

LAND TITLE ACT

FORM C

(Section 233)

Province of
British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

Page 1 of 10 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Kelsey Bakewell
The Board of Education of School District No. 68 (Nanaimo-Ladysmith)
395 Wakesiah Avenue, Nanaimo, BC, V9R 3K6

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND: *

(PID) (LEGAL DESCRIPTION)

008-881-952 Lot 3, Block 8, Section 17, Range 7, Mountain District, Plan 526

3. NATURE OF INTEREST: *

DESCRIPTION DOCUMENT REFERENCE (page and paragraph) PERSON ENTITLED TO INTEREST
Statutory Right of Way Transferee (City of Nanaimo)

4. TERMS: Part 2 of the instrument consists of (select one only)

- (a) Filed Standard Charge Terms D.F. No. Terms of Instrument (attached)
- (b) Express Charge Terms Annexed as Part 2
- (c) Release There is no Part 2 of this Instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S): *

The Board of Education of School District No. 68 (Nanaimo-Ladysmith)

6. TRANSFEREES(S): (including postal address(es) and postal code(s)) *

The City of Nanaimo, 455 Wallace Street, Nanaimo, BC, V9R 5J6

7. ADDITIONAL OR MODIFIED TERMS: *

See schedule - Terms of Instrument

8. EXECUTION(S): ** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Transferor(s) Signature(s)

Y	M	D

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT – PART 2

WATER METER AND CONNECTION

STATUTORY RIGHT OF WAY AND SECTION 219 COVENANT AGREEMENT

THIS AGREEMENT dated for reference November 4th, 2022 is

BETWEEN:

The Board of Education of School District No. 68 (Nanaimo-Ladysmith), 395
Wakesiah Ave, Nanaimo, B.C. V9R 3K6
(the “**Owner**”)

AND:

CITY OF NANAIMO, 455 Wallace Street, Nanaimo, B.C. V9R 5J6
(the “**City**”)

GIVEN THAT:

- A. The Owner is the registered owner in fee simple of the land legally described in the *Land Title Act* Form C attached to and forming part of this Agreement (the “**Land**”);
- B. The Owner has constructed, or wishes to construct, an institutional building on the Land (the “**Building**”), portions of which are shown on Schedule A;
- C. In connection with the construction of the Building, the Owner is required to install for the City certain water meters, meter reading devices, electrical connections and other works, facilities and appurtenances as described and shown on the plans attached as Schedule A;
- D. The City normally requires that such metering works be installed at the boundary of the property and adjoining highway, however, at the request of the Owner to reduce installation costs, the City has agreed to permit the Owner to install such works within the Building and on the exterior of the Building;
- E. In connection with the construction of the Building, the Owner is also required to install a waterline connecting the City water system located within adjacent highway to the Building, which waterline is described and shown on the plans attached as Schedule A, with the Owner retaining ownership of and sole responsibility for such waterline and connection;
- F. In connection with the foregoing, the Owner has agreed to grant to the City:

(i) a statutory right of way under section 218 of the *Land Title Act* (British Columbia) for the installation, operation and maintenance of water meters, meter reading devices, electrical connections and other works, facilities and appurtenances necessary or convenient for the purpose of measuring the volume of water supplied to the Building (collectively, the “**Works**”), including the initial Works described and shown on the plans attached as Schedule A, and

(ii) a covenant under section 219 of the *Land Title Act* with respect to the use of the Land and the Building; and

- G. The statutory right of way granted in this Agreement is necessary for the operation and maintenance of the City’s undertaking;

THIS AGREEMENT is evidence that in consideration of \$1.00 and other good and valuable consideration from the City to the Owner, the receipt and sufficiency of which the Owner acknowledges, the Owner and the City covenant and agree as follows:

