

## Schedule A.2

### TERMS OF INSTRUMENT - PART 2 STATUTORY RIGHT OF WAY

THIS AGREEMENT dated for reference this [day] of [month], 2021.

BETWEEN:

[NAME OF INDIVIDUAL, occupation]

[NAME OF INDIVIDUAL, occupation]

Address

City, Province

Postal Code

("Grantor")

AND:

**DISTRICT OF LAKE COUNTRY**, a municipal corporation incorporated under the laws of British Columbia and having an address of 10150 Bottom Wood Lake Road, Lake Country, BC V4V 2M1

("Grantee")

#### WHEREAS:

- A. The Grantor is the registered owner in fee simple of certain lands in the District of Lake Country legally described in item 2 of the Form C General Instrument - Part 1 to which this Agreement is attached ("Land");
- B. Section 218 of the Land Title Act, R.S.B.C. 1996, c. 250, enables the Grantor to grant in favour of the Grantee an easement without a dominant tenement known as a statutory right of way;
- C. The Grantor has agreed to grant and the Grantee accepts the statutory right of way created by this Agreement under section 218 of the Land Title Act, for the purposes of the construction, installation, improvement, extension, removal, alteration, repair, inspection, maintenance, operation, replacement and use of certain works, including all appurtenances ancillary and incidental thereto, generally described as all pipes, conduits, wires, optic lines, valves, fittings, pumps, facilities, manholes, improvements, appliances, meters, devices and appurtenances necessary or convenient for one or more systems of sewer, water, drainage, gas, electrical, communication, or other public utility for the necessary and convenient collecting, carrying, distributing of these utilities as part of the Grantee's utilities systems (collectively, the "Works"); and
- D. This statutory right of way is necessary for the operation and maintenance of the Grantee's undertaking.

**NOW THEREFORE** this Agreement is evidence that in consideration of the promises set out in this Agreement, other good and valuable consideration, and of TWO DOLLARS (\$2.00) paid by the Grantee to the Grantor, receipt of which is acknowledged by the Grantor, the Grantor covenants and agrees with the Grantee in accordance with section 218 of the *Land Title Act* as follows:

1. **Statutory Right of Way** – Under section 218 of the Land Title Act, the Grantor hereby grants and conveys, in perpetuity and at all times, to the Grantee, its servants, employees, agents, contractors, invitees, licensees, administrators, successors and assigns, the full, free, unrestricted and uninterrupted right, license, liberty, privilege, easement, permission and statutory right of way (“Right of Way”) over that portion of the Land shown outlined in bold black on the Statutory Right of Way Plan over a part of [**Lot , Section , Township , ODYD Plan**] and registered in the Land Title Office in Kamloops, British Columbia under Number [**insert plan**], (the “Right of Way Area”), a reduced size print of which is attached hereto as Schedule “A”, to enter, use, go, return, pass and repass with or without vehicles, equipment, machinery and materials along, over, under and upon the Right of Way Area:
  - (a) to construct and install the Works upon the Right of Way Area and to inspect, improve, extend, alter, remove, operate, use, replace, repair, and maintain the Works from time to time in the Grantee's discretion;
  - (b) to construct and install one or more temporary systems of Works on the Right of Way Area in the event of a breakdown or malfunction of the Works and to inspect, operate, use, repair and replace such temporary systems of Works;
  - (c) to store temporarily on the Right of Way Area all personal property (including equipment) necessary for the installation, maintenance, repair or replacement of the Works;
  - (d) to alter the Right of Way Area as necessary for the purposes for which the Right of Way is granted, including by the removal or deposit of soil and other surface or subsurface materials, the removal of trees, vegetation, buildings, structures or obstructions of any kind; and
  - (e) to do all acts which in the opinion of the Grantee are necessary, useful, convenient and incidental to the use of the Right of Way granted by this Agreement and in connection with the operations of the Grantee in relation to the Works.
  
2. **Ancillary Access** – The Grantor covenants and agrees to and with the Grantee that the Grantor grants, conveys, confirms and transfers to the Grantee, its servants, employees, agents, contractors, invitees, licensees, administrators, successors and assigns, together with machinery, vehicles, equipment and materials, the right at all times to enter upon and to pass and re-pass over such of the Lands of the Grantor as may reasonably be required for the purpose of ingress to and egress from the Right of Way Area, and this right includes the temporary storage of materials during the repair or maintenance of the Works.

3. **Grantor's Obligations** – The Grantor covenants and agrees with the Grantee that the Grantor must:

- (a) permit the Grantee to hold and enjoy the rights, licenses, liberties, rights of ways;
- (b) privileges and easements hereby granted without hindrance, molestation or interruption on the part of the Grantor or of any person, firm or corporation claiming by through, under or in trust for the Grantor;
- (c) not make, place, erect or maintain or permit any other person to make, place, erect or maintain on the Right of Way Area any building, structure, foundation, mobile home, concrete or paved driveway, pipe, wire or conduit or obstruction on the Right of Way;
- (d) not do or permit to be done any act or thing which in the reasonable opinion of the Grantee might injure, prevent access to or interfere with the Works;
- (e) not carry on or permit to be carried on blasting on or adjacent to the Right of Way Area without the Grantee's prior approval;
- (f) not diminish or increase or permit any other person to diminish or increase the soil cover over any Works without the Grantee's prior approval;
- (g) thoroughly clean the Right of Way Area of all debris, rubbish and related matter placed on the Right of Way Area by the Grantor; and
- (h) from time to time and at all times at the reasonable request and at the cost of the Grantee to do and execute or cause to be made, done or executed any further and other lawful acts, deeds, things, devices, conveyances and assurances in law required to ensure the Grantee of its rights under this Agreement.

