



SUBJECT	UBC–City of Kelowna Master Roads Agreement Sixth Modification – Hollywood Road North Road Reserve
SUBMITTED TO	Board of Governors
MEETING DATE	December 3, 2020
SESSION CLASSIFICATION	Recommended session criteria from Board Meetings Policy: OPEN
REQUEST	Action requested – Recommendation to Board for Approval IT IS HEREBY RESOLVED that the Property Committee recommends that the Board of Governors: <ul style="list-style-type: none"> i. authorize the execution of the sixth modification of the UBC Okanagan Master Roads Agreement (as shown in Attachment 1 to the briefing); ii. authorize Campus & Community Planning and Finance & Operations, UBC Okanagan to seek Ministerial approval for the grant of a new road reserve over the lands to the City of Kelowna for future roadway purposes (as shown in Attachment 2 to the briefing), pursuant to Section 50(2) of the <i>University Act</i>; iii. authorize Campus & Community Planning and Finance & Operations, UBC Okanagan to, upon receipt of Ministerial approval, grant the new road reserve to the City of Kelowna on terms and conditions approved by University Counsel; and, iv. declare that the disposal of an interest in land (i.e., the grant of the new road reserve described above) will not affect the future delivery of educational programs.
LEAD EXECUTIVE	Robin Ciceri, Vice-President External Relations
SUPPORTED BY	Lesley Cormack, Deputy Vice-Chancellor and Principal, UBC Okanagan Peter Smailes, Vice-President Finance & Operations Hubert Lai, Q.C., University Counsel Michael White, Associate Vice-President Campus & Community Planning Rob Einarson, Associate Vice-President Finance & Operations, UBC Okanagan

PRIOR SUBMISSIONS

The subject matter of this submission has not previously been considered by the Property Committee.

EXECUTIVE SUMMARY

UBC and the City of Kelowna (“CoK”) signed the UBC Okanagan Master Roads Agreement dated effective March 10, 2008 and various Modification Agreements dated May 16, 2008; June 4, 2008; June 24, 2008; July 22, 2008; and August 9, 2008 (collectively the “MRA”) concerning the parties’ responsibilities associated with various City and Provincial transportation improvement projects affecting the Okanagan campus.

The proposed Sixth Modification of the MRA (“MRA Modification”) (see Attachment 1) concerns the Highway Reservation Agreement (“Current Reserve Agreement”) and Road Reserve Area (“Current Road Reserve Area”) granted by UBC to the CoK under the MRA to accommodate the future Hollywood Road North on campus. In particular, the MRA Modification seeks to change the location of the Road Reserve Area to a new preferred configuration (“New Road Reserve Area”) as set forth in a New Highway Reservation Agreement (“New Reservation Agreement”).

The New Road Reserve Area results in less campus property being dedicated for future public roadway, and does not impact any future development opportunities, nor affect the operation, function and delivery of educational programs on the UBC Okanagan campus.

Under the Board’s policies and Section 50(2) of the *University Act*, the disposition of land, including the New Road Reserve, requires the authorization of the Board of Governors and Ministerial approval. This report provides information regarding the proposed disposition of land and requests the Board’s authorization. Once authorization is provided, Campus & Community Planning and Finance & Operations – UBC Okanagan will seek Ministerial approval, and upon receipt of such approval, coordinate the execution of the MRA Modification and any required ancillary documents required by the Land Title Office in accordance with UBC Signing Resolutions to effect the disposition. The MRA Modification has been vetted by the Office of the University Counsel to ensure full protection of UBC’s rights and interests.

BACKGROUND

In 2008, following the approval of the MRA by UBC and CoK, UBC received Ministerial approval to dispose of its land interest to reserve and dedicate land, and grant statutory rights of way as may be required to implement the initiatives contained in the MRA, including the Current Road Reserve Area, the Highway 97 flyover (overpass) exit ramp project by the Ministry of Transportation, and the John Hindle Drive, Innovation Drive and Hollywood Road North arterial road projects.

The MRA Modification specifically concerns the Current Reservation Agreement and Current Road Reserve Area granted to the CoK in 2008 to accommodate the future Hollywood Road North on campus, extending from north of the existing intersection with University Way to the campus’s northern boundary (see Attachment 3). UBC and the CoK have agreed to change the location of the Current Road Reserve Area from its current configuration to a new preferred configuration (see Attachment 4) as the New Road Reserve Area, and to amend the MRA and replace the Current Reservation Agreement to a New Reservation Agreement to reflect this change.

The New Road Reserve Area strategically shifts the alignment for future Hollywood Road North further east and the connection with Innovation Drive further north, and as such, will not impact the future development of campus. The New Road Reserve Area will reduce the amount of campus property dedicated to the Current Road Reserve Area from 14,965 square metres to 8,760 square meters, resulting in a net gain of 6,205 square meters. It will also substantially decrease the area of campus land that will be severed from the Main Campus by the future public road, and consequently retain a much larger contiguous area for the development of the University’s future Innovation Precinct planned within the northeast sector of campus.

The Office of the University Counsel has reviewed the MRA Modification and is satisfied with its language and terms. The CoK has agreed in principle to the language and terms of the MRA Modification, and under its terms is required to receive Council approval before December 31, 2020. Both parties view the reconfiguration from the Current Road Reserve Area to the New Road Reserve Area as a “straight swap” that does not require a financial transaction or alter the parties’ responsibilities and obligations as set out in the MRA.

The New Reservation Agreement for the New Road Reserve Area with CoK will be consistent with the MRA and the MRA Modification and with the forms of agreement previously reviewed and approved by UBC.

APPENDICES

1. Proposed Sixth Modification of UBC Okanagan Master Roads Agreement and Highway Reservation Agreement
2. New Road Reserve Area, Plan EPP96157
3. Hollywood Road North Road Reserve - Location & Context Map
4. Plan illustrating changes to the Road Reserve Area for future Hollywood Road North

SUPPLEMENTAL MATERIALS (optional reading for Governors)

1. UBC Okanagan Master Roads Agreement
2. Modification of UBC Okanagan Master Roads Agreement
3. Second Modification of UBC Okanagan Master Roads Agreement
4. Third Modification of UBC Okanagan Master Roads Agreement
5. Fourth Modification of UBC Okanagan Master Roads Agreement
6. Fifth Modification of UBC Okanagan Master Roads Agreement

SIXTH MODIFICATION AND/OR ADDENDUM OF UBC OKANAGAN MASTER ROADS AGREEMENT AND HIGHWAY RESERVATION AGREEMENT

This Addendum having an effective date of _____, 2020

BETWEEN:

THE UNIVERSITY OF BRITISH COLUMBIA

A body corporate having offices located at
3333 University Way, Kelowna, British Columbia V1V 1V7, and at
6328 Memorial Road, Kelowna, Vancouver, British Columbia V6T 1Z2

("UBC")

AND:

CITY OF KELOWNA

A municipal corporation having offices located at
1435 Water Street, Kelowna, British Columbia V1Y 1J4

("CoK")

A. CoK and UBC are parties to a UBC Okanagan Master Roads Agreement dated effective March 10, 2008 and Modification Agreements dated May 16, 2008, June 4, 2008, June 24, 2008, July 22, 2008 and August 9, 2008 (collectively the "**Master Roads Agreement**").

B. Pursuant to the Master Roads Agreement (clause 25) UBC granted to CoK a Highway Reservation Agreement dated May 28, 2008 and registered at the Land Title Office under number LB225845 (the "**Reservation Agreement**") as shown on Plan KAP87186 (the "**Road Reserve Area**").

C. CoK and UBC have agreed to make certain amendments to the location of the Road Reserve Area and to amend the Master Roads Agreement and replace the Reservation Agreement to reflect their agreement in this regard.

Now therefore the parties agree that, in consideration of the mutual promises made in this Addendum, the sufficiency of which is hereby acknowledged, that:

1. Change of Road Reserve Area location

1.1 The parties have agreed that the location of the Road Reserve Area be changed from the Road Reserve Area as shown on Plan KAP87184 to the area shown on Plan EPP96157 attached to this Addendum as Schedule A (the "**New Reserve Area**").

1.2 In order to amend the location of the Road Reserve Area to the New Reserve Area, the parties agree to sign and deliver to the other, no later than 30 days after the fulfillment or waiver of all of the conditions contained in clause 3 herein (the “**Removal Date**”), such documents as may be necessary to give effect to the re-location of the Road Reserve Area and discharge of the existing Reservation Agreement and in particular to register at the Land Survey and Title Authority (“**LTSA**”) a new highway reservation agreement in the same form as the Reservation Agreement with the exception of the plan, which shall instead reference the New Reserve Area (the “**New Reservation Agreement**”), and the legal description of the underlying property which has been amended since the date of the Reservation Agreement.

1.3 The parties agree the New Reservation Agreement will be registered no later than 45 days after the Removal Date as a priority charge against Lot A Sections 10 and 11 Township 23 Osoyoos Division Yale District Plan KAP87188 Except Part on Plan EPP57644 and EPP53665 subject to all existing under-surface rights, statutory rights of way, easements, covenants and Crown reservations.

1.4 CoK agrees to provide UBC, no later than 30 days after the Removal Date, a registrable discharge of the Reservation Agreement which discharge is to be registered with LTSA concurrently with registration of the New Reservation Agreement.

1.5 As of the Removal Date for all purposes of the Master Roads Agreement:

- (a) the New Reservation Agreement shall be considered the ‘Part Three Road Reserve (Hollywood Road North)’ thereunder; and
- (b) the New Reserve Area shall be considered the location of the Part Three Road Reserve (Hollywood Road North).

2. No Representation On Environmental Conditions

2.1 The CoK agrees to accept the New Reserve Area on an “as is” basis and condition and specifically confirms that the provisions of clause 34 of the Master Roads Agreement apply to the New Reserve Area.

3. Conditions

3.1 The obligations of UBC hereunder are subject to the satisfaction of the following conditions on or before the dates noted, unless and to the extent waived, in writing, by UBC at any time prior to the relevant date:

- (a) UBC has received approval from its Board of Governors to enter into this Addendum and to carry out its obligations hereunder on or before , December 4, 2020; and
- (b) UBC has received approval from the Minister of Advanced Education, Skills & Training to enter into this Addendum and to carry out those of its obligations hereunder requiring the approval of the Minister of Advanced Education, Skills & Training pursuant to the *University Act* on or before December 1, 2021. However,

the City and UBC acknowledge that in March 2020 the World Health Organization declared a global pandemic of the virus leading to COVID-19. The Governments of Canada and the Province of British Columbia responded to the pandemic, either regionally or globally, with legislative amendments, controls, orders, and requests of the public, which could significantly delay the timing of approval of this Agreement by the Province (collectively, the “**Governmental Response**”). It is uncertain how long the pandemic, and the related Governmental Response, will continue, and it is unknown whether there may be a resurgence of the virus leading to COVID-19 or any mutation thereof (collectively, the “**Virus**”) and resulting or supplementary renewed Governmental Response. The parties agree that if such approval extends past the AVED approval term described at clause 3.1(b) due to the Governmental Response or the Virus, then the parties shall mutually agree to extend the AVED approval term accordingly, provided that UBC has made a submission to the Province for approval of this Agreement by January 30, 2021.

3.2 The obligations of CoK hereunder are subject to the satisfaction of the following conditions on or before the dates noted, unless and to the extent waived, in writing, by CoK at any time prior to the relevant date:

- (a) CoK has received approval from its Council to enter into this Addendum and to carry out its obligations hereunder on or before December 31, 2020.

4. General

4.1 This Addendum may be altered or amended only by an agreement in writing signed by the parties.

4.2 Each of the parties will at all times and from time to time and upon reasonable request do, execute and deliver all further assurances, acts and documents for the purpose of evidencing and giving full force and effect to the covenants and agreements in this Addendum.

4.3 This Addendum is binding upon the parties hereto, and successors and permitted assigns.

4.4 This Addendum may be executed in several counterparts, each of which will be deemed to be an original and all of which will together constitute one and the same instrument.

4.5 A copy of this Addendum delivered by facsimile or other electronic means and bearing a copy of the signature of a party to this Addendum shall for all purposes be treated and accepted as an original copy thereof.

4.6 The parties expressly agree that this Addendum is supplemental to the Master Roads Agreement and the Reservation Agreement and is intended to amend either or both of those Agreements only to the extent of a change in the location of the Road Reserve Area and therefore all agreements, covenants, conditions, processes and provisos contained within the Master Roads Agreement and Reservation Agreement and any schedules or ancillary documentation thereto remain in full force and effect and are hereby unaltered unless expressly stated otherwise herein.

Signed by CoK this ____ day of _____, 2020.

CITY OF KELOWNA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

Signed by UBC this ____ day of _____, 2020.

