

# ATTACHMENT D

## LAND EXCHANGE AGREEMENT

**THIS AGREEMENT** dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 2019

**BETWEEN:**

**CITY OF NANAIMO**, a municipality under the British Columbia *Local Government Act*, RSBC 2015, c. 1:

455 Wallace Street  
Nanaimo, BC V9R 5J6

(the "**City**")

OF THE FIRST PART

**AND:**

**VANCOUVER ISLAND UNIVERSITY**, a post-secondary institution under the *University Act*, RSBC 1996, c.468:

900 Fifth Street  
Nanaimo, BC V9R 5S5

("VIU")

OF THE SECOND PART

**WHEREAS:**

- A. The City is the owner of the City Exchange Lands as hereinafter defined;
- B. VIU is the owner of the VIU Lands as hereinafter defined; and
- C. The City has agreed to transfer the City Exchange Lands to VIU and VIU has agreed to transfer the VIU Exchange Lands to the City, all upon the terms and conditions contained herein.

**NOW THEREFORE**, in consideration of \$10.00 and other good and valuable consideration now paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged) and of the mutual covenants and agreements contained in this Agreement, the parties covenant and agree as follows:

**1. DEFINITIONS**

**1.1** In this Agreement, including in the Recitals hereto, the following terms have the following meanings unless the context otherwise requires:

- (a) **“Agreement”** means this Land Exchange Agreement, including the Schedules attached hereto;
- (b) **“Applicable Laws”** means, with respect to any Person, properties, transaction or event, including any and all requirements or restrictions with respect to the disclosure of the transaction contemplated by this Agreement, all laws, bylaws, rules, regulations, orders, judgment, decrees, decisions or other requirements having the force of law relating to or applicable to such Person, properties, transaction or event;
- (c) **“Boundary Adjustment Plan”** means the subdivision plan to be prepared by the City, the cost of which is to be shared by the Parties in equal proportions, to adjust the boundaries of the City Owned Lot, to incorporate the VIU Exchange Lands, in compliance with the provisions of the British Columbia *Land Title Act* and all other applicable legislation, a copy of which plan is attached hereto as Schedule “A” ;
- (d) **“Business Day”** means Monday to Friday inclusive of each week, excluding days which are statutory holidays in the Province of British Columbia or days when the LTO is closed for business;
- (e) **“City Exchange Lands”** means those certain lands in the City of Nanaimo, comprised of 3,160 m<sup>2</sup>, more or less, and described as: that portion of the Fifth Street Road Right of Way shown as “Closed Road” on a plan of survey to be prepared in accordance with Section \_\_ of the Agreement;
- (f) **“City Owned Lot”** means those certain lands in the City of Nanaimo having a legal description of PID: 030-240-948, Lot 1 Section 1 Nanaimo District Plan EPP70668;
- (g) **“City’s Condition Precedent”** has the meaning set forth in Section 6.1;
- (h) **“City’s Solicitors”** means Stewart McDannold Stuart, Barristers & Solicitors;
- (i) **“Closing”** means the closing and consummation of this Agreement as contemplated by Section 7.6, including without limitation the delivery of the Closing Documents on the Closing Date in accordance herewith;
- (j) **“Closing Date”** means the date that is thirty (30) Business Days after receipt of the approval of the Ministry of Advanced Education, or such other date as agreed to in writing by the Parties;
- (k) **“Closing Documents”** means the agreements, instruments and other documents to be delivered by the City pursuant to Section 7.3 and the agreements, instruments and other documents to be delivered by VIU pursuant to Section 7.4;

- (l) **“Consolidation Plan”** means a lot consolidation plan to be prepared by the City, the cost of which is to be shared by the Parties in equal proportions, to add the City Exchange Lands to the VIU Lands, to form a single lot, in compliance with the provisions of the British Columbia *Land Title Act* and all other applicable legislation, a copy of which sketch plan is attached hereto as “Schedule ‘B’”;
- (m) **“Contaminants”** means any explosives, radioactive materials, asbestos materials, urea formaldehyde, hydrocarbon contaminants, underground tanks, pollutants, hazardous contaminants, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated under any Environmental Laws;
- (n) **“Environmental Documents”** has the meaning set forth in Section 4.1(b);
- (o) **“Environmental Laws”** means any laws, regulations, bylaws or other lawful requirements with respect to the environment, health or occupational health and safety of any governmental authority having jurisdiction over the VIU Parcels, including all applicable guidelines, standards and protocols as adopted by any such governmental authority from time to time;
- (p) **“Execution Date”** means the date of execution and delivery of this Agreement by the last party to execute and deliver it;
- (q) **“GST”** means goods and services tax payable under the Canada *Excise Tax Act*;
- (r) **“Land Exchange”** means the transfer of the City Exchange Lands to VIU and the concurrent transfer of the VIU Exchange Lands to the City as contemplated in this Agreement;
- (s) **“LTO”** means the Victoria Land Title Office;
- (t) **“Parties”** means, together, the City and VIU, and each is individually herein called a **“Party”**;
- (u) **“Permitted Encumbrances”** have the meaning set forth in Part 1 and Part 2 of Schedule “C” as the context requires;
- (v) **“Person”** includes an individual, a corporation, a partnership, a trust, an incorporated organization, a First Nation, the government of a country or any political subdivision thereof, or any agency or department of any such government;
- (w) **“Statutory Rights of Way”** means a statutory right of way granted in favour of the City over a defined area together with a blanket statutory right of way

to provide access by the City, both as more particularly described in Schedule “C”.

