

NEW WESTMINSTER LAND TITLE OFFICE

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

Feb-05-2021 10:01:18.001

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PAGE 1 OF 20 PAGES

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the Land Title Act, 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.

Jennifer Victoria Wong W5HEG9 Digitally signed by Jennifer Victoria Wong W5HEG9 Date: 2021.02.05 09:54:35 -08'00'

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

Teresa Tallarico, Legal Assistant
City of Burnaby, Legal Department
4949 Canada Way
Burnaby BC V5G 1M2
Document Fees: \$74.87

Phone: (604) 294-7312
File: Sub. 16-41 SRW - Central Park Main
No. 2 - Stride Avenue School Park (GVWD)

Deduct LTSA Fees? Yes [checked]

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

SEE SCHEDULE

STC? YES []

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Statutory Right of Way

Article 2; over part on plan EPP87387

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

(a) [] Filed Standard Charge Terms D.F. No.

(b) [checked] Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

CITY OF BURNABY

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

GREATER VANCOUVER WATER DISTRICT

4730 KINGSWAY

BURNABY

BRITISH COLUMBIA

V5H 0C6

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

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)

JENNIFER V. WONG

Barrister & Solicitor

4949 Canada Way
Burnaby, BC V5G 1M2
(604-293-6532)

Table with 3 columns: Y, M, D. Values: 21, 02, 05

CITY OF BURNABY,
by its authorized signatory:

Name: Eva Prior
Acting Deputy City Clerk

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.

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

CHERYL TING

Y	M	D
21	01	29

GREATER VANCOUVER WATER
DISTRICT, by its authorized signatory
(ies):

Commissioner for Taking Affidavits in British Columbia

4730 Kingsway
Burnaby, B.C. V5H 0C6
Expiry - December 31, 2021

Name: Randy Wenger
Director Properties

Name:

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.

**LAND TITLE ACT
FORM E**

SCHEDULE

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

002-546-159 **PARCEL "C" (BY-LAW PLAN 47861) DISTRICT LOT 53 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 3037**

STC? YES

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

008-506-540 **LOT 77 DISTRICT LOT 53 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 38602**

STC? YES

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

STC? YES

**PART 2 – TERMS OF INSTRUMENT
STATUTORY RIGHT OF WAY
CENTRAL PARK MAIN NO. 2 – STRIDE AVENUE SCHOOL PARK**

BETWEEN:

CITY OF BURNABY
4949 Canada Way
Burnaby, BC V5G 1M2

(the “City”)

AND:

GREATER VANCOUVER WATER DISTRICT
4730 Kingsway, Metrotower III
Burnaby, BC V5H 0C6

(“GVWD”)

WHEREAS:

- A. The City is the registered owner of the Lands (as herein defined);
- B. Pursuant to *Burnaby Park Dedication Bylaw 2014*, the City dedicated the Lands for park and recreation uses of the public;
- C. GVWD is a corporation created by an Act of the Legislature of the Province of British Columbia the objects of which are stated in the *Greater Vancouver Water District Act*, S.B.C. 1924 c. 22, as amended;
- D. GVWD wishes to construct and maintain the Works (as herein defined) on a portion of the Lands;
- E. Section 218 of the *Land Title Act*, R.S.B.C. 1996 c. 250, enables the City to grant in favour of GVWD an easement without a dominant tenement, known as a statutory right of way;
- F. GVWD desires that the City grant to GVWD a Statutory Right of Way necessary for the operation and maintenance of GVWD’s undertaking, through, under and across the SRW Area (as herein defined) on the terms and conditions set out in this Agreement; and
- G. It is necessary for the operation and maintenance of GVWD’s undertaking to obtain the statutory right of way in this Agreement.

NOW THEREFORE in consideration of the matters referred to in the foregoing recitals, the covenants and agreements herein contained and the sum of Ten Dollars (\$10.00) now paid by GVWD to the City and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the parties hereto hereby covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms defined in this Article 1.1 for all purposes of this Agreement, unless specifically provided in this Agreement, have the meanings hereinafter specified. The terms herein defined are:

- (a) **“Agreement”** or **“this Agreement”** means this agreement and includes all recitals and schedules to this agreement and all instruments comprising this agreement;
- (b) **“City”** and **“City of Burnaby”**, being the Transferor described in item 5 of the *Land Title Act* Form C General Instrument constituting Part 1 of this Agreement, means the City of Burnaby and is called the “City” when referring to the corporate entity and “City of Burnaby” when referring to the geographic location;
- (c) **“City Personnel”** means the City’s officials, officers, employees, agents, contractors, licencees, permittees, nominees and delegates;
- (d) **“City Works”** means all such existing and future City infrastructure and recreational and parks amenities and facilities described in Article 2.4 (a) through (f), provided that unless otherwise permitted in writing by GVWD, the City Works’ primary purpose must be to create and maintain a park amenity or facility and related or ancillary amenities or facilities for Stride Avenue School Park, and to provide corridors for utilities or infrastructure services over, upon, or under Stride Avenue School Park;
- (e) **“GVWD”**, being the Transferee described in item 6 of the *Land Title Act* Form C General Instrument constituting Part 1 of this Agreement, means the Greater Vancouver Water District;
- (f) **“GVWD Personnel”** means GVWD’s officials, officers, employees, servants, agents, contractors, workers and licensees;
- (g) **“Land Title Act”** means the *Land Title Act*, RSBC 1996, c. 250, and amendments thereto and re-enactments thereof;
- (h) **“Lands”** means the lands described in item 2 of the *Land Title Act* Form C General Instrument constituting Part 1 of this Agreement;
- (i) **“MVRD”** means Metro Vancouver Regional District;

- (j) “**Prime Rate**” means the rate of interest equal to the floating interest rate established from time to time by the Royal Bank of Canada at its main branch in Vancouver, BC, as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Royal Bank of Canada as its prime rate;
- (k) “**SRW Area**” means that portion of the Lands shown outlined in bold black on the reference plan of Statutory Right of Way dated October 15, 2018, by Gary Sundvick, B.C. Land Surveyor, registered in the Land Title Office under number EPP87387, and containing 757.6m² more or less, Survey Plan Certification Control Number 153-972-2689, a reduced copy of which is attached as Schedule “A”;
- (l) “**Third Party Works**” means all existing and future works installed by third party utility providers or government agencies over, upon or under the SRW Area that are necessary or convenient for the purposes of transmitting and distributing electricity or gas, for the purpose of telecommunications or public transportation, or for the purpose of delivering or providing a public service; and
- (m) “**Works**” means underground water works, and such appurtenances, connections and ancillary works as may be necessary for the water works, whether constructed or yet to be constructed, occupying or intended to occupy the SRW Area, for the purpose or purposes of any, some or all of supplying, distributing, transmitting, conveying, transporting, delivering, containing, controlling, protecting, limiting, restricting, regulating or metering water and waterworks, and includes, without limiting the generality of the foregoing, shaft liners, mains, pipes, lines, drains, ducts, manholes and access hatches, conduits, electrical and communication equipment, vaults and kiosks, protection equipment, meters, meter chambers, pumps, valves, valve chambers, connections, shutoffs or any, some or all of them, together with all appurtenances and related or ancillary structures, equipment, apparatus and works as necessary, incidental or desirable as part of GVWD’s regional water supply, distribution or transmission systems.

1.2 Schedules

The following Schedules are attached hereto and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
“A”	Plan of SRW Area

1.3 Interpretation

Any interest in land created hereby, including those noted in the *Land Title Act* Form C General Instrument comprising Part 1 of this Agreement, as being found in certain sections, paragraphs or parts of this Agreement, will be construed, interpreted and given force in the context of those portions of this Agreement:

- (a) which define the terms used herein;
- (b) which deal with the interpretation of this Agreement; and
- (c) which are otherwise of general application.

1.4 Headings

The division of this Agreement into Articles and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles are to Articles of this Agreement.

1.5 Number

Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations, and vice versa.

1.6 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

1.7 Use of “including”

The word “including”, when following any general statement, term or matter, will not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, but will be construed to refer to all other items or matters that could reasonably fall within the scope of such general statement, term or matter, whether or not non-limiting language (such as “without limitation”, “but not limited to” or words of similar import) is used with reference thereto.

1.8 Approval and Exercise of Discretion

The City and GVWD covenant and agree as follows:

- (a) any City approval or consent required to be given pursuant to or in connection with this Agreement is not effective or valid unless provided by the City in writing, such consent or approval not to be unreasonably withheld; and
- (b) any GVWD approval or consent required to be given pursuant to or in connection with this Agreement is not effective or valid unless provided by GVWD in writing, such consent or approval not to be unreasonably withheld.