**THE UNIVERSITY OF BRITISH
COLUMBIA**

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

SGC/43573.135/dlk

Schedule "A"

REFERENCE PLAN OF PARTS OF LOT A, SECTIONS 10 AND 11,
TOWNSHIP 23, OSOYOOS DIVISION YALE DISTRICT,
PLAN KAP87188, EXCEPT PART ON
PLAN EPP56744 AND EPP53665

PLAN EPP96157

PURSUANT TO SECTION 99(1)(e) OF THE LAND TITLE ACT
FOR ROAD RESERVE PURPOSES
BCGS 82E.094

The intended plot size of this plan is 432mm in width by
560mm in height (C size) when plotted at a scale of 1:1500
(All distances are in metres)

LEGEND

- Denotes Standard Iron post (Type 5) found
- Denotes Standard Iron post (Type 5) placed
- ⊙ Denotes Control Monument found
- NF Denotes nothing found

Integrated Survey Area No. 4, City of Kelowna,
NAD83 (CSRS) 4.0.0.BC.1

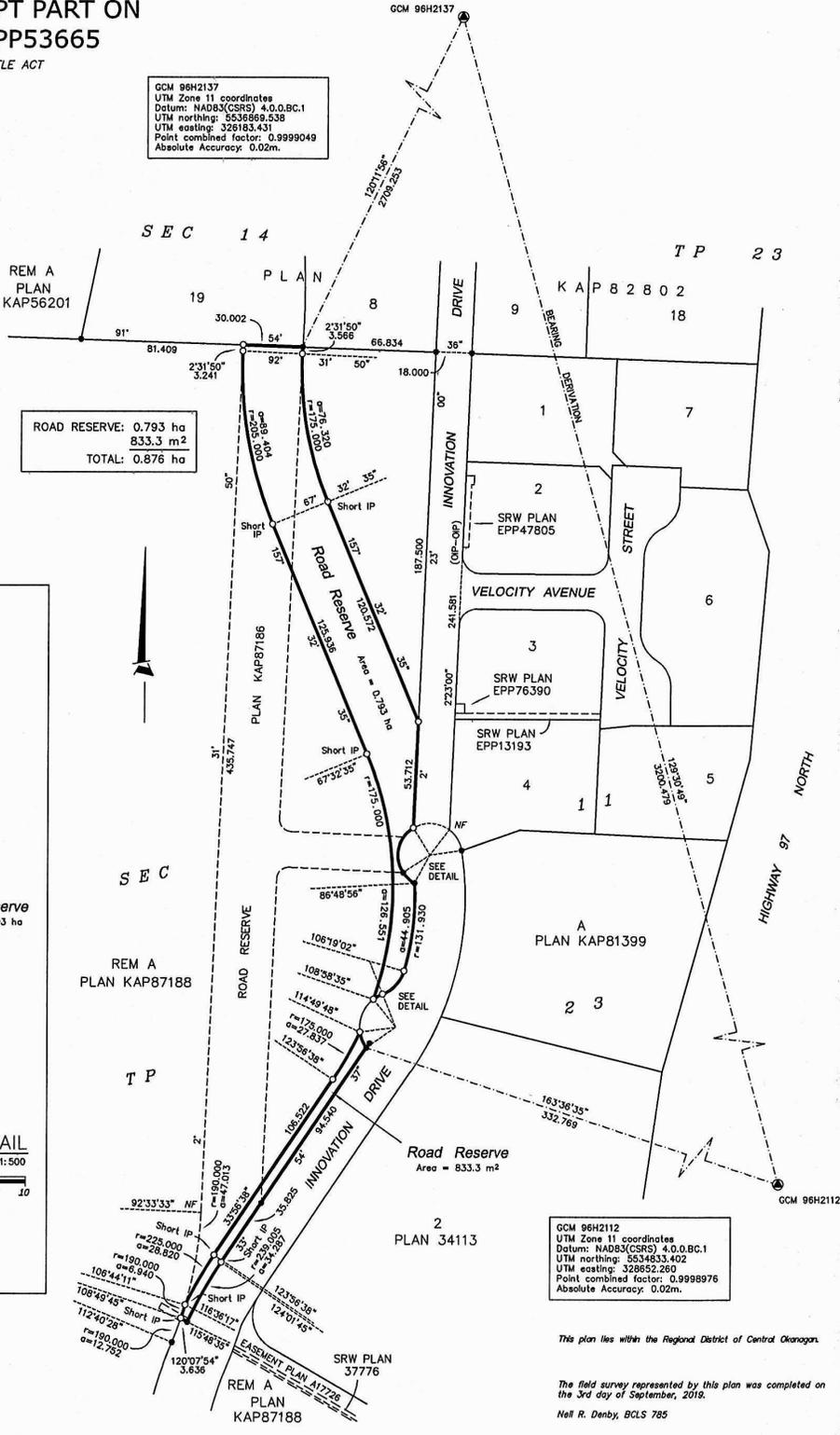
Grid bearings are derived from GNSS observations and
are referred to the central meridian of UTM Zone 11.

The UTM coordinates and estimated horizontal positional
accuracy are derived from Real-time GNSS survey ties to
geodetic control monuments 96H2112 and 96H2137 from
Leica Smartnet station D 4005.

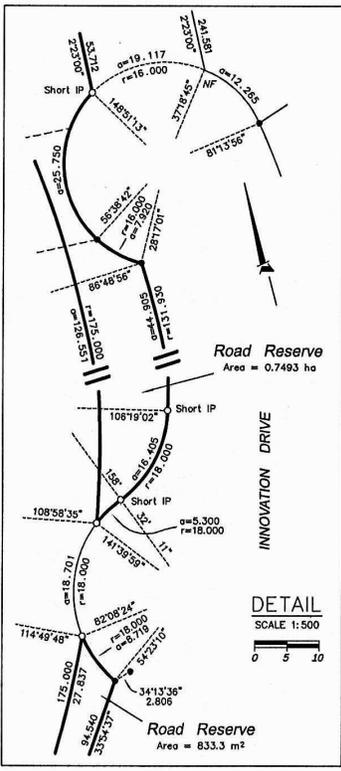
The plan shows horizontal ground-level distances unless
otherwise specified. To compute grid distances, multiply
ground-level distances by the combined factor of
0.9999976 which has been derived from geodetic
control monument 96H2112. CORD 28 (HTV2.0)

Note: The coordinates and horizontal positional accuracies
shown on this plan are a result of an independent and
accurate GNSS survey and do not represent official
published coordinates.

GCM 96H2137
UTM Zone 11 coordinates
Datum: NAD83(CSRS) 4.0.0.BC.1
UTM northing: 5536869.538
UTM easting: 326183.431
Point combined factor: 0.9999049
Absolute Accuracy: 0.02m.



ROAD RESERVE: 0.793 ha
833.3 m²
TOTAL: 0.876 ha

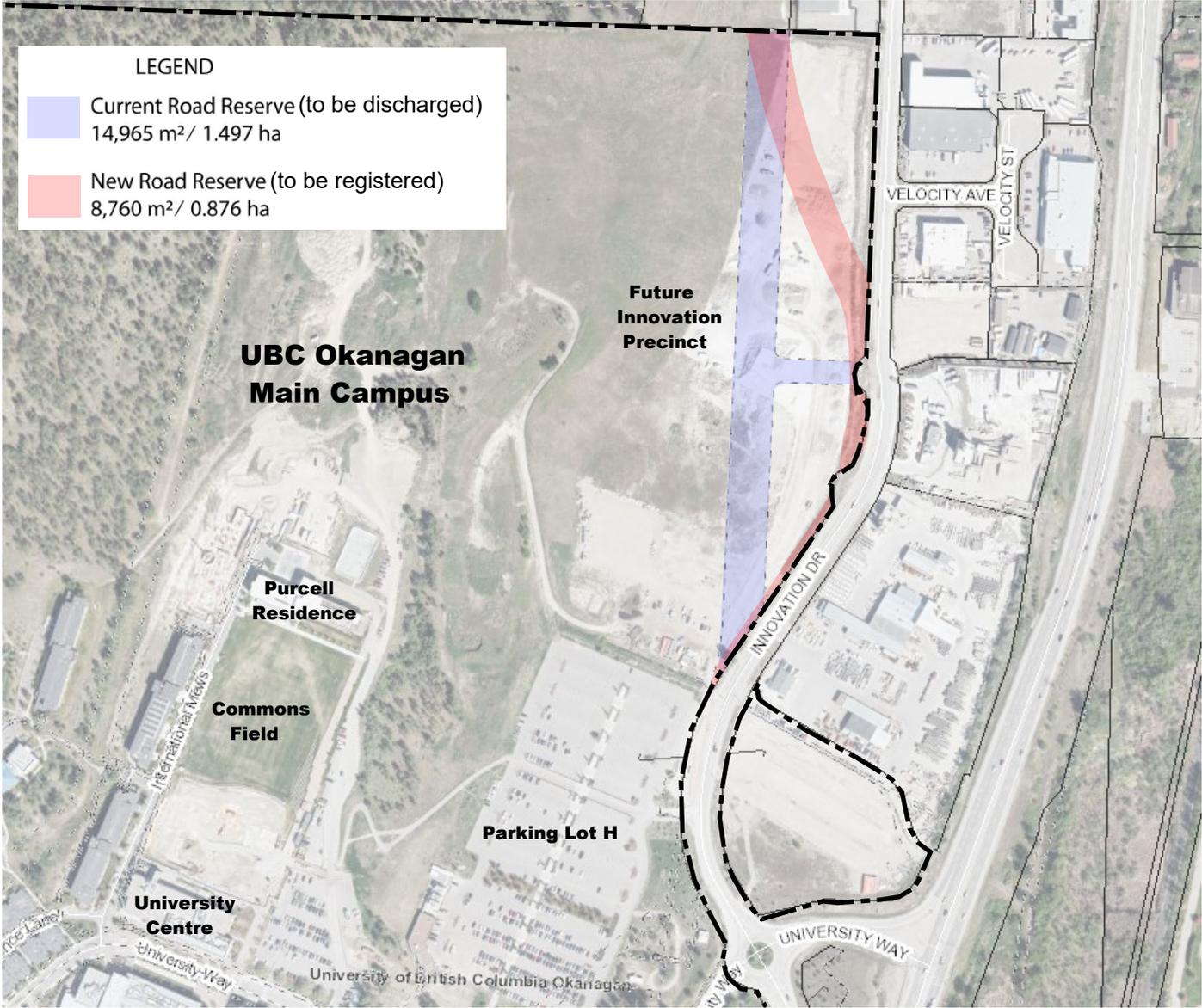


GCM 96H2112
UTM Zone 11 coordinates
Datum: NAD83(CSRS) 4.0.0.BC.1
UTM northing: 5534833.402
UTM easting: 326652.250
Point combined factor: 0.9998976
Absolute Accuracy: 0.02m.

RUNNALLS DENBY
british columbia land surveyors
259A Lawrence Avenue Phone: (250)763-7322
Kelowna, B.C. Fax: (250)763-4413
V1Y 6L2 Email: nell@runnallsdenby.com
DWG. No.: 15500 ROAD RESERVE FILE: 15500

This plan lies within the Regional District of Central Okanagan.
The field survey represented by this plan was completed on
the 3rd day of September, 2019.
Nell R. Denby, BCLS 785

Hollywood Road North Road Reserve - Location & Context Map



REFERENCE PLAN OF PARTS OF LOT A, SECTIONS 10 AND 11, TOWNSHIP 23, OSOYOOS DIVISION YALE DISTRICT, PLAN KAP87188, EXCEPT PART ON PLAN EPP56744 AND EPP53665

