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CITY OF VANCOUVER

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ADMINISTRATIVE REPORT

Report Date: April 23, 2008
Author: Eileen Curran
Phone No.: 604.871.6131
RTS No.: 07408
VanRIMS No.: 08-2000-20
Meeting Date: June 24, 2008

TO: Vancouver City Council
FROM: General Manager of Engineering Services
SUBJECT: Boundary Road Maintenance Agreement Renewal

RECOMMENDATION

- A. THAT Council approve the new Boundary Road maintenance agreement including the indemnity granted by the City of Vancouver to the City of Burnaby, substantially in the form attached to this report as Appendix A, and that Council authorize the General Manager of Engineering Services to negotiate any further minor changes to the agreement and to execute the agreement.
- B. THAT Council authorize the Director of Legal Services to bring forward a by-law authorizing a replacement maintenance agreement for Boundary Road, between Vancouver and Burnaby, to be effective on adoption of a by-law by each of Vancouver and Burnaby.

COUNCIL POLICY

There is no applicable Council Policy.

PURPOSE

The purpose of this report is to obtain Council approval of the maintenance agreement which has been negotiated with Burnaby for Boundary Road. This agreement will replace the current agreement that will expire on June 30, 2008.

BACKGROUND

On February 18, 1992, Council approved the recommendation of the City Engineer that an agreement be entered into with the City of Burnaby for the maintenance of Boundary Road, to be effective upon receipt of approval from the Minister of Municipal Affairs. The Minister of Municipal Affairs approved the by-laws on June 16, 1992. These agreements have since been renegotiated on five-year terms and the current agreement that expires on June 30, 2008 is now due for renewal.

The agreement in general provides for 50-50 cost sharing between the two Cities and outlines the division of duties for maintenance along Boundary Road including pavements, signing, lighting, traffic signals, overpasses and boulevards. Both parties agree to indemnify the other for performance of obligations under this agreement.

DISCUSSION

To date the Cities of Vancouver and Burnaby have had a good working relationship under this agreement and no major changes are proposed.

Section 246(2) of the *Local Government Act*, which applies to Vancouver pursuant to section 246(3(b)), requires that a by-law be adopted by each respective Council to make valid an agreement between two municipalities. This requirement is necessary when two municipalities have joined together to exercise a power that extends beyond the boundaries of the municipality. Vancouver will be working on Burnaby's land during the maintenance of portions of Boundary Road.

FINANCIAL IMPLICATIONS

There are no financial implications.

CONCLUSION

The new maintenance agreement is required to replace the current agreement that expires on June 30, 2008.

* * * * *

BOUNDARY ROAD MAINTENANCE AGREEMENT

THIS AGREEMENT made to be effective as of July 1, 2008.

BETWEEN:

CITY OF VANCOUVER, a municipal corporation,
having offices at 453 West 12th Avenue,
in the City of Vancouver,
in the Province of British Columbia,
V5Y 1V4

(hereinafter called "Vancouver")

OF THE FIRST PART

AND:

CITY OF BURNABY,
4949 Canada Way, in the Municipality of
Burnaby, Province of British Columbia.
V5G 1M2

(hereinafter called "Burnaby")

OF THE SECOND PART

WHEREAS:

- A. Boundary Road (as hereinafter defined) straddles the legal boundary between Vancouver and Burnaby;
- B. The legal boundary line between Vancouver and Burnaby is variable and is not consistently at the Agreed Boundary (as hereinafter defined) of Boundary Road;
- C. Vancouver and Burnaby wish to continue sharing responsibility for the maintenance of Boundary Road and have agreed to enter into this Agreement to better define each party's responsibilities regarding the maintenance of Boundary Road; and
- D. This Agreement will serve to continue the parties' previous agreements to share the costs and maintenance responsibilities for Boundary Road, pursuant to an agreement dated January 1, 1998 and which was extended to June 30, 2003 and then further extended by an extension agreement from July 1, 2003 to June 30, 2008.

NOW THEREFORE WITNESSETH that in consideration of the covenants and agreements contained herein, the sum of Five (\$5.00) Dollars (the receipt and

sufficiency whereof is hereby acknowledged by the parties) the parties hereto covenant and agree as follows:

1. The following terms shall have the meaning hereinafter specified and the definitions given herein shall be applicable to the singular, plural and possessive for the terms defined:

