

Memo



Date: January 11, 2011
File: 2250-70-89
To: City Manager
From: Steve Muenz, Development Engineering Manager
Subject: Latecomer Charges - Shayler Court

Recommendation:

THAT Council requires the owner of **Lot 1 PI 7056 Sec 20 & 29 Twp 23 SDYD** which is to be subdivided or developed, to provide the excess or extended services shown in Appendix D of the Latecomer Agreement No. 2250-70-89 attached to the report of the Development Engineering Branch Manager/Community Services, dated January 11, 2011.

AND THAT Council consider the cost to provide the excess or extended services shown in Appendix D of the Latecomer Agreement No. 2250-70-89 in whole or in part, to be excessive:

AND THAT the Latecomer charges be imposed for excess or extended services, as shown in Appendix D of Latecomer Agreement No. 2250-70-89, which are required to be installed as part of the referenced Development Project;

AND THAT Latecomer charges be imposed on the benefiting lands listed in Appendix D of Latecomer Agreement No. 2250-70-89

AND THAT the City enter into Latecomer Agreement No. 2250-70-89 with the owner to be effective upon Substantial Performance of the Excess or Extended Services, and the Mayor and City Clerk be authorized to execute and affix the corporate seal to this Latecomer Agreement;

AND FURTHER THAT the owners of the benefiting lands be advised in writing of the Latecomer charge to be imposed on their land.

BACKGROUND:

Pursuant to the Local Government Act, where an owner of land that is to be subdivided or developed is required to provide excess or extended services by Council, and where Council considers its cost to be provided these services are excessive: then Council can require the services to be paid for by the owner.

However, where the owner is required to pay for these costs, Council is required to:

- (a) determine the proportion of the cost of providing the highway or water, sewerage or drainage facilities that it considers constitutes the excess or extended service:

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- (b) determine which part of the excess or extended service that it considers will benefit each of the parcels of land that will be serviced by the excess or extended service: and
- (c) impose as a condition of an owner connecting to or using the excess or extended service, a charge related to the benefit determined under paragraph (b).

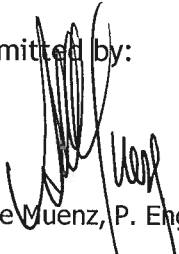
The purpose of this report is to establish these latecomer charges which will be collected from latecomers who connect to or use the designated services for a period fixed by the Latecomer Agreement which shall be no greater than 10 years commencing from the date of **Substantial Performance August 20, 2010** as determined by the City Engineer.

In this particular development, the services which are the subject of a Latecomer charge are identified in Appendix D of the Latecomer Agreement.

All of the benefiting parcels have been identified as Appendix D of the Latecomer Agreement and the total Latecomer charge for each parcel is shown along with a breakdown by individual utility.

Where Development Cost Charge works are proposed to be constructed, a rebate will be made to the owner according to current Development Cost Charge rebate policy. Development Cost Charge works, are not eligible for Latecomer Charges.

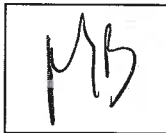
Submitted by:



Steve Muenz, P. Eng.

Development Engineer Manager

Approved for inclusion:



Mo Bayat

Director of Development Services

Considerations not applicable to this report:

Internal Circulation:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

External Agency/Public Comments:

Community & Media Relations Comments:

Alternate Recommendation

LATECOMER AGREEMENT NUMBER 2250-70-89

THIS AGREEMENT dated the 20th day of October 2010

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna BC V1Y 1J4
("the City")

AND:

616507 BC Ltd.
Att: Clark Smith &/or Bob Gruber
53-2200 Gordon Drive
Kelowna, BC, V1Y 8T7
(the "Owner")

WHEREAS:

