e) to sell, lease or dispose of all or any part of the Collateral whether by public or private sale or lease or otherwise and on any terms, so long as every aspect of the disposition is commercially reasonable;
 - f) to enjoy and exercise all of the rights and remedies of a secured party under the PPSA; and
 - g) at the sole option of the REGIONAL DISTRICT, provided notice is given in the manner required by the PPSA to the CITY WEST and to any other person to whom the PPSA requires notice to be given, to elect to retain all or any part of the Collateral in satisfaction of the Indebtedness.
- 2.6 All moneys received by the REGIONAL DISTRICT or by the Receiver pursuant to s. 2.5 shall be applied as follows:
- a) first, in payment of all costs and expenses incurred by the REGIONAL DISTRICT in the exercise of all or any of the powers granted to it under this agreement and in payment of all of the remuneration of the Receiver and all costs and expenses properly incurred by the Receiver in the exercise of all or any of the powers granted to it under this agreement, including, without limitation, the remuneration, costs and expenses referred to in s. 2.5;
 - b) second, in payment of all amounts of money borrowed or advanced by either of the REGIONAL DISTRICT or the Receiver pursuant to the powers set out in this Agreement and any interest thereon;

- c) third, in payment of the Indebtedness, provided that if there are not sufficient moneys to pay all of the Indebtedness, the REGIONAL DISTRICT may apply the moneys available to such part or parts thereof as the REGIONAL DISTRICT, in its sole discretion, may determine; and
- d) fourth, in payment of any surplus in accordance with applicable law.

2.7 The Security constituted hereby shall be deemed to be a continuing security for the Indebtedness until the entire Indebtedness has been paid and performed in full and the REGIONAL DISTRICT has repaid and fully satisfied the Loan.

ARTICLE THREE – REPAYMENT OF THE INDEBTEDNESS

3.1 Repayment of the Loan. CITY WEST shall pay to the REGIONAL DISTRICT all principal amounts of the Loan, together with any interest or other amounts payable, all in accordance with the terms and conditions of the Loan Agreement. It is the intent of CITY WEST, to ensure full payment of the regular repayment amounts of the Loan due, prior to the payment due date set out in the Loan Agreement.

3.2 Prepayments and Early Payments. CITY WEST shall be entitled to prepay any of the outstanding principal amount of the Loan, subject to the terms and conditions of the Loan Agreement, provided CITY WEST also pays whatever penalties or restrictions on repayment are set out therein. However, any gains calculated by MFA, such as the early repayment of MFA gains earned through the investment of proceeds, shall be for the benefit of CITY WEST.

3.3 Repayment of other indebtedness. If there are any payments required to be made by CITY WEST to the REGIONAL DISTRICT in addition to payments on the Loan, including those under Article 2.2 of this Agreement, then CITY WEST shall make such payments to the REGIONAL DISTRICT within thirty (30) days of receipt of an invoice from the REGIONAL DISTRICT detailing such obligations of CITY WEST.

3.4 Type and Place of Payment. All payments by CITY WEST, shall be made or delivered to the REGIONAL DISTRICT at the address set out on the first page of this Agreement.

ARTICLE FOUR – CONDITIONS PRECEDENT

4.1 Mutual Condition. The obligations of the parties with respect to the consummation of any arrangements under this Agreement are subject to the waiver or fulfillment, in writing, of the following condition precedent on or before June 30, 2021:

- a) the arrangement of the Loan Agreement between the REGIONAL DISTRICT and the MFA, on terms and conditions that are acceptable to the REGIONAL DISTRICT and CITY WEST, in their sole respective discretions.

In the event that the foregoing condition precedent is not waived or declared fulfilled, in writing by both parties, by June 30, 2021, then all obligations of the REGIONAL DISTRICT and CITY WEST hereunder shall be null and void.

4.2 REGIONAL DISTRICT Conditions. The obligations of the REGIONAL DISTRICT with respect to the consummation of any arrangements under this Agreement are subject to the waiver or fulfillment, in writing, of the following conditions precedent on or before June 30, 2021:

- a) the REGIONAL DISTRICT obtaining the necessary approval from its electors and from

the supervising ministries of the Provincial Government, on terms and conditions that are acceptable to it in its sole discretion;

- b) the REGIONAL DISTRICT adopting the following required bylaws to give effect to this Agreement and the transactions contemplated herein:
 - i. a Service Establishing Bylaw, that establishes the service of the REGIONAL DISTRICT providing capital financing for high-speed internet service;
 - ii. a Loan Authorization Bylaw, that authorizes the REGIONAL DISTRICT to borrow funds to lend to CITY WEST;
 - iii. a Security Issuing Bylaw, that issues debentures or other evidence of debt authorized by the REGIONAL DISTRICT; and
- c) the REGIONAL DISTRICT obtaining advance of the Loan from the MFA.

In the event that the foregoing conditions precedent are not waived or declared fulfilled, in writing by the REGIONAL DISTRICT, by June 30, 2021, then all obligations of the REGIONAL DISTRICT and CITY WEST hereunder shall be null and void.

ARTICLE FIVE – COVENANTS, REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of CITY WEST. CITY WEST makes the following representations and warranties to the REGIONAL DISTRICT which representations and warranties shall survive the execution and delivery of this Agreement:

- a) CITY WEST has been duly incorporated, validly exists and is in good standing under the *Business Corporations Act*, S.B.C. 2002, c. 57;
- b) CITY WEST is duly and fully qualified, authorized, licensed and registered to carry out its activities, and to the knowledge of CITY WEST it is conducting such activities in compliance in all material respects with all applicable laws and regulations and all such licences, registration and qualifications are valid and subsisting and in good standing in all material respects;
- c) all necessary corporate action on the part of the CITY WEST has been taken to authorize and approve the execution and delivery of this Agreement and the completion of the obligations contemplated herein;
- d) there is no provision in CITY WEST's constating documents or any other agreement or documents to which CITY WEST is a party which restricts or limits the powers of CITY WEST to enter into this Agreement and to carry out the obligations contemplated herein;
- e) there are no actions, suits or proceedings pending, or to its knowledge threatened against CITY WEST in any court or before any governmental authority which are likely to materially adversely affect the financial condition of CITY WEST;
- f) no action of, or filing with any governmental or public body or authority is required to authorize, or is otherwise required in connection with, the execution, delivery and performance of this Agreement by CITY WEST; and
- g) CITY WEST shall not, without the prior written consent of the REGIONAL DISTRICT:
 - i. sell, lease or otherwise dispose of the Collateral or any part thereof;
 - ii. release, surrender or abandon possession of the Collateral or any part thereof; or
 - iii. enter into or grant, create, assume or suffer to exist any mortgage, charge,

hypothec, assignment, pledge, lien or other security interest or encumbrance affecting any of the Collateral.

5.2 CITY WEST Project Obligations

- a) City West will, itself or through third-party contractors, design and construct the Network Infrastructure for each of the Project Areas.
- b) City West will manage, maintain and operate, and oversee the operation of, the Network Infrastructure, including the operation of all equipment and facilities used for the provision of the Services within the Project Areas, and all activities and undertakings ancillary and incidental thereto.
- c) In designing and constructing the Last Mile Network, City West covenants to use exclusively fibre as the technology for the Network Infrastructure except if it would be commercially unreasonable to utilize fibre due to extreme geographic or topographic limitations.
- d) City West will provide the Services to end-customers in the Project Areas on terms and conditions customary to the telecommunications industry and will dedicate and apply the time, personnel, expertise and other business resources reasonably necessary to perform the Services to a standard not less than the standard of service associated with the City West's other lines of business.

5.3 Representations and Warranties of the REGIONAL DISTRICT. The REGIONAL DISTRICT makes the following representations and warranties to CITY WEST which representations and warranties shall survive the execution and delivery of this Agreement:

- a) the REGIONAL DISTRICT is a local government under the laws of British Columbia;
- b) all necessary corporate action on the part of the REGIONAL DISTRICT has been taken to authorize and approve the execution and delivery of this Agreement and the completion of the obligations contemplated herein;
- c) the REGIONAL DISTRICT has the full power, authority and capacity to enter into this Agreement and carry out the transactions contemplated herein;
- d) the execution and performance of this Agreement does not and will not contravene any statutory requirement applicable to the REGIONAL DISTRICT at the date of the parties entering in to this Agreement;
- e) there are no provisions in the REGIONAL DISTRICT's procurement, contract execution/approval, accounting and pricing policies which restrict or limit the powers of the REGIONAL DISTRICT to enter into this Agreement and to carry out the obligations contemplated herein; and
- f) there is no action or proceeding pending, or to the REGIONAL DISTRICT's knowledge threatened, against the REGIONAL DISTRICT before any court, arbiter, arbitration panel, administrative tribunal or agency which, if decided adversely to the REGIONAL DISTRICT, might materially affect the REGIONAL DISTRICT's ability to perform its obligations hereunder or that will have an adverse effect on the timing or implementation of this Agreement.

5.4 Survival of Representations and Warranties. The representations and warranties of the parties as set out in Articles 5.1 and 5.2 above will be true and accurate when the parties sign this Agreement and will continue to be true and accurate throughout the term of this Agreement.

ARTICLE SIX – INDEBTEDNESS COVENANTS

- 6.1 Covenants of CITY WEST.** From the date of this Agreement and thereafter until the Indebtedness is paid in full:
- a) CITY WEST will notify the REGIONAL DISTRICT immediately if CITY WEST shall default in a material manner in the payment of any of its indebtedness for borrowed money, whether such indebtedness now exists or shall hereafter be created. CITY WEST also shall notify the REGIONAL DISTRICT immediately if there shall occur a material event of default under any mortgage, indenture or instrument (including without limitation this Agreement) under which there may be incurred or evidenced, any indebtedness of CITY WEST for borrowed money, whether such indebtedness now exists or shall hereafter be created;
 - b) CITY WEST will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, a breach of which would materially and adversely affect the financial condition or businesses of CITY WEST, except where contested in good faith and by proper proceedings;
 - c) CITY WEST will promptly give the REGIONAL DISTRICT notice in writing of all litigation and all proceedings before any governmental or regulatory agencies or arbitration authorities affecting CITY WEST, except those which, if adversely determined, would not have a material adverse effect on the financial condition or business of CITY WEST; and
 - d) CITY WEST shall use all portions of the Loan advanced to it, solely for the purpose of construction required in conjunction with the Project.

ARTICLE SEVEN – GENERAL CONTRACT PROVISIONS

- 7.1 Notices.** All notices to a party by another party must be in writing and delivered to or sent by registered mail or electronic transmission addressed to such party as set out on the first page of this Agreement or to any other address, e-mail address or individual that the Party designates. Any notice:
- a) if validly delivered, will be deemed to have been given when delivered;
 - b) if validly delivered before 3:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day; and
 - c) if validly delivered after 3:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day after the date of transmission.
- 7.2 Additional Considerations.** The parties shall sign such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.
- 7.3 Counterparts.** This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.
- 7.4 Time is of the Essence.** Time shall be of the essence of this Agreement and of every part hereof and no extension or variation of the Agreement shall operate as a waiver of this provision.

