

REPORT

To: Mayor and Council

From: Faye Flatt, Municipal Planner

Date: 26 June 2013

Re: Resolute FP Canada Inc. – 301 Nelson St. – Site Plan Control Agreement

Purpose:

To make a recommendation on the approval of a Site Plan Control Agreement between Resolute FP Canada Inc. (previously Abitibi-Consolidated) and the Corporation of the Town of Fort Frances for the development of a biomass boiler on noted property, and direct the preparation of by-laws required to authorize said agreement and authorize the acquisition of property for use as a municipal parking lot.

Background:

About 7 years ago the Town was approached by Abitibi-Consolidated, recently renamed Resolute Forest Products (hereafter referred to as Resolute), with a proposal to construct a biomass boiler on property fronting Nelson Street at Portage Avenue. To accommodate the proposal, an amendment to both the Official Plan and Zoning By-Law were necessary. As the approval authority for the official plan amendment, the Ministry of Municipal Affairs and Housing (MAH) imposed a condition that the property owner enter into a site plan control agreement with the Town.

Site Plan Control Agreements are usually signed before construction begins but in this case, Council directed that a building permit be issued and construction be permitted to begin without the signed agreement. Unfortunately although numerous attempts were made to negotiate and finalize the agreement, there was very little movement forward by Resolute because of other priorities, staff changes, corporate restructuring and bankruptcy, etc. As time passed, the agreement was revised and redrafted no less than 10 times to reflect changes. The latest was to incorporate the construction of telecommunications equipment/tower that was negotiated with the Owner subsequent to the commencement of this process.

The issues that did not change in the agreement was the requirement of the Owner to:

- provide Engineering with electronic and hard copy of record drawings
- provide two copies of Real Property Report with UTM coordinates
- construct and convey a parking lot at the east limit of the property in exchange for portions of Sinclair Street and Portage Avenue that were stopped up, closed and conveyed to it; and
- install signage for outbound traffic to yield to all other traffic;

The property owners have signed the finalized Agreement (attached) and we are now in a position to have the by-law authorizing the agreement. In addition, as the property for the parking lot has been surveyed (copy attached) and is ready for conveyance to the Town, the by-law authorizing this acquisition can be enacted as well.

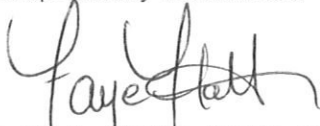


Recommendation:

The attached agreement, including schedules and drawings referenced therein, sufficiently capture the obligations and responsibilities of the development and satisfy the Town's requirements in regards to development control.

It is recommended that the site plan agreement with Resolute FP Canada Inc., the process of which began with the former company Abitibi-Consolidated, at 301 Nelson Street be approved and further that the by-laws to (a) authorize the execution of the agreement, and (b) acquire the property for the parking lot.

Respectfully Submitted



F. Flatt, AMCT, ACST, CPT
Municipal Planner
Att'd

COUNCIL APPROVAL OF THIS REPORT WILL: Direct the Municipal Planner prepare the by-law required to approve a Site Plan Agreement with Resolute FP Canada Inc. for the biomass development at 301 Nelson Street, and (b) direct the Clerk to prepare the by-law to approve the acquisition of the property adjacent on the east for use as a municipal parking lot, and further that the Mayor and Clerk be authorized to execute the by-laws and other documents as may be required on behalf of the Town of Fort Frances.

SITE PLAN AGREEMENT

Agreement made in quadruplicate this ____day of March 2013

B E T W E E N:

RESOLUTE FP CANADA INC.

(hereinafter called the Owner)

- and -

THE CORPORATION OF THE TOWN OF FORT FRANCES

(hereinafter called the Municipality)

WHEREAS the Owner represents that it is the owner of the lands municipally known as 301 Nelson Street and more particularly described in Schedule " A" hereto (the " Lands")

AND WHEREAS Official Plan Amendment No. 2 was adopted by Council on March 2, 2007, and approved, with modifications, by the Ministry of Municipal Affairs and Housing on May 15, 2007 with the recommendation that the Owner enter into a site plan agreement with the Municipality pursuant to section 41 of the Planning Act, R.A.O., 1990 c. P. 13 (the " Act");

AND WHEREAS subs. 41(10) of the Act permits the registration of this Agreement against the land to which it applies in order to secure the provisions of works, facilities or matters referred to in subs. 41(7) and (8) of the Act and the construction of the development in accordance with the accepted plans and drawings;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the Parties hereto agree with the other as follows:

PART I

GENERAL

1. Definitions

In this agreement the following terms shall have the meanings set out below, unless otherwise redefined or where the subject matter or context requires another meaning to be ascribed:

- (a) " Development" means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof.