ARTICLE 2 STATUTORY RIGHT OF WAY

2.1 Grant of Right of Way

Subject to the terms and conditions of this Agreement, the City hereby grants and conveys to GVWD, pursuant to Section 218 of the *Land Title Act*, in perpetuity, the full, free and uninterrupted right, licence, liberty, privilege, easement and statutory right of way:

- (a) for GVWD and GVWD Personnel at all times to come upon, over and under the SRW Area for the following purposes:
 - (i) to enter and work upon, use, and to pass and repass (with or without equipment) over the SRW Area;
 - (ii) to make surveys, tests and examinations upon the SRW Area and to dig, excavate, remove and cover up the soil of the SRW Area; and
 - (iii) to lay down, construct, install, operate, protect, maintain, alter, enlarge, repair, extend, renew, remove, inspect, clean and replace the Works within the SRW Area for the purpose of a regional water main and valve chamber,and for such purposes to make such excavations and do such work and construction as may be necessary; and
- (b) to do all things necessary or incidental to the business and undertaking of GVWD in connection with the foregoing; and
- (c) to have and to hold unto GVWD, from and after the date that this Agreement is registered against the Lands in the Land Title Office unless and until terminated in accordance with the provisions of this Agreement.

2.2 Ownership of Works

All chattels and fixtures installed by GVWD on, in, under or through the SRW Area shall be and remain chattels notwithstanding any rule of law to the contrary and shall belong solely to GVWD.

2.3 Acknowledgement of Existing and Future Rights

GVWD acknowledges and agrees that:

- (a) there are existing City Works and Third Party Works upon, over and under the SRW Area;

- (b) subject to the terms and conditions of this Agreement, there may in the future be additional City Works and/or Third Party Works upon, over and under the SRW Area; and
- (c) the rights of GVWD under this Agreement are non-exclusive and shall be exercised so as to not adversely affect or interfere with existing City Works and/or Third Party Works, or with City Works or Third Party Works which may be laid down in the future upon, over and under the SRW Area in compliance with the terms and conditions of this Agreement.

2.4 Reservations to the City

Subject to Article 4, the City hereby reserves the right:

- (a) to make surveys, tests and examinations upon the SRW Area and to dig, excavate, remove and cover up the soil thereof, provided that such surveys, tests, examinations, digging, excavation, or covering up of soil do not adversely affect the Works;
- (b) [intentionally deleted];
- (c) to construct, install, place, maintain, repair and replace upon, over and under the SRW Area drainage works, underground storm, water and sewer pipes, including swales, culverts, manholes and associated covers and frames, catch basins and other above and below ground drainage and irrigation infrastructure, underground electrical conduits, services lines and vaults, and communication lines, concrete pads, paved or unpaved pathways and trails, with associated sub-grade base material and drainage infrastructure, including curbs and associated fixtures, installation of footings for anchoring of posts and equipment (including fence posts, gate posts, sign posts, light posts, basketball hoop posts, and sign kiosk posts), paving with asphalt and concrete and associated sub-grade material and drainage infrastructure, and the planting of shrubs and grass;
- (d) to construct, install, place, maintain, repair and replace upon, over and under the SRW Area outdoor recreation facilities and amenities, including fenced and unfenced play courts of all types (paved or unpaved), basketball courts, sport fields and baseball diamonds together with associated lights, backstop and outfield fencing, off-leash area for dogs, and park entry features, paved asphalt and concrete pathways with or without lights, ramps and retaining walls, signs, bollards at entries and exits of pathways and trails, and planting of shrubs, grass and groundcover;
- (e) to permit members of the public to enter and use the surface of the SRW Area for park and recreation purposes; and
- (f) to grant licences, leases, easements and statutory rights of way over the SRW Area to any person, firm or corporation, provided such grants do not adversely affect or interfere with the Works.

