



1. Application

Document Fees: \$162.54

Michelle Lee, Agent for City of Surrey
LTO Client #011477
13450 104 Avenue
Surrey BC V3T 1V8
604-598-5730

File #E2024-0057
 Project #R-18592

2. Description of Land

PID/Plan Number	Legal Description
030-904-684	LOT 2 SECTION 36 BLOCK 5 NORTH RANGE 3 WEST NEW WESTMINSTER DISTRICT PLAN EPP58440

3. Nature of Interest

Type	Number	Additional Information
STATUTORY RIGHT OF WAY		over part on Plan EPP136312
COVENANT		Article 4 Section 219 LTA

4. Terms

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

5. Transferor(s)

CITY OF SURREY

6. Transferee(s)

CITY OF SURREY
 13450 104 AVENUE
 SURREY BC V3T 1V8

7. Additional or Modified Terms



8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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

Execution Date

Transferor / Transferee / Party Signature(s)

Vanessa Jieying Ng
Commissioner for Taking Affidavits
for British Columbia
 (as to the signature of the Deputy City
 Clerk)
 13450 104 Avenue
 Surrey BC V3T 1V8

YYYY-MM-DD

2024-03-27

CITY OF SURREY
 By their Authorized Signatory

Stephanie Nichols, Deputy City
Clerk

Expiry: 31/10/2026

Nicholas Rawcliffe, Director, Realty
Services Division

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.

Electronic Signature

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.

Michelle Lee
MSFQYC

Digitally signed by
 Michelle Lee MSFQYC
 Date: 2024-04-02
 11:19:21 -07:00

TERMS OF INSTRUMENT - PART 2

WHEREAS:

- A. The Transferor as hereinafter defined has agreed to grant a Temporary Statutory Right of way in favour of the Transferee as hereinafter defined for the Restoration and Mitigation Works as hereinafter defined for the purposes described herein.
- B. The granting of this Temporary Statutory Right of way is necessary for the operation and maintenance of the Transferee's undertaking.
- C. The Transferor has agreed that the Lands as hereinafter defined shall not be used, built upon or subdivided except in compliance with the Section 219 Covenant contained herein.

Consideration

In consideration of the payment of one dollar and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties) the Owner and the City agree as follows:

Terms of Agreement

ARTICLE 1 DEFINITIONS

- 1.1 **Definitions.** Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:
- (a) "**Agreement**" means this agreement and all schedules attached hereto;
 - (b) "**City**" means the Transferee and its personal representatives, successors and assigns including assigns of a whole or partial interest in this Agreement or of any of the rights conferred upon the City of Surrey by this Agreement;
 - (c) "**City Engineer**" means the General Manager from time to time of the City's Engineering Department and his successors in function and their respective nominees;
 - (d) "**City Personnel**" means all of the City's elected and appointed officials, officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and invitees;
 - (e) "**day**" means a calendar day;
 - (f) "**Land Title Act**" means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;

- (g) "**Lands**" means the parcel of land situate in the City of Surrey, British Columbia, and legally described in Item 2 of the Form C - General Instrument - Part 1, and includes any parcels into which such land is consolidated or further subdivided (including a subdivision pursuant to the *Land Title Act* and a subdivision pursuant to the *Strata Property Act*);
- (h) "**Losses**" means all damages, losses, costs, actions, causes of action, claims, demands, judgments, builders liens, liabilities, expenses, indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays);
- (i) "**Land Title Office**" means the land title office for the jurisdiction in which the Lands are situate;
- (j) "**Owner**" means the Transferor and its personal representatives, successors and assigns and, without limitation, if the Lands are subdivided by way of a strata plan under the *Strata Property Act* of British Columbia, then "Owner" includes the strata corporation thereby created;
- (k) "**person**" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;
- (l) "**Restoration and Mitigation Works**" means works and infrastructure for the purposes of restoring and/or mitigating any physical damage or anticipated physical damage to the Lands arising from or related to constructing, extending, grading, pre-loading, staging, storage, altering, replacing, repairing, upgrading, testing, cleaning, clearing, maintaining, operating, carry out, using and servicing any, some or all of the works on adjacent lands including highway;
- (m) "**Section 219 Covenant**" means the covenants and agreements running with and binding the Lands that the Owner has agreed to pursuant to Article 4 of this Agreement;
- (n) "**Temporary SRW Area**" means that portion of the Lands consisting of 30.5 square metres shown within bold outline on Explanatory Plan EPP136312, a reduced copy of which plan is attached hereto as Schedule A;
- (o) "**Temporary Statutory Right of Way**" means the temporary statutory right of way over the Temporary SRW Area which the Owner is granting to the City pursuant to Article 2 of this Agreement;
- (p) "**Transferee**" means the City of Surrey as identified in Item 6 of the Form C - General Instrument - Part 1;
- (q) "**Transferor**" means the registered owner of the Lands as identified in Item 5 of the Form C - General Instrument - Part 1; and
- (r) "**Works**" means municipal infrastructure, systems, fixtures, and/or facilities constructed by or on behalf of the Transferee, including highway, utilities (including third party utilities), sidewalks, pavement, pathways, boulevards, trees, landscaping, street lighting, curbs, gutters and anything from time to time required, built, constructed, erected, attached or installed by or on behalf of the Transferee on adjacent and abutting lands including highway.