- (a) "Agreed Boundary" means the following:
 - (i) the north/south centre line connecting the midpoints between the curbs or edges of the median for the divided roadway portion of Boundary Road;
 - (ii) the north/south yellow painted traffic line for the portion of Boundary Road which is not divided by a raised median;
 - (iii) the north/south line connecting the midpoints between the edges of the roadway surface for the undivided and unmarked portion of Boundary Road; and
 - (iv) the north/south lines across each of the intersections of Boundary Road connecting the end points of the centre lines and the yellow painted traffic lines defined above; except for the six (6) areas listed below where the Agreed Boundary shall be located as indicated in Schedules "A", "B", "C", "D", "E" and "F" attached hereto which schedules and corresponding Agreed Boundary shall be subject to change from time to time hereafter to reflect changes made to the geometry of the intersections:
 - Adanac Street, Price Street, Regent Street, Canada Way, Schou Street, Boundary Road south of Kent Avenue South;
- (b) "Boundary Road" means that portion of the street known as Boundary Road between Fellowes Street on the north and the Fraser River on the south;
- (c) "Maintenance" means the maintaining of the various facilities to a standard equivalent to the standard that existed at the date of this Agreement including but not limited to all surface repairs, inspections necessary, snow removal and street cleaning, landscaping, grass cutting and litter cleanup, but does not include the complete or substantial replacement of any of the facilities covered by this Agreement;
- (d) "Shared Facilities" means:
 - (i) surfaces of the medians and traffic islands which straddle the Agreed Boundary, including but not limited to: grass, sidewalks, hard surfaces and trees;

- (ii) yellow painted traffic line of the portion of Boundary Road which is not divided by a raised median;
 - (iii) pedestrian and vehicle overpasses;
 - (iv) traffic and pedestrian signals, controllers and wiring;
 - (v) street lighting that connects from Vancouver to Burnaby;
- (e) "Non Shared Facilities" means the following:
- (i) pavement structures, curb and gutter and related drain tile and catch basin leads; and
 - (ii) other facilities including signs, painted pavement markings, boulevard landscaping, fences, guard rails, retaining walls and sidewalks with the exception of sidewalks and hard surfaces on the medians and traffic islands straddling the Agreed Boundary; and
- (f) "Street Lighting" means street lighting poles, luminaries, conduits, service panels and all wiring.
2. The term of the Agreement shall commence on July 1, 2008 and shall continue in full force and effect until June 30, 2013 (the "Term") unless extended by further agreement of the parties.
3. Vancouver and Burnaby agree that either party may terminate this Agreement upon giving the other party six (6) months written notice of such termination at any time during the Term or any renewal thereof and no compensation shall be payable by either party on account of such termination. Notwithstanding the above, any amounts payable by either party to the other as a result of or incidental to any Maintenance work done prior to the effective date of the termination shall continue to be due and owing and shall survive the early termination of this Agreement
4. Vancouver and Burnaby agree that the Agreed Boundary will be the dividing line between Vancouver and Burnaby for maintenance purposes. The Maintenance of the Non Shared Facilities east of the Agreed Boundary shall be the responsibility of Burnaby and the maintenance of the Non Shared Facilities west of the Agreed Boundary shall be the responsibility of Vancouver. Provided however, if the Maintenance of the Non Shared Facilities can be more expediently carried out by the adjoining municipality then the parties hereto may agree to permit the other to carry out such Maintenance and shall invoice the other party at a cost to be agreed upon.
5. Vancouver and Burnaby agree that the responsibility for the Maintenance of the following Shared Facilities shall be as follows:

- (a) surfaces of medians and traffic islands which straddle the Agreed Boundary including grass, sidewalks, hard surfaces and trees within these medians and traffic islands: Burnaby shall be responsible for the Maintenance south of the centre line of the Lougheed Highway and Vancouver shall be responsible for the Maintenance north of the centre line of the Lougheed Highway;
- (b) the yellow painted traffic line of the portion of Boundary Road which is not divided by raised medians shall be the responsibility of Vancouver;
- (c) the pedestrian and vehicle overpasses on Boundary Road shall be the responsibility of Vancouver;
- (d) traffic and pedestrian signal plant on Boundary Road shall be the responsibility of Vancouver; and
- (e) the Street Lighting on Boundary Road:
 - (i) Vancouver shall be responsible for Maintenance of the Street Lighting from 29th Avenue to Price Street and from Kingsway to Kent Avenue South on both sides of the Agreed Boundary; and
 - (ii) the remainder of the Street Lighting shall be the sole responsibility of the municipality on which side of the Agreed Boundary that the Street Lighting is located on.

6. Vancouver and Burnaby agree to share equally the Maintenance costs of the Shared Facilities as set out in paragraphs 5, (b), (c), (d) and (e)(i). The party responsible for any particular Maintenance, in accordance with paragraph 5 (defined herein as the "Billing Party"), shall have the right to demand payment and to invoice the other party for fifty (50%) percent of such Maintenance costs incurred, itemized by the type of work performed, and calculated by including the following charges:

- (a) labour based on wage rates plus fringe benefits for time spent upon the Maintenance;
- (b) material and equipment used in the Maintenance;
- (c) energy costs for the traffic signals and shared Street Lighting;
- (d) normal overhead charges which shall be calculated at fifteen (15%) percent of the total of paragraph 6 (a), (b) and (c); and
- (e) all applicable taxes including any Goods and Services Taxes payable.

