

RD-3

COUNCIL AGENDA REPORT

DATE:	May 14, 2015	COUNCIL MEETING DATE:	May 19, 2015
DEPARTMENT:	Administration		
SUBJECT:	Request for Access to District of Chetwynd Land for Highway Improvement Purposes		

PURPOSE:

To seek Council's approval for the Ministry of Transportation and Infrastructure to use District Land at Parcel A, DL 482, Except Plan 10927 (west of the Legion Hall) to perform improvements to Highway 97.

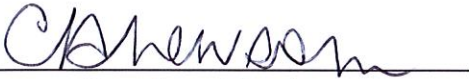

SUMMARY/BACKGROUND:

The Ministry of Transportation and Infrastructure (MOTI) advises that it will be performing frost treatment improvements to a portion of Highway 97 near the Legion Hall. MOTI requires access to District Land in this area to complete this construction project.

RECOMMENDATION(S):

THAT Council receive the report for information; or

THAT Council approve the request from the Ministry of Transportation and Infrastructure to use District Land at Parcel A, DL 482, Except Plan 10927 (west of the Legion Hall) to perform improvements to Highway 97, and authorize the Mayor and Corporate Officer to execute the Licence of Occupation for Construction Access, included as Attachment "A."

<p>SUBMITTED BY:</p>  <hr/> <p>Department Head</p>	<p>REVIEWED AND APPROVED FOR SUBMISSION TO COUNCIL BY:</p>  <hr/> <p>Chief Administrative Officer</p>
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Attachment "A" – Licence of Occupation for Construction Access



May 8, 2015

Property File: PS732376

District of Chetwynd
PO Box 357
Chetwynd, British Columbia
V0C 1J0

Attention: Mr. Paul Gordon

**Re: License of Occupation for Construction Access
Parcel A of District Lot 482 Peace River District, Except Plans 10927**

As a follow-up to discussion yesterday, I have enclosed a License of Occupation for Construction Access. The purpose of the licence is to blend the driveway West of the Legion Building to maintain access to the property during the Ministry Highway 97 Chetwynd and Frost Treatment project. The property will be returned as close as possible to its original state at the completion of the project.

Please sign and return the original agreement for my attention. A scanned copy of the executed agreement is sufficient.

If you have any additional concerns or questions please feel free to contact me any time at (250) 565-6489 or my cell phone: 250-640-0733

Yours truly,

Steven Burke R.I.(B.C.)
Manager, Property Services

Attached: License of Occupation



**LICENCE OF OCCUPATION FOR
CONSTRUCTION ACCESS**

THIS AGREEMENT is dated for reference May 7, 2015

BETWEEN:

DISTRICT OF CHETWYND

(the "Licensor")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as
represented by the minister responsible for the *Transportation Act*

(the "Licensee")

The parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

"Activities" means all activities required by the Licensee to complete the Highway 97
Chetwynd Base and Frost Treatment for the construction of a Detour Route on
Veterans Way and the construction of a temporary driveway access on the Licence
area including the following:

- (a) constructing, reconstructing, maintaining, repairing, improving, altering,
installing, placing and operating the Works in, on or under the Licence Area,
- (b) clearing and restoring the Licence Area, and
- (c) placing sand and soil on the Licence Area as pre-load;

"Agreement" means this licence of occupation;

"Assignment Agreement" means the form of the Licensee that is numbered H-0074(a) and
all replacements of that form;

"Commencement Date" means May 11, 2015.;

"GST" means the tax imposed under Part 1X of the *Excise Tax Act* (Canada);

"Licence Area" means that part of the following described land which is shown on Schedule A:

Parcel Identifier 014-773-813
Parcel A of District Lot 482 Peace River District, Except Plans 10927;

"Term" means the period of time set out in section 2.2 as may be extended under section 2.3;
and

"Works" means all improvements and works of public utility, including provincial public undertakings (as defined in the *Transportation Act*).

ARTICLE 2 - GRANT, TERM AND RENEWAL

- 2.1 On the terms and conditions set out in this Agreement, the Licensor grants to the Licensee, its employees, agents, contractors, sublicensees and invitees an irrevocable licence of occupation over the Licence Area for the following purposes:
- (a) to enter, use, labour, go, return, pass and repass along, over and upon the Licence Area with or without materials, machinery, supplies and equipment to undertake the Activities;
 - (b) to establish all necessary grades and levels;
 - (c) to undertake, perform and complete surveys, tests, inspections and examinations of the Works and the Licence Area;
 - (d) to licence or allow any person to exercise any of the rights granted to the Licensee under this Agreement on such terms as the Licensee, in its sole discretion, may decide; and
 - (e) to do all acts which, in the Licensee's opinion, are necessary and incidental to the use of the Licence Area for the purposes set out in this Agreement.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on November 30, 2015.
- 2.3 This Agreement may, in the sole discretion of the Licensee, be renewed for a period of one month by written notice from the Licensee to the Licensor delivered not later than 10 days before the expiration of the Term (or any renewal of the Term).