1. **Grant of Statutory Right of Way** – The Owner grants, conveys, confirms and transfers, in perpetuity, to the City, for itself and its employees, contractors, agents and licensees, together with machinery, vehicles, equipment and materials, the full, free and uninterrupted right, license, liberty, privilege, permission, easement and right-of-way to, at all times and from time to time:
 - (a) lay down, install, construct, entrench, operate, maintain, inspect, alter, remove, replace, bury, cleanse, string and otherwise establish the Works upon, over, under and across the Land, upon the exterior of the Building and within the Building, including within, onto and through the structural and other elements of the Building and the interior thereof;
 - (b) enter upon and pass and repass over the Land, and enter into those portions of the Building as may be reasonably required for the purpose of ingress to and egress from the Works or for the purpose of exercising the other rights granted to the City under this Agreement, provided that, except in an emergency situation, the City will only exercise such rights to enter the Land and the Building between the hours of 9:00 am and 5:00pm, Monday to Friday and only following 24 hours telephone notice to the Owner;
 - (c) have unobstructed access to and from the Works, subject to paragraph 1(b) above; and
 - (d) do all other things upon, over, under and across the Land, to the exterior of the Building and within the Building, including within, upon and through the structural and other elements of the Building, as may be reasonably necessary or desirable in connection with, or incidental to, the foregoing.

2. **City Covenants** – As covenants granted under section 218(3)(b) of the *Land Title Act* respecting the statutory right of way granted under section 1, the City covenants and agrees with the Owner as follows:
 - (a) The City shall remove all rubbish and construction debris created or placed on the Land or within the Building by the City and shall leave the portions of the Land and the Building it has used in a neat and clean condition.
 - (b) The City shall, as far as reasonably possible, carry out all work on the Land and to and within the Building in a proper and workmanlike manner so as to do as little injury to the Land and Building as reasonably possible.

3. **Owner Covenants and Section 219 Covenant** – The Owner covenants and agrees with the City, both as covenants under section 218(3)(b) of the *Land Title Act* respecting the statutory right of way granted under section 1 and as a covenant under section 219 of the *Land Title Act* respecting the use of the Land and the Building, as follows:
 - (a) The Owner shall not do or permit to be done any act or thing that may interfere with or injure the Works or interfere with the City's rights under this Agreement. The Owner acknowledges that any act or thing that interferes with or injures the Works may rupture or otherwise damage the waterworks forming part of the Works and could result in property damage or bodily harm or death, from water leakage or other cause.
 - (b) The Owner shall not do or permit to be done any connection to the waterline (whether part of the Works or otherwise) from the property line to the water meter forming part of the Works.
 - (c) If at any time a connection is installed in contravention of section 3(b) or if the waterline between the property line and the water meter is injured or interfered with in any way:
 - (i) in an emergency situation, the City may immediately disconnect the water supply to the Land and may install a water meter chamber as per City standards at the property line, all at the Owner's expense;
 - (ii) in a non-emergency situation, if the Owner does not remedy the contravention within 30 days following notice from the City, the City may immediately disconnect the water supply to the Land and may install a water meter chamber as per City standards at the property line, all at the Owner's expense.
 - (d) The Owner shall keep the Building at all times in a good condition and good state of maintenance and repair.