Notwithstanding the foregoing, Vancouver or Burnaby, in the sole discretion of the respective Billing Party, may, in the alternative to calculating the Maintenance costs on the basis of paragraphs 6(a) to 6(e), inclusive, in respect of the Street Lighting

located only on Boundary Road, invoice the other party for work done, Maintenance costs incurred and any other expenses related to Street Lighting on Boundary Road on the basis of a "Standard Maintenance Unit Cost" plus all applicable taxes, including GST. For purposes of this Agreement the Standard Maintenance Unit Cost shall be calculated by the Billing Party using a cost averaging formula whereby the Standard Maintenance Unit Cost is equal to the total Maintenance costs incurred by either Vancouver or Burnaby, respectively, with respect to all Street Lighting in their respective city divided by the number of Street Lights in the respective city. This Standard Maintenance Unit Cost will then be multiplied by the number of street lights on Boundary Road being maintained by the respective Billing Party. Vancouver and Burnaby agree that in billing or invoicing the other party on the basis of the Standard Maintenance Unit Cost such invoices shall be subject to the party being invoiced having the right to verify or to have the Billing Party verify the actual costs incurred by the Billing Party in carrying out similar work related to their Street Lighting located other than on Boundary Road.

7. The completion and cost of the Maintenance of any of the Non Shared Facilities that straddle the Agreed Boundary will be negotiated between Vancouver and Burnaby on a case by case basis.

8. Vancouver and Burnaby agree that the responsibility and liability for the design of Boundary Road shall be shared equally between Vancouver and Burnaby.

9. Vancouver and Burnaby hereby grant each to the other, its respective contractors, subcontractors, employees, agents and officials the right to enter, labour, pass, repass, work and be in, on, under and over the other's property on Boundary Road with or without vehicles, tools, supplies, materials and equipment and supplies for any purpose connected with the performance by each of them of Maintenance services referred to in this Agreement.

10. Vancouver covenants and agrees with Burnaby that in the event that Vancouver's contractors or subcontractors, employees or agents shall cause damage to Burnaby's property during the carrying out of any Maintenance pursuant to this Agreement and does not forthwith repair, Burnaby may complete such repairs as necessary and Vancouver shall make payment for all such repair and cost of Burnaby forthwith upon receipt of an invoice.

11. Burnaby covenants and agrees with Vancouver that in the event that Burnaby's contractors or subcontractors, employees or agents shall cause damage to Vancouver's property during the carrying out of any Maintenance pursuant to this Agreement and does not forthwith repair, Vancouver may complete such repairs as necessary and Burnaby shall make payment for all such repair and cost of Vancouver forthwith upon receipt of an invoice.

12. Burnaby shall indemnify and hold harmless Vancouver and its officers, officials, employees, contractors, subcontractors, licensees and agents (the "Vancouver Personnel") from and against all losses, damages, debts, costs, expenses, actions, causes of action, claims, demands and judgments (collectively referred to in this paragraph 12 as "Losses") suffered or incurred by Vancouver or any Vancouver

Personnel, or made or instituted by any person against Vancouver or any Vancouver Personnel, in any way connected with this Agreement for the failure of Burnaby to carry out the Maintenance obligation set out herein or any Losses caused by the negligent performance by Burnaby of its Maintenance obligations pursuant to this Agreement. This indemnity survives the termination of this Agreement.

13. Vancouver shall indemnify and hold harmless Burnaby and its officers, officials, employees, contractors, subcontractors, licensees and agents (the "Burnaby Personnel") from and against all losses, damages, debts, costs, expenses, actions, causes of action, claims, demands and judgments (collectively referred to in this paragraph 13 as "Losses") suffered or incurred by Burnaby or any Burnaby Personnel, or made or instituted by any person against Burnaby or any Burnaby Personnel, in any way connected with this Agreement for the failure of Vancouver to carry out the Maintenance obligation set out herein or any Losses caused by the negligent performance by Vancouver of its Maintenance obligations pursuant to this Agreement. This indemnity survives the termination of this Agreement.