- (x) **“Statutory Right of Way Plan”** means a survey plan to be registered in the LTO depicting the area of the Statutory Right of Way.
- (y) **“Subdivision Application”** means the application to be made by the City to any relevant approving authorities for approval to subdivide the VIU Lands to create the VIU Exchange Lands;
- (z) **“Transfers”** means the Form A – Freehold Transfers under the British Columbia *Land Title (Transfer Forms) Regulation* required to transfer title to the VIU Exchange Lands to the City and to transfer title to the City Exchange Lands to VIU in accordance with the terms of this Agreement; and **“Transfer”** means one of the Transfers as the context requires;
- (aa) **“VIU Conditions Precedent”** has the meaning set forth in Section 6.3 hereof;
- (bb) **“VIU Exchange Lands”** means that portion of the VIU Lands comprising 6,918 m<sup>2</sup>, more or less, shown outlined in bold on a plan of survey to be prepared in accordance with Section 3.1 of this Agreement;
- (cc) **“VIU Lands”** means those lands legally described as PID: 000-359-173, Lot 1, Section 1 Nanaimo District, Plan 35726 except Part in Plan VIP66138 and Plan VIP66141 and PID: 024-347-078, Lot B Section 1 Nanaimo District Plan VIP68115;
- (dd) **“VIU’s Solicitors”** means Chuck Blararu, Heath Law LLP, 200-1808 Bowen Road, Nanaimo, BC V9S 5W4.

**1.2**        Schedules – The following Schedules are attached hereto and made part of this Agreement:

Schedule “A”	Boundary Adjustment Plan
Schedule “B”	Consolidation Plan
Schedule “C”	Permitted Encumbrances
Schedule “D”	Statutory Right of Way Plan

**1.3**        References and Headings – The references “hereunder”, “herein” and “hereof” refer to the provisions of this Agreement and references to Sections and Schedules herein refer to Sections of or Schedules to this Agreement. The headings of the Sections and Schedules and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provision hereof.

**1.4**        Singular/Plural and Derivatives – Whenever the singular or masculine or neuter is used in this Agreement or in the Schedules, it shall be interpreted as meaning

the plural or feminine or body politic or corporate, and *vice versa*, as the context requires. Where a term is defined herein, a derivative of such term shall have a corresponding meaning unless the context otherwise requires.

**1.5**            Including – The word “including”, when following any general term or statement, and whether or not it is followed by such words as “without limitation”, is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, and the general term or statement will be interpreted to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

**1.6**            Statutory References – Any reference to a statute of any governmental authority shall include and shall be deemed to be a reference to such statute and to the regulations or orders made pursuant thereto and all amendments made thereto and in force from time to time, and to any statute, regulation or order that may be passed which has the effect of supplementing the statute so referred to or the regulations or orders made pursuant thereto.

**1.7**            Currency – All dollar amounts referred to in this Agreement are in Canadian dollars.

## **2.                EXCHANGE TRANSACTION**

**2.1**            Exchange No Adjustments – The Parties agree that there will be no adjustments in connection with the exchange of the City Exchange Lands and the VIU Exchange Lands, and that for greater certainty, no adjustments will be made between the Parties in relation to adjustments customarily made with respect to the purchase and sale of real property in British Columbia, such as operating costs and recoveries, real property taxes, local improvement charges, utilities charges or utility deposits;

**2.2**            Consideration - The City and VIU agree that the values attributable to the City Exchange Lands and the Viu Exchange Lands are deemed to be equal, and that notwithstanding the fair market values of the City Exchange Lands and the VIU Exchange Lands set out in section 8.3 for the purpose of the calculation of the Property Transfer Tax, consideration of One Dollar (\$1.00) shall be paid by the City to VIU for the Viu Exchange Lands and consideration of One Dollar (\$1.00) shall be paid by VIU to the City for the City Exchange Lands.

## **3.                PREPARATION OF PLANS AND BYLAWS**

**3.1**            The City will undertake, or arrange for, the preparation of the following plans and bylaws:

- (a)    Road Closure Plan and Bylaw
- (b)    Subdivision Application
- (c)    Boundary Adjustment Plan

- (d) Consolidation Plan
- (e) Statutory Right of Way Plan

#### **4. DELIVERY OF REPORTS**

**4.1** Delivery of Environmental and Other Reports – VIU and the City acknowledge and agree that each will provide to the other copies of the following:

- (a) Existing leases and licences, registered and unregistered, over the VIU Exchange Lands and the City Exchange Lands (“Encumbrances”).
- (b) Any environmental and geotechnical reports, site assessments, audits, studies, investigations, permits, approvals, licences and records in possession or control of the respective party relating to Contaminants, Environmental Laws and geotechnical soil conditions (together, the “Environmental Documents”).