(b) "Record drawings" means original site drawings modified to show any significant changes in the work made during construction and which are usually based on drawings marked up in the field and other data furnished by the contractor and shall include UTM coordinates for any infrastructure.

(c) " Municipality" shall mean the Corporation of the Town of Fort Frances

(d) " Owner" means the registered owner of the Lands or purchasers under an agreement of purchase and sale.

2. Land Affected

The Lands affected by this Agreement are municipally known as 301 Nelson Street, and more particularly described in Schedule " A" hereto.

3. Schedules

The following schedules are attached hereto and form part of this Agreement:

- 3.1 " SCHEDULE A" being a description of the lands affected by this Agreement.
- 3.2 " SCHEDULE B" being a listing of lands to be conveyed, dedicated or transferred to the Municipality.
- 3.3 " SCHEDULE C" listing of plans and drawings accepted by the Municipality and upon which develop is permitted to occur.

PART II
ACCEPTED PLANS

4. Plans and Drawings

The Owner covenants and acknowledges that no development or re-development will proceed or take place on the Lands except as shown on the plans, drawings and specifications listed on Schedule " C attached to and forming a part of this Agreement and to develop the Lands and construct all works, services and facilities required under this Agreement in accordance with same.

Since provisional approval to proceed with the biomass development, the Owner has requested the inclusion of the construction of a telecommunications equipment/tower on the Subject Lands. To accommodate this request, this development will be considered " phase two" . The Owner acknowledges that this construction may require a building permit which may require a site plan. It is noted and acknowledged that this structure is not included in the above drawings but agreed by the Municipality that although not on the above drawings, it will be incorporated into the Real Property Report required to be submitted.

5. Conformity with Agreement

The Owner covenants and agrees to satisfy the provisions contained in this agreement and to notify the Office of the Municipal Planner upon completion of same. Upon so being notified, the Municipality shall obtain confirmation in writing from all municipal departments having an interest hereunder that requirements have been satisfied, or where issues remain outstanding, a statement of the deficiencies, which shall be delivered to the Owner within ten (10) business days.

PART III
GENERAL TERMS AND CONDITIONS

6. General Conditions

The Owner covenants and agrees to the following general terms and conditions that apply to this development:

(a) No Unauthorized Subdivision or Severance

The Owner covenants and agrees not to convey a part or to further divide the Lands, except in pursuance of the Act or any other similar legislation.

(b) Professional Engineer

The Owner covenants and agrees to retain a Professional Engineer (hereinafter referred to as the " Engineer") who holds a Certificate of Authorization for municipal engineering applications from the Association of Professional Engineers of Ontario to prepare the design of grading, site and external servicing plans, municipal service connection designs in accordance with the storm water management plan

submitted to the Municipality. The Engineer will be responsible for the inspection and certification that all internal and external services, grading and storm water management requirements have been constructed in accordance with the accepted Site Plans and applicable reports and plans. The Municipality may, upon pre-qualification of such, accept the use of other qualified professionals for certain components of the design, inspection and certification process.

Following the completion of the project, the Owner agrees to provide the Engineer's written certification that all internal and external services, grading and storm water management requirements have been completed in accordance with the accepted Site Plans.

(c) Right of Entry

The Municipality may, by its officers, employees or agents, enter on the Lands or any part thereof as well as any building(s) erected thereon to ensure that any works, services or facilities required to be provided, constructed or installed by the Owner comply with this Agreement.

(d) Record Information

- i. To file with the Engineering Department of the Municipality, following completion of construction of any services, a complete set of "record drawings" for the services and one complete electronic set of "record drawings" in dwg format (metric).
- ii. To provide the Planning Department of the Municipality, following completion of all buildings and structures, two copies of a Real Property Report, (with UTM coordinates), prepared by an Ontario Land Surveyor (metric) showing the location of the biomass boiler structure in relationship to the property lot lines, including any structure relative to the telecommunications infrastructure.

PART IV

SPECIFIC TERMS AND CONDITIONS

7. Specific Conditions

The Owner covenants, acknowledges and agrees to be bound to the following special conditions that apply to this development:

- (a) **Grading and Water Disposal** To construct a properly installed drainage system in accordance with the principals of the Storm Water Management Plan prepared by KGS Group (April 2007) and in consultation with and approval of the Operations and Facilities Division.

