

SCHEDULE K

STANDARD STATUTORY RIGHT-OF-WAY DOCUMENT

This is Schedule K of the City of
Vernon Subdivision and Development
Servicing Bylaw No. 3843, 1992

"Patti Bridal"

City Clerk

Last Updated August 13, 2012

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TERMS OF INSTRUMENT - PART 2

Statutory Right of Way - Sanitary and Storm Sewer

THIS AGREEMENT dated for reference _____, 20__.

BETWEEN:

{insert Transferor information from title search}

(the “**Transferor**”)

AND:

THE CORPORATION OF THE CITY OF VERNON

3400 - 30th Street
Vernon, BC V1T 5E6

(the “**Transferee**”)

Background

A. The Transferor is the registered Transferor in fee simple of certain lands located at *{insert civic address}* Vernon, British Columbia, the legal description of which is as follows:

Parcel Identifier: _____
{insert legal description}

(the “**Lands**”).

B. Section 218 of the *Land Title Act*, R.S.B.C. 1996, c. 250 enables the Transferor to grant in favour of the Transferee an easement without a dominant tenement to be known as a statutory right of way.

C. The Transferee requires and the Transferor wishes to grant to the Transferee a statutory right of way for storm drainage and sanitary sewer works over portions of the Lands.

D. This statutory right of way is necessary for the operation and maintenance of the Transferee's undertaking.

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Terms of Agreement

In consideration of \$1.00 now paid by the Transferee to the Transferor and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. The Transferor hereby grants to the Transferee and its agents, workmen, servants and all other persons acting for and on behalf of the Transferee the full and free right in perpetuity to enter onto and use that portion of the Lands shown in bold outline on a Reference Plan of Statutory Right of Way over *{insert plan description}* prepared from a survey conducted by *{insert name of surveyor}*, B.C.L.S., completed on the *{insert date of survey}*, and assigned Plan EPP _____ *{insert plan number from electronic plan}* (the “**Right-of-Way Area**”):
 - (a) to enter over, on, in, and under the Right of Way Area to:
 - (i) conduct surveys and examinations;
 - (ii) dig up, remove and replace soil;
 - (iii) construct, install, operate, maintain, clean, cover with soil, alter, relocate, renew, inspect and replace power poles, transmission lines, pipes, culverts, retaining walls, wing walls, manholes, meters, pumps, valves, and similar equipment, or any of them, together with all ancillary attachments and fittings (all of which are collectively called the “**Works**”) for the purpose of conveying, draining, containing, protecting, metering and disposing of *{water/sewage, liquid waste and storm water}*
 - (b) to bring on to the Right of Way Area all materials and equipment the Transferee requires or desires for the Works;
 - (c) to clear the Right of Way Area and keep it clear of anything which in the opinion of the Transferee constitutes or may constitute an obstruction to the use of the Right of Way Area or to the Works;
 - (d) to cross over the Lands for reasonable access to the Right of Way Area and make reasonable ancillary use of the Lands for carrying out the Works;
 - (e) the right to clear and break open the surface of and excavate the Right-of-Way Area from time to time;
 - (f) the right to take down fences or parts of fences located on the Lands as may be reasonably required by the Transferee to gain access to the Right-of-Way Area from time to time;
 - (g) the right to enter onto the Lands together with vehicles and equipment including that part outside of the Right-of-Way area from time to time for the purpose of gaining access to the Right-of-Way Area; and

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- (h) the right to place soil and other material excavated from within the Right-of-Way Area on that part of the Lands lying adjacent to the Right-of-Way Area, temporarily from time to time while the Transferee is carrying out work within the Right-of-Way Area; and
- (i) to do all acts which in the opinion of the Transferee are incidental to the foregoing.

2. The Transferee shall:

- (a) use the Right-of-Way Area and carry out the construction and maintenance of the Works in a good and workmanlike manner in order to cause no unnecessary damage or disturbance to the Transferor, the Lands or any improvement on the Lands;
- (b) not bury, without the prior written consent of the Transferor, debris or rubbish in excavations or backfill;
- (c) remove shoring and like temporary structures as backfilling proceeds;
- (d) rake up all rubbish and construction debris it creates in order to leave the Right-of-Way Area in a reasonably neat and clean condition;
- (e) re-grade any portion of the Right-of-Way Area disturbed by any construction or maintenance of the Works to the previous grade and slope; and
- (f) exercise care not to damage the Lands or any improvements on the Lands outside the Right-of-Way Area and if the Transferee should cause any such damage, restore such damaged Lands or improvements thereon to as close to their pre-damaged condition as is reasonably practical with reasonable dispatch or where the Transferor deems restoration to be impractical, reimburse the Transferee for all damage the Transferor has caused but not restored.