ARTICLE 3 GVWD COVENANTS

3.1 GVWD Covenants

GVWD covenants and agrees as follows:

- (a) GVWD shall do all work that it is entitled to do under this Agreement in a workmanlike manner in accordance with standards in effect at the time such work is conducted so as to do as little injury as practicable to the surface of the SRW Area and any improvements thereto;
- (b) GVWD shall comply with and abide by all laws and by-laws that apply to the SRW Area, the construction, installation and completion of the Works, and the use and occupation of the SRW Area, including without limitation, City bylaws and provincial and federal laws, regulations and orders;
- (c) GVWD shall pay and discharge when due all applicable taxes, levies, charges and assessments now or hereafter assessed, levied or charged that relate to GVWD's use or occupation of the SRW Area or any GVWD improvements hereon;
- (d) GVWD will comply with, and cause all contractors hired by it to comply with, the requirements of the *Builders Lien Act* or successor statute then in effect in British Columbia in relation to work carried out in respect of the Works and, GVWD shall not suffer or permit any builders lien or claim thereof or any other charge or encumbrance to be filed, registered or claimed against the Lands in relation to work carried out in respect of the Works. GVWD will, at its own cost and expense, cause any and all builders' liens and other lien claims for labour, services, or materials supplied or alleged to have been supplied to GVWD or furnished or alleged to have been furnished with respect to the Lands, which may be registered against or otherwise affect the Lands, to be paid, satisfied, released or vacated within thirty (30) days after it comes to GVWD's notice;
- (e) GVWD shall:
 - (i) at GVWD's expense, maintain, keep, repair and replace, as the case may be, the Works in a good and safe condition;
 - (ii) except in the case of emergency, give the City at least four (4) weeks' advance written notice (except in the case of emergency when no notice will be required) of its intention to enter upon the SRW Area to carry out any construction, removal, replacement, or major maintenance or repair of the Works or any part thereof and to obtain the City's approval thereof, provided however that this Article 3.1(e)(ii) does not apply to any routine or regular inspection, maintenance or repair of the Works;
 - (iii) provide the City with at least thirty (30) days' notice of any intended major upgrades, reconstruction or replacement to the Works, including:

- (A) a description of the Works;
 - (B) plans and specifications for installation and construction of the Works including details of location within the SRW Area and details of any temporary or permanent disturbance of the surface of the lands or subsurface of the lands of the SRW Area; and
 - (C) a construction schedule;
- (iv) to provide the City with “as constructed” plans or “record drawings” of the Works within sixty (60) days of substantial completion of the construction, replacement or reconstruction of the Works or any part thereof;
- (v) not do or permit to be done any act or thing which may interfere with, or injure the construction, maintenance, use or operation of existing or future City Works and Third Party Works, and in particular GVWD agrees, after completion of the Works, not to:
- (A) carry out blasting on or adjacent to the SRW Area; or
 - (B) remove support from City Works and Third Party Works,
- without the prior consent of the City which shall not be unreasonably withheld;
- (vi) not construct, install, place, repair, maintain, keep, replace, alter, use, deposit, store or accumulate on, over or under the SRW Area any buildings, structures or other real or personal property, unless in relation to Works authorized under Article 2 of this Agreement or unless GVWD receives the City’s prior consent;
- (vii) not construct, install or place any Works or portion thereof, including without limitation, manholes, antennae, vents, kiosks and other related works, at grade or above the grade of the SRW Area without the City’s prior consent;
- (viii) not diminish or increase the depth of the ground cover over City Works and Third Party Works without the prior consent of the City, or unless in relation to Works authorized under Article 2 of this Agreement; and
- (ix) not commit or suffer any wilful or voluntary waste, spoil or destruction on the SRW Area or do or suffer to be done anything that may be or become a nuisance;
- (f) at GVWD’s expense, after completion of the initial construction and installation of the Works and after each subsequent construction, installation, alteration, upgrade, removal, replacement, relocation or major maintenance or repair of the

Works (collectively, the “**Subsequent Construction**”), GVWD shall restore the surface of the SRW Area and any other portions of the Lands, as well as any improvements on the surface of the Lands (including, without limitation, a basketball court and other similar amenities and facilities), that are damaged as a result of any initial construction and installation or Subsequent Construction to the same condition they were in prior to the commencement of the initial construction and installation or Subsequent Condition;