(b) **Lighting Facilities** To design light standards, fixtures and illumination devices to ensure that lighting is adequate on the Lands but aligned and shielded to prevent the spread of light onto other properties or onto public highways.

(c) **Noise Control**

- i To include additional construction features including in-duct silencers for the forced-draft fan and outlet of the induced-draft fan.
- ii To limit unnecessary nighttime idling of trucks.

(d) **Property Transfer to Municipality**

To construct, upon that portion of the lands located along the east limit of the land and lying between Nelson Street and Sinclair Street as illustrated on Schedule " B" , a parking lot, including appropriate ingress and egress, (the " property") in accordance with the requirements of and at no cost to the Municipality, and to convey, in fee simple and free from any and all encumbrances, liens or otherwise, the said property to the Corporation of the Town of Fort Frances for use as a public parking lot it being noted that this property is in exchange for the portions of Portage Avenue and Sinclair Street conveyed to the Owner to accommodate the construction of the proposed structures.

(e) **Access Signage**

The Owner covenants and agrees to provide appropriate signage at the exits of the closed portions of Portage Avenue and Sinclair Street accessing municipal roadways to notify all vehicles that they are exiting private property and are required to yield to all other traffic and to provide photographic evidence that such signage has been is in place as required. Signage shall be a minimum of 3' x 4' in size and located on the subject lands so that it is clearly visible by all exiting traffic but such that it will not impede visibility.

(f) **External Services**

The Owner covenants and agrees to provide, construct, install or pay for the following external municipal services:

- i. water and sanitary sewer laterals to the property line of the Lands;
- ii. relocate storm sewers and catch-basins as required;
- iii. paved driveway approaches;

The Owner covenants and agrees to provide, construct and install the above-noted services to the standards and specifications required by the Municipality under the direction and supervision of the Operations & Facilities Division and to the satisfaction of and at no cost to the Municipality. The Owner guarantees the workmanship and materials for the construction and installation of such external works, services and facilities and to maintain same free of defects for a period of two (2) years from the

date of certification of substantial completion. The Owner covenants and agrees that it will promptly and properly repair all defects in such external works, services or facilities to the complete satisfaction of the Municipality.

The Owner acknowledges that any action taken by the Municipality or by its employees, agents or contractors relating to the removal of snow and ice, or sanding, or cleaning of any roads, or permitting the connection of additional services to any of the external works, services or facilities herein required to be constructed or installed, during the guarantee and maintenance period is being done without prejudice to the Municipality's right to enforce the guarantee and maintenance provisions of this Agreement.

PART V

FINANCIAL CONDITIONS , SECURITY & INSURANCE

8. Processing And Approval Fees

The Owner acknowledges that the Town of Fort Frances User Fees By-Law provides a legal fee to be charged for the preparation of a site plan agreement. The Municipality acknowledges that the fee for this Agreement will be incorporated into the restitution of fees for municipal services pursuant to the terms of the Economic Development Financial Incentive Plan.

PART VI

ADMINISTRATION

9. Notices

Any notice, demand or request required to be given or provided for by either party to the other pursuant to this Agreement, shall be made in writing and sent by registered mail or delivered to:

(a) the Owner at:	Local Office	Head Office
	Resolute FP Canada Inc.	Resolute FP Canada Inc.
	Fort Frances Division	111 Duke Street, Suite 5000
	427 Mowat Avenue	Montreal, Quebec, H3C 2M1
	Fort Frances, On P9A 1Y8	

(b) the Municipality at:

Office of the Clerk
Town of Fort Frances
320 Portage Avenue
Fort Frances, Ontario P9A 3P9
Fax # - 807-274-8479

or such other address of which the parties have notified the other in writing, or any such notice mailed, delivered or sent by facsimile transmission shall be deemed good and sufficient notice under the terms of the Agreement.

10. Registration of Agreement

The Owner hereby agrees that this Agreement, together with any schedules thereto, will be registered upon the title to the said Lands at no cost to the Municipality and agrees to pay to the Municipality the cost of registration of this Agreement.

11. Enforcement

The Owner hereby acknowledges and agrees that should there be a deficiency in or failure to carry out any work or matter required by any clause of this Agreement, and the Owner fails to comply, within thirty (30) days written notice, with a direction to carry out such work or matter, the Municipality may enter onto the Lands and complete all outstanding work or matters, and pay all costs and expenses incurred and in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement in accordance with s. 446 of the *Municipal Act*, 2001, Chapter 25.