ARTICLE 3 - FEE

- 3.1 The fee for the Term is \$1.00, the receipt and sufficiency of which is acknowledged by the Licensor.

ARTICLE 4 - COVENANTS

4.1 The Licensee must

- (a) use and occupy the Licence Area only for the purposes set out in section 2.1;
- (b) not place on or make to the Licence Area any improvement except for the purposes set out in this Agreement; and
- (c) on the termination of this Agreement,
 - (i) peaceably quit and deliver to the Licensor possession of the Licence Area in a safe, clean and sanitary condition,
 - (ii) within 45 days, remove from the Licence Area any improvement that the Licensee wants to remove, if the improvement was placed on or made to the Licence Area by the Licensee, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building or part of the Licence Area, and
 - (iii) restore the surface of the Licence Area as nearly as may reasonably be possible to the same condition as it was on the Commencement Date but if the Licensee leaves an improvement on the Licence Area under paragraph (ii), this paragraph will not apply to that part of the surface of the Licence Area on which that improvement is located,

and all of the Licensee's right, interest and estate in the Licence Area will be absolutely forfeited to the Licensor, and to the extent necessary, this covenant will survive the termination of this Agreement.

ARTICLE 5 - TRANSFER OF THE LICENCE AREA

- 5.1 The Licensor must not transfer the fee simple interest in the Licence Area to any person without assigning its obligations under this Agreement to the person to whom the fee simple interest in the Licence Area is to be transferred by way of the Assignment Agreement.

ARTICLE 6 - CANCELLATION

- 6.1 The Licensee agrees with the Licensor that if the Licensee fails to observe, abide by and comply with the provisions of this Agreement and its default or failure continues for 60 days after the Licensor gives written notice of the default or failure to the Licensee this Agreement will, at the Licensor's option and with or without entry, terminate, and all of the Licensee's rights, interests and estate in the Licence Area will be absolutely forfeited to the Licensor.
- 6.2 If the condition complained of requires more time to cure than 60 days, the Licensee will be deemed to have complied with the remedying of it if the Licensee commences remedying or curing the condition within 60 days and diligently complete the same.

ARTICLE 7 - NOTICE

- 7.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the Licensor:

District of Chetwynd
PO Box 357
Chetwynd, British Columbia
V0C 1J0
Attention: Paul Gordon
Facsimile: (250) 401-4101
Email address: pgordon@gochetwynd.com

to the Licensee:

Ministry of Transportation and Infrastructure
213-1011 Fourth Avenue
Prince George, British Columbia
V2L 3H9
Attention: Steven Burke – Manager, Property Services
Facsimile: (250)565-6065
Email address: steven.burke@gov.bc.ca

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 7.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 7.1.

ARTICLE 8 - MISCELLANEOUS

- 8.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 8.2 No remedy conferred upon or reserved to the Licensor under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 8.3 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.

- 8.4 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the Licensee's reasonable control, other than normal weather conditions, the Licensee is delayed in performing any of its obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay.
- 8.5 The Licensee agrees with the Licensor that
- (a) the Licensor is under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Licence Area and the Licensee is solely responsible for all costs and expenses associated with its use of the Licence Area for the purposes set out in this Agreement; and
 - (b) nothing in this Agreement constitutes the Licensee as the agent, joint venturer or partner of the Licensor.

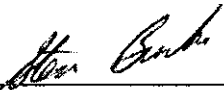
ARTICLE 9 - INTERPRETATION

- 9.1 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 9.2 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 9.3 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 9.4 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 9.5 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 9.6 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 9.7 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 9.8 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.

9.9 Time is of the essence of this Agreement.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** by the Minister responsible for the *Transportation Act* or the minister's authorized representative