PLAN EPP96157

PURSUANT TO SECTION 99(1)(e) OF THE LAND TITLE ACT
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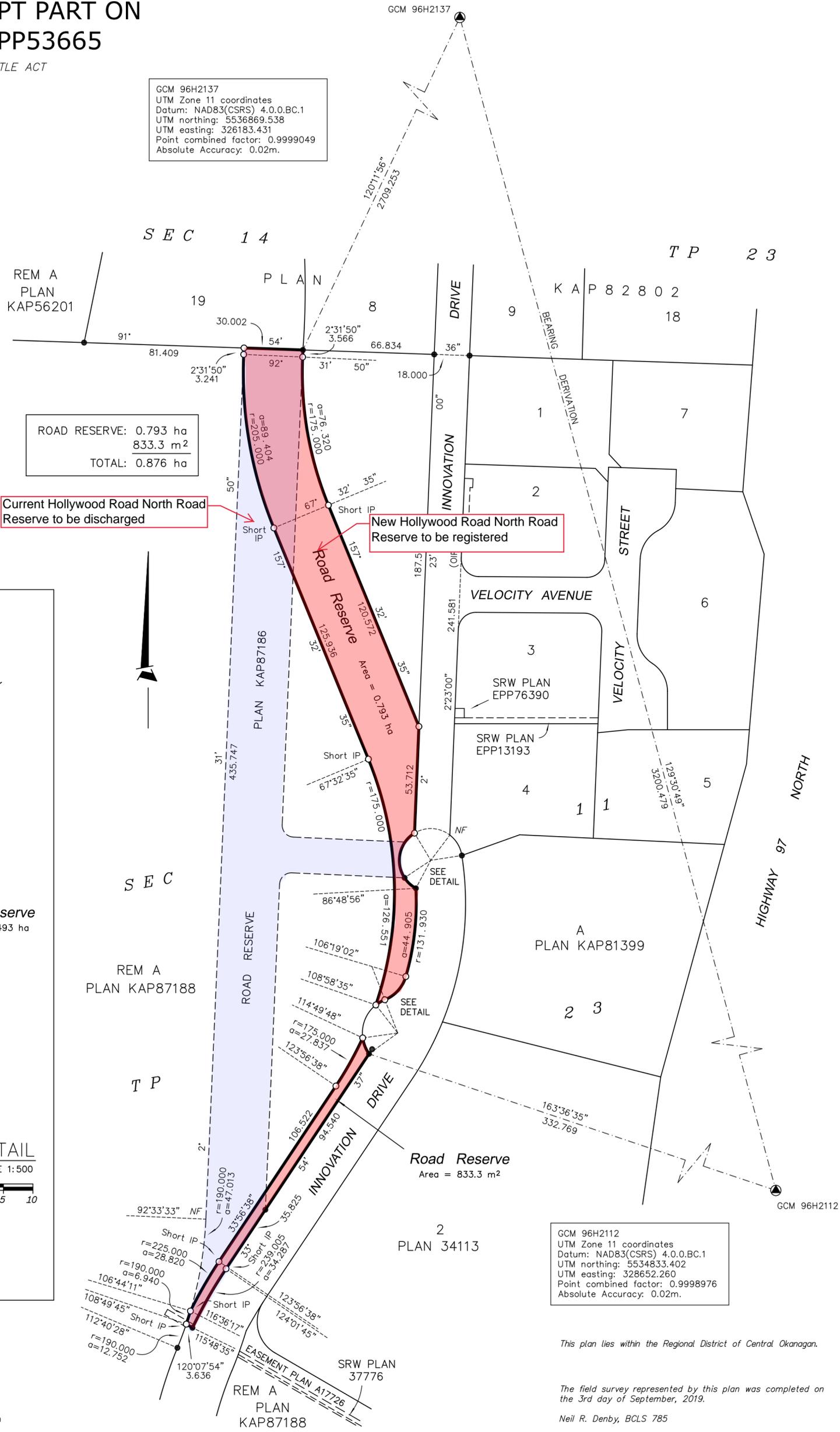
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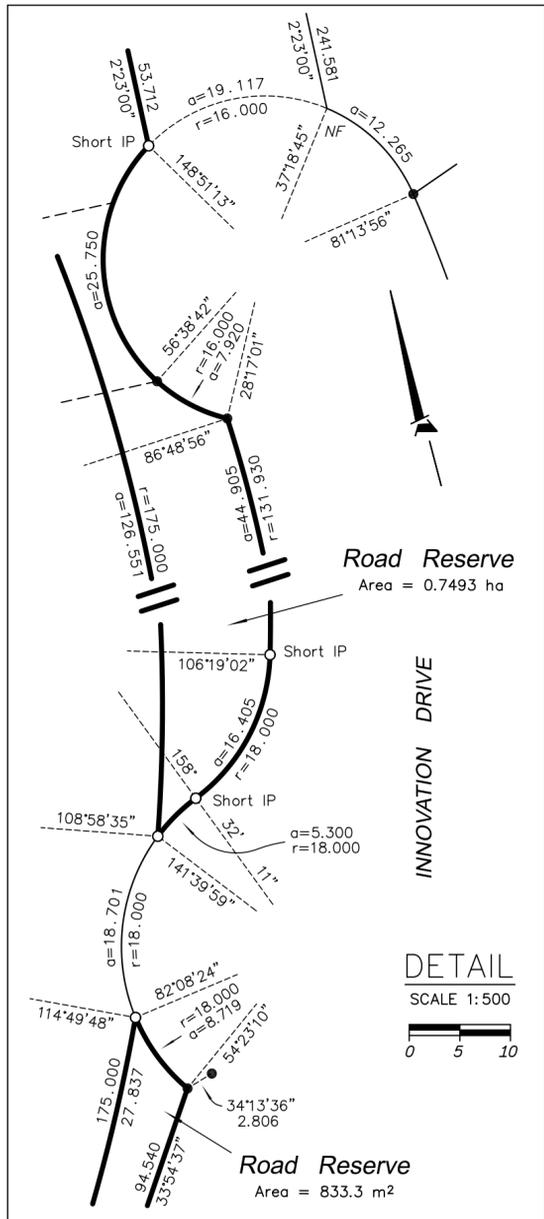
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UTM northing: 5536869.538
UTM easting: 326183.431
Point combined factor: 0.9999049
Absolute Accuracy: 0.02m.



ROAD RESERVE: 0.793 ha
833.3 m²
TOTAL: 0.876 ha

Current Hollywood Road North Road Reserve to be discharged

New Hollywood Road North Road Reserve to be registered



GCM 96H2112
UTM Zone 11 coordinates
Datum: NAD83(CSRS) 4.0.0.BC.1
UTM northing: 5534833.402
UTM easting: 328652.260
Point combined factor: 0.9998976
Absolute Accuracy: 0.02m.

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V1Y 6L2 Email: neil@runnallsdenby.com
DWG. No.: 15500 ROAD RESERVE FILE: 15500

UBC OKANAGAN MASTER ROADS AGREEMENT

This Agreement is effective MARCH 10, 2008 (the "Effective Date")

BETWEEN:

THE UNIVERSITY OF BRITISH COLUMBIA,
a body corporate having offices located at
3333 University Way, Kelowna, BC V1V 1V7, and at
6328 Memorial Road, Vancouver, BC V6T 1Z2

("UBC")

AND:

CITY OF KELOWNA,
a municipal corporation having offices located at
1435 Water Street, Kelowna, BC V1Y 1J4

(the "CoK")

WHEREAS THE FOLLOWING APPLY:

- A. UBC is the registered owner of the following lands (the "UBC Lands"):
- a. Parcel Identifier: 008-981-990
Lot A, Sections 10 and 11, Township 23
Osoyoos Division Yale District
Plan 38917 except Plan KAP57788
(the "North Lot");
 - b. Parcel Identifier: 023-610-182
Lot B, Section 10, Township 23
Osoyoos Division Yale District
Plan KAP57788
(the "Lot B");
 - c. Parcel Identifier: 023-610-166
Lot A, Sections 10 and 11, Township 23
Osoyoos Division Yale District
Plan KAP57788
(the "South Lot").
- B. UBC has applied to the CoK to rezone the UBC Lands to a new "CD20" zoning to enable the development of a university campus.

- C. UBC, the CoK and the Ministry of Transportation for the Province of British Columbia ("MoT") have agreed on the development of a flyover (overpass) access on Highway 97 (the "Flyover Project") and two roads on the UBC Lands running east and north from the south-east corner of the campus to the mid-point across the campus in each direction (the "Flyover Agreement").
- D. The CoK and UBC have entered into an agreement in which UBC pays the CoK for their share of the Flyover Project and the CoK pays MoT (the "Bylaw 9734 – the Hwy 97 Flyover Development Works Agreement").
- E. This Agreement addresses the further road development to complete the public local and arterial roads involving the UBC Lands including completion of an east-west arterial connector road running along the south edge of the UBC Lands (the "Hwy 97/Glenmore Connector").

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement, THE PARTIES HERETO AGREE AS FOLLOWS:

Scope – UBC Lands

1. This Agreement applies only to the UBC Lands.

PART ONE – UNIVERSITY WAY AND HOLLYWOOD ROAD NORTH

Road Closure and Dedication

2. The parties agree that:
 - (a) The CoK will transfer to UBC that area shown as the University Way Closure on the drawing attached as Schedule "A";
 - (b) UBC will dedicate as highway those portions of the UBC Lands shown as CoK Road Dedication on Schedule "B" (the "UBC to CoK Road Dedication"); and
 - (c) UBC will dedicate as highway those portions of the UBC Lands shown as MoT Road Dedication on Schedule "B" (the "UBC to MoT Road Dedication").

Condition Precedent to Road Closure and Dedication

3. The obligations under section 2 shall be subject to section 15 and to the following conditions precedent on or before the dates stipulated:

- (a) On or before March 31, 2008 the Council of the CoK adopting a bylaw (the "Removal of Highway Dedication Bylaw") to permanently close the University Way Closure and to remove the dedication of the University Way Closure as highway;
- (b) On or before April 28, 2008 the Approving Officer of the CoK approving a reference plan of consolidation (the "Consolidation Plan") to consolidate the University Way Closure and Lot B with either the North Lot or the South Lot (the "Consolidated Lot");
- (c) On or before adoption of the Removal of Highway Dedication Bylaw, UBC receiving the approval of the minister to dedicate as highway the UBC to CoK Road Dedication and the UBC to MoT Road Dedication pursuant to section 50(2) of the *University Act*, R.S.B.C. 1996, c.468. Such approval may be conditional upon adoption of the Removal of Highway Dedication Bylaw.

These conditions precedent are for the benefit of both the CoK and UBC and cannot be waived by either unilaterally. Subsection (c) is statutorily required of UBC and cannot be waived.

Contingent University Way and Highway 97 Intersection Road Closure

4. If the existing intersection of University Way and Highway 97 is permanently closed to all traffic, the CoK will transfer to UBC that portion of the lands shown as Highway 97 Intersection Road Closure on the drawing attached as Schedule "C" that is under the CoK's ownership, possession or control under section 35(1) of the *Community Charter* S.B.C. 2003, c.26, and the CoK will use its best efforts to obtain the consent of MoT to close and transfer to UBC that portion of the lands shown as Highway 97 Intersection Road Closure on Schedule "C." The parties acknowledge that some portion of the area shown as Highway 97 Intersection Road Closure on Schedule "C" lies within the control of the MoT and is not within the CoK's authority under s. 35 of the *Community Charter*.

Conditions Precedent to University Way and Highway 97 Intersection Road Closure and Transfer

5. The obligations under section 4 are subject to the satisfaction of the following conditions precedent:

- (a) The Council of the CoK adopting a bylaw (the "Removal of Highway Dedication Bylaw No. 2") to permanently close and remove the dedication of such portion of the Highway 97 Intersection Road Closure which is under the CoK's ownership or possession under s. 35(1) as highway;

- (b) The Approving Officer of the CoK approving a reference plan of consolidation (the "Consolidation Plan No. 2") to consolidate the Highway 97 Intersection Road Closure with the appropriate title of UBC Lands;
- (c) Either the area shown as Hollywood Road North Road Reserve, or Innovation Drive in blue and the Hollywood Road North Transition (Future Road Closure) in red, as shown on Schedule "D", being dedicated, constructed and open to the public as highway, whichever should occur first.

These conditions precedent are for the benefit of both the CoK and UBC and cannot be waived.

Flyover Financial Contributions

6. UBC's financial contribution to the Flyover Project will be as provided for in Bylaw 9734 - the Highway 97 Flyover Development Works Agreement.

Approximated Areas

7. The estimated area of the University Way Closure to be transferred to UBC is approximately 34,985 square metres. The estimated area of the CoK Road Dedication is approximately 32,555 square metres. The areas of the properties being dedicated or closed and transferred are estimates only and are subject to final survey. All land areas will be dedicated or transferred for \$1.00 (the "Purchase Price"). If the surveyed area varies, the Purchase Price will not be adjusted. The surveys prepared by and for UBC shall be subject to the approval of the UBC, CoK and the CoK Approving Officer, and where involving MoT, then MoT.

Concurrent Registration

8. The plan to remove the highway dedication over the University Way Closure and the Consolidation Plan shall be registered in the Kamloops Land Title Office as an all-or-nothing concurrent package and in conjunction with the following documents in the following order:

- (a) Removal of Highway Dedication Bylaw (two certified copies) with filing letter to Registrar;
- (b) The Reference Plan of highway dedication removal;
- (c) Form 17 to raise title to the University Way Closure in the name of the CoK;

- (d) Form A Transfer of the University Way Closure from the CoK to UBC, with UBC's Property Transfer Tax Act form and cheque;
- (e) Consolidation Plan;
- (f) A certificate cancelling the right of resumption pursuant to the Resumption of Highways Regulation, B.C. Reg. 245/2004; and
- (g) Releases of the highway reservations under KK86205 pursuant to Bylaw 7306 and V46463 pursuant to Bylaw 5550-83.

UBC's Costs

9. UBC shall bear all costs of the conveyance and any costs relating to arranging a mortgage. UBC will be responsible for all costs to complete the transactions contemplated by Part One of this Agreement including, but not limited to, road closure and subdivision/consolidation surveys, easements, covenants, and right of way surveys, subdivision application fees, Goods and Services Tax, Property Transfer Tax, and legal costs to prepare and register all documents necessary to complete the Land Title registrations contemplated in this Agreement, with the exception of costs to be shared under the Flyover Agreement.

Terasen Right of Way

10. UBC acknowledges that a Terasen main gas line crosses the University Way Closure. UBC agrees to grant a right of way for gas utility to Terasen Gas over that area of the University Way Closure identified as containing the existing utility. The right of way document shall be in Terasen's standard right of way document form.

No Representations as to Environmental Conditions

11. UBC agrees to accept the transfer of the University Way Closure on an "as is" basis and condition. UBC acknowledges and agrees that the CoK has not made any representations, promises, warranties or agreements as to the condition or quality of the University Way Closure, including as to:

- (a) The subsurface nature or condition of the University Way Closure (including soil type, hydrology and geotechnical quality or stability);
- (b) The environmental condition of the University Way Closure (including regarding contaminants in, on, under or migrating from the University Way Closure) or regarding the compliance of the same, or past or present activities on it, with any environmental laws; or

- (c) The suitability of the University Way Closure for UBC's intended use for, or development of, the University Way Closure.

12. The CoK agrees to accept transfer of the UBC to CoK Road Dedication(s) on an "as is" basis and condition. The CoK acknowledges and agrees that UBC has not made any representations, promises, warranties or agreements as to the condition or quality of the UBC to CoK Road Dedication(s), including as to:

- (a) The subsurface nature or condition of the UBC to CoK Road Dedication(s) (including soil type, hydrology and geotechnical quality or stability);
- (b) The environmental condition of the UBC to CoK Road Dedication(s) (including regarding contaminants in, on, under or migrating from the UBC to CoK Road Dedication(s)) or regarding the compliance of the same, or past or present activities on it, with any environmental laws; or
- (c) The suitability of the UBC to CoK Road Dedication(s) for the CoK's intended use for, or development of, the UBC to CoK Road Dedication(s).