12. Other Applicable Laws

Nothing in this Agreement shall relieve the Owner from compliance with all applicable municipal by-laws, laws, regulations, notices or other policies or laws and/or regulations established by any other governmental body that may have jurisdiction over the Lands.

13. Interpretation of Agreement

- (a) The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) This Agreement shall be construed with all changes in number and gender as may be required by the context. Words in the singular shall include the plural and vice versa, and words importing persons shall include corporations and vice versa.
- (c) Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words " at the expense of the Owner" unless the context otherwise requires, including the payment of any applicable taxes (including GST).
- (d) References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statutes thereto.
- (e) All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
- (f) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or

reference shall not be read so as to limit the generality of that statement or provision, even if words such as “ without limiting the generality of the foregoing” do not precede such list or reference.

- (g) The Owner and the Municipality agree that all covenants and condition contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
- (h) In the event of any conflict or ambiguity in the Site Plans or Schedules to this Agreement, the decision of the Clerk of the Municipality shall be final and binding.
- (i) In the event of conflict between the main body of this Agreement and the Schedules attached hereto, the provisions in the schedules attached hereto shall apply.

14. Waiver

The failure of the Municipality at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Municipality of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Municipality shall specifically retain its right at law to enforce this Agreement.

15. Indemnification

The Owner shall indemnify and save harmless the Municipality against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly by reason of this Agreement or the Owner undertaking the development or re-development herein referred to.


16. Governing Law

This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario.

17. Successors and Assigns

This Agreement and everything contained shall enure to the benefit of and be binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF the parties have hereunto affixed their corporate seals duly attested by the hands of the proper signing officers in that behalf on the day and year first above written.

SIGNED, SEALED AND DELIVERED)	Resolute FP Canada Inc.
)	
in the presence of)	
)	
)	Derrick Lindgren
)	(Seal)
)	
)	
)	The Corporation of the Town of Fort Frances
)	
)	
)	_____
)	R. Avis, Mayor
)	
)	(Seal)
)	
)	_____
)	Glenn W. Treftlin, Clerk

SCHEDULE " A"
LEGAL DESCRIPTION OF LAND

ALL AND SINGULAR that certain parcels or tracts of land and premises situate, lying and being in the Town of Fort Frances and legally described as:

Parcel 86-2, ALBTP, being Lot 88 Townplot of Alberton

Parcel 89-3, ALBTP, being all of Lots 89, 90, 91, 92, 93, 94, 115, 116 117, 118 and 119, Townplot of Alberton

Parcel 120-1, ALBTP, being part of Lot 120, Townplot of Alberton

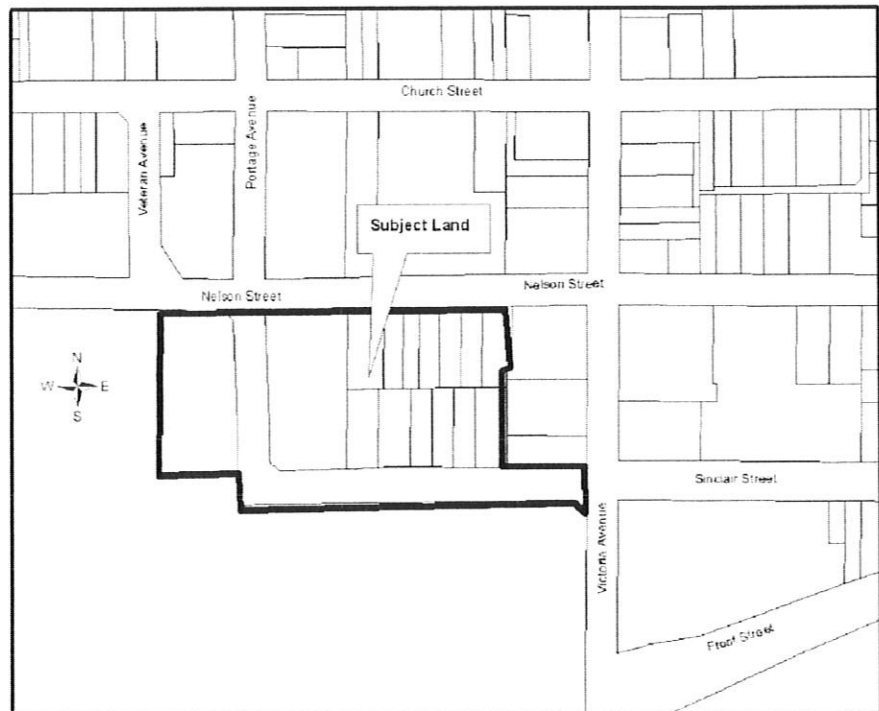
Parcel 120-2, ALBTP, being East 7 feet of Lot 120 and West 36.5 feet of Lot 121, Townplot of Alberton

