

**CITY OF KELOWNA
BYLAW NO. 9734**

**Highway 97 (UBCO) Flyover Development Works
Agreement**

WHEREAS pursuant to the provisions of Section 937.1 of the *Local Government Act*, the Council of the City of Kelowna is empowered by bylaw to enter into an agreement for the provision of works;

AND WHEREAS pursuant to section 937.1(4)(c) of the *Local Government Act* a petition for the development works agreement has been presented to Council, and the petition has been determined as sufficient pursuant to section 212 of the *Community Charter*;

NOW THEREFORE, the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. The Council is hereby authorized to enter into and carry out the Highway 97 Flyover Development Works Agreement with the University of British Columbia attached to and forming part of this bylaw as Schedule "A" for the installation of highway works described therein.
2. The Mayor and Clerk are authorized to execute, seal and deliver the Highway 97 Flyover Development Works Agreement and all other transfers, statements, plans, documents and other instruments contemplated by or necessarily relating to the agreement.
3. This bylaw shall take effect on the date of its adoption by Council.
4. This bylaw shall be cited as "Highway 97 (UBCO) Flyover Development Works Agreement Bylaw No. 9734".

Read a first, second and third time by the Municipal Council this 29th day of January, 2007.

Adopted by the Municipal Council of the City of Kelowna this day of , 2007.

Mayor

City Clerk

Schedule "A"
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CITY OF KELOWNA
HIGHWAY 97 FLYOVER DEVELOPMENT WORKS AGREEMENT

(Section 937.1, *Local Government Act*)

This Agreement made the 1st day of January, 2007.

BETWEEN:

THE CITY OF KELOWNA, a municipal corporation incorporated under the *Local Government Act* and having offices at 1435 Water Street, Kelowna B.C. V1Y 1J4

(the "City")

AND:

THE UNIVERSITY OF BRITISH COLUMBIA, a corporate body continued under the *University Act* and having offices at 6328 Memorial Road, Vancouver B.C. V6T 1Z2

("UBC")

WHEREAS:

- A. UBC intends to develop certain lands in the City in the vicinity of Highway 97;
- B. The City and UBC have agreed to share with the Ministry of Transportation of the Province of B.C. (the "Ministry") the cost of upgrading Highway 97 to accommodate additional traffic including traffic generated by UBC's development, which upgrading is generally described in Schedule A to this Agreement (the "Highway Works"), and the City and UBC have agreed to make provision for the payment of UBC's share of the cost of the Highway Works as set out in this Agreement; and
- C. A sufficient petition for this Agreement has been presented to the City's Council.

NOW THEREFORE UBC AND THE CITY, pursuant to s. 937.1 of the *Local Government Act*, and in consideration of the mutual covenants and agreements contained herein, agree as follows:

1. UBC's share of the cost of the Highway Works is one-third of the total cost of the Highway Works (the "UBC Share"). The UBC Share is currently estimated to be \$4,000,000. The City agrees to pay the UBC Share to the Ministry on behalf of UBC as set forth in Article 6 of this Agreement.

2. UBC shall repay to the City the amount of the UBC Share on the basis of supplementary site servicing costs to be charged by the City against the construction of Building V, identified and described on Schedule B to this Agreement (the "Engineering/Management Building").
3. The City will deliver an invoice to UBC in respect for these supplementary site servicing costs (the "City Invoice") prior to the issuance of any building permit authorizing construction of the Engineering/Management Building. UBC will pay the City Invoice within 30 days of receipt.
4. Commencing from the issuance of the City Invoice and until such time as UBC pays the City Invoice:
 - (a) no building inspector or other City official shall be under a duty or obligation to issue any building permit pertaining to, or provide plan review or inspection services in respect of, the Engineering/Management Building; and
 - (b) neither the City nor any municipal officer or employee shall be obliged to do anything necessary for the development of the lands on which the Engineering/Management Building is to be located, as depicted on Schedule B.
5. The supplementary site servicing costs are estimated to be \$390.45 per square meter of gross building area in the Engineering/Management Building based on the estimated gross building area of the Engineering/Management Building and the estimated amount of the UBC Share, but will be recalculated on the basis of the actual gross building area in the Engineering/Management Building and the actual amount of the UBC Share. If the actual amount of the UBC Share is not known until after the issuance of the building permit authorizing construction of the Engineering/Management Building, the City Invoice shall be calculated on the basis of the estimate set forth above and the City and UBC agree to make appropriate adjustments promptly after the actual amount of the UBC Share is known.
6. UBC will direct the Ministry to send bills in respect of the UBC Share (the "UBC Bills") directly to the City, with copies to UBC. The City will pay the UBC Bills by remitting funds directly to the Ministry on behalf of UBC within 30 days of receipt of each such UBC Bill. If the aggregate amount of the UBC Bills received at that date exceeds the aggregate amounts already paid by UBC to the City under Articles 3 and 4 of this Agreement, the City will advise UBC of the amount of the difference in writing within 15 days and UBC will deliver a cheque in that amount to the City within 15 further days. Such cheque will be treated as an advance on supplementary site servicing costs. The City will not be obliged to pay any UBC Bill unless and until it has received such cheque from UBC.