#### **5. REPRESENTATIONS AND WARRANTIES**

**5.1** Representations and Warranties of the City – The City hereby represents and warrants to VIU, and acknowledges that VIU has relied thereon in entering into this Agreement and in concluding the transactions contemplated herein, that:

- (a) Corporate Status – the City is a municipality validly existing and in good standing under the laws of British Columbia and has the power, authority and capacity to own and dispose of title to the VIU Parcels, to enter into this Agreement and to carry out the transactions contemplated by this Agreement, all of which has been, or by the Closing Date shall have been duly and validly authorized by all necessary municipal proceedings;
- (b) Title – the City is the beneficial owner of the City Exchange Lands, free and clear of all liens, charges, claims and encumbrances of every kind and nature save and except the Permitted Encumbrances;
- (c) Residency – the City is not a non-resident of Canada within the meaning of the *Income Tax Act* of Canada;
- (d) No Option – no Person has any option or other right to acquire any direct or indirect ownership interest in the VIU Parcels, other than VIU pursuant to the terms of this Agreement;
- (e) Environmental Documents:
  - (i) the Environmental Documents are the only reports, letters and assessments regarding the environmental condition of the City Exchange Lands in the possession or control of the City and, as of the Execution Date, to the best of the City’s knowledge no other

environmental reports, letter or assessments have been made regarding the environmental condition of the City Exchange Lands;

- (ii) save and except to the extent identified in the Environmental Documents, to the best of the City's knowledge, there are no Contaminants located on the City Exchange Lands; and
- (iii) save and except to the extent identified in the Environmental Documents, the City has not used or permitted the City Exchange Lands to be used, and has no knowledge of the City Exchange Lands being used, for the storage, manufacture, disposal, treatment, generation, transport, remediation or release into the environment, including by way of discharge, emission, spill, leakage or otherwise, of any Contaminants or for waste disposal or landfill purposes, or otherwise in violation of Environmental Laws.

**5.2**        VIU Representations – VIU hereby represents and warrants to the City, and acknowledges that the City has relied thereon in entering into this Agreement and in concluding the transactions contemplated herein, that:

- (a)        Corporate Status – VIU is a university validly existing and in good standing under the laws of British Columbia and has the power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement, all of which has been, or by the Closing Date shall have been, duly and validly authorized by all necessary corporate proceedings; and
- (b)        No Breach – The completion of the transactions contemplated by this Agreement shall not constitute a breach by VIU of any statute, by-law or regulation or of its constating documents.
- (c)        Environmental Documents:
  - (i)        the Environmental Documents are the only reports, letters and assessments regarding the environmental condition of the VIU Exchange Lands in the possession or control of VIU and, as of the Execution Date, to the best of VIU's knowledge no other environmental reports, letter or assessments have been made regarding the environmental condition of the VIU Exchange Lands;
  - (ii)        save and except to the extent identified in the Environmental Documents, to the best of the VIU's knowledge, there are no Contaminants located on the VIU Exchange Lands; and
  - (iii)        save and except to the extent identified in the Environmental Documents, and to the best of VIU's knowledge, VIU has not used or permitted the VIU Exchange Lands to be used, and has no knowledge of the VIU Exchange Lands being used, for the storage,

manufacture, disposal, treatment, generation, transport, remediation or release into the environment, including by way of discharge, emission, spill, leakage or otherwise, of any Contaminants or for waste disposal or landfill purposes, or otherwise in violation of Environmental Laws.

## **6. CONDITIONS PRECEDENT**

### **6.1 City's Conditions Precedent:**

- (a) The obligation of the City to complete the transactions contemplated in this Agreement shall be subject to material compliance with or performance of all of the terms, covenants and conditions of this Agreement to be complied with or performed by VIU on or before the Closing Date, including the delivery of all Closing Documents on the part of VIU to be delivered pursuant to this Agreement, as applicable;
- (b) The City will, not more than twenty (20) Business Days after receiving copies of the Encumbrances and the Environmental Documents affecting the VIU Exchange Lands, review all information contained in the Encumbrances and the Environmental Documents and shall satisfy itself, in its sole discretion, that the VIU Exchange Lands are safe for the intended purpose;
- (c) The City will, not later than September 9, 2019, or such other date as may be agreed in writing between the parties, receive approval to proceed with the Land Exchange from the Nanaimo City Council;
- (d) Nanaimo City Council will, by no later than November 5, 2019, or such other date as may be agreed in writing between the Parties, have adopted the requisite road closure bylaw;
- (e) The City will, not later than the Closing Date, prepare a Road Closure Plan and all required documentation to complete raising title of the City Exchange Lands; and
- (f) The City of Nanaimo's approving officer will, by no later than November 25, 2019, or such other date as may be agreed in writing between the parties, have approved the Boundary Adjustment Plan and the Road Closure Plan.

(collectively, the "**City's Conditions Precedent**").