Parcel 122-1, ALBTP, being East part of Lot 122, part of Lot 123, and part of Lot 124, Townplot of Alberton

Parcel 8208, ALBTP, being the East part of Lot 121 and the West part of Lot 122, Townplot of Alberton

Parcel 13416, ALBTP, being the East 44 feet of Lot 89, Townplot of Alberton

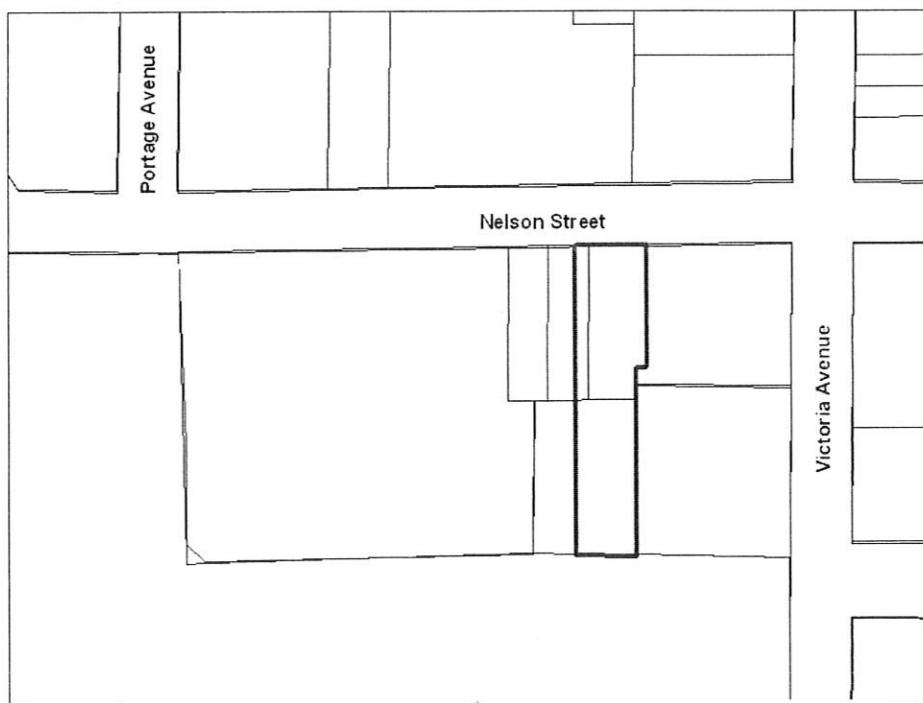
Key Map:



SCHEDULE " B"

The map below is intended to show approximately the property to be constructed as a parking lot with appropriate ingress and egress and conveyed to the Corporation of the Town of Fort Frances for use as a public parking lot following the completion of construction of proposed structures. The property set out below is comprised of

- Part of PIN 56018-0171 being that part of lot 89, Townplot of Alberton, designated as Part 1 on 48R-4338;
- PIN 56018-0172 being that part of lots 122, 123 and 124, Townplot of Alberton, designated as Part 2 on 48R-4338;
- Part of PIN 56018-2222 being that part of lot 88, Townplot of Alberton, designated as Part 3 Plan 48R-4338; and
- PIN 56018-0344 being that part of lot 89, Townplot of Alberton, designated as Part 4 on 48R-4338; and



SCHEDULE " C"

Listing of plans and drawings accepted by the Municipality and upon which develop is permitted to occur.