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7. To the extent that the Ministry charges interest or penalties in respect of the UBC Share because the City does not receive any payment from UBC within the timeframes set forth in this Agreement, UBC shall reimburse the City for such interest or penalties and such amounts shall become a debt payable by UBC to the City.

IN WITNESS WHEREOF this Agreement has been executed by duly authorized representatives of the Parties.

THE CITY OF KELOWNA


Name

Name

Title

Title

THE UNIVERSITY OF BRITISH COLUMBIA



Name Hubert Lai



Name SUMNER

University Counsel

Title

VP Admin & Finance

Title

SCHEDULE A

DESCRIPTION OF HIGHWAY WORKS

The project works include the construction of a flyover, roadways, storm drainage utility adjustments and relocations, signalization, illumination, and landscaping for the items of work shown on the design drawings prepared by R.F.Binnie and Associates Ltd. and CWMM Consulting Engineers LTD. and tendered on December 29, 2006:

1. Highway 97 from Ellison Overhead to University Way (L100 Sta. 101+00 to 111+60);
2. University Way from Highway 97 to Hollywood Road (L400 Sta. 400 to 401+60 and L1200 Sta. 1200+00 to 1201+28);
3. the East/West Connector from Highway 97 to the main UBC Okanagan entrance (L200 Sta. 200+00 to 1202+26);
4. Hollywood Road from the East/West Connector to University Way (L500 Sta. 503+03 to 509+44);
5. Highway 97 Off-ramp from Ellison Overhead to Hollywood Road (L700 Sta. 700+01 to 705+10);
6. Highway 97 on-ramp from Hollywood Road to Ellison Overhead (L800 Sta. 800+00 to 804+59);
7. Roadways within the UBC lands and fully funded by UBC (L900 Sta. 900+15 to 903+46 and L300 Sta. 300+04 to 301+37);
8. Borrow supplied to the project free for the clearing and grubbing, stripping and excavation costs along the proposed extension of the East/West Connector west of Sta. 202+26;
9. Upon completion of the roadway construction, necessary landscaping agreed to by the three partners; and
10. Planning to insure linkage and continuity with features or land uses beyond the UBC Okanagan campus. Traffic analysis and functional design will ensure linkages from the components in 2.2.3 and 2.2.4 above extend to their ultimate limit on the UBC Okanagan campus.

TO: CITY OF KELOWNA

PETITION

In accordance with Section 212 of the *Community Charter*, the undersigned petitions the City of Kelowna to enter into a development works agreement under s. 937.1 of the *Local Government Act* to provide the works described in this Petition.

The lands that will be subject to the development works agreement are the lands indicated as the location for Building V on the master plan attached to and forming part of this Petition.

In general terms, the agreement would provide for the undersigned to make contributions towards the construction of an overpass over Highway 97 at University Way, and related highway improvements serving the lands of the undersigned and others lands in the vicinity. The improvements are to be constructed by the Ministry of Transportation in 2006 and 2007. The contributions would be made at the time of issuance of building permits authorizing the construction of buildings in the Agreement Area, on the basis of a charge of approximately \$390.45 per square metre of building area. It is understood that the City and the Ministry of Transportation will be sharing in the cost of the improvements, and that those portions of the cost of the improvements are not within the scope of the development works agreement.

We acknowledge that the total cost to the undersigned to provide contributions under the development works agreement is estimated to be \$4,000,000.

The undersigned are the registered owners in fee simple of the property described in this Petition.

Property Address	Owner(s) Full Name	Owner(s) Residential Address	Owner(s) Signature
	University of British Columbia		