**6.2 Satisfaction of City's Conditions Precedent** – The City's Conditions Precedent are for the City's sole benefit and only the City may waive, in whole or in part, the City's Conditions Precedent by giving notice of waiver to VIU on or before the Closing Date. If the City's Conditions Precedent have not been satisfied or waived by the City on or before the Closing Date, the City shall have the right to terminate this Agreement by notice to VIU.



**6.3**            VIU Conditions Precedent – The obligation of VIU to complete the transactions contemplated in this Agreement shall be subject to fulfilment of each of the following conditions, on or before the respective dates for the fulfilment thereof, set out below:

- (a) VIU will, not more than twenty (20) Business Days after receiving copies of the Encumbrances and the Environmental Documents affecting the City Exchange Lands, review all information contained in the Encumbrances and the Environmental Documents and shall satisfy itself, in its sole discretion, that the City Exchange Lands are safe for the intended purpose;
- (b) VIU will, not later than September 9, 2019, or such other date as may be agreed in writing between the parties, receive written consent to the subdivision, in the form of a resolution, from the Malaspina Students' Union Society, or its successor, holder of the lease registered against title to the portion of the VIU Lands having PID 000-359-173, and as legally described above, under charge number EM116670.
- (c) VIU will, not later than September 9, 2019, or such other date as may be agreed in writing between the parties, receive approval, in the form of a resolution, to proceed with the Land Exchange from the VIU Board of Governors; and
- (d) VIU must receive approval of the Land Exchange from the Province of British Columbia, Minister of Advanced Education and will submit the Agreement to the Minister of Advanced Education immediately following execution by the Parties

(together, the “**VIU Conditions Precedent**”).

**6.4**            Satisfaction of VIU Conditions Precedent – The VIU Conditions Precedent are for the sole benefit of VIU and only VIU may waive, in whole or in part, any or all of the VIU Conditions Precedent by giving notice of waiver to the City on or before their respective dates for fulfilment. If any of the VIU Conditions Precedent shall not have been satisfied or waived by VIU on or before their respective dates for fulfilment, VIU shall have the right to terminate this Agreement by notice to the City.

**6.5**            Non-Refundable Moneys –

- (a) The City acknowledges and agrees that a portion of the consideration of \$10.00 paid to the City by VIU represents non-refundable moneys paid in consideration of the City allowing VIU the benefit of the VIU Conditions Precedent and agreeing that the City's acceptance of this offer is irrevocable.
- (b) VIU acknowledges and agrees that a portion of the consideration of \$10.00 paid to the VIU to the City represents non-refundable moneys paid in

consideration of the VIU allowing the City the benefit of the City Conditions Precedent and agreeing that VIU's acceptance of this offer is irrevocable.

## **7. CLOSING DATE AND PROCEDURE**

**7.1** Preparation of Closing Documents – the City's Solicitors shall provide draft copies of all Closing Documents to VIU's Solicitors no later than ten (10) Business Days prior to the Closing Date, for review by VIU.

**7.2** Closing – The closing of the transactions as herein contemplated shall take place at the offices of the City's Solicitors in Victoria, British Columbia on the Closing Date and documents may be delivered in counterparts and by electronic means with the originals to follow in due course.

**7.3** City's Closing Documents – On or before the Closing Date, the City shall deliver to VIU's Solicitors for their review:

- (a) an application to deposit the Consolidation Plan;
- (b) an application to deposit the Road Closure Plan;
- (c) the Statutory Rights of Way;
- (d) the Transfer;
- (e) a certificate of an officer of the City confirming that the City is not a non-resident of Canada for the purpose of the *Income Tax Act*;
- (f) such other documents and instruments as may be reasonably required by VIU's Solicitors to complete the transactions contemplated herein, providing that such documents are customary closing documents for similar transactions to that contemplated herein and that no such documents will impose any liability on the City not already contemplated in this Agreement.

**7.4** VIU Closing Documents – On or before the Closing Date, VIU shall duly execute and deliver copies of the following documents and instruments to the City's Solicitors for their review, in registrable form where applicable, the following documents:

- (a) The Transfer;
- (b) an application to deposit the Boundary Adjustment Plan;
- (c) discharges in registrable form of all liens, charges, claims and encumbrances not constituting Permitted Encumbrances, or undertakings from the VIU's Solicitors, satisfactory to the City's Solicitors, acting reasonably, to discharge such liens, charges, claims and encumbrances within a reasonable time after the Closing Date;

- (d) a certificate satisfactory to the City's Solicitors, acting reasonably, and sufficient to relieve the City from any obligation to collect and remit any GST with respect to the transfer of the VIU Exchange Lands; and
- (e) such other documents and instruments as may be reasonably required by the City's Solicitors to complete the transactions contemplated herein, providing that such documents are customary closing documents for a similar transaction to that contemplated herein and that no such documents will impose any liability on VIU not already contemplated in this Agreement.

**7.5**            Registration – Following the exchange of the Closing Documents, the City shall cause the City's Solicitors to file the registrable Closing Documents at the LTO in the following order:

- (a) The Road Closure Plan;
- (b) The Statutory Rights of Way;
- (c) The Transfers;
- (d) The Boundary Adjustment Plan;
- (e) The Consolidation Plan.