- 7.5 Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to all of the matters herein and its execution has not been induced by, nor do any of the parties rely upon or regard as material, any representations or writings whatever not incorporated herein and made a part hereof and may not be amended or modified in any respect except by written instrument signed by the parties hereto.
- 7.6 Inurement.** This Agreement shall ensure to the benefit of and be binding upon the parties and their respective successors and assigns.
- 7.7 Currency.** Unless otherwise provided for herein, all monetary amounts referred to herein shall refer to the lawful money of Canada.
- 7.8 Headings for Convenience Only.** The division of this Agreement into articles and sections is for convenience of reference only and shall not affect the interpretation or construction of this Agreement.
- 7.9 Governing Law.** This Agreement will be governed exclusively by, and is to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of this Agreement.
- 7.10 Gender.** In this Agreement, words importing the singular number shall include the plural and vice versa, and words importing the use of any gender shall include the masculine, feminine, and neuter genders and the word "person" shall include an individual, a trust, a partnership, a body corporate, an association or other incorporated or unincorporated organization or entity.
- 7.11 Calculation of Time.** When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, then the time period in question shall end on the first Business Day following such non-Business Day.
- 7.12 Legislation References.** Any references, in this Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.
- 7.13 Severability.** If any article, section or any portion thereof of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, that unenforceability of invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid article, section or portion thereof shall be severed from the remainder of this Agreement.
- 7.14 Delivery by Electronic Means.** Any Party may deliver an executed copy of this Agreement by electronic mail transmission, but that Party will dispatch by delivery in person to the other Party an originally executed copy of this Agreement as soon as is reasonably practicable thereafter.
- 7.15 Legal Advice.** Each of the Parties acknowledge and agree that they have obtained independent legal advice with respect to this Agreement and the obligations and liabilities set out herein.
- 7.16 Assignment.** CITY WEST shall not assign this Agreement without the prior written consent of the REGIONAL DISTRICT.
- 7.17 Non-Derogation.** Nothing contained or implied in this Agreement shall fetter in any way the discretion of the REGIONAL DISTRICT or the board of the REGIONAL DISTRICT. Further,

nothing implied herein shall prejudice or affect the REGIONAL DISTRICT's rights, powers and obligations in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or the *Local Government Act* (British Columbia) and the rights, powers and obligations of the REGIONAL DISTRICT under all of its public and private statutes, bylaws and regulations, all of which may be fully and effectively exercised, performed and observed as if the parties had not signed this Agreement.

IN WITNESS WHEREOF the parties have duly executed this Indebtedness Agreement as of the day first above written.

**CITY WEST CABLE AND TELEPHONE
CORP.**

STRATHCONA REGIONAL DISTRICT

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

Schedule A – Project Overview and Maps**Quadra Island**

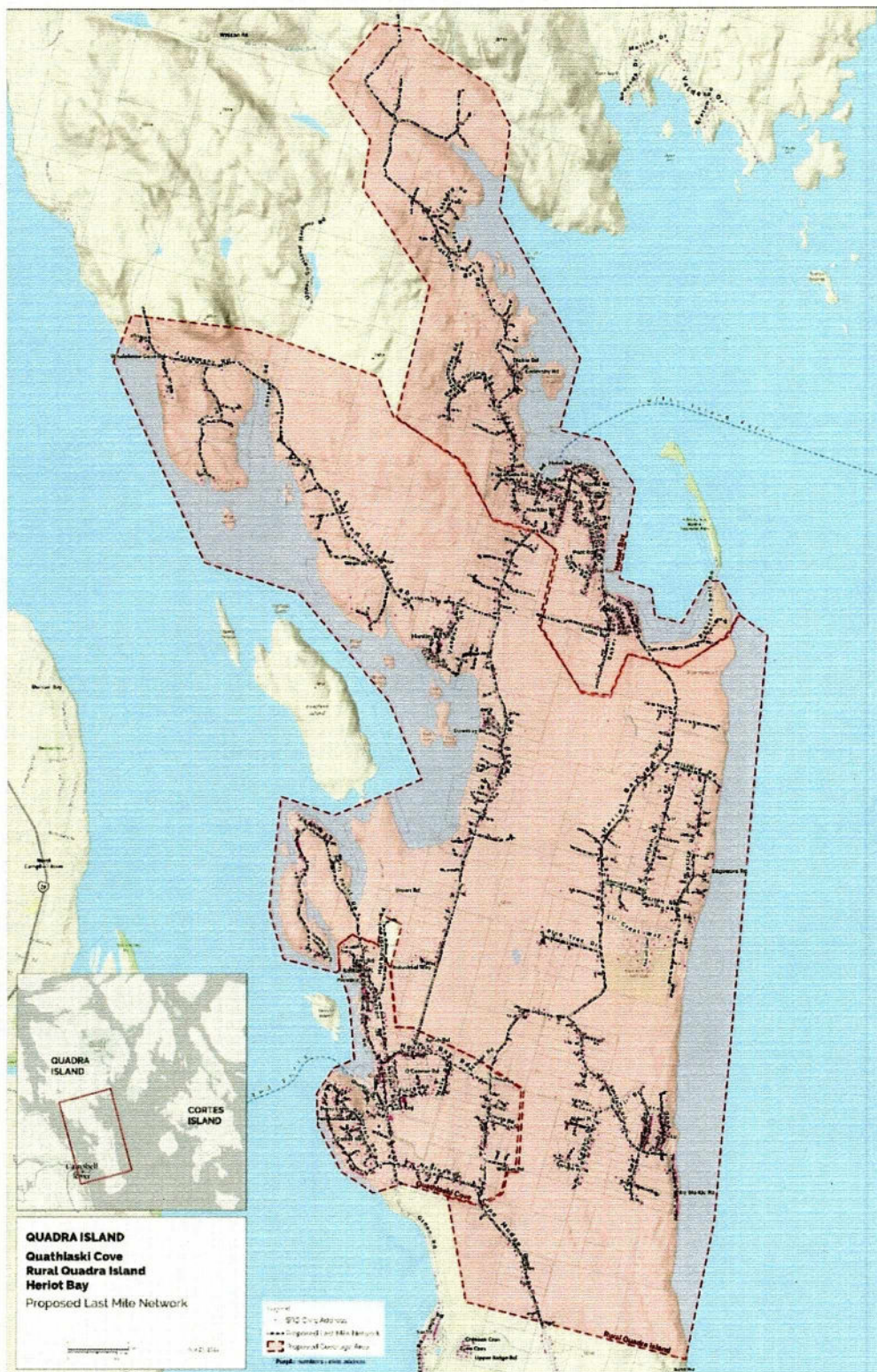
The Connecting Quadra Island project proposes building a last-mile high-speed fibre network that will support the local distribution of vastly improved Internet, landline phone, and TV services within the community of Quadra, BC. With the support of the community of Quadra Island, we would access this Internet service through the Connected Coast backbone, which will have a break-out cabinet on site. From there, we will deliver "last mile" services to the community through fibre-to-the-home technology. With this infrastructure in place, CityWest will deliver high-speed, reliable Internet access to households, businesses, government and non-profit institutions, thereby allowing them to participate fully in the global digital economy. The services will contribute to economic growth by providing access to Internet services that are on par with, or even superior to, their counterparts in larger urban areas.

Through this project, CityWest intends to serve around 1159 underserved households.

This project has four key objectives:

- 1) To modernize the broadband infrastructure and provide the residents and businesses of the community with access to affordable and reliable broadband speeds of a minimum of 50 Mbps download and up to 10 Mbps upload.
- 2) To future-proof the community's broadband infrastructure and the customers' homes with world-class fibre technology.
- 3) To provide access to voice and television services via a state-of-the-art fibre-to-the-home network.
- 4) To build infrastructure that positively contributes to improving the quality, accessibility, and effectiveness of public services.

Quadra Island Project Map



Tahsis

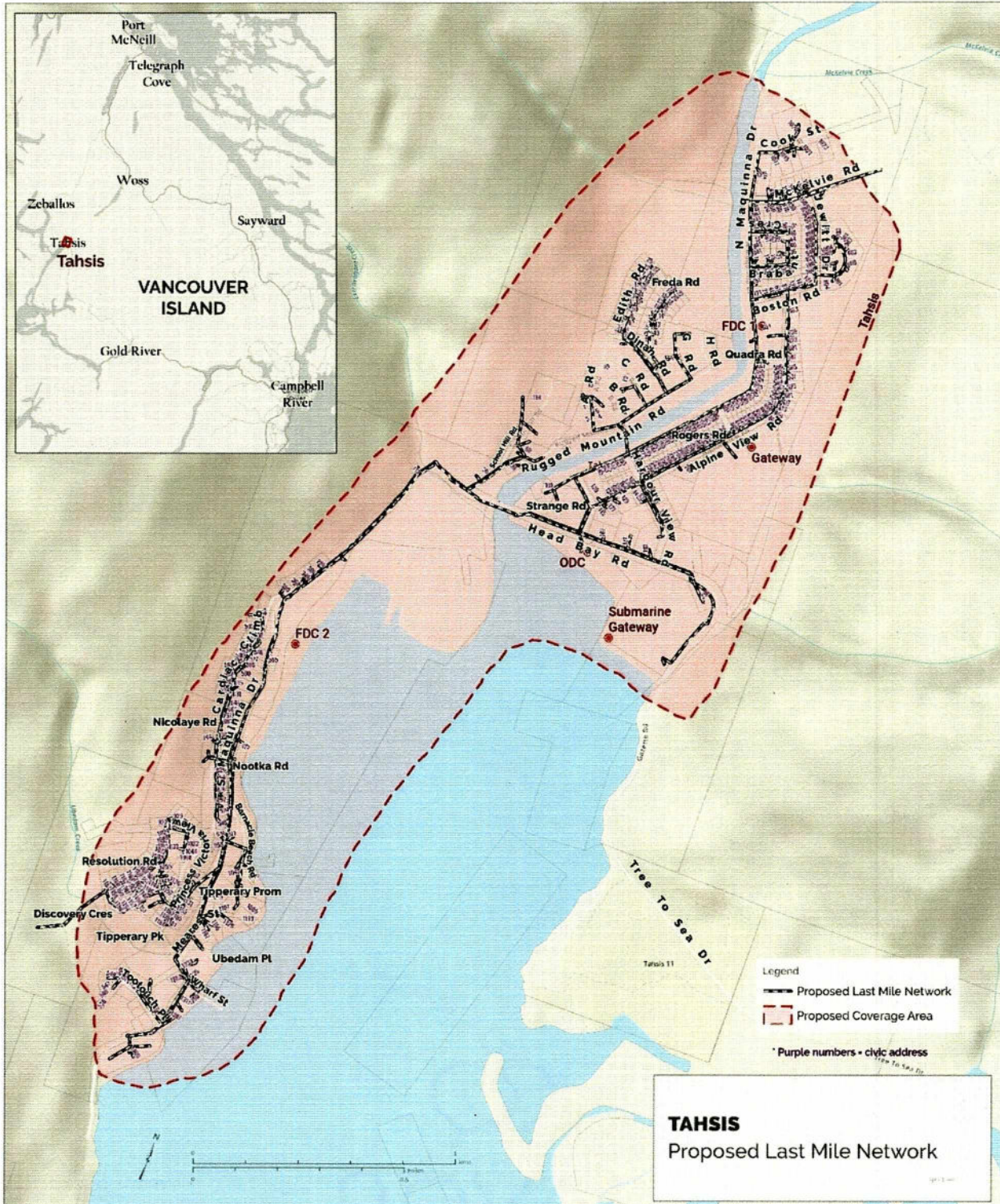
The Connecting Tahsis project proposed building a last-mile high-speed fibre network that will support the local distribution of vastly improved Internet, landline phone, and TV services within the community of Tahsis, BC. With the support of the community of Tahsis, we would access this Internet service through the existing backbone that runs through the community. From there, we will deliver "last mile" services to the community through fibre-to-the-home technology. With this infrastructure in place, CityWest will deliver high-speed, reliable Internet access to 370 households, businesses, government and non-profit institutions, thereby allowing them to participate fully in the global digital economy. The services provided by CityWest will contribute to economic growth by providing access to Internet services that are on par with, or even superior to, their counterparts in larger urban areas.