14. Any notice, approval or request given under this Agreement may be well and adequately given if served personally upon any officer of the party for whom it is intended or mailed by prepaid registered mail from any post office in British Columbia and in the case of Vancouver addressed to it at:

City Clerk
City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

with a copy to:

City Engineer
City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

and in the case of Burnaby addressed to it at:

City Clerk
City of Burnaby
4949 Canada Way
Burnaby, British Columbia
V5G 1M2

or at such other address as the parties may from time to time advise by notice in writing. The date of receipt of any such notice, approval or request shall be deemed to be the date of delivery of such notice, approval or request if served personally or, on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual

receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request shall only be affected if actually delivered.

15. If any portion of any section of this Agreement or if any section of this Agreement is declared by a court of competent jurisdiction to be void or unenforceable then that portion of that section or that section shall be severed from the balance of this Agreement and the balance of this Agreement shall survive and be enforceable.

16. The parties hereto shall do such things and execute such documents and in such form necessary in order to perfect the intention of this Agreement.

17. Neither party to this Agreement may assign this Agreement nor any of its rights hereunder without the prior written consent of the other, which consent may be arbitrarily withheld.

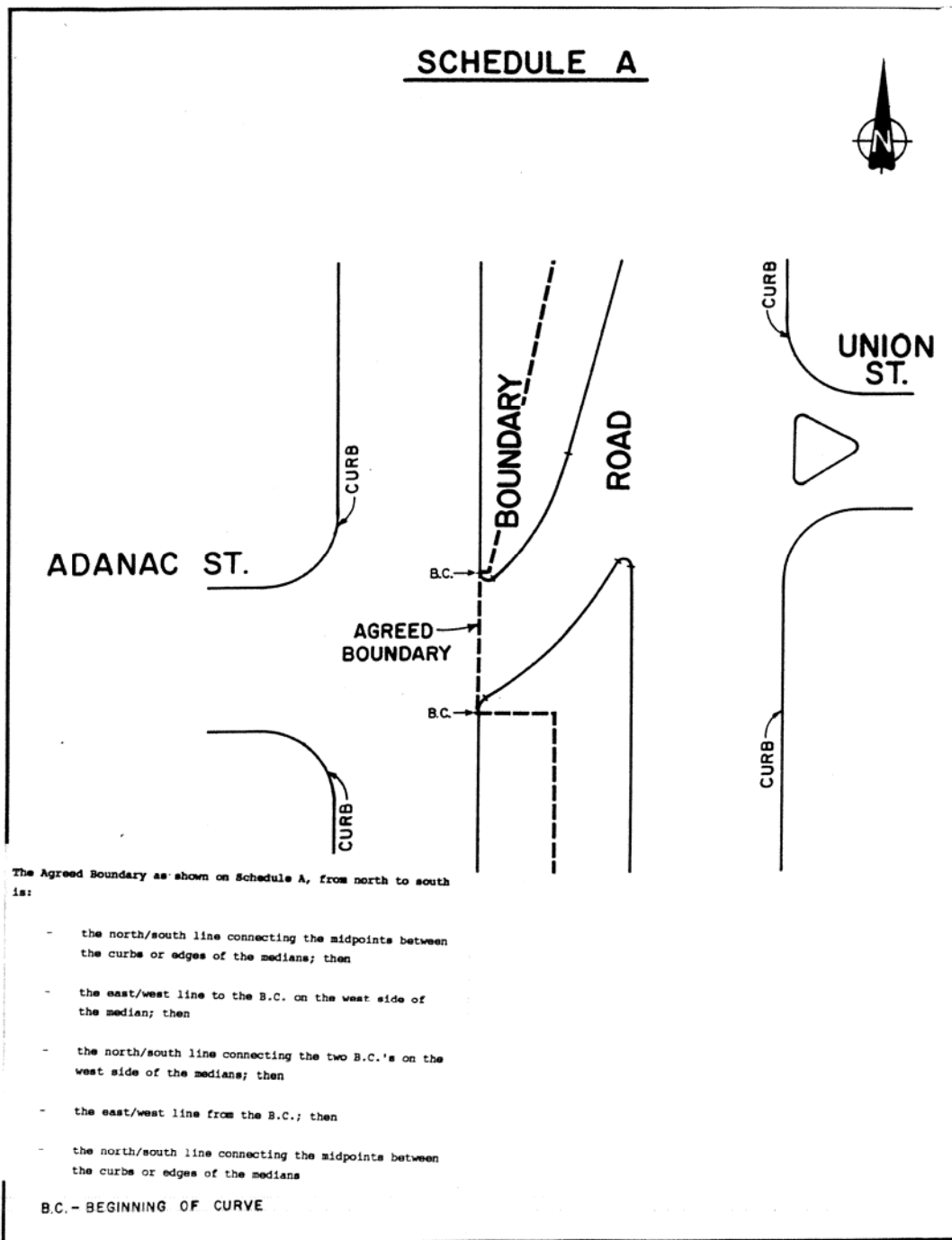
18. The failure of either of the parties hereto to insist upon performance of any covenant or condition contained in this Agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition, right or option and no waiver shall be inferred from or implied by anything done or admitted to be done by either of the parties hereto save an expressed waiver in writing.