- (e) The Owner acknowledges its ownership of the waterline connecting from the adjacent highway to and within the Building as shown on Schedule A and the Owner shall repair and maintain that waterline so that it is at all times in a good and operating condition.
 - (f) The Owner shall, at least on a monthly basis, inspect the Works and promptly advise the City of any malfunction or other condition that may require repair or maintenance and the Owner acknowledges that the City's inspection policy in place from time to time may, at the discretion of the City, contemplate City inspections of the Works at less frequent intervals.
 - (g) If the Building is damaged or destroyed by any cause, the Owner shall cause such damage or destruction to be repaired or replaced in a manner that permits and accommodates the repair, reinstallation or replacement of the Works, as the case may be.
 - (h) The Owner shall at all times maintain its participation in the British Columbia Schools Protection Program (the "SPP"), a self-insurance program established and administered by the British Columbia Ministries of Finance and Education, providing coverage for property owner or leased by the Owner, and Commercial General Liability coverage to a limit of \$5,000,000.00, and:
 - (i) name the City as an additional insured; the City shall be added as an Additional Interest, but only with respect to liability arising out of the operations of the Owner; and
 - (ii) upon request from time to time by the City, the Owner shall provide the City with a Memorandum of Insurance issued by the SPP, evidencing that such policy is in place on the terms required under this Agreement
4. **Indemnity** – As a covenant under section 218(3)(b) of the *Land Title Act* respecting the statutory right of way granted under section 1 and as an integral part of the covenant granted pursuant to section 219 of the *Land Title Act* under section 3, the Owner hereby releases, and shall indemnify and save harmless, the City and its elected and appointed officials, officers, employees, contractors, agents and licensees from and against any and all actions, causes of action, liabilities, demands, losses, damages, expenses (including legal fees and disbursements), fines and penalties suffered or incurred by the City or any of its elected and appointed officials, officers, employees, contractors and agents in any way arising or resulting from, or related to, the presence of the Works within the Building (**Excluding** any malfunction of the Works howsoever caused (including if caused by the negligence of the City or any of its officers, employees, contractors, agents or licensees)), the existence of this Agreement, the restrictions contained herein or any breach of the Owner's covenants and obligations under this Agreement

General

5. **Owner Contact Telephone Number** – For the purposes of enabling the City to provide notice by telephone where contemplated under this Agreement, the Owner will provide a telephone contact number for such purposes and will provide the City with any changes to that number promptly as and when such number may change from time to time.
6. **Runs With Land** – This Agreement burdens and runs with, and binds the successors in title to, the Land and each and every part into which the Land may be subdivided by any means.
7. **Specific Relief** – Because of the public interest in ensuring that all of the matters described in this Agreement are complied with, the public interest strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the City, in the event of an actual or threatened breach of any of the Owner’s covenants or obligations under this Agreement.
8. **No Effect on Powers** – This Agreement does not:
 - (a) affect or limit the discretion, rights or powers of the City under any enactment, or at common law, including in relation to the use or subdivision of the Land;
 - (b) affect or limit any enactment, including any enactment relating to the use or subdivision of the Land or the Building; or
 - (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land or the Building.
9. **No Public Law Duty** – Where the City or any representative of the City is required or permitted under this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the City or its representative, as the case may be, is under no public law duty of fairness or natural justice in that regard and the City or its representative may do any of those things in the same manner as if it were a private party and not a public body or a representative thereof.
10. **No Obligation To Enforce** – The rights given to the City under this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the to any one, or obliges the to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
11. **Owner’s Expense** – The Owner shall be solely responsible for all costs of complying with and performing its obligations under this Agreement. Where this Agreement permits the City to do something at the Owner’s expense, the Owner will reimburse the City for

