



1. Application

**Samuel S. Dabner, FULTON & COMPANY LLP,  
 Lawyers & Trade-mark Agents  
 Agent on behalf of City of Kamloops  
 300 - 350 Lansdowne Street  
 Kamloops BC V2C 1Y1  
 250-372-5542**

File: 2728-509/SSD/jmt

2. Description of Land

PID/Plan Number	Legal Description
EPP93009	LOT 1 DISTRICT LOT D GROUP 2 KAMLOOPS DIVISION YALE (FORMERLY LYTTON) DISTRICT PLAN EPP93009
EPP93009	LOT 2 DISTRICT LOT D GROUP 2 KAMLOOPS DIVISION YALE (FORMERLY LYTTON) DISTRICT PLAN EPP93009
EPP93009	LOT 3 DISTRICT LOT D GROUP 2 KAMLOOPS DIVISION YALE (FORMERLY LYTTON) DISTRICT PLAN EPP93009
EPP93009	LOT 4 DISTRICT LOT D GROUP 2 KAMLOOPS DIVISION YALE (FORMERLY LYTTON) DISTRICT PLAN EPP93009
EPP93009	LOT 5 DISTRICT LOT D GROUP 2 KAMLOOPS DIVISION YALE (FORMERLY LYTTON) DISTRICT PLAN EPP93009

3. Nature of Interest

Type	Number	Additional Information
<b>STATUTORY RIGHT OF WAY</b>		

4. Terms

Part 2 of this instrument consists of:  
**(b) Express Charge Terms Annexed as Part 2**

5. Transferor(s)

**CITY OF KAMLOOPS**

6. Transferee(s)

**CITY OF KAMLOOPS  
 7 VICTORIA STREET WEST  
 KAMLOOPS BC V2C 1A2**

7. Additional or Modified Terms



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.

Witnessing Officer Signature

\_\_\_\_\_

**CRYSTAL GELINEAU**  
**Commissioner for Taking Affidavits**  
**for British Columbia**  
 7 Victoria St. W  
 Kamloops BC V2C 1A2

Execution Date

YYYY-MM-DD

**2022-01-19**

Transferor Signature(s)

**CITY OF KAMLOOPS**  
 By their Authorized Signatory

\_\_\_\_\_

**Print Name: Natalie Garbay,**  
**Corporate Officer**

250-828-3311  
 Expires: September 30, 2023  
 (as to both signatures)

\_\_\_\_\_

**Print Name: Kenneth L. Christian,**  
**Mayor**

**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.

<p><b>Electronic Signature</b></p> <p>Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the <i>Land Title Act</i>, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.</p>	<p><b>Samuel Stirling</b>  <b>Dabner MFTR5B</b></p> <p><b>Digitally signed by</b>  <b>Samuel Stirling Dabner</b>  <b>MFTR5B</b>  <b>Date: 2022-01-31</b>  <b>06:39:59 -08:00</b></p>
--	--

---

**TERMS OF INSTRUMENT – PART 2**

---

**STATUTORY RIGHT OF WAY**

**WHEREAS:**

- (a) The Transferor is the registered owner of an estate in fee simple of the lands and premises as shown in paragraph 2 of the Form C (hereinafter called the "Lands");
  - (b) The Transferee has applied to the Transferor for permission to access, install and maintain a dike, earth dam, drainage ditch, drainage pipes, clean outs and other drainage works and any necessary appurtenances (hereinafter called the "Dike") over, under, and through the surface of the Lands;
  - (c) The Transferor has agreed to grant the Transferee such rights in respect of the Dike as necessary for the operation and maintenance of the Dike;
  - (d) The Transferor recognizes that lands adjacent to waterways are subject to damage by erosion and/or damage by floodwaters and the Dike may or may not be adequate protection for such damage; and
  - (e) The Transferor has accepted the risk associated with the Lands and has agreed to indemnify and save harmless the Transferee from loss or damage.
1. FOR GOOD AND VALUABLE CONSIDERATION given by the Transferee to the Transferor (the receipt whereof by the Transferor is hereby acknowledged), and the covenants and agreements herein contained, the Transferor HEREBY GRANTS CONVEYS AND CONFIRMS unto the Transferee, its servants, agents, invitees heirs and assigns, a full, free and uninterrupted right licence, liberty, easement, privilege and permission to construct, lay down, operate, maintain, inspect, alter, remove replace, reconstruct and repair the Dike over, under and through that part of the Lands of the Transferor shown as SRW 'A' to SRW 'E', inclusive, outlined on a Statutory Plan of Right of Way prepared by Thomas Dunkley, BCLS, and completed the 9th day of

November, 2021 and registered in the Kamloops Land Title Office under plan number EPP93067 (hereinafter collectively called the "Right of Way Area") together with the full, free and uninterrupted right of ingress and egress in connection therewith for the Transferee, its servants and agents, to use, enter, labour, pass and re-pass upon and in the Lands, with or without equipment, and to dig up such of the soil of the Right of Way Area as may be necessary.