**7.6**            Completion of Closing – Completion of registration of all the registrable Closing Documents in the LTO and all matters of payment and delivery of documents by each party to the other shall be deemed to be concurrent requirements of Closing so that the Closing shall not be completed hereunder until everything has been paid, delivered and fully registered.

## **8.                COSTS AND TAXES**

**8.1**            Registration Fees – The fees for the registration of the Transfer in the LTO shall be shared equally between the Parties. The Party incurring the costs shall, upon receipt of an invoice, provide a copy of the invoice to the other Party, who shall promptly, and in any case not later than thirty (30) days after receiving the invoice, reimburse the Party incurring the costs for 50% of the amount of the invoice.

**8.2**            Survey Costs – The fees for surveying the City Exchange Lands and the VIU Lands, including the cost of the Boundary Adjustment Plan, the Road Closure Plan and the Consolidation Plan, shall be shared equally between the Parties. The Party incurring the costs shall, upon receipt of an invoice, provide a copy of the invoice to the other Party, who shall promptly, and in any case not later than thirty (30) days after receiving the invoice, reimburse the Party incurring the costs for 50% of the amount of the invoice.

**8.3**            Property Transfer Tax – Any property transfer tax in relation to the Land Exchange shall be paid by each of the respective Parties for the land acquired. For purposes of the Property Transfer Tax calculation, the value of the City Exchange Lands

and the VIU Exchange Lands have each been appraised as having a value of one hundred and seventy-five thousand (\$175,000.00).

**8.4** GST – Each Party is responsible for any GST in respect of the transactions contemplated by this Agreement and shall be responsible to account for GST in accordance with the *Excise Tax Act*.

**9. POSSESSION**

**9.1** VIU shall be entitled to have possession of the City Exchange Lands subject to the Permitted Encumbrances once the Closing has been completed in accordance with Section 7.6.

**9.2** The City shall be entitled to have possession of the VIU Exchange Lands subject to the Permitted Encumbrances once the Closing has been completed in accordance with Section 7.6.

**10. MISCELLANEOUS**

**10.1** Tender – Any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by wire transfer, or by certified solicitor's cheque or bank draft in each case drawn on any one of the five largest Canadian chartered banks.

**10.2** Time of Essence – Time shall be of the essence of this Agreement, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Parties or by their respective solicitors who are hereby expressly appointed in that regard.

**10.3** Binding Agreement – The Parties acknowledge and agree that this Agreement is not void, voidable, revocable or otherwise capable of being terminated by any Party unless otherwise expressly provided herein or otherwise agreed by the Parties in writing.

**10.4** Notices – Any notice to be given under this Agreement shall be in writing and shall be validly given if delivered or transmitted by email to the parties as follows:

**To the City at:**

City of Nanaimo  
455 Wallace Street  
Nanaimo, British Columbia V9R 5J6

Attention: Bill Corsan  
Email: Bill.Corsan@nanaimo.ca

with a copy to:

Stewart McDannold Stuart  
Barristers & Solicitors  
2nd Floor  
837 Burdett Avenue  
Victoria, British Columbia V8W 1B3

Attention: Marie Watmough  
Email: mwatmough@sms.bc.ca

**To VIU**

Vancouver Island University  
900 Fifth Street  
Nanaimo, British Columbia V9R 5S5

Attention:  
Email:

with a copy to:

Heath Law LLP  
200-1808 Bowen Road  
Nanaimo, British Columbia V9S 5W4

Attention: Chuck Blanaru  
Email: cblanaru@vancouverislandlawyers.com

or to such other address or email address as a Party may advise the other by written notice hereunder. Any notice addressed and provided as aforesaid shall be deemed to have been given on the day of delivery or transmission by email if a Business Day and if not a Business Day, then on the next Business Day.

**10.5** Entire Agreement – This Agreement constitutes the entire Agreement between the Parties pertaining to the Land Exchange and supersedes all prior agreements, negotiations and discussions, whether oral or written, of the Parties, and there are no agreements, covenants, representations or warranties, express, implied, statutory, collateral or otherwise between them, save as set forth in this Agreement.

**10.6** Assignment – Neither Party shall assign this Agreement or any portion of its right, title or interest hereunder to any Person without the prior written consent of the other Party, not to be unreasonably withheld, conditioned or delayed.

**10.7** Costs and Expenses – Each of the Parties shall bear their own costs, expenses and legal fees incurred or to be incurred in negotiating and preparing this

Agreement and otherwise in connection with this transaction, except as otherwise expressly contemplated herein.

**10.8** Governing Law – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The Parties agree to submit to the jurisdiction and the courts of the Province of British Columbia with respect to any dispute relating to this Agreement or the transactions contemplated herein and to appoint respective agents for the receipt and service of process in British Columbia.

**10.9** Binding Effect – This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

**10.10** Counterparts – This Agreement may be executed in counterparts and by the facsimile or email transmission of an originally executed document, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first above written.