- A. The Owner has applied to the City to develop the Owner's Lands herein defined on Appendix A and is in accordance with the City's Subdivision and Development Bylaw providing water, sewage, drainage or Highway facilities, or a combination of such facilities, that will serve the Owner's Lands;
- B. A portion of the water, sewage, drainage, or Highway facilities (herein defined as "Excess or Extended Services") will serve the Benefiting Lands herein defined on Appendix B, which Benefiting Lands do not include the Owner's Lands;
- C. The City considers that its costs to provide the Excess or Extended Services in whole or in part are excessive, and requires the Owner of the Owner's Lands, and the owners of any other lands that, in the opinion of the City, will benefit from the Excess or Extended Services, to pay the cost of the Excess or Extended Services;
- D. The City is authorized to enter into this Agreement under Section 939 of the Municipal Act;
- E. The Council of the City has by way of Bylaw No. 6519, as amended or replaced from time to time, set the rate of interest referred to under Section 939(8) of the Municipal Act and in paragraph 3 of this agreement;

THIS AGREEMENT IS EVIDENCE THAT in consideration of the \$1000.00 (plus HST) the mutual covenants and agreements made by each of the parties to the other as set out in this agreement, and for other valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the City and the Owner covenant and agree as follows:

Interpretation

1. In this agreement

- (a) "Benefiting Lands" means the lands other than the Owner's Lands that:
 - (i) in the opinion of the City, will be served by the Excess or Extended Services, which Benefiting Lands are, subject to paragraph 1(a)(ii), legally described on Appendix B;
 - (ii) may be connected to the Excess or Extended Services after completion of those Excess or Extended Services;
- (b) "Excess or Extended Services" means any combination, as shown in Appendix D, of a portion of a:
 - (i) Highway system required to be constructed and installed by the owner that will provide access to land other than the land being subdivided or developed, or
 - (ii) Water, sewage, or drainage system constructed and installed by the owner that will service land other than the land being subdivided or developed;
- (c) "Latecomer" means an Owner of Benefiting Lands;
- (d) "Owner's Lands" means those certain lands equally described in Appendix A and owned by the Owner in respect of which the Owner is constructing works and services, a portion of which systems constitutes the Excess or Extended Services that will serve the Benefiting Lands;
- (e) "Owner" in respect of real property means the registered owner of an estate in fee simple, and includes:
 - (i) the tenant for life under a registered life estate,
 - (ii) the registered holder of the last registered agreement for sale,
 - (iii) the holder or occupier of land held in the manner mentioned in Sections 356 and 357 of the Municipal Act,
- (f) Substantial Performance is the stage of completion of all the Works and Services when:
 - (i) the Works and Services are ready to be used for their intended purpose, as certified by the Consulting Engineer; and
 - (ii) the total of the incomplete, defective and deficient Works and Services can be completed at a cost as estimated by the Consulting Engineer;

and verified by the City Engineer, of no more than 3% of the total cost of the Works and Services.

Payment of Latecomer Charges During Term

2. The City shall pay to the Owner charges imposed by the City under Section 939(5)(c) of the Municipal Act based upon the formula described on Appendix C, only if and to the extent the charges are paid by the Latecomers and collected by the City during the period commencing on the date of Substantial Performance and ending on the earlier of:
 - (i) the date on which the Owner's costs in connection with the Excess or Extended Services, determined in accordance with Section 11.1 of the Subdivision and Development Servicing Bylaw 7900, have been paid to the Owner; or
 - (ii) Aug 20 2020 - Ten Years from the date of Substantial Performance.

Interest

3. There shall be included in the charge payable to the Latecomer under Section 939(5)(c) interest calculated annually at a rate prescribed by a Bylaw of the City, payable for the period commencing on Substantial Performance, up to the date that the connection is made or the use commences, and if paid by the Latecomer and collected by the City during the period referred to in paragraph 2, the interest shall be paid to the Owner.

Assignment or Transfer of Owner's Rights

4. This Agreement may not be assigned by the Owner without the prior written consent of the City. In the event of a dispute as to the beneficiary of this Agreement, the City may, at its option, commence an action in interpleader joining any party claiming rights under this agreement, or other parties which the City believes to be necessary or proper, and the City shall be discharged from further liability on paying the person or persons whom the court having jurisdiction over such interpleader action shall determine, and in such action the City shall be entitled to recover its reasonable legal fees and costs, which fees and costs shall constitute a lien upon all funds accrued and accruing pursuant to this Agreement.