PART TWO – EAST/WEST ARTERIAL EXTENSION

Road Dedication

13. Concurrent with the dedication of the UBC to MoT Road Dedication and the UBC to CoK Road Dedication (see Section 2), UBC will dedicate as highway, that part of the South Lot shown as the E/W Arterial Road Dedication on the drawing attached as Schedule "E" (the "E/W Arterial Road Dedication"). UBC shall execute the plan dedicating as highway the E/W Arterial Road Dedication. This section is subject to section 15.

Road Reserve

14. Concurrent with the dedication of highway under section 13, UBC will grant to the CoK a road reserve over that part of the South Lot shown as the E/W Arterial Road Reserve on the drawing attached as Schedule "E" (the "E/W Arterial Road Reserve"). The grant of road reserve will be in the form of the agreement attached as Appendix "A" and UBC will ensure that the agreement is registered as a Priority charge on title to the South Lot, or a consolidated lot encompassing the South Lot, subject to under-surface rights, statutory rights of way, and existing Crown reservations.

Conditions Precedent to Road Dedication and Road Reserve

15. The obligations under sections 2, 13 and 14 shall be subject to the following conditions precedent on or before the dates stipulated:

- (a) On or before April 28, 2008 the Approving Officer of the CoK approving a highway dedication plan to dedicate the E/W Arterial Dedication and the agreement contemplated in section 14;
- (b) On or before adoption of the Removal of Highway Dedication Bylaw, UBC receiving the approval of the minister to dedicate the E/W Arterial Dedication and to grant the E/W Arterial Reserve pursuant to section 50(2) of the *University Act*; and
- (c) On or before February 22, 2008 the Flyover Agreement has been fully executed.

These conditions precedent are for the benefit of both the CoK and UBC and cannot be waived by either unilaterally.

Payment for Road Dedication and Road Reserve

16. The CoK will pay UBC \$1.00 upon registration of the highway dedication plan dedicating the E/W Arterial Road Dedication and a further \$1.00 upon registration of the E/W Arterial Road Reserve. UBC will be responsible for all expenses to dedicate the E/W Arterial Road Dedication and to register the E/W Arterial Road Reserve, including all survey and legal costs. The payments of \$1.00 are as token consideration with the remainder of the true value of the lands being absorbed as a cost to UBC.

Notice of Construction

17. UBC must construct the road within the E/W Arterial Road Dedication and within as much of the E/W Arterial Road Reserve as required to meet the design standards set out in section 18 (the "E/W Arterial Extension"). At its sole discretion, the CoK may require the construction of the E/W arterial Extension pursuant to either the standard under section 18(a) or 18(b). The construction must be completed within two years of UBC receiving notice from the CoK to construct the E/W Arterial Extension. The CoK is entitled to give UBC such notice at any time subsequent to registration of the E/W Arterial Road Dedication but only contemporaneous with construction of an extension of the E/W Arterial Road west from the UBC Lands sufficient to consume all usable fill excavated during the construction of the E/W Arterial Extension on UBC Lands, and in any case, not prior to December 31, 2008.

Construction Standards

18. As directed by the CoK under section 17, UBC must construct the E/W Arterial Extension:

- (a) In accordance with the SS-R9 1st Stage standard (a 2 lane parkway) in the CoK Subdivision, Development and Servicing Bylaw 7900 in effect as of the date of this Agreement (the "Effective Servicing Bylaw"); or
- (b) In accordance with the SS-R9 2nd Stage standard (a 4 lane parkway) in the Effective Servicing Bylaw, should the CoK in its sole discretion require.

Apportionment of Construction Costs

19. The parties will be responsible for the costs of constructing the E/W Arterial Extension according to the following formula:

- (a) If constructed as a 2 lane parkway in accordance with the SS-R9 1st Stage standard in the Effective Servicing Bylaw, UBC will be solely responsible for the cost of construction, including underground roadway drainage system, barrier curbs & gutters, and if specified in the design sidewalks, street lighting and boulevard treatment (herein after the latter is referred to as "Included Infrastructure");
- (b) The CoK will be responsible for:
 - (i) sanitary sewers, water distribution mains, hydrants and irrigation systems; and
 - (ii) the additional cost of constructing the E/W Arterial Extension to the SS-R9 2nd Stage standard (a 4 lane parkway) in the Effective Servicing Bylaw, including the Included Infrastructure, beyond the cost of construction to the SS-R9 1st Stage standard, excepting that with respect to excavation and fill costs incurred by UBC, the CoK will contribute one-third of such costs.

Terasen Relocation Costs

20. The CoK and UBC will share equally the cost of protecting, moving, replacing or relocating the Terasen gas line and associated infrastructure, including design, regulatory application and approval costs, required in connection with the construction of the E/W Arterial Extension.

Provision of Construction Cost Information

21. UBC will provide such information as may be requested by the CoK to verify the costs of designing and constructing the E/W Arterial Extension, including sanitary sewers, water distribution mains, hydrants and irrigation systems, and the Terasen relocation costs under section 20. Any dispute that the parties are unable to resolve, acting in good faith, respecting the provision of information under this section, may be referred to dispute resolution under section 53.

Construction Compliance, Remedies and Supervision

22. The following shall apply to the construction by UBC within the E/W Arterial Extension (the "UBC Construction"):

- (a) UBC will comply with the provisions of all CoK bylaws throughout the UBC Construction. If any material or debris is left on any road after the UBC Construction but before commissioning, UBC covenants and agrees that the CoK may forthwith remove such material or debris at the expense of UBC, the cost of such removal to be determined by a CoK Engineer. The cost of removal of such material or debris shall be payable by UBC to the CoK within thirty (30) days of receipt of an invoice for same from the CoK;
- (b) UBC shall submit to the CoK final as-built drawings on mylar transparencies of all roads and services as constructed and as approved by a CoK Engineer. UBC shall pay to the CoK any inspection fees, administration fees, engineering fees, levies, charges or legal costs incurred by the CoK that are directly attributable to the roads covered by Part Two;
- (c) UBC shall at all times in connection with the UBC Construction, keep and employ a competent general superintendent with the authority to act on behalf of UBC and capable of speaking, reading and writing the English language and any explanations, orders, instructions, directions and requests given by the CoK to such superintendent shall be held to have been given to UBC;
- (d) Upon request by the CoK, UBC shall provide the CoK from time to time with statutory declarations certifying that all labour, material, workers' compensation, and other accounts and assessments respecting the UBC Construction have been paid;
- (e) The CoK shall permit UBC to perform all the works herein upon the terms and conditions herein contained;

- (f) UBC shall, for a period of one (1) year from the completion of the UBC Construction:
- (i) maintain the UBC Construction works in complete repair for thereof as certified by the CoK Engineer; and
 - (ii) remedy any defects appearing and pay for any damage to other work or property resulting therefrom save and except for defects caused by reasonable wear and tear, negligence of the CoK, its servants or agents, or acts of God or by vandalism proven to have been committed after the date of completion;

If UBC does not do so, the CoK may undertake the work at the cost of UBC. The cost shall be payable by UBC to the CoK within thirty (30) days of receipt of an invoice for same from the CoK. It is understood that the CoK may do such work either by staff or by contractors employed by the CoK.

Consent for Bridge Construction

23. No bridge shall be constructed within or over the E/W Arterial Extension without obtaining UBC's written consent to the design, construction and location.

PART THREE – HOLLYWOOD ROAD NORTH, INNOVATION DRIVE AND LOCAL ROAD CROSS CONNECTION

Road Reserve

24. Concurrent with the registration of the road dedications under Sections 2 and 13, UBC will:

- (a) Dedicate as highway, that part of the North Lot shown in blue as Innovation Drive on the drawing attached as Schedule "D" (the "Part Three Highway Dedication (Innovation Drive)") and shall execute such plan as necessary to do so; and
- (b) grant to the CoK and register a road reserve over that part of the North Lot shown on Schedule "D" as Hollywood Road North (including that area shown as Local Road Connection on Schedule "D") in the form of the agreement attached as Appendix "A" (the "Part Three Road Reserve (Hollywood Rd North)");

(collectively the "Part Three Road Reserve and Dedication").

Registration of Highway Reserve Covenants

25. The Part Three Highway Dedication (Innovation Drive) under section 24 must be registered concurrent with registration of the road dedications under Sections 2 and 13. UBC must ensure that the Part Three Road Reserve (Hollywood Rd North) is registered as a priority charge on title to the North Lot or a consolidation encompassing the North Lot, subject to under-surface rights, statutory rights of way, and existing Crown reservations.

Conditions Precedent to Road Reserve – Sections 24 and 25

26. The obligations under sections 24 and 25 shall be subject to the following condition precedent being satisfied on or before the dates stipulated:

- (a) the conditions precedent specified in section 15; and
- (b) On or before adoption of the Removal of Highway Dedication Bylaw UBC receiving the approval of the minister to grant the Part Three Road Reserve (Hollywood Rd North) pursuant to section 50(2) of the *University Act*.

This condition precedent is statutorily required of UBC and cannot be waived.

Driveway Connections

27. The CoK agrees that upon the event of UBC dedicating and constructing as highway the roads pursuant to the terms of the Part Three Road Reserve (Hollywood Rd North), UBC shall be entitled to the following:

- (a) On the dedication and construction of Innovation Drive, a minimum of one private driveway connection onto Innovation Drive constructed in accordance with SS-R2 the standards for driveway construction in the Effective Servicing Bylaw at a location or locations acceptable to the City Engineer;
- (b) On the dedication and construction of Hollywood Road North two private driveway connections from the west onto Hollywood Road North constructed in accordance with the SS-R2 standards for driveway construction in the Effective Servicing Bylaw at a location or locations acceptable to the CoK City Engineer on the North Lot. Consent of the CoK City Engineer shall be required before any additional private driveway connections by UBC onto Hollywood Road North at locations on the North Lot, and such connections must be at a location or locations acceptable to the CoK City Engineer.

Hollywood Road North Transition Future Road Closure and Transfer

28. Upon completion of construction of Hollywood Road North following UBC's dedicating Hollywood Road North, the CoK agrees to transfer to UBC the area shown on Schedule "D" as Hollywood Road North Transition (Future Road Closure).

Conditions Precedent to Hollywood Road North Transition Road Closure and Transfer

29. The CoK's obligations under section 28 shall be subject to the following conditions precedent first being satisfied:

- (a) The Council of the CoK adopting a bylaw (the "Removal of Highway Dedication Bylaw No.3") to permanently close the Hollywood Road North Transition (Future Road Closure) and to remove its dedication as highway;
- (b) The Approving Officer of the CoK approving a reference plan of consolidation (the "Consolidation Plan No. 3") to consolidate the Hollywood Road North Transition (Future Road Closure) with the North Lot or a consolidation encompassing the North Lot and Lot B, Plan 81399 in the event that the CoK determines that it is required to return any portion of the Hollywood Road North Transition (Future Road Closure) to the owner of Lot B, Plan 81399.

These conditions precedent are for the benefit of both the CoK and UBC and cannot be waived.

Payment for Section 24 Road Reserves and Section 28 Transfer

30. The CoK will pay UBC \$1.00 upon registration the Part Three Road Reserve (Hollywood Rd North) contemplated by section 24. UBC will pay the CoK \$1.00 upon registration of the transfer of the Hollywood Road North Transition (Future Road Closure). In the event that the areas to be reserved, thereafter dedicated or transferred, vary from the areas shown on Schedule "D", the parties agree that the purchase price(s) will not be adjusted.

Costs of Section 24 Road Reserves and Section 28 Transfer

31. UBC will be responsible for all costs to complete the registration of the Part Three Road Reserve (Hollywood Rd North) and the transfer of the Hollywood Road North Transition (Future Road Closure), but not limited to, any and all surveys, easements and right of way surveys, subdivision application fees, and legal costs to prepare and register all documents necessary to complete the Land Title registrations contemplated in this Agreement.

Costs of Construction

32. UBC will be responsible for the cost of construction of Innovation Drive to local collector road standards for the Effective Servicing Bylaw (Standard SSR7 Urban) on a shared cost basis with neighbouring landowners consistent with standard practices of the CoK, such that UBC will be responsible for curbs, gutters, a sidewalk plus one-half of the paved roadway. UBC shall not be responsible for the cost of design or construction, or the associated costs and service installations, of Hollywood Road North extending north from the limit of the Flyover Project excepting that should UBC construct this portion of Hollywood Road North to meet its development objectives, UBC will be responsible for the costs of construction but shall be entitled to receive credit, according to City of Kelowna policy against road development cost charges.

No Representations as to Environmental Conditions

33. UBC agrees to accept the transfer of the Hollywood Road North Transition (Future Road Closure) on an "as is" basis and condition. UBC acknowledges and agrees that the CoK has not made any representations, promises, warranties or agreements as to the condition or quality of the Hollywood Road North Transition (Future Road Closure), including as to:

- (a) The subsurface nature or condition of the Hollywood Road North Transition (Future Road Closure) (including soil type, hydrology and geotechnical quality or stability);
- (b) The environmental condition of the Hollywood Road North Transition (Future Road Closure) (including regarding contaminants in, on, under or migrating from the Hollywood Road North Transition (Future Road Closure)) or regarding the compliance of the same, or past or present activities on it, with any environmental laws; or
- (c) The suitability of the Hollywood Road North Transition (Future Road Closure) for UBC's intended use for, or development of, the Hollywood Road North Transition (Future Road Closure).