2. The Transferor further grants to the Transferee the right to:
  - (a) make surveys, tests, inspections and examinations upon the Right of Way Area;
  - (b) clear the Right of Way Area and keep it clear of all or any part of any trees, buildings, obstructions or damaging or interfering growth now or hereafter on the Right of Way Area which might, in the opinion of the Transferee, interfere or endanger the installation repair, construction, erection, placement, operation, maintenance, removal, replacement, excavation for, or installation of the Dike or any part thereof; and
  - (c) generally do all acts necessary or incidental to the business of the Transferee in connection with the Dike.
  
3. The Transferee covenants and agrees with the Transferor that it will:
  - (a) construct, lay down, maintain and repair the Dike as may be reasonable and proper in the circumstances ;
  - (b) so often as its servants or agents shall enter upon the Right of Way Area to construct, reconstruct, maintain, inspect, renew, or repair the Dike forthwith restore the surface soil and surfacing materials of the Lands to, as nearly as possible, the same condition as it was prior to the entry for the aforesaid purpose or purposes;
  - (c) pay for all expenses incurred in the construction of the Dike and for any repairs, alterations, and maintenance thereto and in the performing of any of the covenants and agreements herein agreed to be performed by the Transferee; and

- (d) not commit or suffer any wilful or voluntary waste, spoil or destruction on the Right of Way Area or do or suffer to be done thereon anything in excess of the rights granted hereunder which may be or become a nuisance or annoyance to the Transferor.

4. The Transferor covenants and agrees with the Transferee that it will:

- (a) not plant any trees or shrubs or make, place, erect, or maintain any building, structure, foundation, pavement, excavation, pile of material, or obstruction upon the Right of Way Area which, in the opinion of the Transferee, might interfere with the safe and efficient operation of the Dike, or any part thereof, or might obstruct access to the Dike, or any part thereof by the Transferee;
- (b) not do or knowingly permit to be done any act or thing which will interfere with or injure the construction or maintenance of the Dike;
- (c) not, without the written consent of the Transferee, diminish or add to the ground cover of the Right of Way Area nor interfere with the structural integrity of the Dike; and
- (d) except as provided in this agreement, not to use the Right of Way Area for purposes other than the Dike as more particularly described herein.

5. The parties agree that nothing herein obliges the Transferee to construct the Dike or exercise any other rights granted to it in accordance with this Right of Way in relation to the Dike, even if the Lands are threatened by erosion or floodwaters and, further, the presence of the Dike does not guarantee that the Lands will be safeguarded from damage by erosion or floodwaters.

6. To the extent permitted by law, the Transferor, on behalf of himself and his heirs, executors, administrators, successors and assigns hereby indemnifies and saves harmless the Transferee and the its employees, servants or agents from all loss, damage, costs, actions, suits, debts, accounts, claims and demands which the Transferor may suffer or incur or be put to arising out of or in connection with any

breach of any covenant or agreement on the part of the Transferor or his heirs, executors, administrators, successors and assigns contained in this Agreement or arising out of or in connection with any personal injury, death or loss or damage to the Lands, or to any building, modular home, manufactured home or unit, improvement, chattel or other structure, including the contents of any of them, built, constructed or placed on the Lands caused by erosion or floodwaters (notwithstanding the presence of the Dike).

7. The covenants herein contained shall be covenants running with the Lands and shall be perpetual and the Right of Way hereby granted shall be perpetual.
8. Any and all chattels and fixtures installed by the Transferee on the Right of Way Area shall be and shall remain chattels, any rule at law to the contrary notwithstanding, and shall belong solely and exclusively to the Transferee.
9. There are no representations, warranties, guarantees, promises, agreements, covenants, or conditions on the part of either party other than those set forth in this agreement which may only be altered in a written amendment signed by both parties.
10. If any provision of this Agreement or any part thereof shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable in any respect, or be deemed to impose an impermissible positive covenant, then such invalid, unenforceable or impermissible provision or part shall be severable and severed from this Agreement and the other provisions of this Agreement shall remain in effect and be construed as if such invalid, unenforceable or impermissible provision or part had never been contained herein.
11. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

END OF DOCUMENT