Through this project, CityWest intends to serve around 370 underserved households.

This project has four key objectives:

- 1) To modernize the broadband infrastructure and provide the residents and businesses of the community with access to affordable and reliable broadband speeds of a minimum of 50 Mbps download and up to 10 Mbps upload. (Communities that are currently served by CityWest fibre can access speeds of 1,000 Mbps download and 100 Mbps upload);
- 2) To future-proof the community's broadband infrastructure and the customers' homes with world-class fibre technology;
- 3) To provide access to voice and television services via a state-of-the-art fibre-to-the-home network;
- 4) To build infrastructure that positively contributes to improving the quality, accessibility and effectiveness of public services.

Tahsis Project Map



Sayward

Customers will be serviced using GPON (Gigabit Passive Optical Network) technology which is a point to multipoint infrastructure. A fibre connects from an OLT (Optical Line Termination) to a fibre splitter which provides services for up to 32 residential or business customers per fibre strand.

Fibre is distributed from an FDH (Fibre Distribution Hub) located within the community and each point of service will have at least a single strand of fibre available at the premise. Within the premise a CPE (Customer Premise Equipment) will connect to the fibre strand to obtain services.

The OLT will be able to provide multiple types of service including Internet, TV, and phone. The OLT will be fed by two 10Gbps links connected to an MPLS (Multiprotocol Label Switching) edge router located in the community. This MPLS edge router will in turn be fed by two 10Gbps links that connect back to the CityWest core network via a subsea landing site.

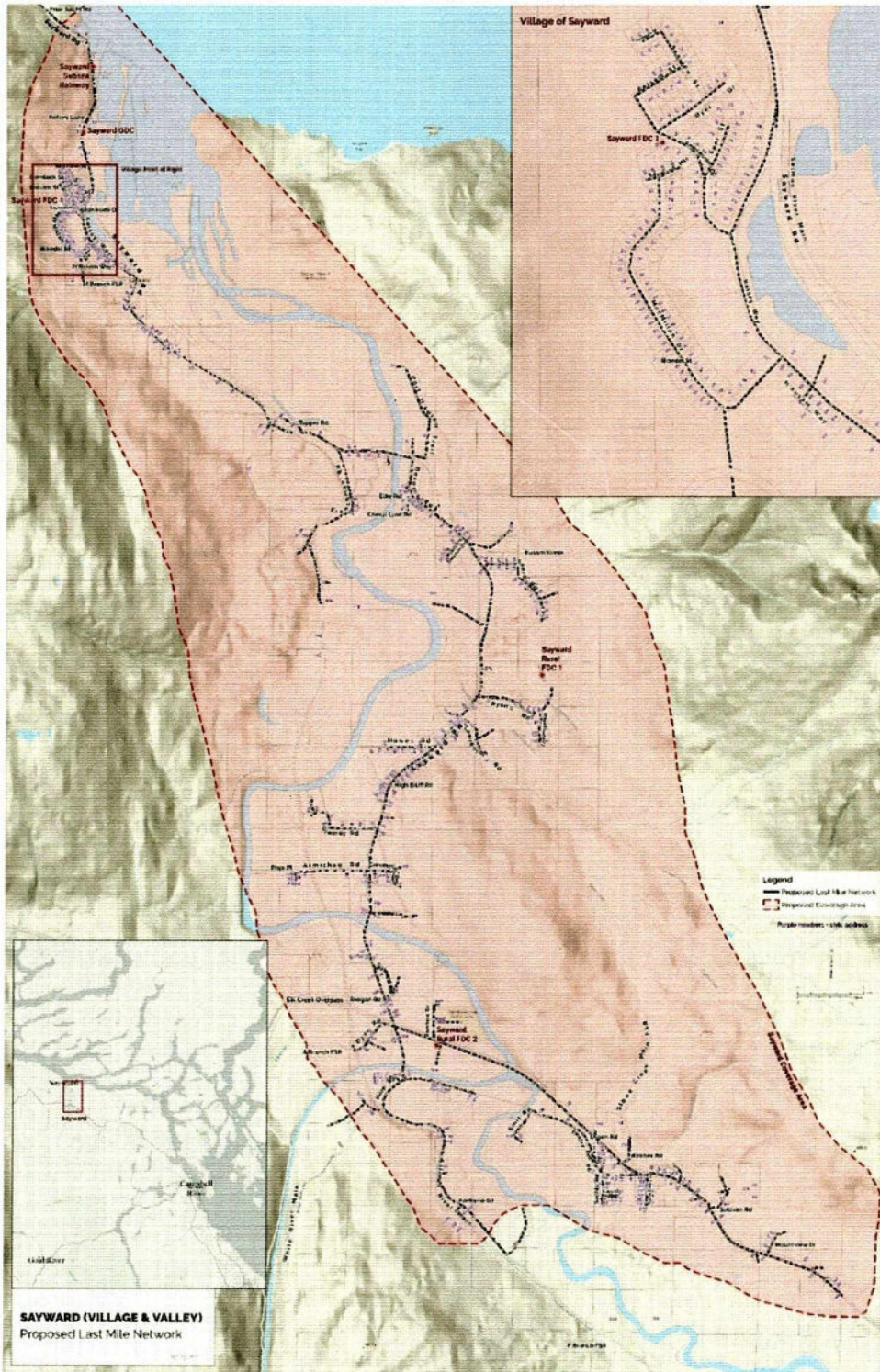
The proposed equipment is capable of providing maximum data rates of up to 1Gbps download and 1Gbps upload per home/business. This bandwidth is shared for all services that a customer is subscribed to.

Building a network for Sayward utilizing fibre and GPON technology will provide the households with current technology that will provide service to the community for many years to come.

Little maintenance is required on fibre systems especially when located underground. Upgrades to systems is more cost effective than with coaxial or copper-based systems. With underground construction current issues accessing above ground structures will be eliminated thus allowing construction to proceed without very lengthy access processes causing several delays and increased cost in finishing a project. An added benefit to underground systems is resistance to man-made events such as vehicle accidents hitting poles and interface fires due to natural disaster events. Building an underground system also offers an added level of redundancy for aerial systems, thereby creating more resilience in the regional network.

Through this project, CityWest intends to serve around 512 underserved households.

Sayward Project Map



Gold River

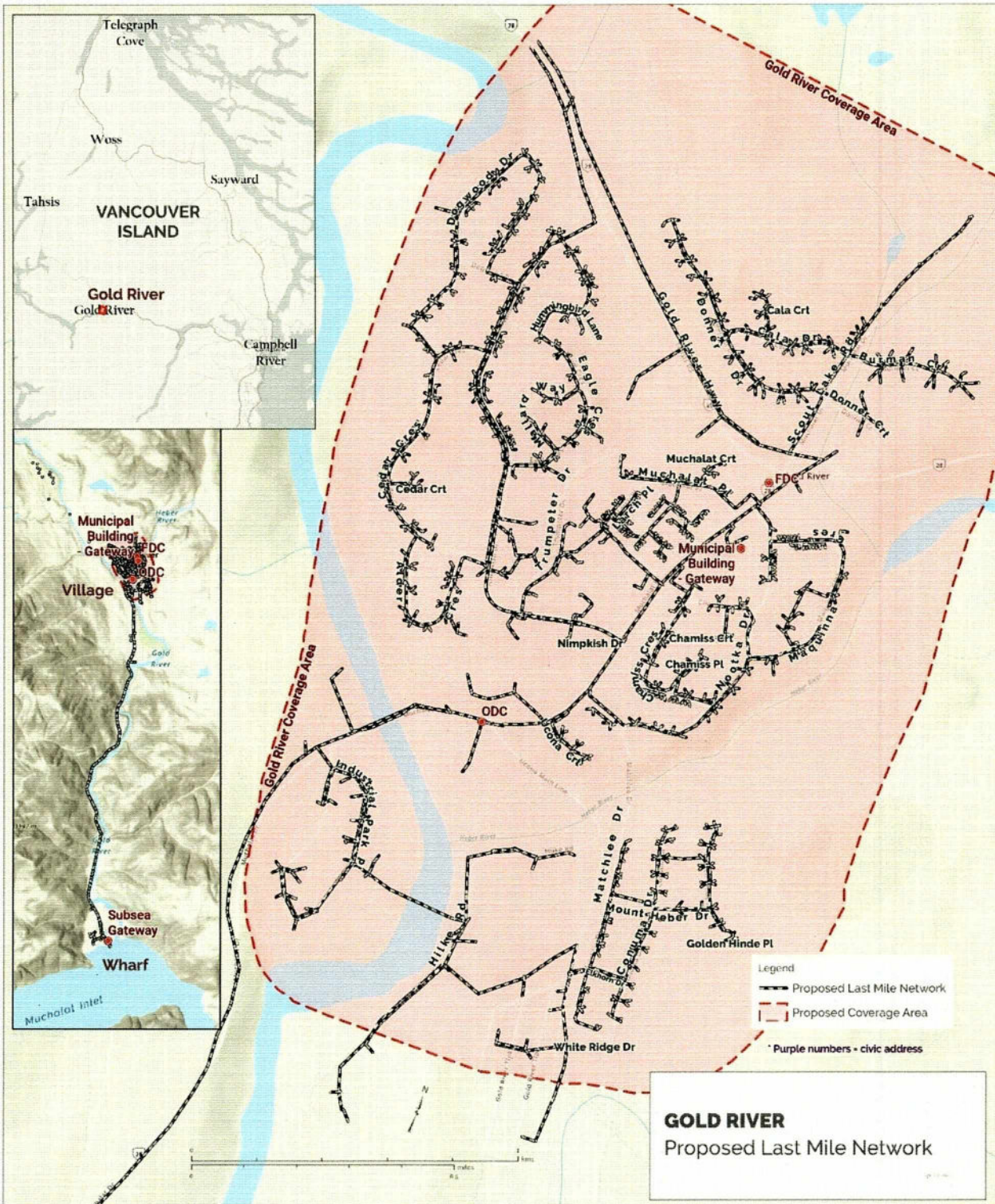
The Connecting Gold River project proposed building a last-mile high-speed fibre network that will support the local distribution of vastly improved Internet, landline phone, and TV services within the community of Gold River, BC. With the support of the community of Gold River, we would access this Internet service through the Connected Coast backbone, which will have a break-out cabinet on site. From there, we will deliver "last mile" services to the community through fibre-to-the-home technology. With this infrastructure in place, CityWest will deliver high-speed, reliable Internet access to households, businesses, government, and non-profit institutions, thereby allowing them to participate fully in the global digital economy. The services provided by CityWest will contribute to economic growth by providing access to Internet services that are on par with, or even superior to, their counterparts in larger urban areas.