4. **Grantee's Obligations**

- (a) The Grantee must remove from the Right of Way Area all debris, rubbish and related matter on the Right of Way Area arising from any work done by the Grantee, at the conclusion of any such work;
- (b) The Grantee must use the Right of Way Area, and carry out any work on the Right of Way Area expeditiously, and in a good and worker like manner; and
- (c) The Grantee will, as soon as weather and soil conditions permit, and so often as it may exercise its rights to the Right of Way Area, replace the surface soil as nearly as may be reasonably possible to the same condition as it was prior to such entry, in order to restore the natural drainage to the Land or the Right of Way Area, PROVIDED HOWEVER the Grantee is not required to restore any trees or other surface growth but

the Grantee will leave the Right of Way Area in a condition which will not inhibit natural regeneration of such growth;

- (d) The Grantee will make good at its own expense all damage or disturbance which may be caused to the surface soil of the Right of Way Area in the exercise of its rights under this Agreement;
- (e) The Grantee must take reasonable care so as not to damage the Land outside of the Right of Way Area and repair all damage caused by any work done by it, its servants, agents or contractors at the conclusion of any such work.

5. **Property**

- (a) The Grantor transfers, assigns and conveys to the Grantee all right, title and interest in and to any Works that the Grantee, or the Grantor have prior to this Agreement established, constructed, maintained or operated within the Right of Way Area or in relation to any similar Works previously constructed by any party whatsoever within the Right of Way Area.
- (b) The Works in, upon or under the Right of Way Area are chattels and the property of the Grantee, notwithstanding that the same may be annexed or affixed to the freehold, and the Works may at any time be removed in whole or in part by the Grantee, in its discretion, except that the Grantee may its discretion leave the Works in the Right of Way Area after the discharge of this Agreement from title to the Land and the Grantor shall accept ownership thereof.

6. **Right of Way Runs With the Land** – Every obligation and covenant of the Grantor in this Agreement constitutes both a contractual obligation and a statutory right of way granted under section 218 of the *Land Title Act* in respect of the Land and this Agreement burdens the Land and runs with it and binds its successors in title to the Land. This Agreement burdens and charges the Land or any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated. The Grantor is only liable under this Agreement in respect of matters that occur while the Grantor is the registered owner of the Land.

7. **No Affect On Laws Or Powers** – This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the Grantee under any statute, bylaw or other enactment, including in relation to the use or subdivision of the Land;
- (b) affect or limit any statute, bylaw or other enactment relating to the use or subdivision of the Land; or
- (c) relieve the Grantor from complying with any statute, bylaw or other enactment, including in relation to the use or subdivision of the Land.

8. **Registered Owner** – If at the date of this Agreement, the Grantor is not the sole registered owner of the Land, this Agreement shall nevertheless bind the Grantor to the full extent of the Grantor’s interest and if the Grantor shall acquire a greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests.
9. **Amendment** – This Agreement may be amended or affected only by an instrument duly executed by both the Grantor and the Grantee, and may be discharged only by an instrument duly executed by the Grantee.
10. **Waiver** – A waiver of any breach of this Agreement is binding only if given in an instrument executed by the party giving the waiver and only if the waiver is an express waiver of the breach in question. A waiver of a breach of this Agreement operates to waive only the breach in respect of which it has expressly been given.
11. **Contract and Deed** – By executing and delivering this Agreement both the Grantor and the Grantee intend to create both a contract and a deed executed and delivered under seal.
12. **Priority** – At the Grantor’s expense, the Grantor must do everything necessary to secure priority of registration and interest for this Agreement and the section 218 Statutory Right of Way it creates over all registered and pending charges and encumbrances of a financial nature against the Land.
13. **Further Acts** – The Grantor must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
14. **Severance** – If any part of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, that part must be severed and the decision that it is invalid, illegal or unenforceable must not affect the validity of the remainder of the Agreement.
15. **Reference** – Every reference to a party is deemed to include the heirs, executors, administrators, successors, assigns, servants, employees, agents, contractors, officers, licensees and invitees of such party wherever the context so requires or allows.
16. **Governing Law** – This Agreement is governed and construed in accordance with the laws of the Province of British Columbia.
17. **Consent and Priority**- \_\_\_\_\_, being the registered holder of a mortgage registered under Registration Number \_\_\_\_\_ against title to the Lands hereby consents to the filing of this covenant and hereby grants priority to this covenant over its mortgage registered under Number \_\_\_\_\_.

THIS Statutory Right of Way Agreement and attached plans have been approved by the District Engineer.

IN WITNESS WHEREOF the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing Land Title Act Forms C and/or D attached hereto.

SCHEDULE "A"

[Reference Plan]

END OF DOCUMENT