**CITY OF NANAIMO**

Per: \_\_\_\_\_  
Mayor

Per: \_\_\_\_\_  
Corporate Officer

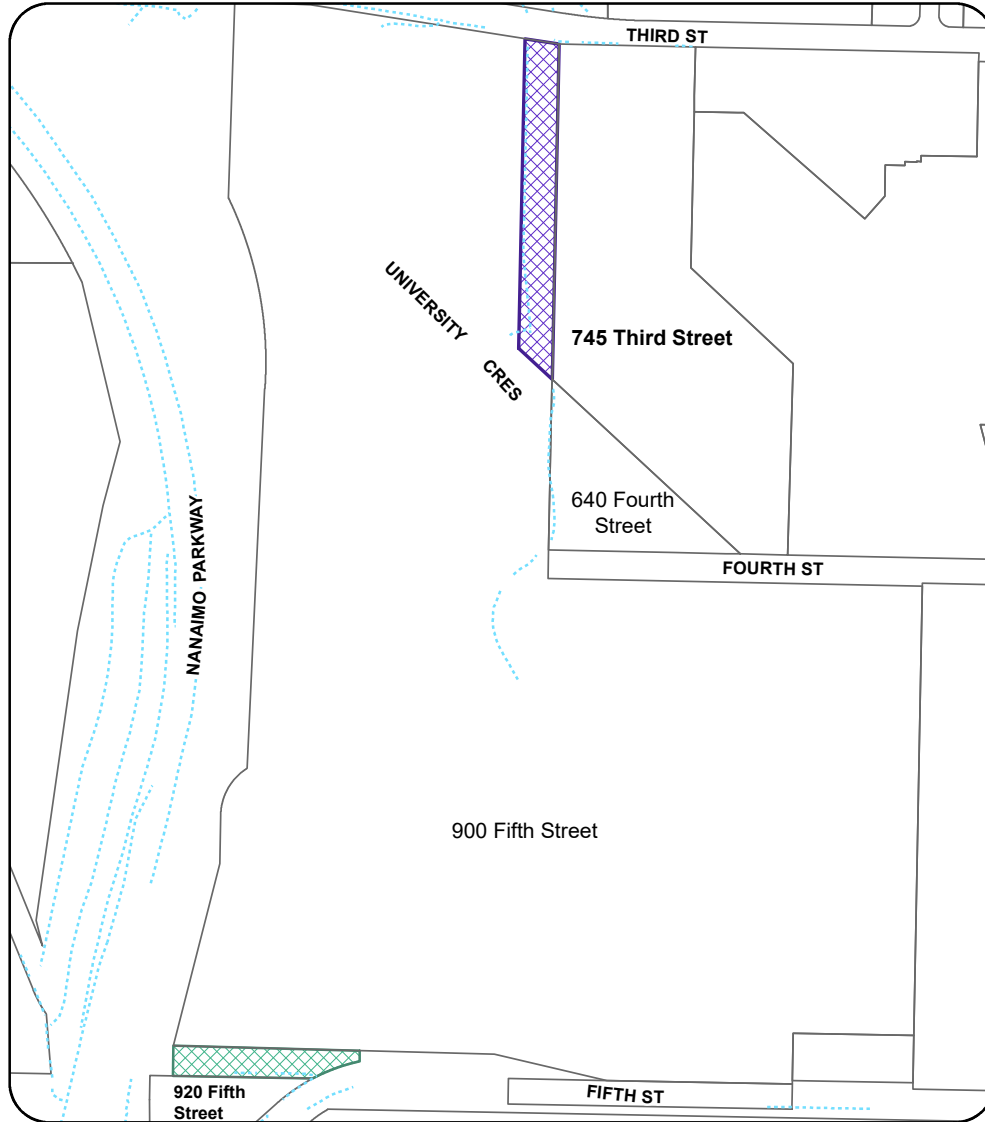
**VANCOUVER ISLAND UNIVERSITY**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

# SCHEDULE A BOUNDARY ADJUSTMENT PLAN

## Schedule A - Boundary Adjustment Plan



**Legend**

- Water courses
- City Road Closure Area, 3,160 m<sup>2</sup>
- VIU Land Exchange area, 6,918 m<sup>2</sup>