Through this project, CityWest intends to serve around 610 underserved households.

This project has four key objectives:

- 1) To modernize the broadband infrastructure and provide the residents and businesses of the community with access to affordable and reliable broadband speeds of a minimum of 50 Mbps download and up to 10 Mbps upload. (Communities that are currently served by CityWest fibre can access speeds of 1,000 Mbps download and 100 Mbps upload);
- 2) To future-proof the community's broadband infrastructure and the customers' homes with world-class fibre technology.
- 3) To provide access to voice and television services via a state-of-the-art fibre-to-the-home network.
- 4) To build infrastructure that positively contributes to improving the quality, accessibility, and effectiveness of public services.

Gold River Map



SCHEDULE 'B'

LAST MILE NETWORK INFRASTRUCTURE PARTNERING AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 2021 (the "Effective Date").

BETWEEN:

CITY WEST CABLE & TELEPHONE CORP., a British Columbia company having its registered and records office at 510 – 1800 West Georgia Street, Vancouver, British Columbia, V6B 0M3

("CITY WEST")

AND:

STRATHCONA REGIONAL DISTRICT, a British Columbia regional district having its principal business office at 990 Cedar Street, Campbell River, BC, V9W 7Z8

("SRD")

WHEREAS:

- A. Capitalized terms used in these Recitals and in this Agreement have the meanings ascribed to them in Section 1.1;
- B. City West is a wholly-owned corporation of the City of Prince Rupert that owns and operates an integrated commercial and retail communications network business providing connectivity services including internet, television, home phone and cellular services;
- C. The SRD is responsible for, *inter alia*, providing services necessary or desirable for its region and fostering the economic and social well-being of its region;
- D. The SRD has enacted the Regional Broadband Infrastructure Service Establishing Bylaw No. 321 for the purpose of enabling the provision of broadband services within the geographic boundaries of the Strathcona Regional District (the "**Service Area**");
- E. City West and the SRD (the "**Parties**" and each a "**Party**"), through the establishment by their affiliates of the Connected Coast Network Partnership, have developed the Connected Coast Network to provide backbone infrastructure to bring new or improved high-speed internet accessibility to rural and remote coastal communities along coastal British Columbia, Haida Gwaii and Vancouver Island;
- F. The Parties now wish to develop the last mile (fibre to the home) for unserved and underserved residents within the Service Area;
- G. The SRD may, pursuant to the *Local Government Act*, provide assistance to a business or other entity through a partnering agreement for the provision of a service on behalf of the SRD; and
- H. The Parties wish to record their respective rights and obligations with respect to the design, construction, installation, maintenance and ownership of the Last Mile Network and the provision of the Services as hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT for and in consideration of the mutual terms and agreements hereinafter set forth, the Parties covenant, agree and promise each with the other as follows:

1. INTERPRETATION

1.1 Defined Terms. In addition to the terms otherwise defined in this Agreement, the following terms have the meanings set out below:

- a) **"Agreement"** means the agreement including the recitals and Schedules to this agreement, as amended from time to time in accordance with this agreement.
- b) **"Annual Gross Project Revenues"** the gross revenues paid by Project Customers to City West for communications network services that utilize the Network Infrastructure, except for Excluded Revenues.
- c) **"Annual Net Project Revenues"** the Annual Gross Project Revenues minus the annual Operating Costs and overhead charges at cost.
- d) **"Applicable Laws"** means all applicable federal, provincial and municipal laws, bylaws, codes, rules, regulations, ordinances and requirements applicable to the Project and the Services.
- e) **"Business Day"** means a day other than Saturday, Sunday or a statutory holiday in British Columbia.
- f) **"City West Group"** means, collectively, City West and City West Management Corporation and their respective affiliates.
- g) **"City West Separate Business"** means City West's separate business carried on independently from time to time by the members of the City West Group, which business is separate and apart from City West's provision of the Services to Project Customers pursuant to this Agreement.
- h) **"Conditions Precedent"** has the meaning given in Section 7.1.
- i) **"Connected Coast Network"** means the fibre optic communications network comprising approximately 3,400 kilometres of subsea fibre-optic cable and the associated landing site points along the associated coastline, running from Prince Rupert, British Columbia south to Vancouver, British Columbia, and then around Vancouver Island, Haida Gwaii and further north to Lax Kw'alaams.
- j) **"Connected Coast Network Partnership"** means the partnership formed by City West Management Corp. and the Strathcona Connected Coast Network Corp. for the purposes of, *inter alia*, establishing the Connected Coast Network.
- k) **"Election Notice"** has the meaning given in Section 2.2.
- l) **"Event of Default"** has the meaning given in Section 8.1.
- m) **"Excluded Revenues"** has the meaning set out in Subsection 6.4.
- n) **"Last Mile Network"** means the network of telecommunications infrastructure installed to

connect end-users to the Connected Coast Network.

- o) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 2015, c. 1, as may be amended or replaced from time to time.
- p) **"Network Infrastructure"** means, collectively, all works and services to be designed, constructed and installed by City West in connection with the establishment of the Last Mile Network and for certainty, excludes: (i) any communications network assets acquired, built or otherwise created by City West as a component of City West's Separate Business (as defined in Subsection 6.4), to provide communications network services beyond the Last Mile Network; and (ii) any communications infrastructure of the Connected Coast Network.
- q) **"Non-Defaulting Party"** means a Party that is not a Party in default under Section 8.1.
- r) **"Ongoing Capital Investment Costs"** mean, collectively any capital expansion, improvement or upgrade costs in respect of the Network Infrastructure.
- s) **"Operating Costs"** mean, collectively, the actual out-of pocket costs incurred by City West required to operate and maintain the Network Infrastructure and the Third Party Project Sites through its life cycle following completion of construction and installation including, without limitation, costs relating to staffing, the provision of Services, taxes, insurance and capital maintenance and capital renewal/replacement costs, but do not include Ongoing Capital Investment Costs.
- t) **"Project"** means the development, design, construction and operation of the Network Infrastructure.
- u) **"Project Customers"** means residents within the Service Area that receive Services from City West utilizing the Network Infrastructure.
- v) **"Service Area"** has the meaning given in Recital D.
- w) **"Service Records"** has the meaning given in Section 6.5.
- x) **"Services"** means, collectively, the connectivity services to be provided by City West pursuant to this Agreement and utilizing the Network Infrastructure., including high speed internet, television, home phone and mobile phone services, together with all billing and collection services, technology support and customer service required in connection with the supply of such connectivity services.
- y) **"SRD"** means the Strathcona Regional District, a British Columbia local government having its principal business office at 990 Cedar Street, Campbell River, BC V9W 7Z8.
- z) **"Substantial Completion"** means the date at which the construction of the infrastructure, technologies and facilities making up the Last Mile Network is completed such that all segments of the Last Mile Network are implemented and available to provide service to Project Customers.
- aa) **Third Party Project Sites** has the meaning given in Section 4.2(a).

2. THE AGREEMENT**2.1 Term**

Subject to Section 2.2 below, this Agreement shall commence on the Effective Date and continue in effect in respect of the development and construction of the Project and the provision of the Services until the earlier of:

- i. 20 years following the date of Substantial Completion; and
- ii. the date this Agreement is terminated in accordance with Section 9 below.

2.2 Extension of Term

Unless one of the Parties delivers a written election not to renew the Agreement (the "**Election Notice**") to the other Party on or before that date that is 180 days prior to the expiry of the then current term of this Agreement, as set out in Section 2.1(i) above, or any renewal term, as the case may be, this Agreement will automatically renew for further consecutive five (5) year renewal terms. For certainty:

- a) if an Election Notice is delivered by one of the Parties in accordance with this Section 2.2 the Agreement will continue in effect until the expiry of the then current term; and
- b) once a renewal term has commenced, the Agreement may only be terminated in accordance with Section 9 below.

Any renewal agreement will contain the same terms, covenants, agreements and provisos contained in this Agreement.

3. PARTNERING ARRANGEMENT**3.1 Relationship between the Parties**

Commencing on the Effective Date and continuing until termination in accordance with the provisions of this Agreement, the Parties hereby associate themselves and hereby enter into this Agreement for the limited purposes set forth herein. The Parties agree that the provisions of this Agreement shall hereafter govern and define their respect rights, proceeds, revenues, benefits, liabilities, interests, powers and obligations as between themselves with respect to the completion of the Project and the provision of the Services.

3.2 Purpose

The business of the Parties shall be limited strictly to the Project and the provision of the Services. The business of the Parties shall not be extended by implication or otherwise beyond the transactions contemplated herein unless approved in writing by each Party.

3.3 Other Activities

Nothing in this Agreement prevents or restricts either Party from carrying on any other business or venture independently or with others.

3.4 Disclaimer of Partnership

Nothing in this Agreement will constitute the Parties as partners or, except as specifically provided in this Agreement, constitute either Party as agent of the other and each Party expressly disclaims any intention to create a partnership or, except as specifically provided in this Agreement, an agency arrangement between them and covenants with the other Party that it will not at any time, allege or claim that such a partnership or agency arrangement was created.

4. PROJECT DEVELOPMENT

4.1 Project Construction

City West will, itself or through third-party contractors, design and construct the Network Infrastructure in accordance with the project milestones.

4.2 Third Party Project Site Access

- a) The SRD will use commercially reasonable efforts to assist City West to obtain secure, long-term tenure to any lands and improvements required for the Project, including without limitation the construction, installation and operation of the Network Infrastructure, that are privately owned by third parties (the "**Third Party Project Sites**").

4.3 Capital Costs

- a) City West will be responsible for identifying and obtaining grant funding from senior levels of government and other third-party sources to fund the cost of the Project. The SRD will, upon City West's request, cooperate and provide Project related information to such funding sources to the extent reasonably necessary to facilitate City West obtaining such funding.
- b) Subject to subsection (c) below, City West will be responsible for all costs in respect of the design, build, construction and installation of the Network Infrastructure.
- c) In the event that City West is not able to secure funding to pay the total of all of the design, build and construction costs in respect of the Network Infrastructure ("**Network Infrastructure Costs**"), the SRD will make a capital contribution of no more than 10% of the overall Network Infrastructure Costs up to a maximum of \$540,255 (the "**SRD Contribution**") to City West to cover a portion of any shortfall between total actual Network Infrastructure Costs and the amount of the funding received by City West pursuant to Section 4.3(a), provided that City West covers the remaining shortfall. The SRD Contribution may be funded from sources that include, but are not limited, to grant funding from senior levels of government, gas tax revenues, local area service taxes, developer contributions and/or borrowing. The capital contributions by SRD for the overall Network Infrastructure and proposed Last Mile Infrastructure Maps are included in Appendix A.