- (g) GVWD shall secure and maintain comprehensive general liability insurance for bodily injury (including death) or property damage caused by the activities and operations of GVWD and those for whom GVWD is in law responsible, within the SRW Area, for the insurance coverage amounts as a prudent regional government entity may require, acting reasonably, and naming the City as additional insured, and provide evidence to the City of such insurance and any renewals, provided that GVWD may, at its option, self-insure with respect to the insurance coverages set forth in this Article 3.1(g), and provided further, that if and to the extent GVWD self-insures with respect to the insurance required hereunder, GVWD provides the same protections and benefits to the City as it would have had GVWD purchased the required commercial general liability policy;
- (h) on the release or earlier termination of this Agreement, GVWD shall either:
 - (i) at GVWD’s expense, remove all or part of the Works from the SRW Area, provided that:
 - (A) GVWD shall coordinate the removal of such portion of the Works with the City;
 - (B) GVWD shall obtain all applicable approvals and permits required to remove such portion of the Works; and
 - (C) GVWD shall restore the SRW Area, where practicable, to the same or better condition that it was in prior to the removal of such portion of the Works or to such other condition as agreed by the City; or
 - (ii) abandon all or part of the Works in place, provided such abandonment is approved by the City, and further provided that GVWD coordinates such abandonment of the Works with the City to ensure that any risks to public safety, property and the environment are addressed to ensure that all such abandoned Works remain safe; and
- (i) GVWD agrees to waive, remise, release, indemnify and save harmless the City and City Personnel from and against all losses, damages, costs (including, without limitation, legal costs on a solicitor-and-client basis), expenses, actions, suits, debts, accounts, claims and demands, including, without limitation, any and all claims of third parties (whether for personal injury, death, property damage or

otherwise), which the City or City Personnel may suffer, incur or be put to arising out of or in connection with, directly or indirectly, or that would not or could not have occurred “but for” the grant of right of way set out in Article 2.1 of this Agreement, including without limitation:

- (i) the design, construction and installation activities of GVWD or GVWD Personnel;
- (ii) any personal injury, death or property damage arising out of GVWD’s use or occupation of the SRW Area or the exercise by GVWD of any of its rights hereunder; and
- (iii) any breach by GVWD or GVWD Personnel of any covenant or agreement contained in Article 3 of this Agreement.

The covenants and obligations set out in Article 3.1(h), and the release and indemnity granted in Article 3.1(i) shall survive the termination or release of this Agreement.

3.2 GVWD’s Default

- (a) If GVWD defaults in observing or performing any obligation under this Agreement, GVWD will rectify such default within 30 days after receipt of notice from the City, except that if GVWD, by reason of the nature of the default, cannot in the opinion of the City, rectify such default within 30 days, GVWD will have a further reasonable period to rectify so long as GVWD proceeds promptly and diligently. If GVWD fails to rectify such default within the permitted time period or if the City, in case of emergency (as determined by the City, acting reasonably), does not consider that it has time to deliver such notice, the City may rectify the default on GVWD’s behalf, although the City will be under no obligation to do so. If any default by GVWD results in the need for GVWD to take positive action to rectify such default, GVWD will take such positive action as the City considers necessary, and if GVWD fails to do so, the City may apply to court for a mandatory injunction requiring GVWD to take such action; and
- (b) GVWD will pay to the City on demand the aggregate of all of the City’s costs and expenses of rectifying any default of GVWD, plus a sum equal to 20% of those costs and expenses on account of the City’s overhead, plus any other amounts GVWD may owe to the City from time to time pursuant to this Agreement. If GVWD does not pay the City within 30 days after the date GVWD receives demand from the City, the arrears will bear interest from the date of demand to the date of payment at the Prime Rate plus 3% per annum, calculated and compounded monthly not in advance.

This Article 3.2 will survive the completion of the Works and/or termination or release of this Agreement.

ARTICLE 4 CITY COVENANTS

4.1 City Covenants

The City covenants and agrees as follows:

- (a) except in respect to work permitted by Article 2.4(a) through (f) of this Agreement, the City shall not, and shall not permit any Third Party:
 - (i) to excavate or dig any well, hole, trench, ditch or excavation of any kind or nature;
 - (ii) erect, build, construct or place any building, structure, erection, pipe, pole, tower, road, concrete, pavement, foundation, improvement or thing of any kind or nature;
 - (iii) place or remove any soil or other material of any kind or nature, on, in, under, through or over the SRW Area without the prior written consent of GVWD, which consent shall not be unreasonably withheld;
- (b) GVWD may peaceably enjoy the statutory right of way granted by this Agreement and instrument without hindrance or interruption by the City or any person, firm or corporation claiming by, through, under or in trust for the City;
- (c) at all times that any City Works are located over, upon or under the SRW Area, the City shall:
 - (i) at its cost, keep and maintain all City Works located within the SRW Area in a state of good condition and repair;
 - (ii) secure and maintain:
 - (A) comprehensive general liability insurance for bodily injury (including death) or property damage caused by the activities and operations of the City and those for whom the City is in law responsible, in the SRW Area, for the insurance coverage amounts as a prudent local government entity may require, acting reasonably, and naming GVWD as additional insured; and
 - (B) “all-risk” property insurance covering the City Works, and any infrastructure, amenities, facilities, alterations, additions, improvements or equipment permitted within the SRW Area under this Agreement, containing a waiver of subrogation against GVWD, provided that such waiver of subrogation shall except only matters or losses arising out of the sole negligence of GVWD,