34. The CoK agrees to accept the transfer of the lands under the Part Three Road Reserve and Dedication, when each is dedicated, on an "as is" basis and condition. The CoK acknowledges and agrees that UBC has not made any representations, promises, warranties or agreements as to the condition or quality of the lands under the Part Three Road Reserve and Dedication, including as to:

- (a) The subsurface nature or condition of the lands under the Part Three Road Reserve and Dedication (including soil type, hydrology and geotechnical quality or stability);

- (b) The environmental condition of the lands under the Part Three Road Reserve and Dedication (including regarding contaminants in, on, under or migrating from the lands under the Part Three Road Reserve and Dedication) or regarding the compliance of the same, or past or present activities on it, with any environmental laws; or
- (c) The suitability of the lands under the Part Three Road Reserve and Dedication for the CoK's intended use for, or development of, the lands under the Part Three Road Reserve and Dedication.

Concurrent Registration

35. The plan to remove the highway dedication over the Hollywood Road North Transition (Future Closure) and the Consolidation Plan No. 3 shall be registered in the Kamloops Land Title Office as an all-or-nothing concurrent package and in conjunction with the following documents in the following order:

- (a) Removal of Highway Dedication Bylaw No. 3 (two certified copies) with filing letter to Registrar;
- (b) The Reference Plan of highway dedication removal;
- (c) Form 17 to raise title to the Hollywood Road North Transition (Future Road Closure) in the name of the CoK;
- (d) Form A Transfer of the Hollywood Road North Transition (Future Road Closure) from the CoK to UBC, with UBC's Property Transfer Tax Act form and cheque;
- (e) Consolidation Plan No. 3;
- (f) A certificate cancelling the right of resumption pursuant to the Resumption of Highways Regulation, B.C. Reg. 245/2004.

No Obligation to Provide Access to Lot B

36. The CoK acknowledges and agrees that upon completion of the dedication and construction of Hollywood Road North and the closure of the intersection of University Way and Highway 97, UBC will be under no obligation to provide access across the North Lot to Lot B, Plan 81399.

PART FOUR – QUAIL RIDGE LOCAL ROAD**Road Reserve**

37. Concurrent with the registration of the highways contemplated by Sections 2, 13, and 24 UBC must grant to the CoK a road reserve 40 metres in width over that part of the North Lot shown as Quail Ridge Road Reserve on the drawing attached as Schedule "F". The grant of road reserve will be in the form of agreement attached as Appendix "A" (the "Quail Ridge Road Reserve Covenant") and must include a provision that, upon dedication and construction of the eventual Quail Ridge Road Extension, the CoK will cause the Quail Ridge Road Reserve Covenant to be discharged from the North Lot not dedicated as highway. UBC must ensure that the Quail Ridge Road Reserve Covenant is registered as a priority charge on title to the North Lot.

Road Dedication

38. The parties acknowledge and agree that the Quail Ridge Road Reserve Covenant is intended to secure the dedication of a highway 20 metres in width and in accordance with standard SS-R5 of the Effective Servicing Bylaw (the "Quail Ridge Road Extension") but that as of the date of this Agreement they have not determined the precise location for this 20 meter wide highway so have agreed on the 40 meter wide road reserve to accommodate the highway and the slopes required to support the highway within the Quail Ridge Road Reserve. The parties hereby commit and agree to use their best efforts to determine the exact location and alignment of the Quail Ridge Road Extension which is intended to provide access to non-landlocked lands neighbouring UBC, and not for UBC's benefit.

Payment and Costs

39. UBC agrees that the consideration for registration of the Quail Ridge Road Reserve shall be \$1.00, which the CoK will pay to UBC upon registration of the Quail Ridge Road Reserve Covenant. UBC shall be responsible for all costs to register the Quail Ridge Road Reserve Covenant, including survey, legal costs and applicable application fees. UBC shall not be responsible for the cost of design or construction of the Quail Ridge Road Extension highway, or associated costs and service installations, except UBC will be responsible for the foregoing costs should it construct the Quail Ridge Road Extension to provide UBC traffic with access to lands neighbouring UBC, for UBC's benefit. UBC may build a private driveway or roadway crossing the Quail Ridge Road Reserve, at its cost before construction of the Quail Ridge Road Extension and subject to it being removed, replaced or altered by such construction without compensation to UBC. This paragraph is not predeterminative of cost allocation for extension of the Quail Ridge Road Extension onto lands neighbouring UBC to the west and itself is subject to review and may be amended expressly in a subsequent agreement of the parties concerning such lands.

Agreement Conditions Precedent

40. This Agreement shall be subject to the satisfaction of the following conditions precedent on or before the dates stipulated:

- (a) Council Approval –before adoption of the Removal of Highway Dedication Bylaw, the Council of the CoK has approved this Agreement, in its sole discretion;

This condition precedent is for the sole benefit of the CoK and cannot be waived.

- (b) Statutory Notices – on or before April 2, 2008, the CoK has posted at the City Hall and published two newspaper notices under sections 26 and 40 of the *Community Charter* that:
 - (i) it intends to close the University Way Closure, and
 - (ii) transfer the University Way Closure.

This condition precedent is for the sole benefit of the CoK and cannot be waived.

PART FIVE – CONSTRUCTION LICENCE AND BUILDING SETBACKS

Grant of Construction Licence

41. UBC hereby grants to the CoK and MoT the full, free and unrestricted right and licence (the “Construction Licence”) to enter:

- (a) The area shown as the Construction Licence Area on Schedule “A”;
- (b) The area six metres in width on either side of and running parallel and the length of, and adjacent to the following:
 - (i) the E/W Arterial Road Dedication;
 - (ii) regarding the E/W Arterial Road Reserve:
 - (A) the E/W Arterial Road Reserve, while extant and thereafter until commissioning of the E/W Arterial Extension built on the UBC Lands; and
 - (B) any highway dedication (if needed) within the E/W Arterial Road Reserve;

- (iii) regarding the Part Three Road Reserve (Hollywood Rd North):
 - (A) the Part Three Road Reserve (Hollywood Rd North), while extant and thereafter upon dedication of lands within the reserve until commissioning of the highway built within the lands so dedicated; and
 - (B) the highway dedication within the Part Three Road Reserve (Hollywood Rd North);
- (iv) the Part Three Highway Dedication (Innovation Drive); and
- (v) regarding the Quail Ridge Road Reserve:
 - (A) the Quail Ridge Road Reserve, while extant and thereafter upon dedication of lands within the reserve until commissioning of the highway built within the lands so dedicated; and
 - (B) the highway dedication within the Quail Ridge Road Reserve;

for the purposes of:

- (c) Construction and staging for active or immediately pending road construction; and
- (d) After completion of the road construction, ongoing maintenance of the roadways and slopes and construction and/or staging for active or immediately pending future widening and four laning of Hollywood Road North.

Construction Licence Indemnity

42. The CoK indemnifies and saves harmless UBC from all actions, suits, demands, costs and expenses, claims and other harm which UBC may suffer or incur as a result of the CoK's entry onto and use of the Construction Licence Area in accordance with section 41 of this Agreement.

Building Setback and Building in Construction License Area

43. No building or structure shall be constructed within:

- (a) the areas subject to a Construction Licence unless otherwise agreed by CoK, at CoK's sole discretion;; or

- (b) six metres from:
- (i) the top of a cut slope for the E/W Arterial Extension; or
 - (ii) the bottom of a fill slope for the E/W Arterial Extension;

unless the CoK is satisfied with the applicable geotechnical report such that there will be no adverse effect upon the adjacent highway or the proposed building or structure.

PART SIX – GENERAL

Assignment

44. This Agreement is assignable by UBC without the consent of the CoK if firstly, the Assignee agrees in writing to be bound by the terms and conditions of this Agreement, and secondly, UBC agrees in writing to continue to be bound by the terms and conditions of this Agreement.

Enurement

45. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Registrable Form

46. All documents required to give effect to this Agreement shall be delivered in registrable form where necessary and shall be lodged for registration in the appropriate Land Title Office on or before the Completion Date

Concurrent Registration

47. The intent of the parties is that the road dedications, reservations and closure provided for in this Agreement shall be registered as a package. The registrations provided for in sections 2, 8, 13, 14, 25 and 37 shall be registered in the Kamloops Land Title Office as an all-or-nothing concurrent package.

Legal Costs Responsibility

48. The cost of all legal advice by either party, other than Land Title registration, will be at the expense of that party. UBC will retain independent legal counsel to search and certify title to the respective real properties being received and to facilitate the exchange of land anticipated herein. Each party shall bear its own costs and legal fees associated therewith.

No Implied Approvals

49. Nothing in this Agreement shall be construed to imply any specific approvals for development intended by UBC. Any intended development by UBC may require the approvals of, but not limited to, the CoK Council, the Subdivision Approving Officer, MoT and the Ministry of Environment, Parks and Land. UBC is separately responsible for obtaining any of the required approvals for subdivision and any intended development on the respective UBC Lands other than those under taken by the CoK, the MoT or at the behest of either.

Notice

50. Any notice given under this Agreement shall be sufficient and deemed received three days after deposit in the mail, postage prepaid, to UBC at the address as set forth herein, and to the CoK at the address noted herein, to the attention of the Manager of Transportation.

Waiver

51. No failure by either UBC or the CoK to insist on the strict performance of any covenant, duty or condition of this Agreement, or to exercise any right or remedy consequent on a breach of this Agreement shall constitute a waiver of any such breach of any covenant, duty or condition. Either UBC or the CoK may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to waive any of the rights of such party or any conditions to the obligations of such party under this Agreement, or in any covenant or duty or any other party under this Agreement. No waiver shall affect or alter the remainder of this Agreement but each other covenant, duty and condition of this Agreement shall continue in full force and effect of the respect to any other then existing or subsequently occurring breach.

Authority to Execute

52. Any individual executing this Agreement does represent and warrant to each other so signing that he/she has been duly authorized to deliver this Agreement in the capacity and for the entity set forth where he/she signs.

Dispute Resolution

53. (a) If either party to this Agreement determines that there is a matter in dispute between them requiring a specific meeting, such party shall forthwith advise the other by a fax letter setting out the nature of the dispute and the suggested time and place of the meeting. The other party shall reply within seventy-two (72) hours of receiving the letter and the meeting shall take place within seven (7) working days of the first notice;

- (b) If the matter in dispute is not resolved within five (5) working days of the date of the first meeting, or if either party should fail to attend any scheduled meeting, the matter in dispute will be referred forthwith, for binding determination, to a single arbitrator appointed by the British Columbia Arbitration and Mediation Institute and acting pursuant to the provisions of the *Commercial Arbitration Act* of British Columbia. Each of the parties covenants and agrees to co-operate with each other to ensure that any decision may be reached within twenty (20) working days of the arbitrator; and
- (c) The arbitrator may, at his sole discretion, award costs to either party.

Entire Agreement

54. This Agreement sets forth the entire agreement and understanding of the parties with respect to its subject matter and this Agreement supersedes all prior proposals, writings, agreements and understandings between the parties with respect to the matters herein, and there are no oral or written agreements, promises, warranties, terms, conditions, representations or collateral agreements whatsoever, express or implied, other than those contained in this Agreement with the exception of:

- Flyover Agreement
- Bylaw 9734 – the Hwy 97 Flyover Development Works Agreement