4.4 Operating Costs

City West will pay 100% of all Operating Costs associated with the operation, maintenance and management of the Network Infrastructure. City West will be entitled to deduct all annual Operating Costs incurred pursuant to this Agreement from the Annual Gross Project Revenues received from the provision of the Services in accordance with Section 6.2 below. For greater certainty, with respect to staffing, Operating Costs will be limited to full recovery of the cost of personnel of City West and its associated and affiliated entities, seconded, from time to time, to

operate and maintain the Network Infrastructure and the Third Party Project Sites, based on such personnel's hourly pay or salary *prorated* based on the number of hours worked to; and full recovery of City West's actual costs for all compensation paid (including, without limitation, salaries, benefits, and pension contributions) for personnel assigned exclusively to the Last Mile Network.

4.5 Ownership of Network Infrastructure

Notwithstanding any SRD Contribution made pursuant to Section 4.3(c), City West will retain sole ownership of the Network Infrastructure, including the communications network and related assets that are acquired, built or otherwise created for the purposes of delivering network services to Project Customers.

5. PROVISION OF SERVICES

5.1 City West to Provide Services

During the Term, City West will manage, maintain and operate, and oversee the operation of, the Network Infrastructure, including the operation of all equipment and facilities used for the provision of the Services within the Service Area, and all activities and undertakings ancillary and incidental thereto, with a view of profit.

5.2 Last Mile Network Infrastructure Technology

In designing and constructing the Last Mile Network, City West covenants to use exclusively fibre as the technology for the Network Infrastructure except if it would be commercially unreasonable to utilize fibre due to extreme geographic or topographic limitations.

5.3 Service Standards

- a) City West will provide the Services to the Project Customers on terms and conditions customary to the telecommunications industry (including without limitation the minimum service standard commitments set out in Section 5.3(b)).
- b) In the course of performing the Services City West will:
 - i. dedicate and apply the time, personnel, expertise and other business resources reasonably necessary to perform the Services to a standard not less than the standard of service associated with the City West Separate Business;
 - ii. from time to time, and promptly upon the request of the SRD, cause senior officers to make themselves available to meet with the authorized representatives of the SRD regarding the provision of the Services and to receive and respond to the SRD's questions and concerns regarding the Services; and
 - iii. implement internal processes and procedures to safeguard and protect the confidential information of the SRD and any Project Customers provided to or obtained by City West in providing the Services.

6. OPERATING COSTS AND DISTRIBUTION OF ANNUAL NET PROJECT REVENUES

6.1 Operating Costs

City West will pay 100% of all Operating Costs associated with the operation, maintenance, repair and management of the Network Infrastructure and Third Party Sites and will be entitled to deduct all annual Operating Costs from the Annual Gross Project Revenues prior to any distribution of Annual Net Project Revenues pursuant to Section 6.2.

6.2 Distribution of Net Project Revenues

Except as otherwise set out in this Agreement, the Parties agree that each year all Annual Net Project Revenues from City West's provision of the Services to Project Customers will be shared by the Parties on an annual basis as follows:

- a) City West - 80%; and
- b) SRD - 20% (the "**SRD Revenue Share**").

6.3 SRD Revenue Share

Intentionally deleted.

6.4 City West's Separate Business and Excluded Revenues

City West will develop and establish the retail pricing to be collected as Project Revenues for product offerings for communications network services provided to Project Customers through the Network Infrastructure (the "**Product Offerings**") that City West may offer for sale to its Project Customers. All revenues generated by the sale of Product Offerings to Project Customers will be received by City West for the account of the Parties as Project Revenues.

6.5 Financial Statements

City West will prepare and maintain at its principal office in British Columbia proper and sufficient books, accounts and supporting business records in respect of the provision of the Services (the "**Service Records**"). City West will also prepare financial statements of its business and affairs in relation to the Project and the Services, which annual financial statements will be prepared on an accrual basis in accordance with generally accepted accounting principles. Within 60 days of the preparation of the annual financial statements, City West will provide or cause to be provided to the SRD an accounting showing the Project costs, Operating Costs and Annual Gross Project Revenue for the fiscal year then ending (the "**Annual Accounting Report**"). For the purpose of verifying the Annual Accounting Report, SRD shall have the right through any agent, employee or chartered accountant designated by it, at all reasonable times during usual business hours to: (i) examine and make copies of extracts from the book and records of City West which pertain to the Project and the Annual Accounting Report; and (ii) will have the right, at its cost, to have the Annual Accounting Report audited by a chartered accountant chosen by SRD, and acceptable to City West acting reasonably. City West will act promptly and in good faith to reimburse SRD to the extent of any discrepancies shown to be due SRD by any such audit that exceed in the aggregate \$5,000. If there is a discrepancy in excess of \$5,000, City West shall reimburse SRD for its audit costs, otherwise the SRD shall bear all expenses incurred by it in any such examination or copying made for its account.

6. CONDITIONS PRECEDENT

7.1 Conditions Precedent

The obligations of the parties to carry out the requirements of this agreement are subject to the following conditions (collectively, the “**Conditions Precedent**”) being satisfied or waived on or before the dates set out herein:

- a) on or before that date that is 0 months after the Effective Date, the Board for the SRD approving the substantial terms of this Agreement and the transactions contemplated herein;
- b) on or before that date that is 2 months after the Effective Date, the Board for City West approving the substantial terms of this Agreement and the transactions contemplated herein;
- c) on or before that date that is 12 months after the Effective Date, City West obtaining secure, long-term access rights to any Third-Party Project Sites necessary for the Project or the provision of the Services; and
- d) on or before that date that is 0 months after the Effective Date, the SRD successfully completing all statutory requirements in respect of the authorization of this Agreement, including obtaining all approvals and publishing all required notices.

7.2 Waiver of Conditions Precedent

The Condition Precedent in Section 7.1(a) is for the SRD’s sole benefit and may be waived, unilaterally by the SRD, at the SRD’s election. The Condition Precedent in Section 7.1(b) is for City West’s sole benefit and may be waived, unilaterally by City West, at City West’s election. The Conditions Precedent in Sections 7.1(c) and 7.17.1(d) are mutual conditions for the benefit of both the SRD and City West and may only be waived by both parties. If any of the Conditions Precedent are not satisfied or waived within the time herein provided then the Parties’ respective obligation under this Agreement will be at an end, except as otherwise set out herein.

8. DEFAULT

8.1 Default

A Party will be in default of this Agreement if it:

- a) fails to observe, perform or carry out any of its material obligations hereunder and such failure continues for 45 days after any of a Non-Defaulting Party has in writing demanded that such failure be cured; or
- b) becomes a bankrupt or commits an act of bankruptcy or if a receiver or receiver-manager of its assets is appointed or makes an assignment for the benefit of creditors or otherwise, (any such event being an “**Event of Default**”).

8.2 Remedies on Default

In the event of an Event of Default by a Party, any Non-Defaulting Party may do any one or more of the following:

- a) pursue any remedy available to them in law or equity, it being acknowledged by each of the Parties that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy;
- b) take all actions as may reasonably be required to cure the default, in which event all payments, costs and expenses incurred therefor will be payable by the defaulting Party to the other Party on demand with interest at 10%;
- c) waive the Event of Default; or
- d) unilaterally terminate the Agreement.

9. TERMINATION

9.1 This Agreement may only be terminated:

- a) by the mutual agreement of the Parties; or
- b) in accordance with Section 8.2(d) above.

10. INDEMNITIES**10.1 City West Indemnity**

City West shall indemnify and hold harmless the SRD from and against all claims, demands, losses, costs (including without limitations client-based solicitor costs), damages, actions, suits or proceedings, sustained by the SRD which are arising out of any:

- (a) loss of or damage to property relating to the Project or the provision of the Services;
- (b) breach of a legal duty arising under Applicable Laws;
- (c) claim for or in respect of the death or personal injury of any individual as a result of the design, construction or installation of the Network Infrastructure;
- (d) other claim, action, charge, cost, demand or expense by a third party relating to City West undertaking the design, construction or installation of the Network Infrastructure or the provision of the Services; or
- (e) breach by City West of any representations or warranties given by it in this Agreement,

save and except to the extent caused by the negligence or willful acts or omissions or misconduct of the SRD or as a result of a breach by the SRD of an express provision of this Agreement.

10.2 SRD Indemnity

The SRD shall indemnify and hold harmless City West from and against all claims, demands, losses, costs (including without limitations client-based solicitor costs), damages, actions, suits or

proceedings, sustained by City West which are:

- (a) arising out of any breach by the SRD of any representations or warranties given by it in this Agreement; or
- (b) arising in respect of any challenge to the validity of this Agreement or any provision herein brought by a third party, including without limitation any regulatory body,

save and except to the extent caused by the negligence or willful acts or omissions or misconduct of City West or as a result of a breach by City West of an express provision of this Agreement.

10.3 Survival of Indemnities

The indemnities set out in Sections 10.1 and 10.2 above will be true and accurate when the Parties sign this Agreement and will continue to be true and accurate throughout the Term of this Agreement.

11. REPRESENTATIONS AND WARRANTIES

11.1 SRD Representations and Warranties

The SRD represents and warrants to City West that:

- a) the SRD is a regional district under the laws of British Columbia;
- b) all necessary corporate action on the part of the SRD has been taken to authorize and approve the execution and delivery of this Agreement and the completion of the obligations contemplated herein;
- c) the SRD has the full power, authority and capacity to enter into this Agreement and carry out the transactions contemplated herein;
- d) the execution and performance of this Agreement does not and will not contravene any statutory requirement applicable to the SRD at the date of the Parties entering into this Agreement;
- e) there are no existing provisions in the SRD's procurement, contract execution/approval, accounting and pricing policies which restrict or limit the powers of the SRD to enter into this Agreement and to carry out the obligations contemplated herein; and
- f) there is no action or proceeding pending, or to the SRD's knowledge threatened, against the SRD before any court, arbiter, arbitration panel, administrative tribunal or agency which, if decided adversely to the SRD, might materially affect the SRD's ability to perform its obligations hereunder or that will have an adverse effect on the timing or implementation of this Agreement.

11.2 City West Representations and Warranties

City West represents and warrants to the SRD that:

- a) City West has been duly incorporated, validly exists and is in good standing under the *BC Corporations Act*;

- b) City West is duly and fully qualified, authorized, licensed and registered to carry out its activities, and to the knowledge of City West it is conducting such activities in compliance in all material respects with all Applicable Laws and regulations and all such licences, registration and qualifications are valid and subsisting and in good standing in all material respects;
- c) all necessary corporate action on the part of the City West has been taken to authorize and approve the execution and delivery of this Agreement and the completion of the obligations contemplated herein;
- d) there is no provision in City West's constating documents or any other agreement or documents to which City West is a party which restricts or limits the powers of City West to enter into this Agreement and to carry out the obligations contemplated herein;
- e) City West is not subject to any obligation, non-compliance with which is likely to have a material adverse effect on its ability to undertake the Project or provide the Services; and
- f) there are no actions, suits or proceedings pending, or to its knowledge threatened against City West in any court or before any Governmental Authority which are likely to materially adversely affect the financial condition of City West.