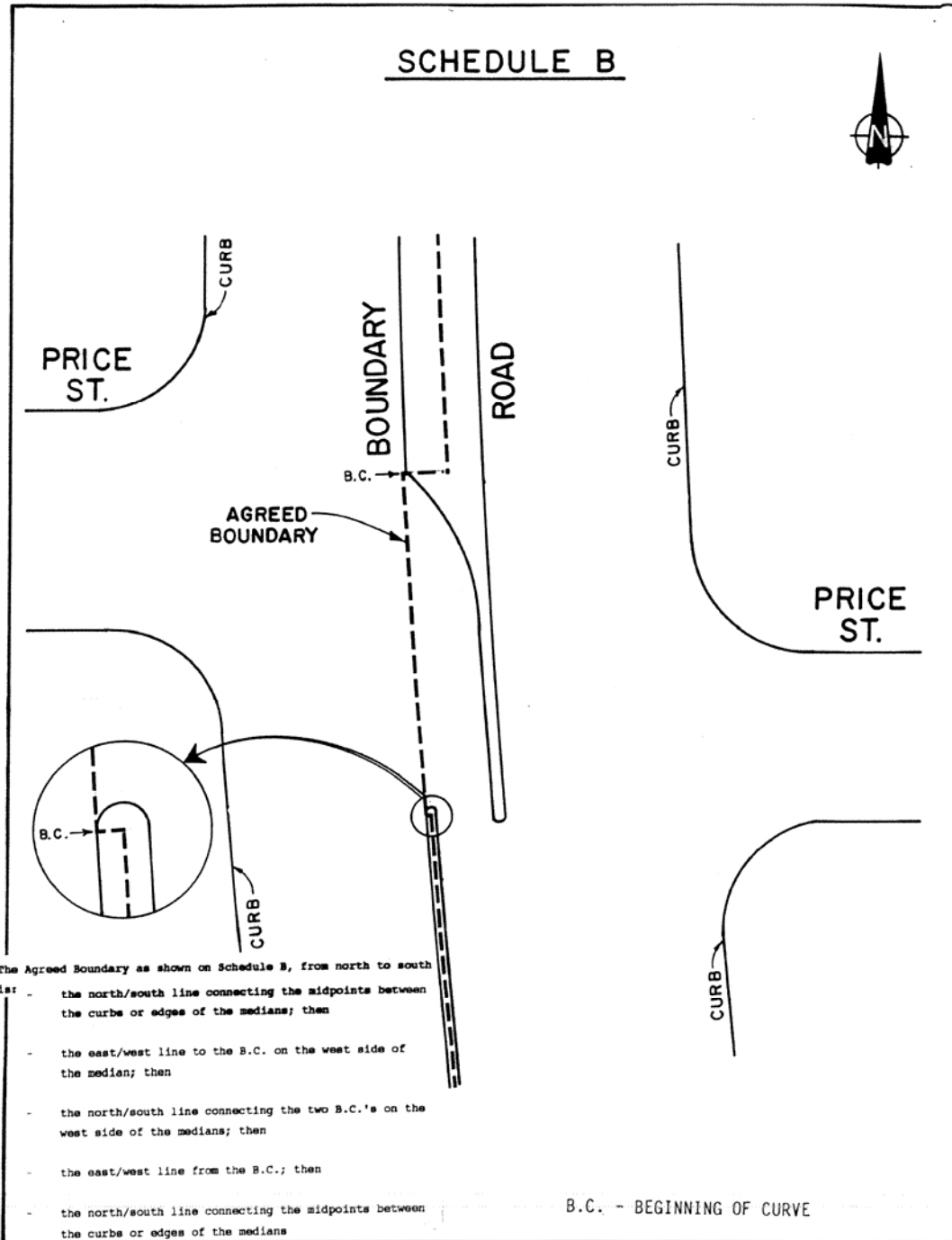
19. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, administrators and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto caused their respective seals to be affixed under the hands of their proper officers duly authorized in that behalf as of the day and year first above written.