Indemnity

5. The Owner covenants not to sue the City, its administrators, successors, assigns, directors, officers, agents, employees, servants, tenants, solicitors, consultants, and anyone else whom the City is in law liable, by reason of or arising out of or in any way connected with any error, omission, or conduct of the City in relation to the Excess or Extended Services, including, without the generality of the foregoing, a failure of the City to pass a resolution, enact a bylaw, enter into an agreement, impose a charge, calculate a charge correctly, or collect a charge under Section 939 of the Municipal Act.

Termination

6. Upon the expiration of the Term, the City shall be forever released and wholly discharged from any and all liability and obligations hereunder this agreement, or howsoever arising pertaining to the Latecomer Charges, and whether arising before or after the expiry of this Agreement.
7. Paragraphs 5 to 16 shall survive the termination of this Agreement.

Owner Representation and Warranty

8. The Owner represents and warrants to the City that the Owner has not received, claimed, demanded or collected money or any other consideration from the Latecomers for the provision, or expectation of the provision of the Excess or Extended Services, other than as contemplated and as provided for under this Agreement; and further represents and warrants that the Owner has not entered into any agreement the Latecomers for consideration in any way related to or connected directly or indirectly with the provision of the Excess or Extended Services.

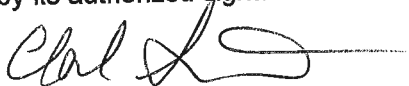
Miscellaneous

9. Time is of the essence.
10. Any notice required by this Agreement will be sufficiently given if delivered by mail to the parties at the addresses first above written.

11. This Agreement will enure to the benefit of and be binding on the parties hereto and their respective successors and assigns.
12. This Agreement shall be governed by the laws of the Province of British Columbia.
13. This Agreement constitutes the entire agreement between the City and the Owner with regard to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written of the City with the Owner.
14. No amendment or waiver of any portion of this agreement shall be valid unless in writing and executed by the parties of this agreement. Waiver of any default by a party shall not be deemed to be a waiver of any subsequent default by that party.
15. A reference, in this Agreement to the City or the Owner includes their permitted assigns, heirs, successors, officers, employees, and agents.
16. The Owner represents and warrants to the City that:
 - (a) all necessary corporate actions and proceedings have been taken by the Owner to authorize its entry into and performance of this Agreement;
 - (b) upon execution and delivery on behalf of the Owner, this Agreement constitutes a valid and binding contractual obligation of the Owner;
 - (c) neither the execution and delivery, nor the performance, of this agreement shall breach any other agreement or obligation, or cause the Owner to be in default of any other agreement or obligation, respecting the Owner's Lands; and
 - (d) the Owner has the corporate capacity and authority to enter into and perform this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first above written.

by its authorized signatories:




Authorized Signatory (Print name and position of person signing)

CLARK SMITH
president 616507 BC LTD

CITY OF KELOWNA
by its authorized signatories:

Authorized Signatory (Print Name) Mayor


Authorized Signatory (Print name and position of person signing)

ROBERT GRUBER
TREASURER 616507 BC LTD

Authorized Signatory (Print Name) City Clerk

Appendix A to Latecomer Agreement 2250-70-89

June 9, 2010

Legal Description of Owner's Land	Roll Number	KID Number
Lot A, Plan KAP89180 - 2890 Shayler Court	3579.038	
Lot B, Plan KAP89180 - 2884 Shayler Road	3579.039	
Lot C, Plan KAP89180 - 2902 Shayler Road	3579.040	
Lot D, Plan KAP89180 - 2930 Shayler Court	3579.041	
Lot E, Plan KAP89180 - 3020 Shayler Court	3579.042	
Lot F, Plan KAP89180 - 3018 Shayler Road	3579.043	
Lot 1, Plan KAP89957 - 3130 Shayler Court	3579.051	
Lot 2, Plan KAP89957 - 3162 Shayler Road	3579.052	
Lot 15, Plan KAP70569 - 3180 Shayler Court	3579.016	
Lot 1, Plan KAP90169 - 3274 Shayler Road	3579.046	732583
Lot 2, Plan KAP90169 - 3570 Shayler Road	3579.054	732595
Lot L, Plan KAP89180 - 3278 Shayler Road	3579.049	
Lot 1, Plan KAP90528 - 3282 Shayler Road	3579.047	
Lot 2, Plan KAP90528 - 3284 Shayler Road	3579.048	