3. The Transferor shall:

- (a) not do or permit to be done any act or thing which in the opinion of the Transferee might interfere with, injure, impair the operating efficiency of, or obstruct access to or the use of the Right of Way or the Works;
- (b) not cause or permit the soil cover over any of the Works within the Right-of-Way Area to be substantially diminished or increased or change the overland routing of storm waters;
- (c) not cause or permit retaining walls, open drains or ditches to be constructed across any of the Works installed in the Right-of-Way Area without written permission from the Transferee;

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- (d) not cause or permit any trees, concrete, buildings or structures of any kind including retaining walls to be erected or located on, over or within the Right-of-Way Area; or
- (e) not construct any works directly adjacent to the Right-of-Way which would in any way be undermined or structurally compromised by the rightful excavation of the Works within the Right-of-Way by the Transferee.

Except as set out above, the Transferor shall be entitled to landscape the surface of the Right-of-Way Area and to use same provided that no such use shall interfere with or restrict the use of the Right-of-Way Area by the Transferee for the purposes set out in this Agreement. Notwithstanding the foregoing, except as expressly provided in this Agreement the Transferee is not obligated to restore or replace any landscaping, fencing or other improvements installed on or within the Right-of-Way Area.

- 4. If the Transferor omits, fails or neglects to carry out one of its obligations contained in this Agreement or do some act contrary to its obligations contained in this Agreement, the Transferee may give the Transferor 14 days' written notice in the manner provided in this Agreement requiring the default to be cured. If the Transferor fails to cure such default to the satisfaction of the Transferee within the time specified, the Transferee may enter onto the Lands and rectify such default to the extent considered necessary by it and the cost of doing so shall be a debt due and owing to the Transferee by the Transferor with interest to accrue at the prime commercial lending rate of the Canadian Imperial Bank of Commerce as of the date of the notice.
- 5. The Transferor shall at all times and does hereby indemnify, save harmless, release and forever discharge the Transferee from and against all manner of actions, causes of action, claims, debts, suits, damages, demands and promises, at law or in equity, whether known or unknown, including without limitation for injury to persons or property including death, of any person directly or indirectly arising or resulting from, or attributable to, any act, omission, negligence or default of the Transferor in connection with or in consequence of this Agreement, save and except to the extent caused by any act, omission, negligence or default of the Transferee.
- 6. This Agreement runs with the Lands.
- 7. No right granted to or reserved by the Transferee in this Agreement shall require the Transferee to clean, repair, or maintain the Works or the Statutory Right of Way unless the Transferee is expressly required in this Agreement to perform such cleaning, repairing or maintenance.
- 8. The Transferee shall have quiet enjoyment of the rights hereby granted without disturbance, let or hindrance by any person, firm or corporation being the Transferors or occupiers from time to time of the Lands.

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9. The Transferor will from time to time and at all times at the request and at the expense of the Transferee, do and execute, or cause to be made done or executed all such further and other lawful acts, deeds, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the Transferee of the rights hereby granted to the Transferee.
10. The Works, and all goods, chattels and materials installed on or within the Right-of-Way Area by the Transferee from time to time in the course of carrying out the purposes set out above shall remain the property of the Transferee at all times. If the Transferee abandons the Works, or any part of the Works, the Transferee may, at its election, leave the whole or any part of the Works in place on, under, or within the Right-of-Way Area.
11. Wherever this Agreement creates a power or obligation of the Transferee to make a decision or to exercise any contractual right or remedy, the Transferee may do so in accordance with the provisions of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, shall have any application.
12. Notwithstanding anything contained in this Agreement, the Transferee reserves all rights and powers of expropriation otherwise enjoyed by the Transferee.
13. Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party.
14. Whenever it is required or desired that either party shall deliver or serve a notice on the other, delivery or service shall be deemed to be satisfactory if and deemed to have occurred when:
 - (a) the Clerk of the Transferee or a director of the Transferor has been served personally, on the date of service; or
 - (b) mailed by prepaid registered mail, on the date received or on the sixth day after receipt of mailing by any Canada Post office, whichever is the earlier, so long as the notice is mailed to the party at the address provided in this Agreement or to whatever address the party may from time to time provide to the other party.
15. The Transferor acknowledges and agrees that the Statutory Right-of-Way created by this Agreement shall be registered as a charge against the title to the Lands pursuant to the provisions of Section 218 of the *Land Title Act*, R.S.B.C. 1996, Chapter 250.
16. The Transferor shall, after execution of this Agreement by it, at the expense of the Transferor, do or cause to be done all acts reasonably necessary to grant priority to this Agreement over all financial charges and encumbrances which may have been registered against the title to the Lands in the Land Title Office save and except those as have been specifically approved in writing by the Transferee or have been granted in favour of the Transferee.

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17. None of the covenants contained in this Agreement shall be personal or binding upon the Transferor, save and except during the Transferor's ownership of any interest in the Lands and with respect only to that portion of the Lands owned by the Transferor from time to time, but the Lands nevertheless shall be and remain at all times charged therewith in perpetuity.

18. *{insert priority clause for financial chargeholder, if applicable}*