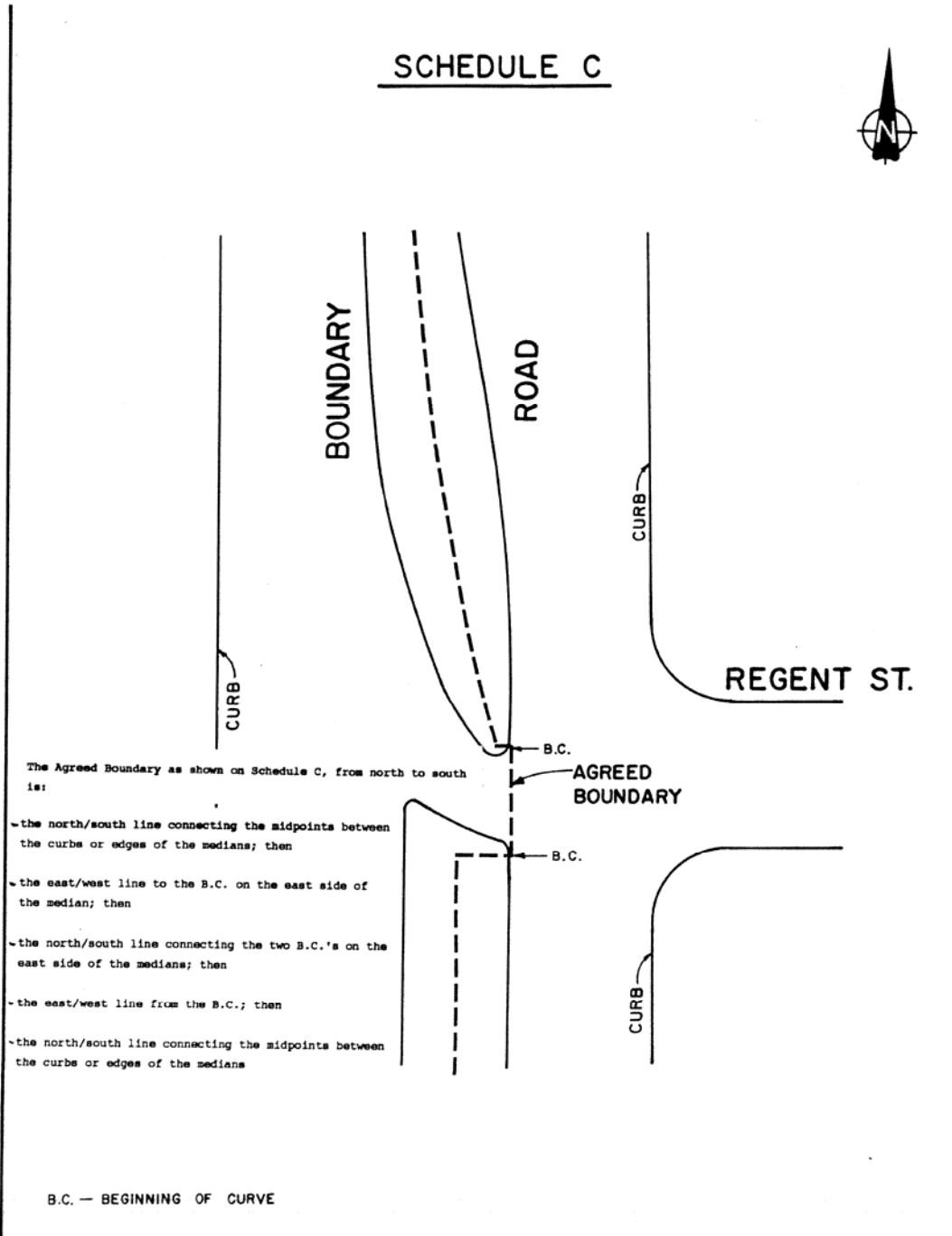
The Common Seal of the)
CITY OF VANCOUVER)
was hereunto affixed)
in the presence of:) C/S
)
_____)
Authorized Signatory)