**ARTICLE 2
STATUTORY RIGHT OF WAY**

- 2.1 **Grant of Temporary Statutory Right of Way.** Pursuant to Section 218 of the *Land Title Act*, the Owner does hereby give, convey and grant unto the City for a five (5) year period commencing on the date of registration of this Agreement on the title to the Lands at the Land Title Office the full, free and unrestricted right, liberty, privilege, easement and statutory right of way for the City, its employees, licensees, invitees, servants, officials, contractors, agents and workmen, with or without vehicles, machinery and equipment, to enter freely and without interruption in, over, under and upon the Temporary SRW Area at all times for the purpose or purposes of:
- (a) a work area to facilitate constructing, grading, extending, altering, replacing, repairing, upgrading, installing, protecting, surveying, testing, cleaning, clearing, maintaining, operating, carrying out, using and/or servicing any, some or all of the Works; and
 - (b) Restoration and Mitigation Works.
- 2.2 **Covenants.** The City hereby covenants and agrees with the Owner that the City will:
- (a) not bury debris or rubbish of any kind in excavations or backfill and will remove shoring and like temporary structures as backfilling proceeds;
 - (b) during construction thoroughly clean the Temporary SRW Area, raking up all rubbish and construction debris and leave the Temporary SRW Area in a neat and clean condition;
 - (c) as far as reasonably necessary, carry out the construction, maintenance, repair and/or replacement and renewal of the Temporary SRW Area in a proper and workmanlike manner;
 - (d) repair any damage to the Temporary SRW Area occasioned by its use of the Temporary SRW Area;
 - (e) prior to the expiry of this Agreement, restore the Temporary SRW Area to, as close as practical, the condition it was in prior to the City's use of the Temporary SRW Area except that the City shall not be responsible for removing the Restoration and Mitigation Works, and
 - (f) not unreasonably deny the Grantor access through, over or across the Temporary SRW Area.
- 2.3 **Temporary Statutory Right of Way Necessary.** The Temporary Statutory Right of Way is necessary for the operation and maintenance of the City's undertaking.
- 2.4 **No City Obligation.** Nothing in this Agreement implies that the City has any obligation to the Owner or to any person to exercise any of its rights under Section 2.1 and the City may, at its sole option, execute a release of this Agreement at any time without liability to any person for doing so.
- 2.5 **Temporary Statutory Right of Way Not Affected by Default of the City.** No default by the City with respect to the Temporary Statutory Right of Way and no act or failure to act by the City in connection with the Temporary Statutory Right of Way will result or be deemed to result in the interruption, suspension, or termination of the Statutory Right of Way, and the Owner will refrain from seeking any judgment, order, declaration, or injunction to that effect.

- 2.6 **No Interference of Owner.** Save as aforesaid, nothing in this Temporary Statutory Right of Way shall be interpreted so as to restrict or prevent the Owner from using the Temporary SRW Area in any manner which does not interfere with the security or efficient functioning of the Restoration and Mitigation Works.
- 2.7 **Other Sections Form Part of Statutory Right of Way.** The Owner covenants and agrees with the City that Sections 5.1 to 7.23 inclusive of this Agreement will be deemed to be included in and form part of this Temporary Statutory Right of Way made pursuant to Section 218 of the *Land Title Act*.