Steven Burke – Manager, Property Services

SIGNED on behalf of **DISTRICT OF CHETWYND** by its authorized signatories

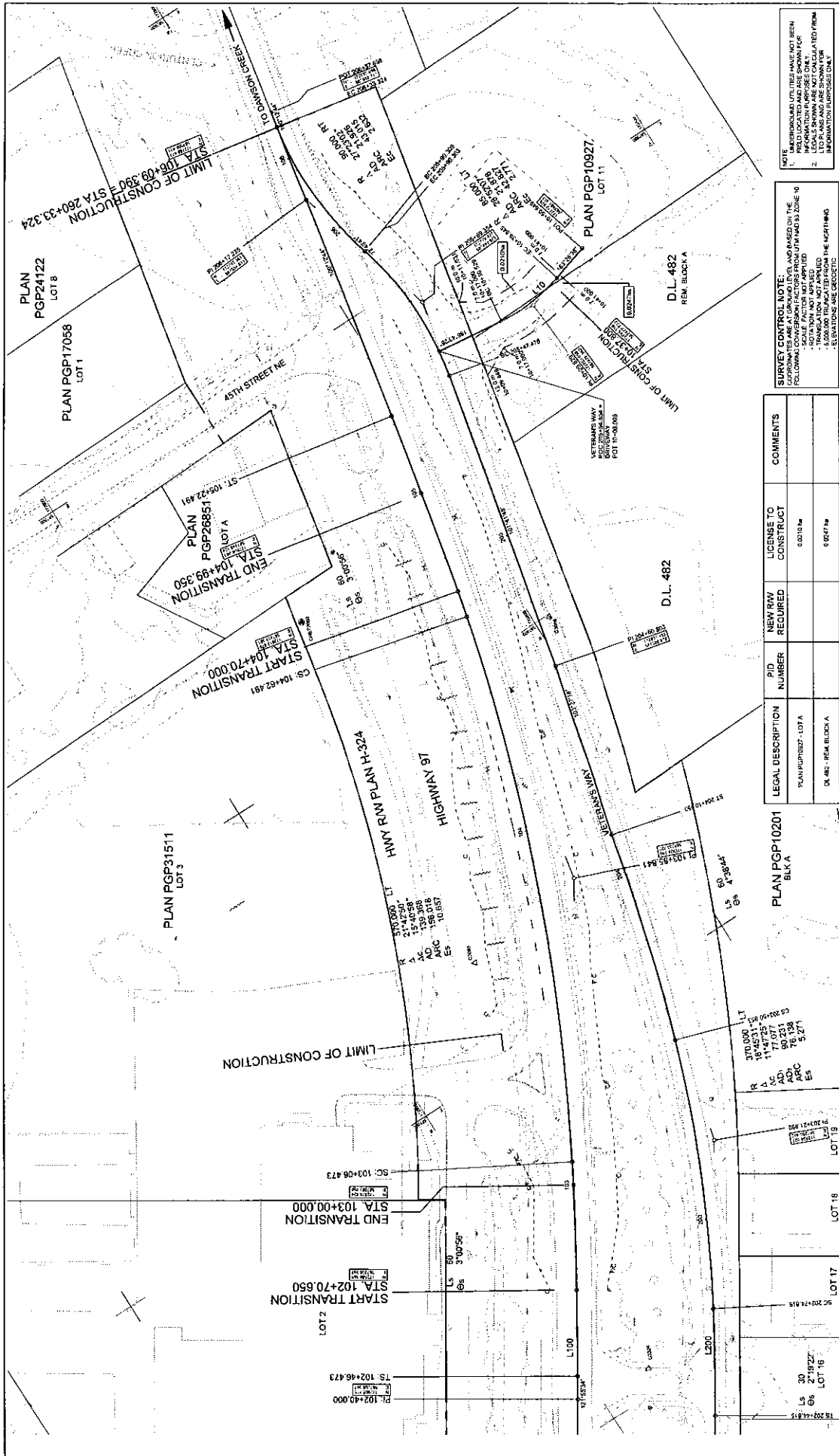
Authorized Signatory

Authorized Signatory

SCHEDULE A

LICENCE AREA

SEE ATTACHED PROPERTY ACQUISITION PLAN NR-234-101RW



FOR DISCUSSION ONLY
2014-11-25
urban-systems.ca

URBAN
systems

DATE: _____
REV: _____

SCALE: 0 5 1000 2000
DATE: _____
REV: _____

PROJECT: HIGHWAY 10
CLIENT: TRANSPORTATION AND INFRASTRUCTURE
REGION: NORTHERN REGION

DATE: _____
REV: _____

PROJECT NUMBER: 37047
DRAWING NUMBER: NR-NR-234-102RW

DATE: _____
REV: _____

PROPERTY ACQUISITION PLAN
JOHN HART HIGHWAY NO. 97
CHIETWYND - BASE REPAIR AND FROST HEAVES TREATMENT
STA. 102+40.00 TO STA. 106+00.00

DATE: _____
REV: _____

PROJECT NUMBER: 37047
DRAWING NUMBER: NR-NR-234-102RW

DATE: _____
REV: _____

SURVEY CONTROL NOTE:
ELEVATIONS ARE AT GROUND LEVEL AND BASED ON THE FOLLOWING:
- DATUM: NAVD 83
- SCALE FACTOR: NOT APPLIED
- REDUCTION: NOT APPLIED
- ELEVATION: NOT CALCULATED FROM DATUM
- ELEVATION: NOT CALCULATED FROM DATUM
- ELEVATION: NOT CALCULATED FROM DATUM

LEGAL DESCRIPTION	PID NUMBER	NEW RW REQUIRED	LICENSE TO CONSTRUCT	COMMENTS
PLAN PGP10201 BLK A			0.0019 ha	
DL 482 - REAL BLOCK A			0.0247 ha	

NOTE:
1. UNDERGROUND UTILITIES HAVE NOT BEEN FIELD LOCATED AND ARE SHOWN FOR INFORMATION PURPOSES ONLY.
2. LEGAL SHOWN ARE NOT CALCULATED FROM DATUM.
3. INFORMATION IS FOR INFORMATION PURPOSES ONLY.

MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE
NORTHERN REGION
REGISTRATION NUMBER: _____
REGISTRATION DATE: _____
REGISTRATION TYPE: _____