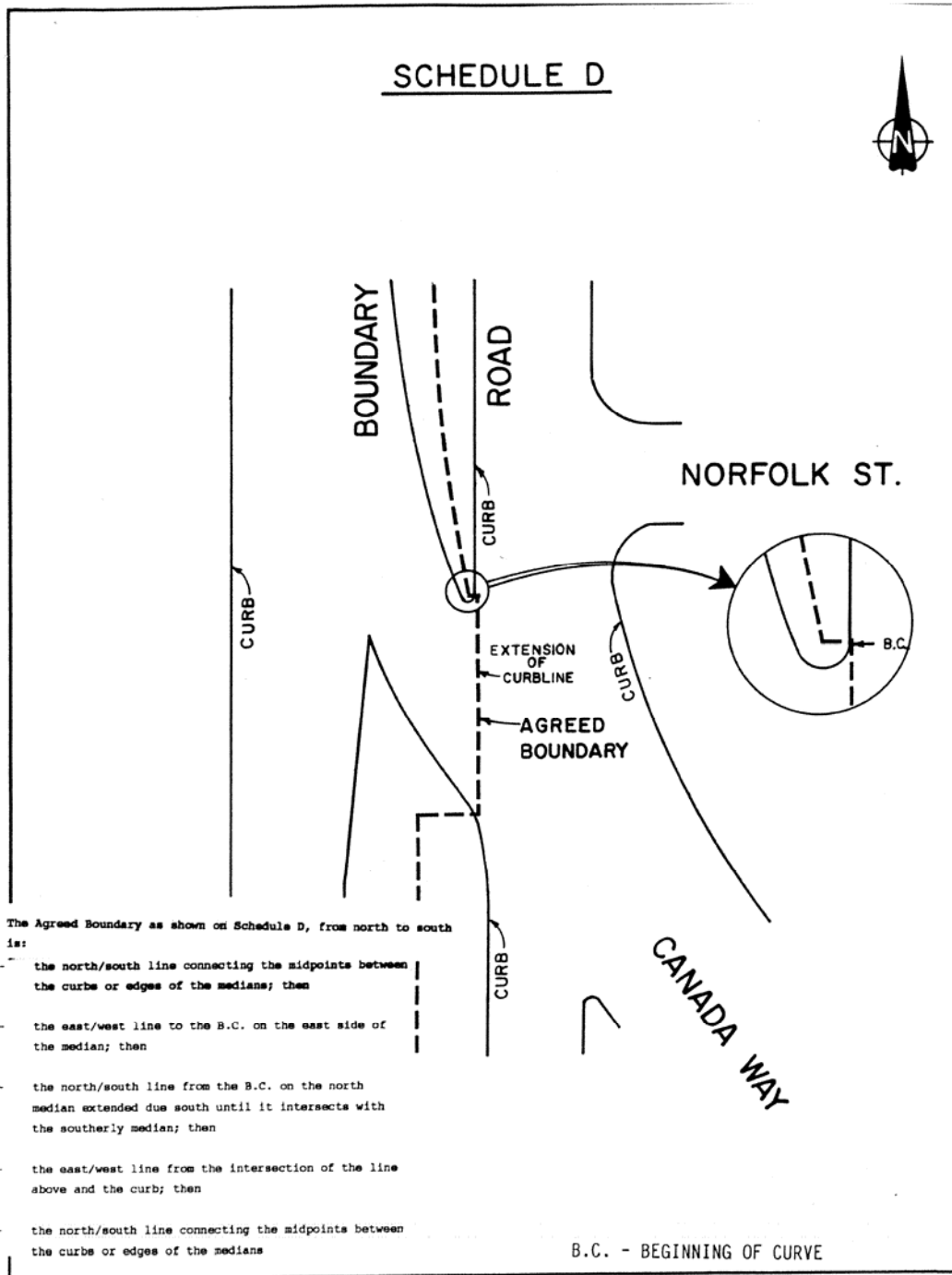
The Common Seal of the)
CITY OF BURNABY)
was hereunto affixed)
in the presence of:)
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Authorized Signatory)
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Authorized Signatory)