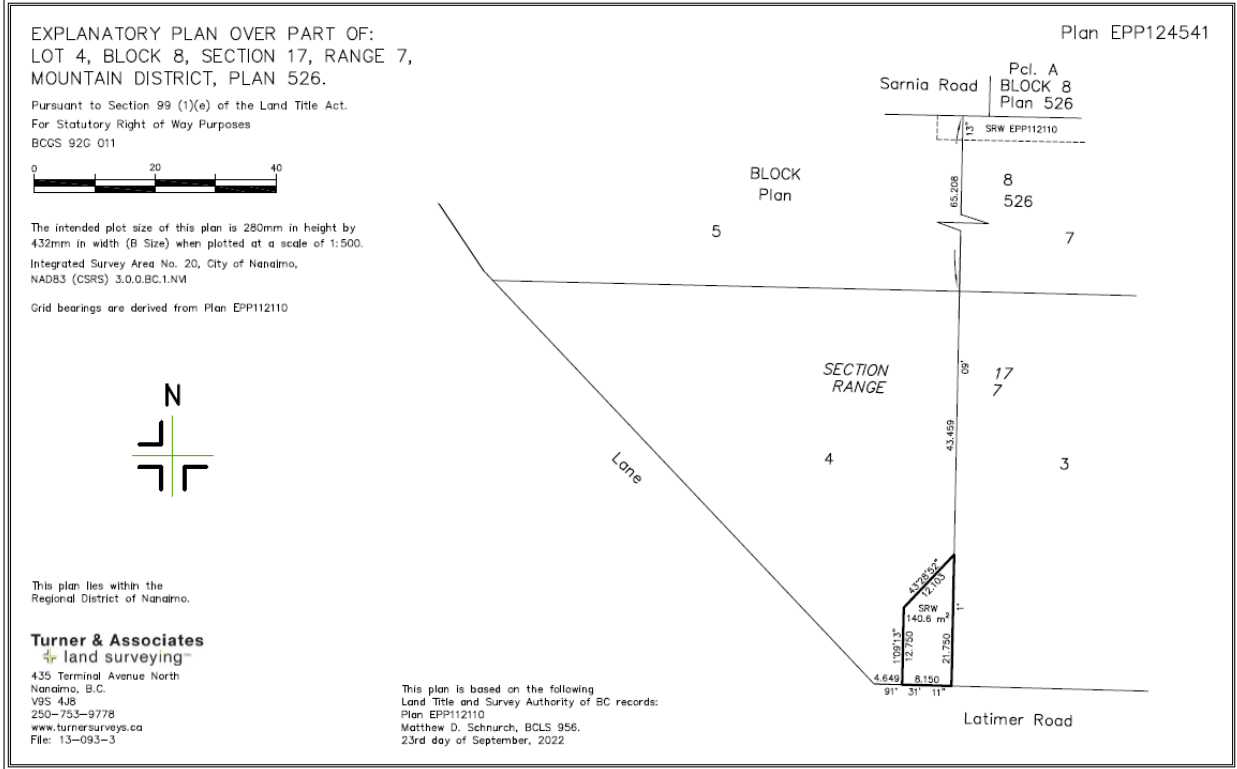
its reasonable out-of-pocket costs of doing so within 30 days of receipt of an invoice from the City.

12. **Waiver** – An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach or continuing breach of this Agreement.
13. **Priority** – The Owner shall, at its expense, do or cause to be done all acts necessary to register this Agreement in the land title office against title to the Land with priority over all financial charges, liens and encumbrances registered, or pending registration, at the time of application for registration of this Agreement against the title to the Land, other than any other existing statutory rights-of-way, covenants or easements.
14. **Time of Essence** – Time is of the essence of this Agreement.
15. **Further Assurances** – The Owner shall from time to time and at all times upon every reasonable request from the City and at the cost of the Owner 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 City of the rights granted under this Agreement.
16. **No Vesting of Fee** – No part of the title in fee simple to the soil shall pass to or be vest in the City under or by virtue of this Agreement and the Owner may fully use and enjoy the Land and the Building, subject only to the rights and restrictions in this Agreement.
17. **Joint and Several Liability** – Where the Owner is at any time comprised of more than one person, all of the Owner’s obligations under this Agreement shall be construed as being several as well as joint.
18. **Covenants and Agreements** – All of the provisions of this Agreement shall be construed as covenants and agreements as though the words importing covenants and agreements were used in each provision.
19. **Severance** - If any part of this Agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid part shall be considered severed from the rest of this Agreement and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.
20. **Interpretation** - In this Agreement:
 - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;

- (c) the term “enactment” has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
 - (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
 - (e) reference to any enactment (including, for clarity, any bylaw) is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;
 - (f) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this and any Schedules to this Agreement form part of this Agreement; and
 - (g) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".
21. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof.
22. **Enurement** – This Agreement and each and every provision hereof shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, as the case may be.
23. **Entire Agreement** – This Agreement is the entire agreement between the parties regarding its subject.

As evidence of their agreement to be bound by this Agreement, the parties have executed the *Land Title Act* Form C attached to and forming part of this Agreement.

Schedule A



END OF DOCUMENT