11.3 Survival of Representations and Warranties

The representation and warranties of the Parties as set out in Sections 11.1 and 11.2 above will be true and accurate when the Parties sign this Agreement and will continue to be true and accurate throughout the Term of this Agreement.

12. COMMUNICATIONS

12.1 Communications Protocol

All communications regarding this Agreement, or any aspect thereof, will be jointly agreed upon prior to any public release and the parties agree that they will not engage in any communications, advertising or media interviews regarding any of the matters described in this Agreement without the prior written consent of the other party.

13. GENERAL

13.1 Confidentiality and FOIPPA Compliance

- (a) The SRD and City West acknowledge and agree that each of them, by virtue of either being a local government or corporation affiliated with a local government under the *Local Government Act*, as applicable, are subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) from time to time in force and all amendments thereto and includes all regulations and amendments thereto made pursuant to that Act (collectively, "FOIPPA"); and each of the Parties will comply with the requirements of the FOIPPA.
- (b) Except as required by FOIPPA, a Party will not, at any time either during the duration of this Agreement or thereafter, disclose to or discuss with others any confidential knowledge or information concerning the Project or Project Customers, and no Party will use, for its own benefit or any other purpose, or make notes of any confidential knowledge or information that has been obtained relating to the Project or the Project

Customers except with the other Party's prior written consent.

13.2 Amendments

No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by each Party to this Agreement at the time of the amendment, supplement, restatement or termination.

13.3 Construction

The division of this Agreement into Sections, Subsections and Schedules, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this Agreement and will not be used to affect the construction or interpretation of this Agreement. The word "including" will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- a) each reference in this Agreement to "**Section**", "**Subsection**" and "**Schedule**" is to a Section or Subsection of, and a Schedule to, this Agreement;
- b) each reference to a statute is deemed to be a reference to that statute, and to the regulations made under that statute, as amended or re-enacted from time to time;
- c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- d) references to time of day or date mean the local time or date in Vancouver, British Columbia,
- e) all references to amounts of money mean lawful currency of Canada, and
- f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with Canadian generally accepted accounting principles consistently applied.

13.4 Time

Time will be of the essence of this Agreement.

13.5 Assignment

No Party will assign this Agreement, or any part of this Agreement, without the consent of the other Party. Any purported assignment without the required consent is not binding or enforceable against any Party.

13.6 Notice

All notices to a Party by another Party must be in writing and delivered to or sent by electronic transmission addressed to the Party set out on the first page of this Agreement or to any other address, e-mail address or individual that the Party designates. Any notice:

- a) if validly delivered, will be deemed to have been given when delivered;
- b) if validly transmitted by sent by electronic transmission before 3:00 p.m. (local time at the

place of receipt) on a Business Day, will be deemed to have been given on the Business Day, and

- c) if validly transmitted by sent by electronic transmission after 3:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day after the date of transmission.

13.7 Dispute Resolution

All disputes between the Parties arising out of or in connection with this Agreement, which cannot be settled by them, will be resolved in the following manner:

- a) First, the Parties will use all reasonable efforts to resolve any dispute, controversy, non-agreement or claim (a "**Dispute**") through good faith negotiations.
- b) Second, if such good faith negotiations do not resolve the Dispute, the following will apply: if such a Dispute should arise, senior designated representatives of each Party ("**Designated Representatives**") will attempt to resolve the matter within fourteen (14) days of the matter being referred to them, or any other period agreed upon by the Parties; in the event that the Designated Representatives are unable to resolve the matter within fourteen days of the matter being referred to them, or any other period agreed upon, such matter will initially be attempted to be resolved by mediation as set out below.
- c) **Mediation.** In the event that the Dispute is not resolved within forty-five (45) days of the internal mechanisms described above, the Parties will refer the matter to non-binding mediation, with the mediation to be chosen by the Parties upon agreement at such time. The Parties will share the cost of the mediation equally. The decision of the mediator will not be binding on the Parties.
- d) **Arbitration.** In the event the Dispute is not resolved through mediation, then the Dispute will be referred to a single arbitrator under the *Arbitration Act* (BC) then in effect in British Columbia whose decision thereon will be determined by the majority decision of the panel of arbitrators and will be final, binding and conclusive.

All arbitration proceedings will be conducted, unless the Parties otherwise agree, in Vancouver, British Columbia. Any matter, issue or dispute referred to arbitration will be dealt with on an expeditious basis with the Parties using all commercially reasonable efforts to obtain and implement a timely decision of the arbitration panel.

Any Party may at any time after a matter, issue or dispute referred to arbitration under this Section has been outstanding for 180 days, calculated from the date of delivery of the initial notice of dispute in respect thereof, commence proceedings in the Supreme Court of British Columbia to have the dispute determined therein, whereupon all arbitration proceedings will terminate except that no such proceedings may be commenced unless such Party has determined, acting reasonably and in good faith, that such Court proceedings are reasonably likely to resolve the matter in dispute in a manner that is more timely or less costly, or both, than would be the case if the arbitration proceeding continued; or competent jurisdiction for any remedy that is beyond the jurisdiction of the arbitrator to grant and which a Party reasonably requires in order to maintain its rights under this Agreement.

13.8 Entire Agreement

This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or oral.

13.9 Further Assurances

The Parties will from time to time promptly execute and deliver all further documents and take all further action necessary or appropriate to give effect to the provisions and intent of this Agreement and to complete the transactions contemplated hereby.

13.10 Severability

Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- b) the legality, validity or enforceability of that provision in any other jurisdiction.

except that if:

- c) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, then the other provision will be deemed also to be invalid or unenforceable; and
- d) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and if, as a result of this Section, the basic intentions of the Parties in this Agreement are entirely frustrated, then the Parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

13.11 Counterparts

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

13.12 Delivery by Electronic Means

Any Party may deliver an executed copy of this Agreement by electronic mail transmission, but that Party will dispatch by delivery in person to the other Party an originally executed copy of this Agreement as soon as is reasonably practicable thereafter.

13.13 Governing Law

This agreement will be governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of this Agreement.

13.14 Succession

This agreement will enure to the benefit of and be binding on the Parties, their respective permitted assigns, successors, heirs, executors and administrators.

13.15 Legal Advice

Each of the Parties acknowledge and agree that they have obtained independent legal advice with respect to this Agreement and the obligations and liabilities set out herein.

IN WITNESS WHEREOF the Parties have hereunto set their hands and affixed their seals as of the day and year first above written.

<p>CITY WEST CABLE AND TELEPHONE CORP.</p> <p>Per: _____ Authorized Signatory</p>	<p>STRATHCONA REGIONAL DISTRICT</p> <p>Per: _____ Authorized Signatory</p> <p>Title: _____</p>
<p>CITY WEST CABLE AND TELEPHONE CORP.</p> <p>Per: _____ Authorized Signatory</p>	<p>STRATHCONA REGIONAL DISTRICT</p> <p>Per: _____ Authorized Signatory</p> <p>Title: _____</p>