provided that the City may, at its option, self-insure with respect to the insurance coverages set forth in Article 4.1(c)(ii), and provided further, that if and to the extent the City self-insures with respect to the insurance required hereunder, the City provides the same protections and benefits to GVWD as it would have had the City purchased the required commercial general liability policy;

- (iii) provide evidence to GVWD of the insurance coverages set forth in Article 4.1(c)(ii) and any renewals thereof;
 - (iv) waive, remise, release, save harmless and indemnify GVWD and MVRD and their respective directors, officers, employees and agents and other representatives (the “**Indemnified Parties**”) from and against all actions, claims, demands, proceedings, suits, losses, damages, costs (including, without limitation, legal costs on a solicitor-and-client basis) and expenses of any kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) arising from the breach of this Agreement by the City or City Personnel, or arising in any way out of or connected with the City Works, or the use of the SRW Area by the City or City Personnel under this Agreement, except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the Indemnified Parties or any of them;
 - (v) pay all taxes, rates, duties, and assessments whatsoever, whether federal, provincial, municipal or otherwise, charged upon the City or GVWD as a result of the City’s occupation, use or installation of infrastructure, amenities or facilities within the SRW Area;
- (d) the City covenants and agrees to provide GVWD with at least thirty (30) days’ notice of its intended installation of City Works permitted by Article 2.4(a) through (f) of this Agreement, including:
- (i) a description of the City Works and how such works fit within the Reservations to the City set forth in Article 2.4(a) through (f);
 - (ii) if available, plans and specifications for installation and construction of the City Works including details of location within the SRW Area and details of any temporary or permanent disturbance of the surface of the lands or subsurface of the lands of the SRW Area, provided that if plans and specifications are not available, the City will provide a written description to GVWD to satisfy the foregoing requirement; and
 - (iii) a construction schedule.

The release and indemnity herein granted in Article 4.1(c)(iv) herein shall survive the termination or release of this Agreement.

4.2 City's Default

- (a) If the City defaults in observing or performing any obligation under this Agreement, the City will rectify such default within thirty (30) days after receipt of written notice from GVWD, except that if the City, by reason of the nature of the default, cannot in the opinion of GVWD, rectify such default within thirty (30) days, the City will have a further reasonable period to rectify so long as the City proceeds promptly and diligently. If the City fails to rectify such default within the permitted time period or if GVWD, in case of emergency (as determined by GVWD, acting reasonably), does not consider that it has time to deliver such notice, GVWD may do all things necessary to rectify the default on the City's behalf, although GVWD will be under no obligation to do so. If any default by the City results in the need for the City to take positive action to rectify such default, the City will take such positive action as GVWD considers necessary, and if the City fails to do so, GVWD may apply to court for a mandatory injunction requiring the City to take such action.
- (b) The City will pay to GVWD on demand the aggregate of all of GVWD's costs and expenses of rectifying any default of the City, plus a sum equal to 20% of those costs and expenses on account of GVWD's overhead, plus any other amounts the City may owe to GVWD from time to time pursuant to this Agreement. If the City does not pay GVWD within thirty (30) days after the date the City receives demand from GVWD, the arrears will bear interest from the date of demand to the date of payment at the Prime Rate plus 3% per annum, calculated and compounded monthly not in advance.

This Article 4.2 will survive the completion of the Works and/or termination or release of this Agreement.

ARTICLE 5 MISCELLANEOUS

5.1 Sale or Transfer of the Lands

If the City sells or otherwise transfers ownership of the Lands, or any portion thereof, the City will require the purchaser or transferee, as a condition of the sale or transfer, to:

- (a) enter into an assignment and assumption agreement with the City and GVWD by which the purchaser or transferee will unconditionally assume all of the City's obligations under this Agreement; and
- (b) enter into and grant a Section 219 Covenant in favour of GVWD in respect of all of the City's covenants set out in this Agreement to be observed and performed by the City, and such covenant will have priority over any financial charge of the purchaser or transferee.