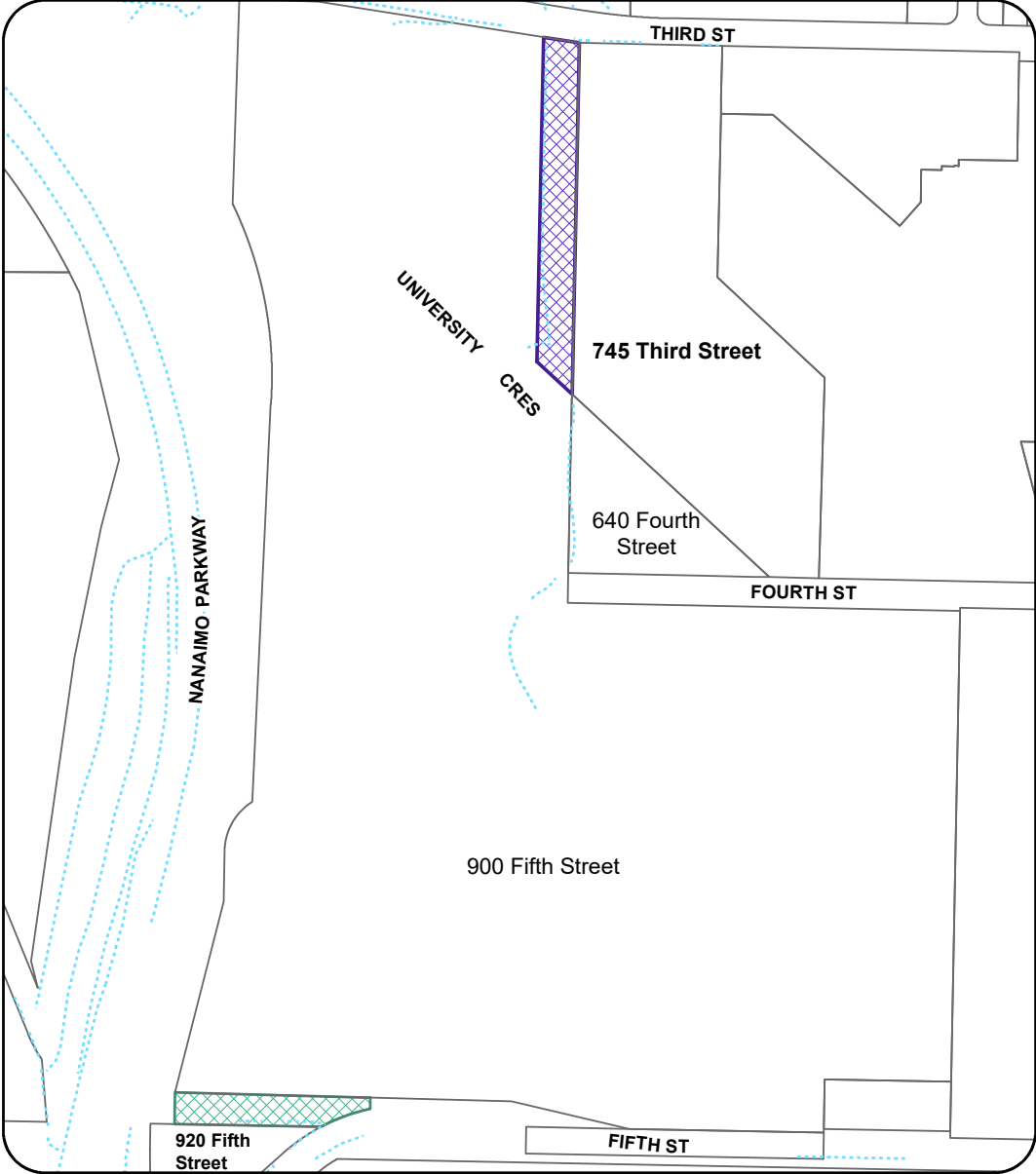
**Boundary between 900 Fifth Street and 745 Fourth Street to be adjusted through a boundary adjustment subdivision plan**  
**VIU Land Exchange Area to be consolidated with 745 Third Street**






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**SCHEDULE B**  
**CONSOLIDATION SKETCH PLAN**

**Schedule B - Consolidation Plan**



**Legend**

-  Water courses
-  City Road Closure Area, 3,160 m<sup>2</sup>
-  VIU Land Exchange area, 6,918 m<sup>2</sup>

**900 Fifth Street, 920 Fifth Street and City Road Closure Area to be consolidated through lot consolidation plan**





**SCHEDULE C**  
**PERMITTED ENCUMBRANCES**

1. The “**Permitted Encumbrances**” with respect to the VIU Exchange Lands shall mean and include the following:

- (a) the exceptions and reservations contained in the original Crown grant or contained in any other grant or disposition from the Crown and the usual statutory exceptions and reservations to title; and
- (b) the following legal notations, charges, liens and interests:
  - (i) Statutory Right of Way 235087G in favour of British Columbia Hydro and Power Authority;
  - (ii) Statutory Right of Way G38382 in favour of Her Majesty the Queen in Right of Canada;
  - (iii) Undersurface and Other Exceptions and Reservations M23972 in favour of Her Majesty the Queen in Right of the Province of British Columbia;
  - (iv) Statutory Right of Way R92451 in Favour of the City of Nanaimo
  - (v) Statutory Right of Way ES79519 in favour of the City of Nanaimo
  - (vi) Statutory Right of Way FB294687 in favour of the City of Nanaimo
  - (vii) Statutory Right of Way FB294688 in favour of the City of Nanaimo