Termination

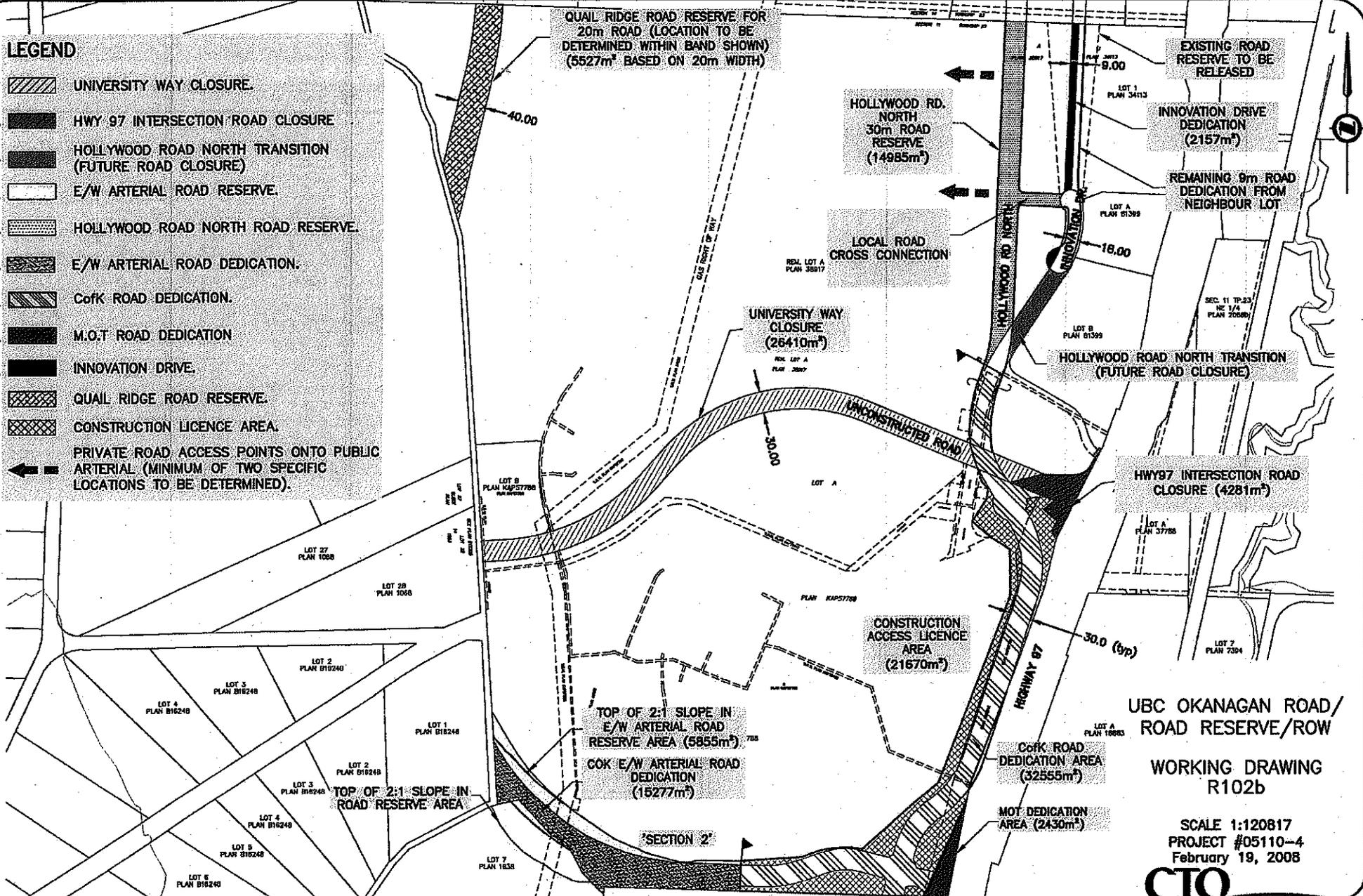
55. The following provision shall survive termination of this Agreement:

- (a) If:
- (i) by March 31, 2008 the UBC Lands have not been zoned to the new "CD20" zoning applied for by UBC so as to enable the development of a university campus; and
 - (ii) by June 30, 2008 the registrations referenced in section 47 are not registered as an all-or-nothing package;

then at UBC's option UBC may terminate this Agreement without any obligation or liability to CoK arising in relation to this Agreement or its termination.

LEGEND

1.  UNIVERSITY WAY CLOSURE.
2.  HWY 97 INTERSECTION ROAD CLOSURE
3.  HOLLYWOOD ROAD NORTH TRANSITION (FUTURE ROAD CLOSURE)
4.  E/W ARTERIAL ROAD RESERVE.
5.  HOLLYWOOD ROAD NORTH ROAD RESERVE.
6.  E/W ARTERIAL ROAD DEDICATION.
7.  CoK ROAD DEDICATION.
8.  M.O.T ROAD DEDICATION
9.  INNOVATION DRIVE.
10.  QUAIL RIDGE ROAD RESERVE.
11.  CONSTRUCTION LICENCE AREA.
12.  PRIVATE ROAD ACCESS POINTS ONTO PUBLIC ARTERIAL (MINIMUM OF TWO SPECIFIC LOCATIONS TO BE DETERMINED).