Appendix B to Latecomer Agreement 2250-70-89

June 9, 2010

Legal Description of Benefiting Lands	Roll Number	KID Number
Lot 2, Plan KAP70569 - 2750 Shayler Court	3579.003	
Lot 3, Plan KAP70569 - 2820 Shayler Court	3579.004	
Lot 4, Plan KAP70569 - 2840 Shayler Court	3579.005	
Lot 5, Plan KAP70569 - 2860 Shayler Court	3579.006	
Lot 8, Plan KAP70569 - 2965 Shayler Court	3579.009	
Lot 13, Plan KAP70569 - 3090 Shayler Court	3579.014	

Appendix C to Latecomer Agreement 2250-70-89

June 9, 2010

The charges imposed by the City for the purposes of paragraph 2 will, in respect of the particular **Parcel** of the **Benefiting Lands**, be based on one of the following formula. The selection of appropriate formula will be at the sole discretion of the City.

Construction costs for Water Distribution & Roads $\times \frac{\text{Parcel Frontage}}{\text{Total Frontage}}$ = Cost per Lot

Water Supply, Soft Costs for Professional Fees & Engineering etc. $\times \frac{1}{6}$ = Cost per Lot

Appendix D to Latecomer Agreement 2250-70-89

June 9, 2010

Developer's Name: 616507 BC Ltd.
 Att: Clark Smith &/or Bob Gruber
 53-2200 Gordon Drive
 Kelowna, BC, V1Y 8T7

Project Number: City of Kelowna File: S06-0098
 Arda File: 1009

Legal Description of Benefiting Parcel	Tax Roll No.	Water Distribution	Shallow Utilities	Roads	Water Supply	Soft Costs	Total
Lot 2, Plan KAP70569 - 2750 Shayler Court	3579.003	\$0.00	\$0.00	\$0.00	\$25,107.32	\$3,437.93	\$28,545.25
Lot 3, Plan KAP70569 - 2820 Shayler Court	3579.004	\$3,411.35	\$0.00	\$38,022.08	\$25,107.33	\$3,437.93	\$69,978.69
Lot 4, Plan KAP70569 - 2840 Shayler Court	3579.005	\$2,824.45	\$0.00	\$31,480.65	\$25,107.32	\$3,437.93	\$62,850.35
Lot 5, Plan KAP70569 - 2860 Shayler Court	3579.006	\$2,751.09	\$0.00	\$30,662.96	\$25,107.32	\$3,437.94	\$61,959.31
Lot 8, Plan KAP70569 - 2965 Shayler Court	3579.009	\$4,951.95	\$0.00	\$55,193.34	\$25,107.33	\$3,437.94	\$88,690.56
Lot 13, Plan KAP70569 - 3090 Shayler Court	3579.014	\$3,044.52	\$0.00	\$33,933.70	\$25,107.33	\$3,437.94	\$65,523.49
		\$16,983.36	\$0.00	\$189,292.73	\$150,643.95	\$20,627.61	\$377,547.65