5.2 Runs with the Lands

The covenants and agreements herein will charge the Lands pursuant to Section 218 of the *Land Title Act*, and will run with the Lands and shall not be personal or binding on the parties hereto except during such time as the parties hereto shall have any interest in the Lands or the SRW Area and only in respect of such portion of the Lands or the SRW Area in which the parties have an interest but the Lands shall nevertheless be and remain at all times charged therewith in perpetuity.

5.3 No Assignment

GVWD shall not assign its rights under this Agreement without the prior written consent of the City.

5.4 Severability

If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a Court of competent jurisdiction, the remainder of this Agreement will continue in full force and effect and, in such case, the parties hereto will agree upon an amendment to be made to the section, subsection, sentence, clause or phrase previously found to be invalid and will do or cause to be done all acts reasonably necessary in order to amend this Agreement so as to reflect its original spirit and intent.

5.5 No Waiver

The parties acknowledge and agree that no failure on the part of either party hereto to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by either party of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies in this Agreement provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for either party in this Agreement will be deemed to be in addition to and not, except as expressly stated in this Agreement, restrictive of the remedies of either party hereto at law or in equity.

5.6 Notice

Any notice or communication required or permitted to be given pursuant to this Agreement will be in writing and delivered by hand or sent by prepaid mail or facsimile to the party to which it is to be given as follows:

- (a) to the City:

City of Burnaby
4949 Canada Way
Burnaby, BC V5G 1M2
Attention: City Clerk
Fax: 604 294 7290

with a copy to the Director Engineering, Director Parks, Recreation and Cultural Services, and the City Solicitor; and

- (b) to GVWD:
4730 Kingsway, Metrotower III
Burnaby, BC V5H 0C6
Attention: Director, Properties
Fax: 604 436-6860

with a copy to the General Manager, Water Services and the Corporate Officer

or to such other address or fax number as any party may in writing advise. Any notice or communication will be deemed to have been given when delivered if delivered by hand, two business days following mailing if sent by prepaid mail, and on the following business day after transmission if sent by facsimile.

5.7 Further Acts

The parties to this Agreement will do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.

5.8 Enurement

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

5.9 Joint and Several

If either party is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of such party shall be joint and several.

5.10 Counterparts

This Agreement may be signed by the parties hereto in counterparts and by facsimile or pdf email transmission, each such counterpart, facsimile or pdf email transmission copy shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties have executed this Agreement as noted on the General Instrument – Part 1 on the date written thereon.

F:\87000 Subdivisions\87000-20 Subdivision application\Sub. Ref. #16-41 (LedMac 7121 Fourteenth Ave)\Greater Vancouver Water District\Part 2 Terms SRW - GVWD CPM2 (Stride Avenue School Park) FINAL.docx

SCHEDULE "A" PLAN OF SRW AREA

FORM_SPC_01

SURVEY PLAN CERTIFICATION
PROVINCE OF BRITISH COLUMBIA PAGE 1 OF 2 PAGES

By incorporating your electronic signature into this form you are also incorporating your electronic signature into the attached plan and you

(a) represent that you are a subscriber and that you have incorporated your electronic signature to the attached electronic plan in accordance with sections 168.73 (3) of the Land Title Act, R.S.B.C. 1996 c.250, and

(b) verify the matters set out in sections 168.73 (4) of the Land Title Act.

Each form used in this representation and certification is to be given the meaning ascribed to it in part 10.1 of the Land Title Act.

Gary Sundvick
BKW4SG

Digitally signed by Gary Sundvick
DN: cn=Gary Sundvick,
ou=BC Land Surveyor,
o=BC Land Surveyor,
email=gary@butlersundvick.ca,
c=CA

1. BC LAND SURVEYOR: (Name, address, phone number)

Gary Sundvick
4 19089 94th Avenue

Surrey BC V4N 3S4

604-513-9611
gary@butlersundvick.ca

Surveyor General Certification (For Surveyor General Use Only)

2. PLAN IDENTIFICATION: Content Number: **155-366-3662**

Plan Number: **EPP87387**

This original plan number assignment was done under Commissioner: **637**

3. CERTIFICATION: Form 9 Explanatory Plan Form 5A

I am a British Columbia land surveyor and certify that I was present at and personally supervised this survey and that the survey and plan are correct.