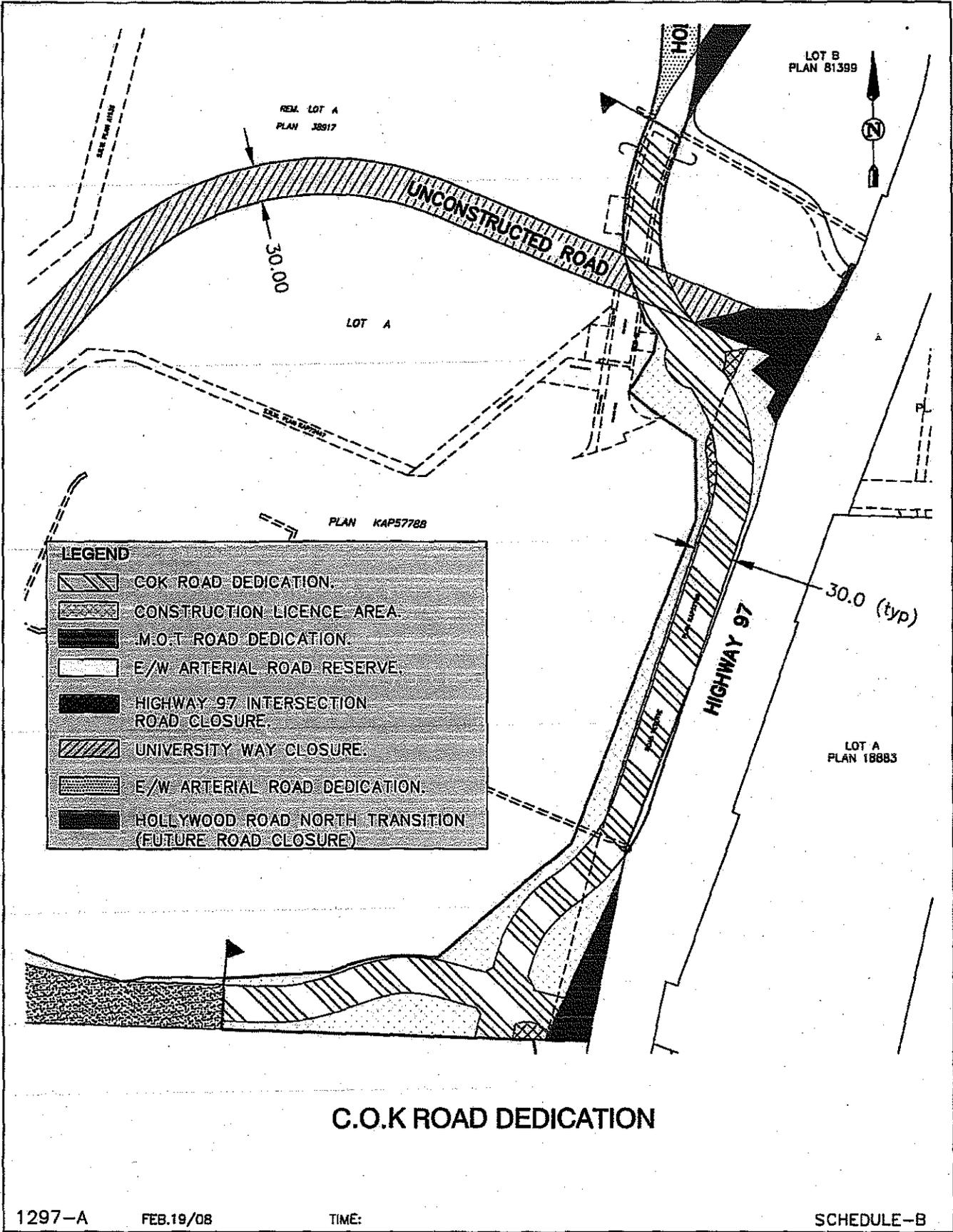


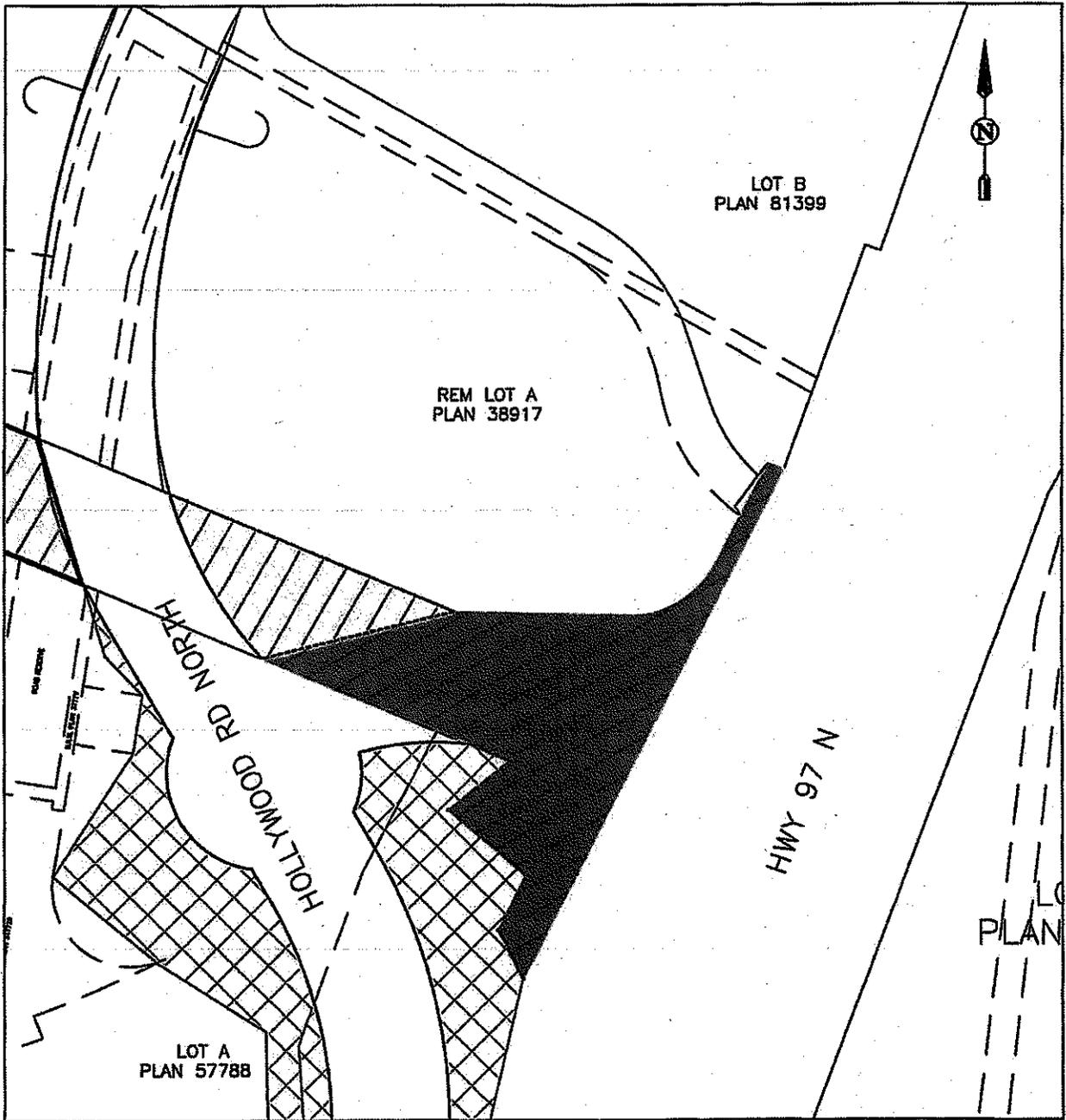
UBC OKANAGAN ROAD/
ROAD RESERVE/ROW

WORKING DRAWING
R102b

SCALE 1:120817
PROJECT #05110-4
February 19, 2008







HIGHWAY 97 INTERSECTION ROAD CLOSURE

SCALE _____

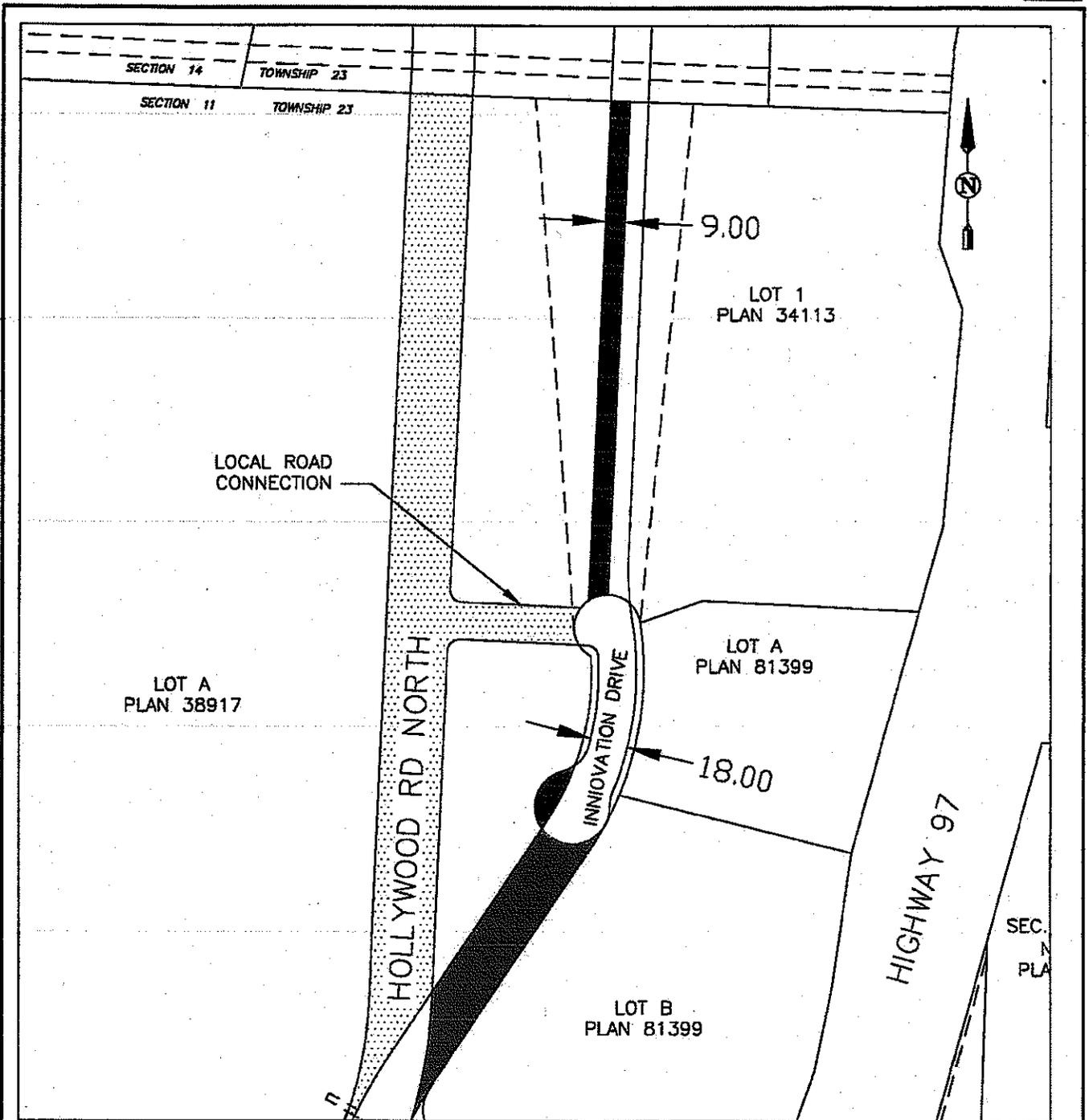
MAILING ADDRESS _____

LEGAL DESCRIPTION: LOT NO. _____ PLAN NO. _____

SEC. _____ TWP. _____



HWY 97 INTERSECTION ROAD CLOSURE--AREA=4,281sqm±



HOLLYWOOD ROAD NORTH ROAD RESERVE & INNOVATION DRIVE DEDICATION

MAILING ADDRESS _____

LEGAL DESCRIPTION: LOT NO. A PLAN NO. 38917
SEC. _____ TWP. _____

-  HOLLYWOOD ROAD NORTH TRANSITION (FUTURE ROAD CLOSURE)=3,097sqm±
-  INNOVATION DRIVE=2,157sqm±
-  HOLLYWOOD ROAD NORTH ROAD RESERVE=14,985sqm±

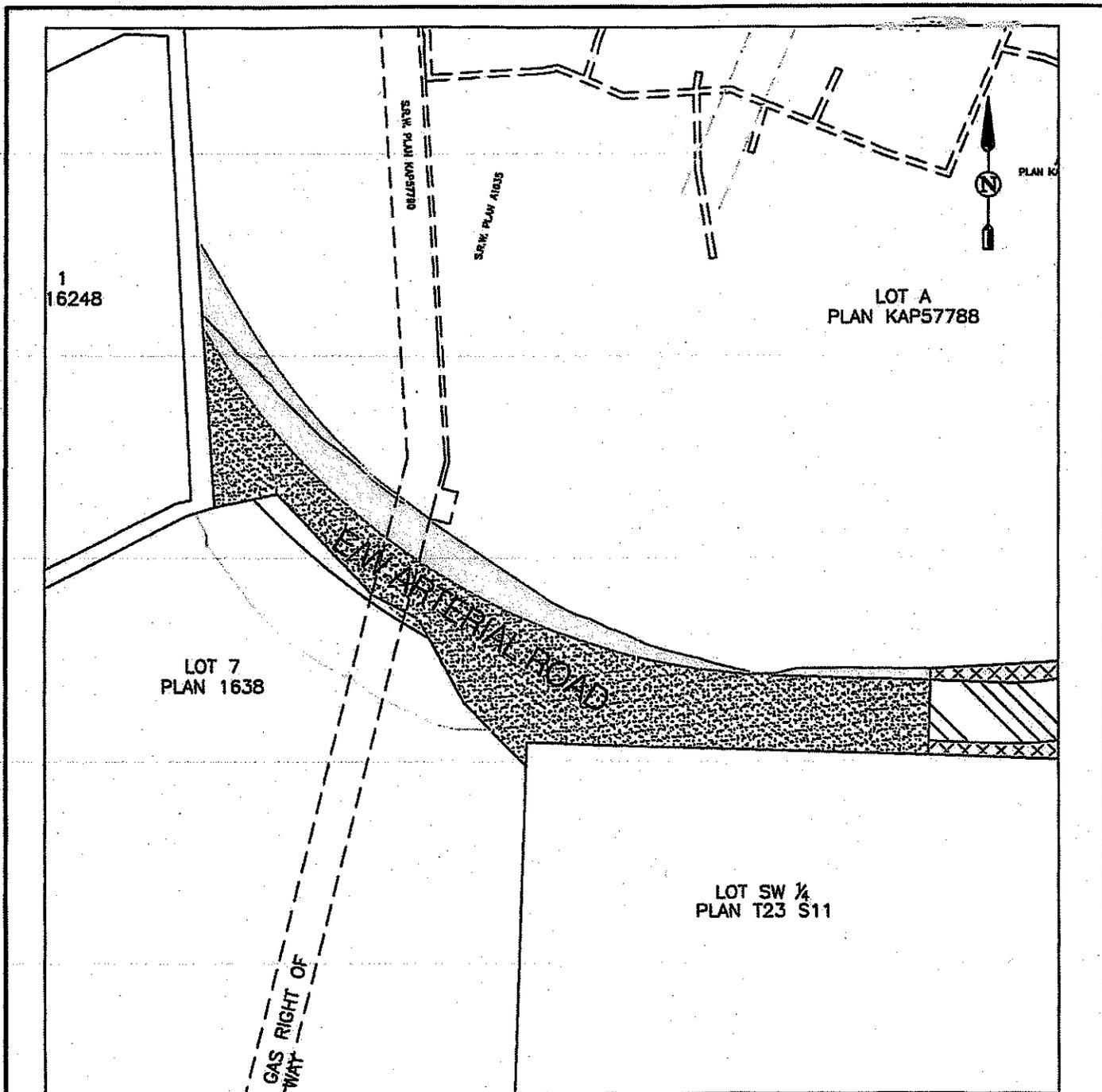
1300

DATE: 2/12/08

TIME: XXX

SCHEDULE-D

END OF DOCUMENT

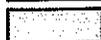


E/W ARTERIAL ROAD DEDICATION

SCALE _____

MAILING ADDRESS _____

LEGAL DESCRIPTION: LOT NO. A PLAN NO. 57788
SEC. _____ TWP. _____

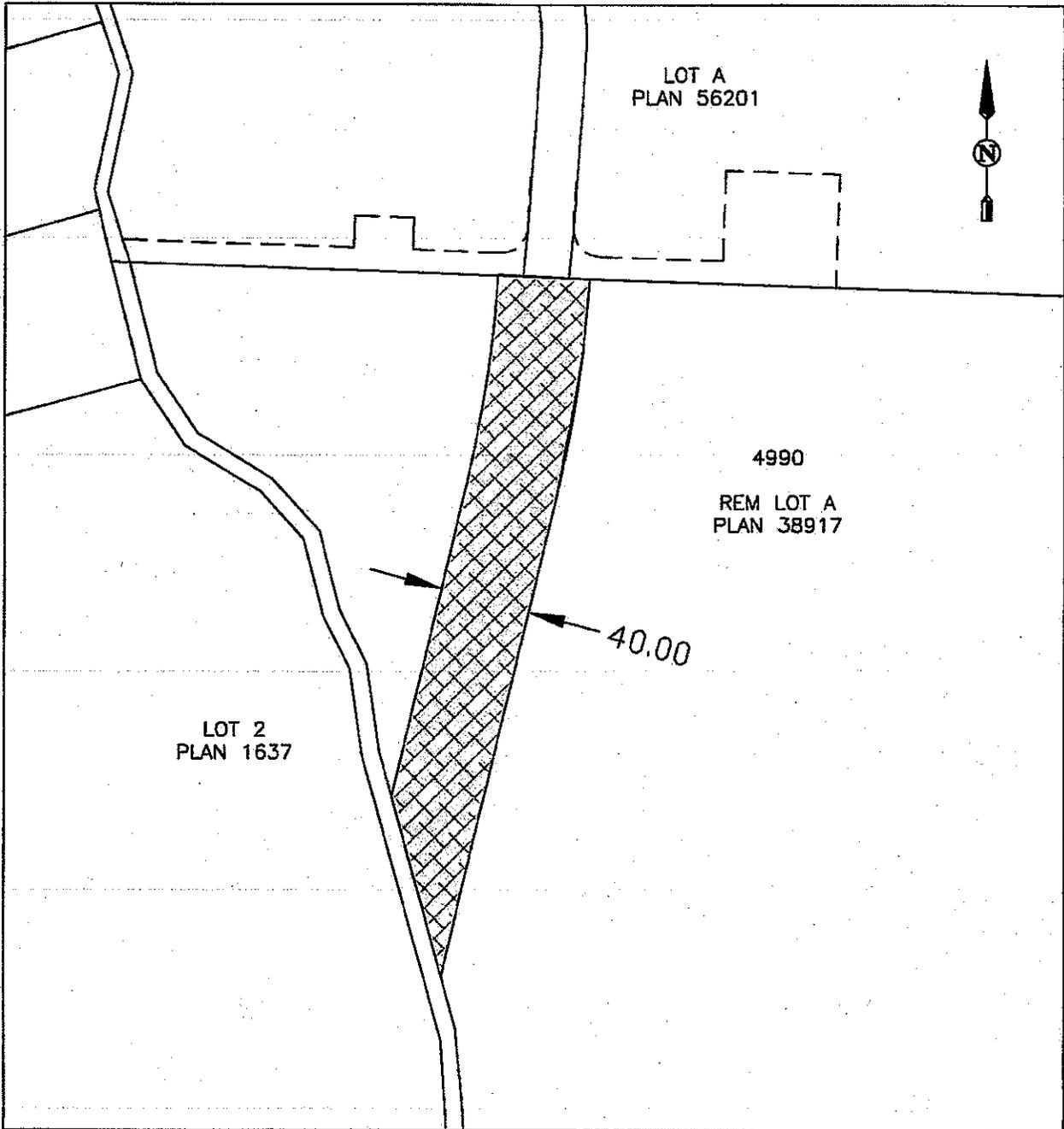
-  E/W ARTERIAL ROAD DEDICATION—AREA=15,281sqm±
-  E/W ARTERIAL ROAD RESERVE—AREA=5,855sqm±

1302

DATE: 12/18/07

TIME: XXX

SCHEDULE—E



QUAIL RIDGE ROAD RESERVE

SCALE N.T.S.

MAILING ADDRESS 4990 HWY 97 N

LEGAL DESCRIPTION: LOT NO. A PLAN NO. 38917
SEC. _____ TWP. _____



QUAIL RIDGE ROAD RESERVE=10,970sqm±

MODIFICATION OF UBC OKANAGAN MASTER ROADS AGREEMENT

This Modification is effective May 16, 2008 (the "Effective Date")

BETWEEN:

THE UNIVERSITY OF BRITISH COLUMBIA,
A body corporate having offices located at
3333 University Way, Kelowna,, British Columbia V1V 1V7, and at
6328 Memorial Road, Kelowna, Vancouver, British Columbia V6T 1Z2

("UBC")

AND:

CITY OF KELOWNA,
A municipal corporation having offices located at
1435 Water Street, Kelowna, BC V1Y 1J4

(the "CoK")

WHEREAS:

- A. UBC and CoK entered into a UBC Okanagan Master Road Agreement (the "Master Road Agreement") dated effective March 10, 2008 on terms and conditions set out therein.
- B. The parties now wish to amend certain terms of the Master Road Agreement as hereinafter set out and to confirm that certain conditions therein have been satisfied.

In consideration of the covenants, conditions, and agreements of UBC and CoK, and \$10 now paid by each other, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of UBC and CoK), the parties covenant and agree as follows:

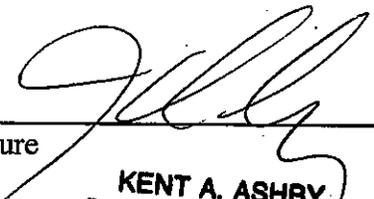
1. The conditions contained in paragraph 3(a) of the Master Road Agreement have been satisfied in full.
2. Paragraph 3(b) of the Master Road Agreement shall be deleted and replaced with the following:

"On or before June 16, 2008 the Approving Officer of the CoK approving a reference plan of consolidation (the "Consolidation Plan") to consolidate the University Way Closure and Lot B with either the North Lot or the South Lot (the "Consolidated Lot")."
3. The conditions contained in paragraph 3(c) of the Master Road Agreement have been satisfied in full.
4. Except as modified, the parties hereby ratify and confirm all other terms and conditions of the Master Road Agreement which remains in full force and effect as herein modified.

- 5. This agreement is binding upon the parties hereto, their successors and assigns.
- 6. This Agreement may be executed in several counterparts, each of which will be deemed to be an original and all of which will together constitute one and the same instrument.
- 7. Delivery of an executed copy of this Agreement by fax or other means of electronic communication producing a printed copy will be deemed to be execution and delivery of this Agreement on the date of such communication by the party so delivering such copy, subject to delivery of an originally executed copy of this Agreement to the party to whom the Agreement was faxed within two weeks of the date of delivery of the copy sent via the electronic communication.