ARTICLE 3 LICENCE

- 3.1 **Licence.** Intentionally Deleted.

ARTICLE 4 SECTION 219 COVENANT

- 4.1 **Section 219 Covenant.** Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees with the City as covenants and agreements running with and binding the Lands that the Owner will:
- (a) use the Lands in accordance with the terms of this Section 219 Covenant;
 - (b) not at any time construct, install or otherwise put in place or suffer the construction, installation or putting in place otherwise of any buildings, fences, trees, shrubs, hedges, or other structures or improvements on, over or under the Temporary SRW Area;
 - (c) not damage the Restoration and Mitigation Works, and that if the Owner does cause any damage to the Restoration and Mitigation Works, the Owner shall forthwith repair the same to the satisfaction of the City Engineer, or if the City carries out the repairs, the Owner shall reimburse the City for the costs thereof;
 - (d) not obstruct, or permit the existence of any obstruction of, the Temporary SRW Area in a manner which interferes with the rights granted under this Agreement;
 - (e) not remove support for the Temporary SRW Area or the Restoration and Mitigation Works and will not diminish nor increase the soil cover within the Temporary SRW Area without first obtaining the consent in writing of the City;
 - (f) not use the Temporary SRW Area for any purpose that, in the opinion of the City Engineer, may interfere with the Restoration and Mitigation Works, damage or destroy them, impair their operation, obstruct access to them, create any hazard or interfere with or interrupt the use of the Temporary SRW Area as contemplated herein; and
 - (g) permit the City to peaceably hold and enjoy the rights hereby granted.

- 4.2 **Owner's Default.** Pursuant to Section 219 of the *Land Title Act*, if the Owner defaults in observing or performing any obligation, covenant or agreement with respect to this Agreement, the Owner covenants and agrees to rectify such default within thirty (30) days after receipt of notice from the City, except that if the Owner, by reason of the nature of the default, cannot in the opinion of the City Engineer rectify it within thirty (30) days, the Owner will have a further reasonable period to rectify so long as the Owner proceeds promptly and diligently. If the Owner fails to rectify such default within the permitted time period or if the City, in case of emergency, does not consider that it has time to deliver such notice, the City may rectify the default on the Owner's behalf. If any default by the Owner results in the need for the Owner to take positive action to rectify such default, the Owner will take such positive action as the City considers necessary, and, if the Owner fails to do so, the City may apply to court for a mandatory injunction requiring the Owner to take such action. This Section 4.2 will survive termination or release of this Agreement.
- 4.3 **City Carrying out Owner's Obligations.** Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees that the City and City Personnel may, at its discretion and for the purpose of exercising the City's rights under Section 4.2, come upon the Lands with equipment, tools and materials for the purpose of carrying out any of the Owner's obligations, covenants or agreements contained in this Agreement.
- 4.4 **Costs.** Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees to forthwith pay to the City all costs and expenses incurred by the City as a result of the City undertaking the work contemplated in section 4.2 and 4.3 plus an additional fifteen (15%) percent of all such costs to cover administrative overhead, upon the City issuing invoices for the same. These costs and expenses are recoverable by the City as a debt and may be collected in the same manner and with the same remedies as ordinary taxes on land and improvements under Section 258.1(c) of the *Community Charter*, S.B.C. 2003, c. 26, as amended, and if it is due and payable by December 31 and unpaid on that date, the debt is deemed to be taxes in arrears.
- 4.5 **Indemnity.** Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees to indemnify and save harmless the City and City Personnel from and against all liabilities, actions, statutory or other proceedings, judgments, investigations, claims, losses, loss of profits, damages, consequential damages, fines, penalties, costs, and legal costs on a solicitor and own client basis which the City may suffer or incur arising out of or in connection with any:
- (a) breach by the Owner of any obligation, covenant or agreement contained in this Agreement; and
 - (b) negligent act or omission or wrongful act of the Owner or its employees, servants, agents, contractors and subcontractors in connection with the exercise of any of the rights, obligations, or responsibilities of the Owner under this Agreement.
- 4.6 **Release.** Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees that he hereby releases and discharges the City and City Personnel from and against all liabilities, actions, statutory or other proceedings, judgments, investigations, claims, losses, loss of profits, damages, consequential damages which may arise or accrue to the Owner by reason of the City or City Personnel exercising any of its rights under this instrument.
- 4.7 **Release and Indemnity to Survive.** Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees that the release and indemnity created by Sections 4.5 and 4.6 will remain effective and survive the expiration or termination of this Agreement whether by fulfilment of the covenants contained in this Agreement or otherwise.