Appendix E to Latecomer Agreement 2250-70-89
Reference Plan

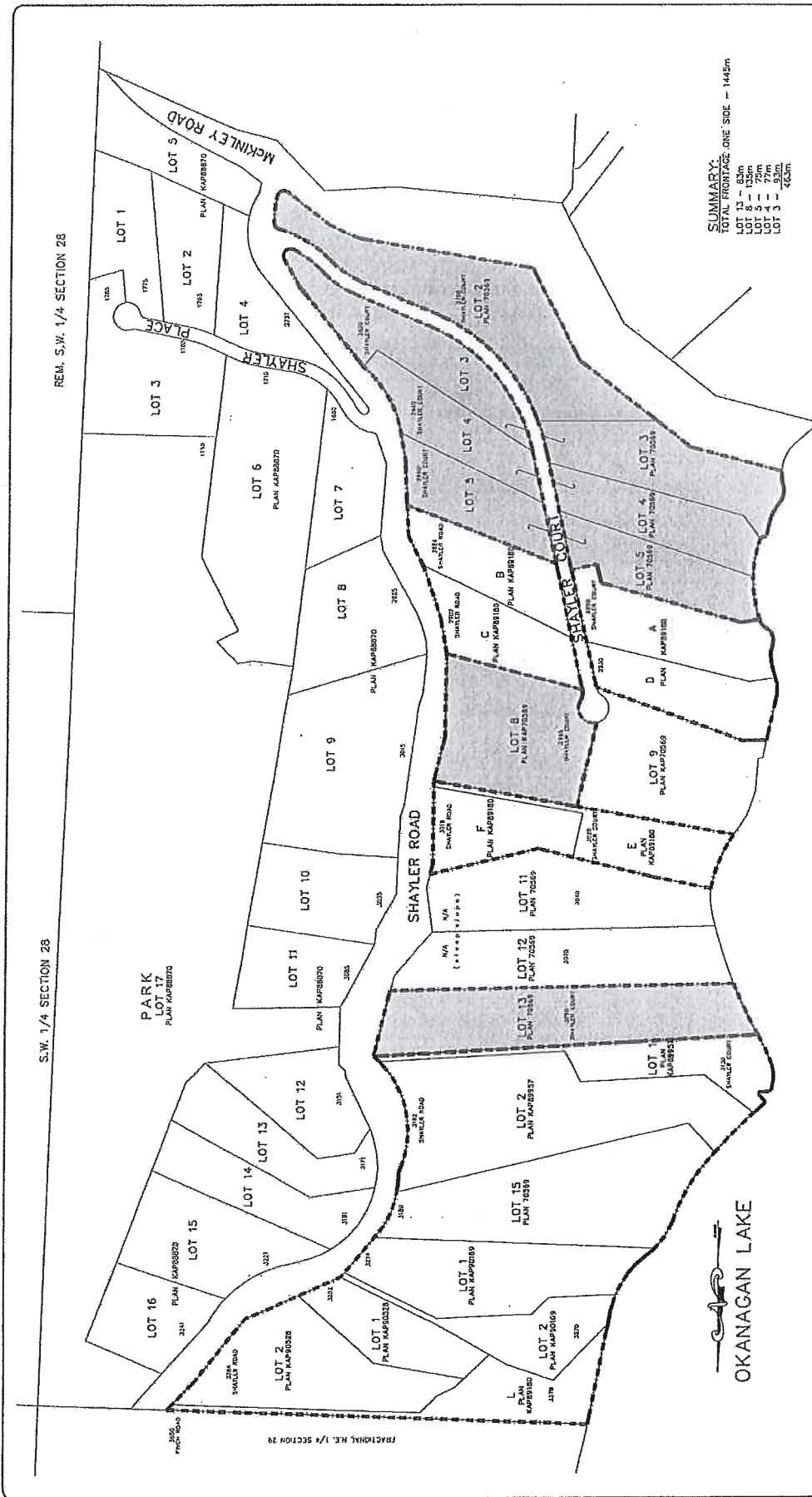
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Att: Clark Smith &/or Bob Gruber
53-2200 Gordon Drive
Kelowna, BC, V1Y 8T7

Project Number: City of Kelowna File: S06-0098
Arda File: 1009

Reference Plan: See Arda Consultants Ltd drawing No. 1009.L1 (Rev0)