Attach.	Drawing Identifier	Drawing Name	Prepared By	Date
C-1	M106321-27-SK-02	General Site Plan	Genivar	2007/01/23
C-2	D-627-2-004	Underground Services	Genivar	2007/06/26
C-3	D-627-1-111	Utility Bridge	Genivar	2011/11/22

PARTS SCHEDULE

Part	Area	Volume	Weight
Part 1	1.0000	1.0000	1.0000
Part 2	1.0000	1.0000	1.0000
Part 3	1.0000	1.0000	1.0000
Part 4	1.0000	1.0000	1.0000
Part 5	1.0000	1.0000	1.0000
Part 6	1.0000	1.0000	1.0000
Part 7	1.0000	1.0000	1.0000
Part 8	1.0000	1.0000	1.0000
Part 9	1.0000	1.0000	1.0000
Part 10	1.0000	1.0000	1.0000
Part 11	1.0000	1.0000	1.0000
Part 12	1.0000	1.0000	1.0000
Part 13	1.0000	1.0000	1.0000
Part 14	1.0000	1.0000	1.0000
Part 15	1.0000	1.0000	1.0000
Part 16	1.0000	1.0000	1.0000
Part 17	1.0000	1.0000	1.0000
Part 18	1.0000	1.0000	1.0000
Part 19	1.0000	1.0000	1.0000
Part 20	1.0000	1.0000	1.0000

RECEIVED THIS PLAN IS BE
APPROVED UNDER THE
AND FILED IN

DATE 24 April 2012

HENRIETTE J. VERHOEFF
ONTOARIO LAND SURVEYOR
CANADA LANDS SURVEYOR

PLAN 48R-4338

RECEIVED AND DEPOSITED

DATE April 25, 2012

"AMANDA WATSON"
REPRESENTATIVE FOR THE
LAND REGULATOR FOR THE
CANADA LANDS SURVEYOR
ON RAINY RIVER

PLAN OF SURVEY OF
LOTS 88 AND 122 AND
PART OF LOTS 89, 121, 123 AND 124
TOWN PLOT OF ALBERTON
TOWN OF FORT FRANCES
DISTRICT OF RAINY RIVER

SCALE - 1:300



NOTES

BEARINGS ARE UTM GRID, DERIVED FROM SPECIFIED CONTROL POINTS
01019801202 AND 01019801218, REFERRED TO THE CENTRAL MERIDIAN
OF UTM ZONE 15 (93° WEST LONGITUDE), NAD83 (CSRS)(1997).
FOR BEARING COMPARISONS, A ROTATION OF 0°09' CLOCKWISE WAS
APPLIED TO BEARINGS ON P2, PLAN 48R-4149 AND THE TOWN PLOT OF
ALBERTON.
DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY
MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.99956332.

SURVEYOR'S CERTIFICATE

- I CERTIFY THAT:
- THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE
WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND
TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
 - THE SURVEY WAS COMPLETED ON THE 19th DAY OF MARCH,
2012.

DATE 24 April 2012

HENRIETTE J. VERHOEFF
ONTOARIO LAND SURVEYOR
CANADA LANDS SURVEYOR

exp Geomatics Inc.

PARTS SCHEDULE

NO.	DESCRIPTION	DATE	AREA
1	PART OF LOTS 121 AND 122	PART OF 56018-0171	0.022 ha
2	PART OF LOTS 121 AND 122 AND 124	ALL OF 56018-0172	0.009 ha
3	ALL OF LOT 88	ALL OF 56018-0220	0.101 ha
4	PART OF LOT 89	PART OF 56018-0344	0.011 ha

REQUIRE THIS PLAN TO BE
DEPOSITED UNDER THE
LAND TITLES ACT

PLAN 48R-4338

RECEIVED AND DEPOSITED

DATE 24 April 2012

DATE April 25, 2012

Henriette J. Verhoef
ONTARIO LAND SURVEYOR
CANADA LANDS SURVEYOR

Amanda Watson
REPRESENTATIVE FOR THE
LAND REGISTRAR FOR THE
LAND TITLES DIVISION
OF RAINY RIVER

PLAN OF SURVEY OF
LOTS 88 AND 122 AND
PART OF LOTS 89, 121, 123 AND 124
TOWN PLOT OF ALBERTON
TOWN OF FORT FRANCES
DISTRICT OF RAINY RIVER

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1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE
WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND
TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON THE 19th DAY OF MARCH,
2012.

24 April, 2012
DATE

Henriette J. Verhoef
ONTARIO LAND SURVEYOR
CANADA LANDS SURVEYOR

exp Geomatics Inc.

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www.exp.com



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• INDUSTRIAL • INFRASTRUCTURE • SUSTAINABILITY •

DRAWN BY: B.F.	CLIENT: ABITIBI	Drawing No.
CREW: M.B. J.V.		
JOB No: FF6062	FIN No: M	F10-607