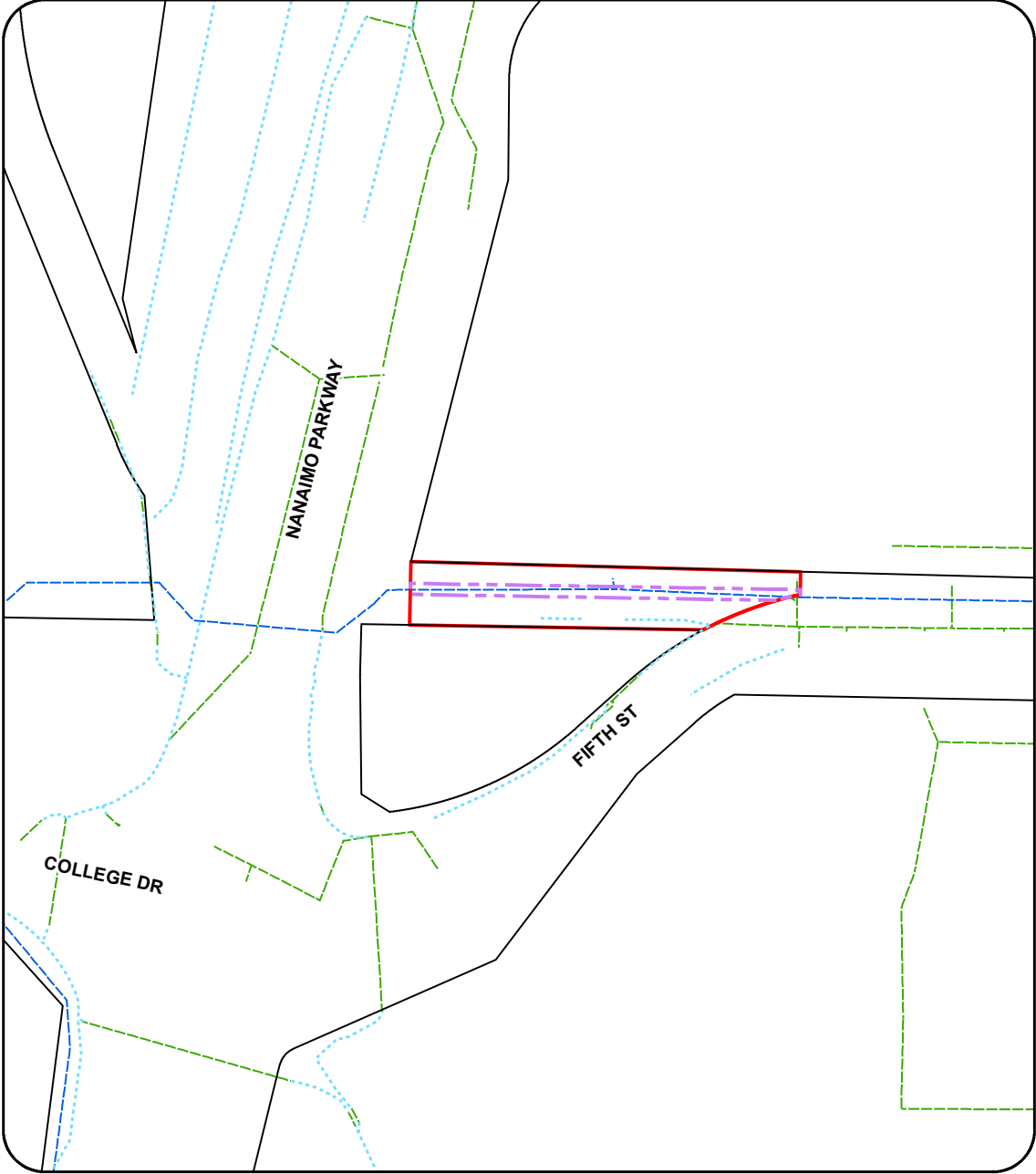
2. The “**Permitted Encumbrances**” with respect to the City Exchange Lands shall mean and include the following:

- (a) the exceptions and reservations contained in the original Crown grant or contained in any other grant or disposition from the Crown and the usual statutory exceptions and reservations to title;
- (b) The Statutory Rights of Way:
  - (i) A four (4) metre wide statutory right of way granted in favour of the City over that portion of the City Exchange Lands shown outlined in bold on the Statutory Right of Way Plan, for the purpose of operating and maintaining existing works pursuant to Standard Terms ST100089; and

- (ii) A blanket statutory right of way granted in favour of the City over the City Exchange Lands for the purpose of accessing and maintaining the City's works pursuant to Standard Terms ST100092.
- (iii) A statutory right of way granted in favour of Shaw Cablesystems Ltd.
- (iv) A statutory right of way granted in favour of Telus
- (v) A statutory right of way granted in favour of BC Hydro

**SCHEDULE D  
STATUTORY RIGHT OF WAY PLAN**

Schedule D - Statutory Right of Way Plan



**Legend**

- ⋯ Water courses
- Water
- City Road Closure Area, 3,160 m2
- Storm
- Conceptual ROW 4m Wide, 608 m2
- Sanitary

Civic: 900 Fifth Street  
 Legal: LOT 1, SECTION 1, NANAIMO DISTRICT,  
 PLAN 35726 EXCEPT PART IN PLAN VIP66138  
 AND PLAN VIP66141



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