McKinley Waterfront Estates - Proportionment for Latecomer								
June 1 2010								
Item	Description	Unit Type	Unit Qty m	Price/unit	Total cost of applic. Works	Apportionment	Latecomer cost	
McKinley Latecomer - Lot 13, 8, 5, 4, 3, 2								
	Total frontage of pertinent lots	l.m	463					
	Hard Costs							
1.0	Dry Sanitary						none	
2.0	Water Distribution (by frontage)					0.5x463/1445		
	250 mm main on Collector	l.m	1445	\$44.00	\$63,580.00	0.161	\$10,208.00	
	Services	ea	0	\$900.00	\$0.00	0.161	\$0.00	
	Hydrants	ea	8	\$5,275.00	\$42,200.00	0.161	\$6,775.36	
	subtotal Water						\$16,983.36	
3.0	Shallows (by frontage)							
	- Collector	L.S.			\$ 378,000.00	N/A	\$0.00	
	- Road 'B'	L.S.			\$ 100,000.00	N/A		
	- FortisBC payment	L.S.			\$ 130,000.00	0.161	\$0.00	
	subtotal Road						\$0.00	
4.0	Roads (by frontage)					0.5x463/1445		
	- Collector - earthworks, gravel, pavement	L.S.			\$ 1,179,000.00	0.161	\$189,292.73	
	- Road 'B'	L.S.			\$ 239,000.00	N/A		
	- Accesses	L.S.			\$ 469,000.00	N/A		
	subtotal Road						\$189,292.73	
	subtotal Hard				\$2,600,780.00		\$206,276.10	
5.0	Water Supply (by extended service)							
	- Reservoir (Cumming Contract)			0.86	\$388,940.00			
	- Reservoir drive			1	\$7,500.00			
	250 mm main on road B and reservoir	l.m	465	\$100.00	\$46,500.00			
	200 mm main on Shayler	L.S.			\$43,432.00			
	- Valve Chamber (616 portion only)			1	\$130,000.00			
	- Excavation and prep(extra)			1	\$50,000.00			
	- Temp Booster			1	\$50,000.00			
	subtotal water				\$661,920.40			
	Engineering (10%)		0.10		\$66,192.04			
	subtotal per lot				\$728,112.44	6/29	\$150,643.95	
	Soft Costs							
6.0	Engineering (10%)		0.10				\$20,627.61	
7.0	GEID fees (ext serv.)	L.S.			\$ 18,200.00	N/A		
	subtotal soft						\$20,627.61	
	Total Costs attributed to 6 future lots (463 m)							\$377,547.66
	Distribution of latecomer by % of lot frontage	Lot #	%	Frontage	Owner		Latecomer	
				m				
		15	0	0	Ginter	cst share	N/A	
		13	17.927	83	Rubini		\$65,523.48	
		12	N/A	0	McKenzie	steep	N/A	
		11	N/A	0	McTavish	steep	N/A	
		10	N/A	0	Gardner	Partner Ph 3	N/A	
		8	29.158	135	Morris		\$88,690.56	
		7	N/A	0	Skoglund	Partner Ph 3	N/A	
		6	N/A	0	Braun	Partner Ph 3	N/A	
		5	16.199	75	Hunter		\$61,959.32	
		4	16.631	77	Tyler		\$62,850.36	
		3	20.086	93	Kindrachuk		\$69,978.69	
		2	ext only	0	Cloutier		\$28,545.26	
	Totals		100.00	463			\$377,547.66	



SUMMARY:
 TOTAL FRONTAGE ONE SIDE = 1445m
 LOT 13 = 85m
 LOT 5 = 77m
 LOT 4 = 77m
 LOT 3 = 465m

Project No.	1009.L1
City/State	THE CITY OF KELOWNA
Project No.	S06-0098
Sheet No.	0
Issue Date	
Author	SHAYLER ROAD
Checker	LATECOMER

Client	
Design	
Location	
Date	
Scale	1:4000

LEGEND

○	CAP	○	OWN	○	SUBMIT AN (EXISTING)
□	CATCH BASIN	◆	OWN	◆	SUBMIT AN (PROPOSED)
▽	TELEPHONE BOX	◇	OWN	◇	STORM-AN (EXISTING)
◇	MANHOLE	○	OWN	○	STORM-AN (PROPOSED)
○	WALK	○	OWN	○	TRANSFORMER
○	CAMP STANDARD	○	OWN	○	UTILITY JUNCTION BOX

No.	DATE	BY	REVISION