**APPENDIX A – SRD CAPITAL CONTRIBUTIONS & PROPOSED LAST MILE INFRASTRUCTURE
MAPS**

Cortes Island: \$435,160

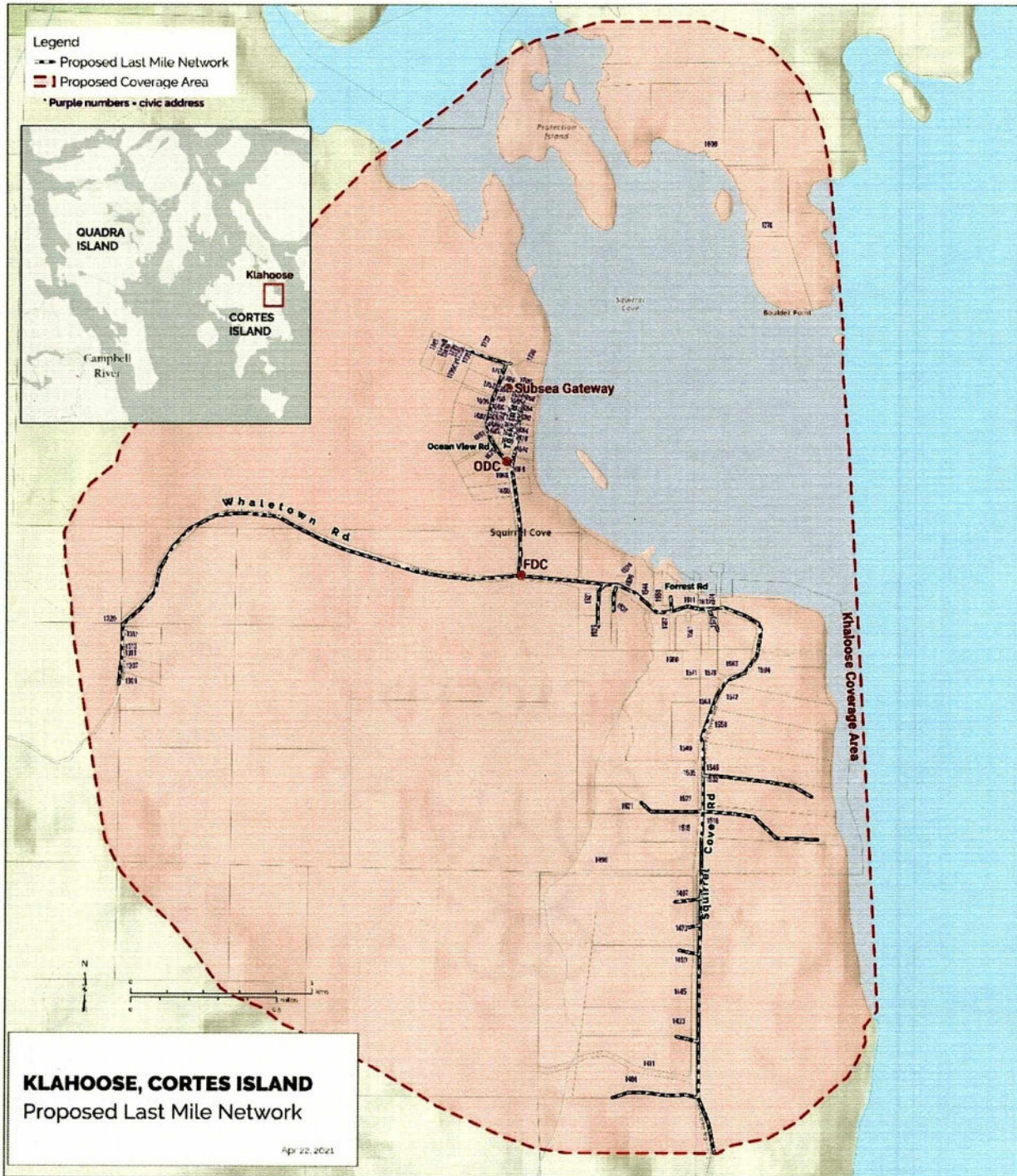
Quadra Island: \$56,978

Zeballos: \$48,117

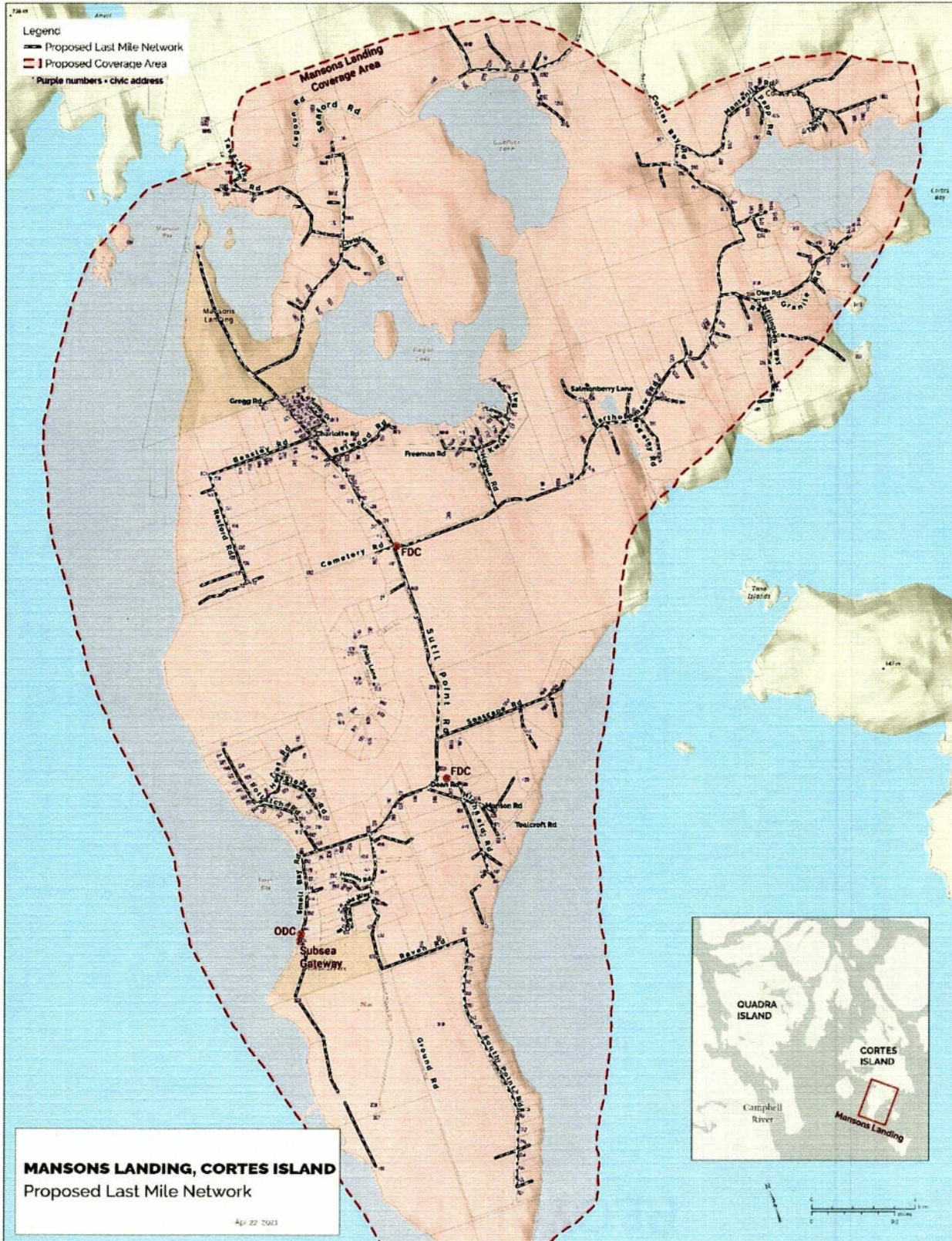
Total: \$540,255

PROPOSED LAST MILE INFRASTRUCTURE FOR CORTES ISLAND

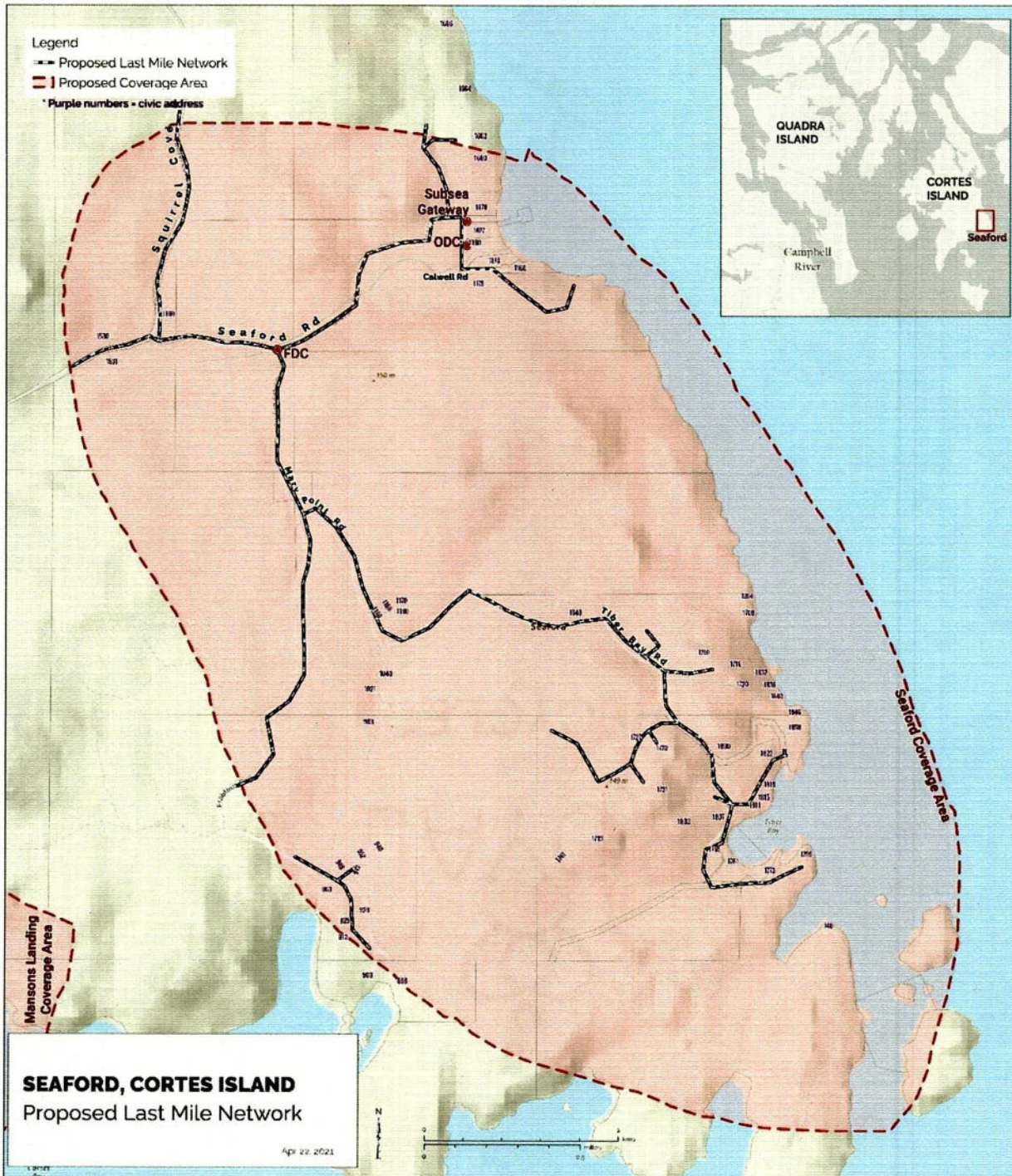