IN WITNESS WHEREOF this Modification Agreement has been executed by duly authorized representatives of the parties as of the day and year first above written.

Executed by UBC in the presence of:



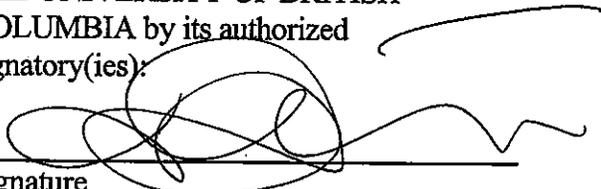
 Signature

KENT A. ASHBY
BARRISTER & SOLICITOR

 Print Name

 Title

THE UNIVERSITY OF BRITISH COLUMBIA by its authorized signatory(ies):



 Signature

Lisa Castle

 Print Name

Acting VP, Administration & Finance

 Title

Executed by UBC in the presence of:



 Signature

KENT A. ASHBY
BARRISTER & SOLICITOR

 Print Name

 Title

THE UNIVERSITY OF BRITISH COLUMBIA by its authorized signatory(ies):

THE UNIVERSITY OF BRITISH COLUMBIA

 Signature

per [Handwritten Signature]

 Associate University Counsel

Mark Crosbie

 Print Name

 Title

Executed by the CoK in the presence of:

Lian Willson
Signature

LIAN WILLSON
Print Name

Legislative Clerk
Title

CITY OF KELOWNA by its authorized signatory(ies):

Sharon Shepherd
Signature

SHARON SHEPHERD, MAYOR
Print Name

Title

Stephen Fleming

STEPHEN FLEMING, DEPUTY CITY CLERK

SECOND MODIFICATION OF UBC OKANAGAN MASTER ROADS AGREEMENT

This Modification is effective ^{June} ~~May~~ 4, 2008 (the "Effective Date")

BETWEEN:

THE UNIVERSITY OF BRITISH COLUMBIA,
A body corporate having offices located at
3333 University Way, Kelowna,, British Columbia V1V 1V7, and at
6328 Memorial Road, Kelowna, Vancouver, British Columbia V6T 1Z2

("UBC")

AND:

CITY OF KELOWNA,
A municipal corporation having offices located at
1435 Water Street, Kelowna, BC V1Y 1J4

(the "CoK")

WHEREAS:

A. UBC and CoK entered into a UBC Okanagan Master Road Agreement dated effective March 10, 2008 and Modification thereof dated May 16, 2008 (collectively the "Master Road Agreement") on terms and conditions set out therein.

B. The parties now wish to further amend certain terms of the Master Road Agreement as hereinafter set out and to confirm that certain conditions therein have been satisfied.

In consideration of the covenants, conditions, and agreements of UBC and CoK, and \$10 now paid by each other, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of UBC and CoK), the parties covenant and agree as follows:

1. The conditions contained in paragraphs 15(b), 15(c), 26(b), 40(a) and 40(b) of the Master Road Agreement have been satisfied in full.

2. Paragraph 15(a) of the Master Road Agreement shall be deleted and replaced with the following:

"On or before June 16, 2008 the Approving Officer of the CoK approving a highway dedication plan to dedicate the E/W Arterial Dedication and the agreement contemplated in section 14";

3. Except as modified, the parties hereby ratify and confirm all other terms and conditions of the Master Road Agreement which remains in full force and effect as herein modified.

4. This agreement is binding upon the parties hereto, their successors and assigns.

THIRD MODIFICATION OF UBC OKANAGAN MASTER ROADS AGREEMENT

This Modification is effective June 24, 2008 (the "Effective Date")

BETWEEN:

THE UNIVERSITY OF BRITISH COLUMBIA,
A body corporate having offices located at
3333 University Way, Kelowna,, British Columbia V1V 1V7, and at
6328 Memorial Road, Kelowna, Vancouver, British Columbia V6T 1Z2

("UBC")

AND:

CITY OF KELOWNA,
A municipal corporation having offices located at
1435 Water Street, Kelowna, BC V1Y 1J4

(the "CoK")

WHEREAS:

A. UBC and CoK entered into a UBC Okanagan Master Road Agreement dated effective March 10, 2008 and Modification thereof dated May 16, 2008 and Modification thereof dated May 2008 (collectively the "Master Road Agreement") on terms and conditions set out therein. ^{June 4}

B. The parties now wish to further amend certain terms of the Master Road Agreement as hereinafter set out and to confirm that certain conditions therein have been satisfied.

In consideration of the covenants, conditions, and agreements of UBC and CoK, and \$10 now paid by each other, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of UBC and CoK), the parties covenant and agree as follows:

1. The conditions contained in paragraphs 3(b), 15(a), and 26(a) of the Master Road Agreement have been satisfied in full.

2. Paragraph 55(a) of the Master Road Agreement shall be deleted and replaced with the following:

- "(i) by July 22, 2008 the UBC Lands have not been zoned to the new "CD20" zoning applied for by UBC so as to enable the development of a university campus; and
- (ii) by July 22, 2008 the registrations referenced in section 47 are not registered as an all-or-nothing package;

then at UBC's option UBC may terminate this Agreement without any obligation or liability to CoK arising relation to this Agreement or its termination."

3. Except as modified, the parties hereby ratify and confirm all other terms and conditions of the Master Road Agreement which remains in full force and effect as herein modified.

4. This agreement is binding upon the parties hereto, their successors and assigns.

5. This Agreement may be executed in several counterparts, each of which will be deemed to be an original and all of which will together constitute one and the same instrument.

6. Delivery of an executed copy of this Agreement by fax or other means of electronic communication producing a printed copy will be deemed to be execution and delivery of this Agreement on the date of such communication by the party so delivering such copy, subject to delivery of an originally executed copy of this Agreement to the party to whom the Agreement was faxed within two weeks of the date of delivery of the copy sent via the electronic communication.

IN WITNESS WHEREOF this Modification Agreement has been executed by duly authorized representatives of the parties as of the day and year first above written.

Executed by UBC in the presence of:

[Redacted Signature]

Signature

Mark Crossie

Print Name

Associate University

Title Counsel

THE UNIVERSITY OF BRITISH COLUMBIA by its authorized signatory(ies):

[Redacted Signature]

Hubert Lai

Print Name

University Counsel

Title

FOURTH MODIFICATION OF UBC OKANAGAN MASTER ROADS AGREEMENT

This Modification is effective July 22, 2008 (the "Effective Date")

BETWEEN:

THE UNIVERSITY OF BRITISH COLUMBIA,
A body corporate having offices located at
3333 University Way, Kelowna, British Columbia V1V 1V7, and at
6328 Memorial Road, Kelowna, Vancouver, British Columbia V6T 1Z2

("UBC")

AND:

CITY OF KELOWNA,
A municipal corporation having offices located at
1435 Water Street, Kelowna, BC V1Y 1J4

(the "CoK")

WHEREAS:

A. UBC and CoK entered into a UBC Okanagan Master Road Agreement dated effective March 10, 2008 and Modification thereof dated May 16, 2008 and Modification thereof dated June 4, 2008 and Modification thereof dated June 24, 2008 (collectively the "Master Road Agreement") on terms and conditions set out therein.

B. The parties now wish to further amend certain terms of the Master Road Agreement as hereinafter set out and to confirm that certain conditions therein have been satisfied.

In consideration of the covenants, conditions, and agreements of UBC and CoK, and \$10 now paid by each other, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of UBC and CoK), the parties covenant and agree as follows:

1. Paragraph 55(a) of the Master Road Agreement shall be deleted and replaced with the following:

"(a) If:

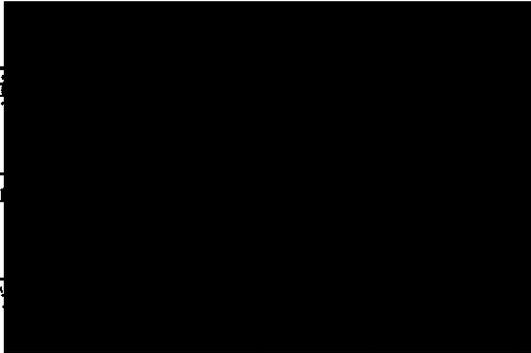
- (i) by August 21, 2008 the UBC Lands have not been zoned to the new "CD20" zoning applied for by UBC so as to enable the development of a university campus; and
- (ii) by August 21, 2008 the registrations referenced in section 47 are not registered as an all-or-nothing package;

then at UBC's option UBC may terminate this Agreement without any obligation or liability to CoK arising in relation to this Agreement or its termination."

2. Except as modified, the parties hereby ratify and confirm all other terms and conditions of the Master Road Agreement which remains in full force and effect as herein modified.
3. This agreement is binding upon the parties hereto, their successors and assigns.
4. This Agreement may be executed in several counterparts, each of which will be deemed to be an original and all of which will together constitute one and the same instrument.
5. Delivery of an executed copy of this Agreement by fax or other means of electronic communication producing a printed copy will be deemed to be execution and delivery of this Agreement on the date of such communication by the party so delivering such copy, subject to delivery of an originally executed copy of this Agreement to the party to whom the Agreement was faxed within two weeks of the date of delivery of the copy sent via the electronic communication.

IN WITNESS WHEREOF this Modification Agreement has been executed by duly authorized representatives of the parties as of the day and year first above written.

Executed by UBC in the presence of:



THE UNIVERSITY OF BRITISH COLUMBIA by its authorized

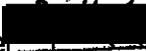


Hubert Lai
Signature

Hubert Lai
Print Name

University Counsel
Title

THE UNIVERSITY OF BRITISH COLUMBIA

per  
Associate University Counsel

FIFTH ADDENDUM/MODIFICATION OF UBC OKANAGAN MASTER ROADS AGREEMENT

This Modification is effective August 9, 2008 (the "Effective Date")

BETWEEN:

THE UNIVERSITY OF BRITISH COLUMBIA,
A body corporate having offices located at
3333 University Way, Kelowna,, British Columbia V1V 1V7, and at
6328 Memorial Road, Kelowna, Vancouver, British Columbia V6T 1Z2

("UBC")

AND:

CITY OF KELOWNA,
A municipal corporation having offices located at
1435 Water Street, Kelowna, BC V1Y 1J4

(the "CoK")

WHEREAS:

A. UBC and CoK entered into a UBC Okanagan Master Road Agreement dated effective March 10, 2008 and Modifications thereof dated: May 16, 2008, June 4, 2008, June 24, 2008 and July 22, 2008 (collectively the "Master Road Agreement") on terms and conditions set out therein.

B. The parties now wish to further amend certain terms of the Master Road Agreement as hereinafter set out and to confirm that certain conditions therein have been satisfied.

In consideration of the covenants, conditions, and agreements of UBC and CoK, and \$10 now paid by each other, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of UBC and CoK), the parties covenant and agree as follows:

1. The condition contained in paragraph 55(a) of the Master Road Agreement has been satisfied in full.

2. Except as modified, the parties hereby ratify and confirm all other terms and conditions of the Master Road Agreement which remains in full force and effect as herein modified.

3. This agreement is binding upon the parties hereto, their successors and assigns.

4. This Agreement may be executed in several counterparts, each of which will be deemed to be an original and all of which will together constitute one and the same instrument.

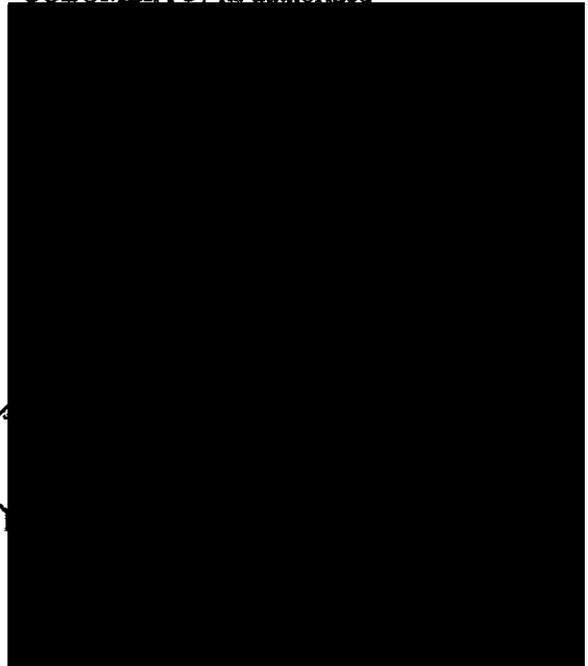
5. Delivery of an executed copy of this Agreement by fax or other means of electronic communication producing a printed copy will be deemed to be execution and delivery of this Agreement on the date of such communication by the party so delivering such copy, subject to delivery of an originally executed copy of this Agreement to the party to whom the Agreement was faxed within two weeks of the date of delivery of the copy sent via the electronic communication.

IN WITNESS WHEREOF this Modification Agreement has been executed by duly authorized representatives of the parties as of the day and year first above written.

Executed by UBC in the presence of:



THE UNIVERSITY OF BRITISH
COLUMBIA by its authorized



Executed by the CoK. in the presence of:

Signature

Print Name

Title

CITY OF KELOWNA by its authorized signatory(ies):

Signature

Print Name

Title