The field survey was completed on: **2018 October 15** (YYYY/Mon/DO) The checklist was filed under ECP#: **217495**

The plan was completed and checked on: **2018 October 16** (YYYY/Mon/DO)

None Strata Form 5

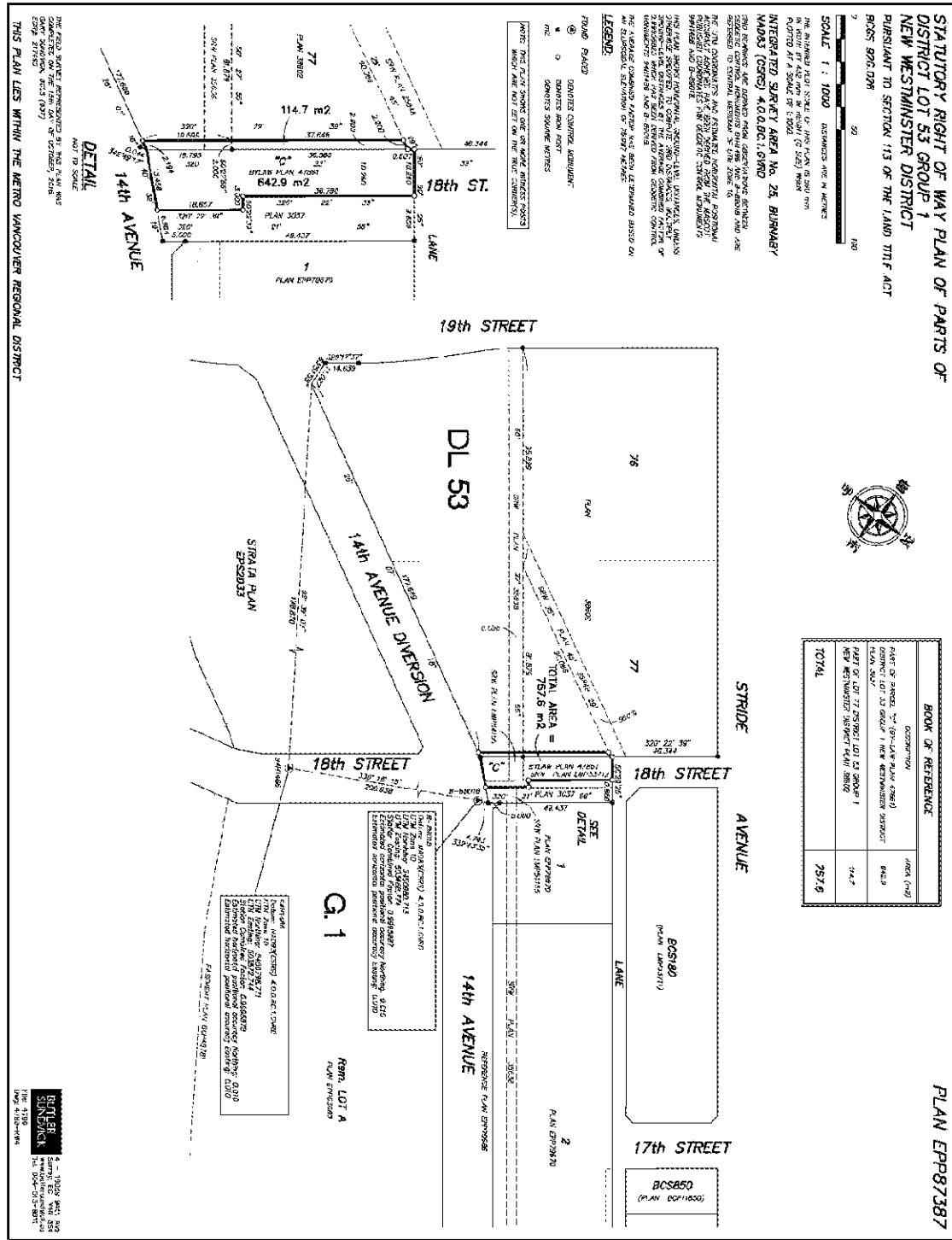
None Strata Form 11 Strata Form 11A/D

Arterial Highway

Remainder Parcel (Airspace)

4. ALTERATION:

GVWD Water Main Line SRW
Stride Avenue School Park (7095 14th Avenue)
Subdivision Reference #16-41
X-Reference: Rezoning #15-25



GVWD Water Main Line SRW
 Stride Avenue School Park (7095 14th Avenue)
 Subdivision Reference #16-41
 X-Reference: Rezoning #15-25