Klahoose



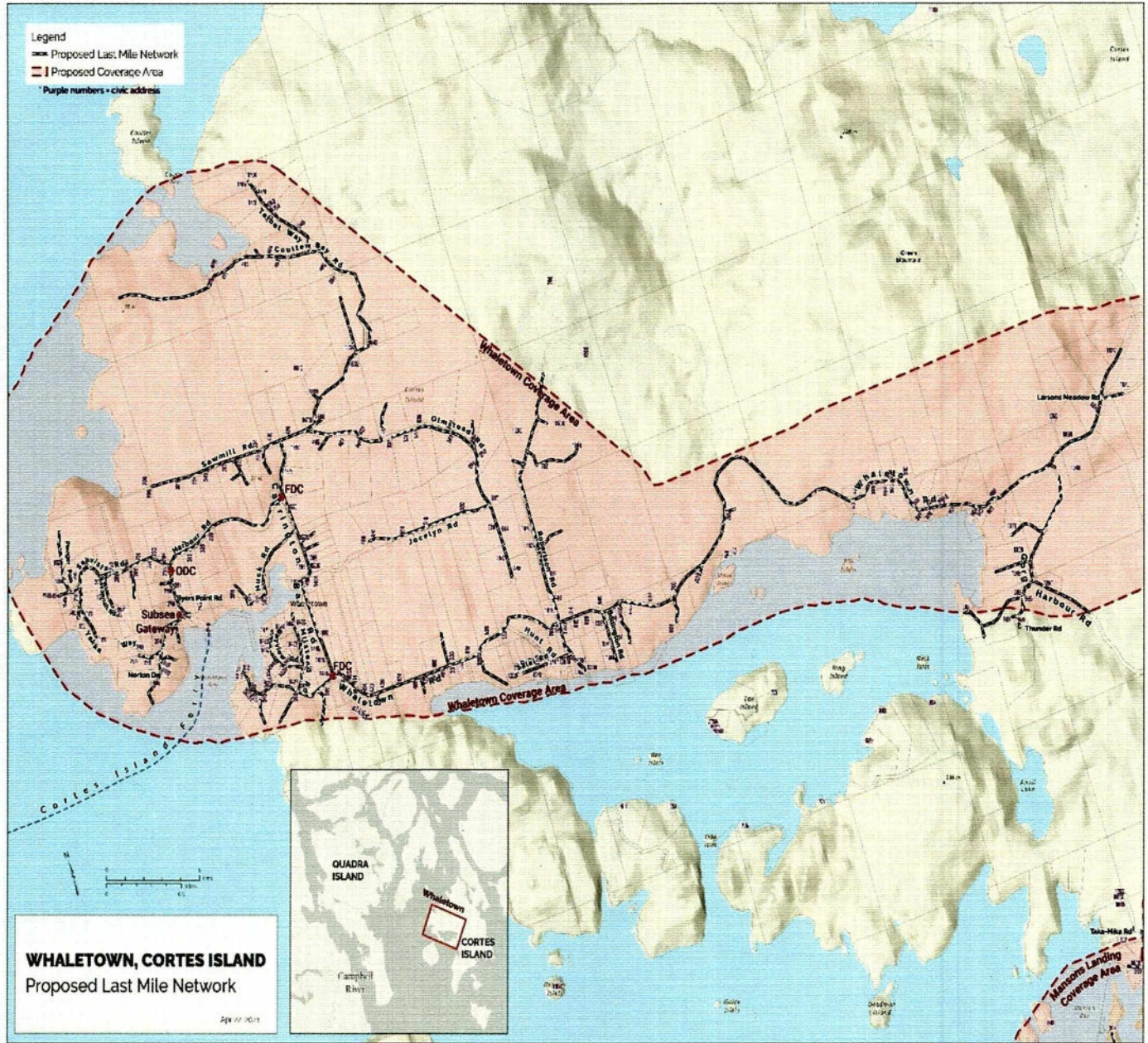
Mansons Landing



Seaford

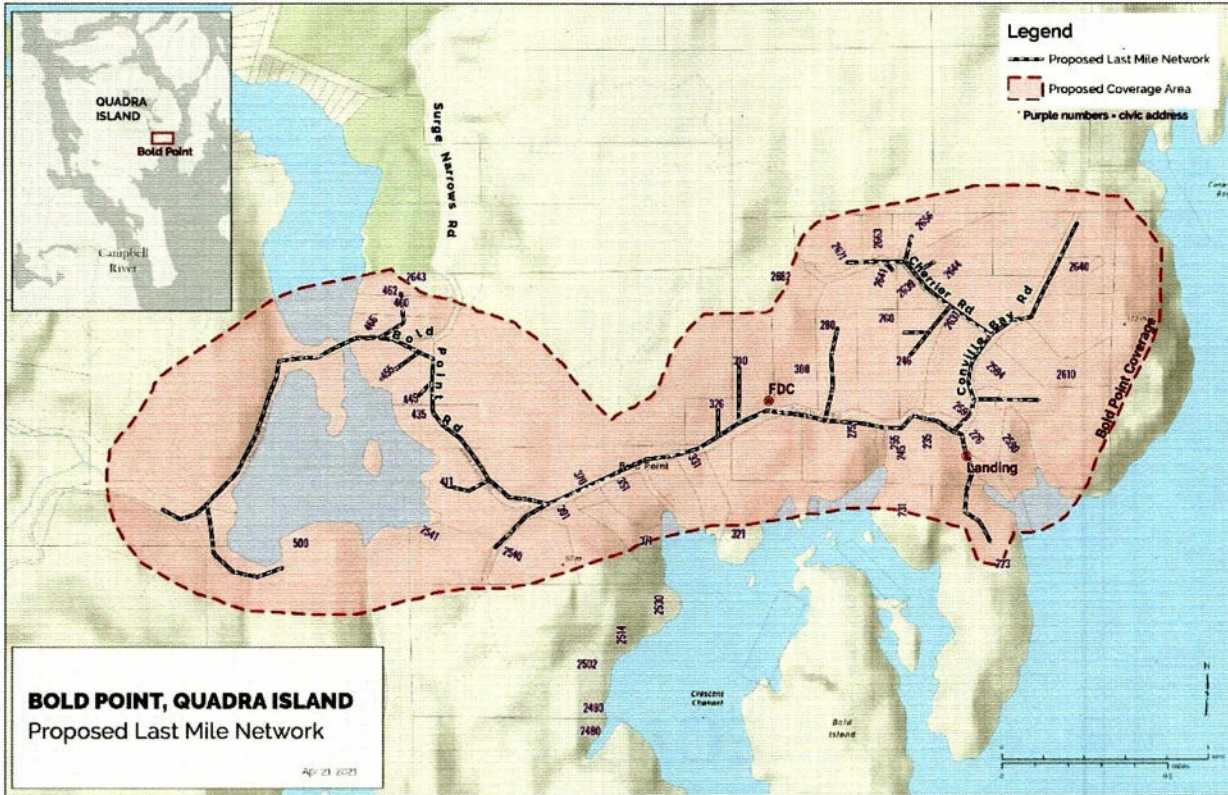


Whaletown

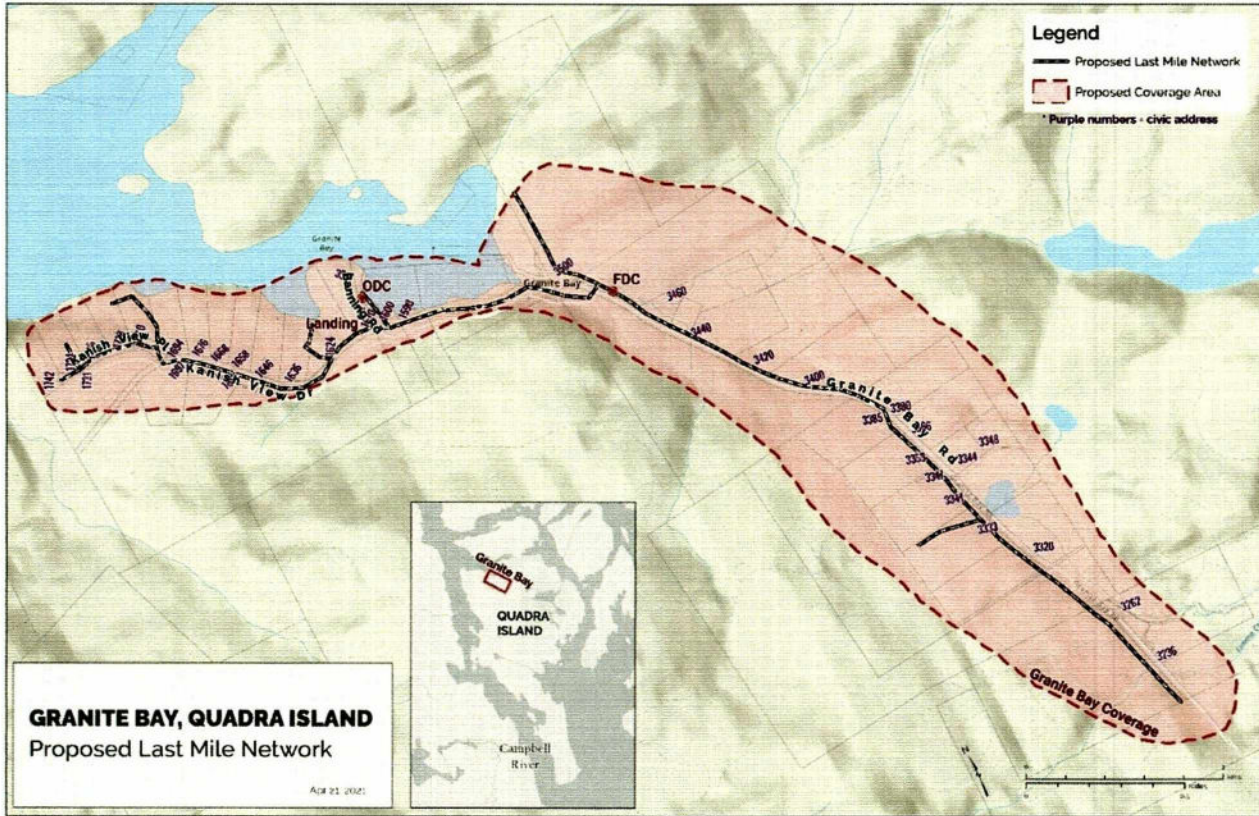


PROPOSED LAST MILE INFRASTRUCTURE FOR QUADRA ISLAND

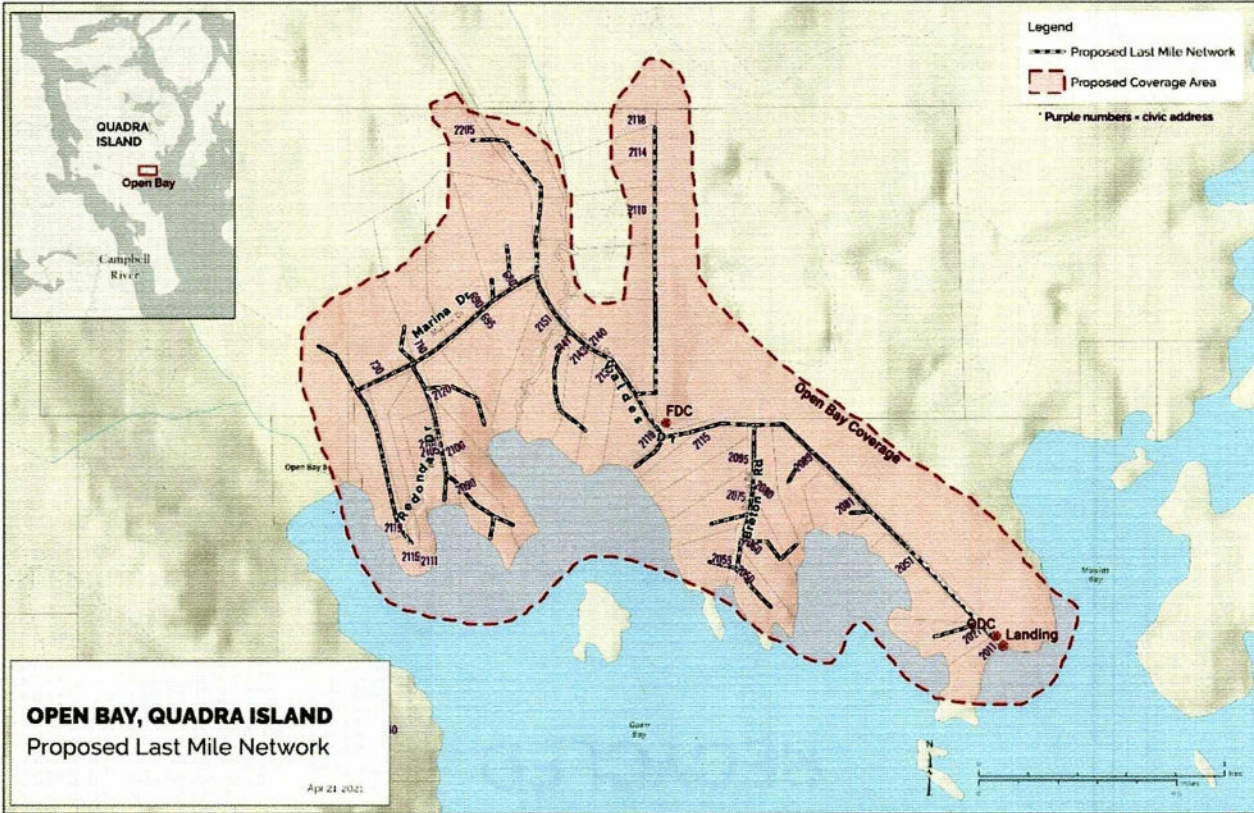
Bold Point



Granite Bay



Open Bay



PROPOSED LAST MILE INFRASTRUCTURE FOR ZEBALLOS