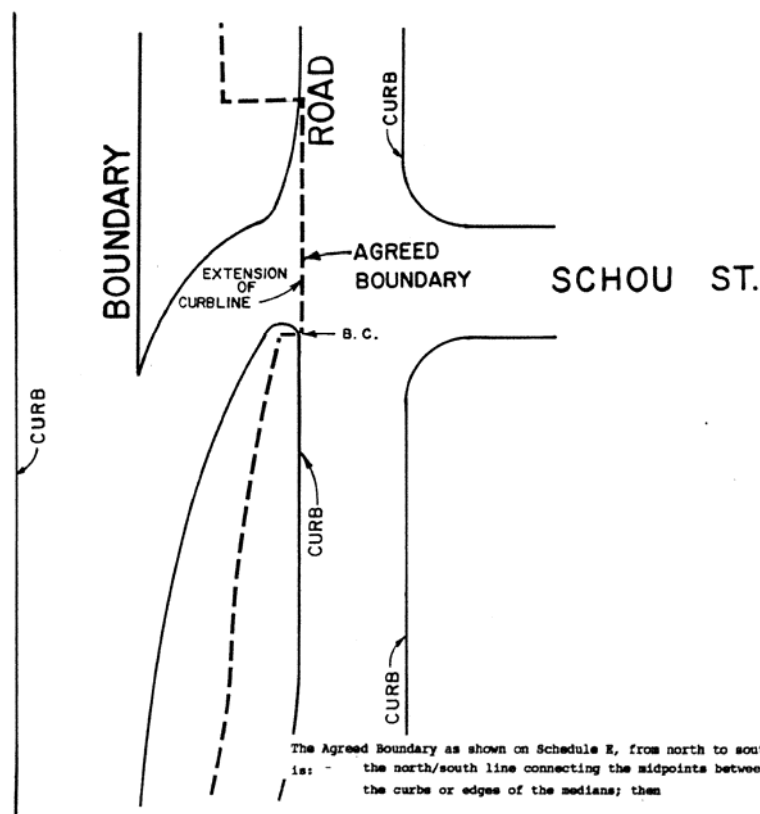


SCHEDULE C



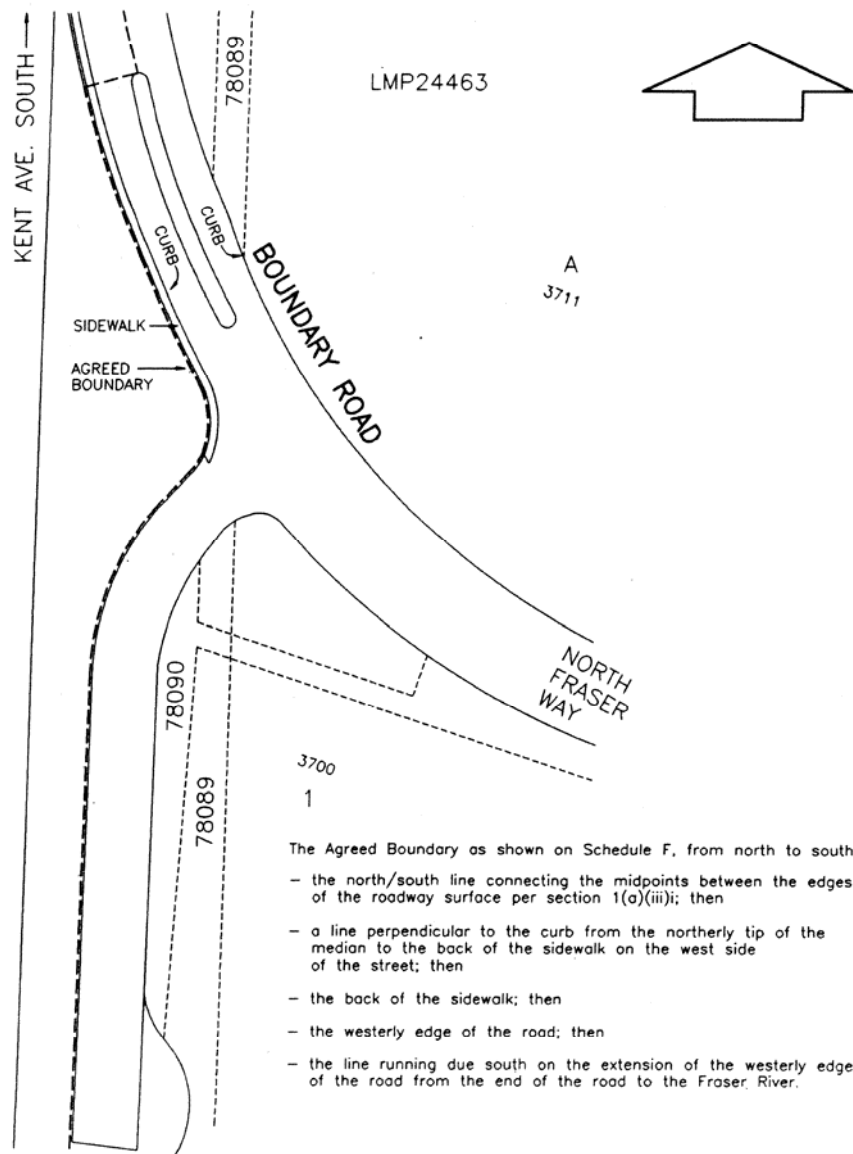


SCHEDULE E



- The Agreed Boundary as shown on Schedule E, from north to south is:
- the north/south line connecting the midpoints between the curbs or edges of the medians; then
 - the east/west line to the extension of the east curb line of the southerly median with the curb of the northerly median; then
 - the extension of the east curb line of the southerly median to the B.C. on the east side of the southerly median; then
 - the east/west line from the B.C. of the southerly median; then
 - the north/south line connecting the midpoints between the curbs or edges of the medians

B.C.— BEGINNING OF CURVE



The Agreed Boundary as shown on Schedule F, from north to south is:

- the north/south line connecting the midpoints between the edges of the roadway surface per section 1(a)(iii); then
- a line perpendicular to the curb from the northerly tip of the median to the back of the sidewalk on the west side of the street; then
- the back of the sidewalk; then
- the westerly edge of the road; then
- the line running due south on the extension of the westerly edge of the road from the end of the road to the Fraser River.

SCHEDULE F