- 4.8 **Obligations Continue.** Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees that the Owner's obligations to release, indemnify and save harmless the City and City Personnel pursuant to Sections 4.5 and 4.6 of this Agreement will continue to apply even if any of the Owner's obligations are undertaken by the City pursuant to the terms of this Agreement or otherwise.
- 4.9 **Section 219 Covenant Not Affected by Default of City.** No default by the City with respect to the Section 219 Covenant and no act or failure to act by the City in connection with the Section 219 Covenant will result or be deemed to result in the interruption, suspension, or termination of the Section 219 Covenant, and the Owner will refrain from seeking any judgment, order, declaration, or injunction to that effect.
- 4.10 **Other Sections Form Part of this Covenant.** Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees that Article 5 inclusive of this Agreement will be deemed to be included in and form part of this covenant made pursuant to Section 219 of the *Land Title Act*.

ARTICLE 5 MISCELLANEOUS

- 5.1 **Notice.** Any notice, document, consent or communication required or permitted to be given hereunder shall be in writing and shall be deemed to be satisfactory if and deemed to have occurred when:
- (a) sent by facsimile transmission or when personally delivered, on the date of receipt; 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 herein or to whatever address a party may from time to time in writing advise.
- 5.2 **Severability.** All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable, the balance of the obligations and covenants will remain and be binding.
- 5.3 **Joint and Several.** Where the Owner consists of more than one person, each such person will be jointly and severally liable to perform the Owner's obligations under this Agreement.
- 5.4 **Agreement to be a First Charge.** The Owner shall, after execution hereof by it and at the expense of the Owner, do or cause to be done all acts reasonably necessary to grant priority to this Agreement over all charges and encumbrances which may have been registered against the title to the Lands in the Land Title Office save and except those specifically approved in writing by the City.

- 5.5 **City's Other Rights Unaffected.** Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Local Government Act* and the *Community Charter*, as amended from time to time and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 5.6 **Council Direction Not Fettered.** Nothing contained or implied in this Agreement shall fetter in any way the discretion of the City or the Council of the City.
- 5.7 **Agreement for Benefit of City.** The Owner and the City hereby acknowledge, agree and declare that this Agreement is entered into for the sole purpose of benefiting the City and, in particular, acknowledge, agree and declare that this Agreement is not designed to protect or promote the interests of the Owner or any mortgagee of the Owner, or any future owner or occupier of the Lands and any improvements on the Lands or any other person and the City may, at its sole option, execute a release of this Agreement at any time without liability to any person for so doing.
- 5.8 **Future Assurances.** The Owner shall do, or cause to be done, all things and execute or cause to be executed all documents and give such further and other assurances which may be reasonably necessary to give proper effect to the intent of this Agreement including acts necessary to effect an assignment pursuant to Section 5.10 or acts necessary to obtain priority of this Agreement over financial charges which may be registered against the Lands in the Land Title Office.
- 5.9 **City Court Costs.** In an action to enforce this Agreement in respect of which the Court determines that the position of the City will prevail, the City will be entitled to court costs on a solicitor-client basis.
- 5.10 **Assignment by City.** This Agreement or any of the rights conferred by this Agreement upon the City may be assigned in whole or in part by the City without the consent of the Owner.
- 5.11 **No Waiver.** The Owner acknowledges and agrees that no failure on the part of the City 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 the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right.
- 5.12 **Remedies.** In addition to any remedies which are available under this Agreement or at law, the City will be entitled to all equitable remedies, including, without limitation, specific performance, injunction and declaratory relief, or any combination thereof, to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.
- 5.13 **Remedies Cumulative.** The remedies provided for in this Agreement will be cumulative and not exclusive of any other remedies provided by law or in equity.
- 5.14 **Time of Essence.** Time will be of the essence of this Agreement. If either party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party. If a time is specified in this Agreement for observing or performing any obligation, such time will be then local Vancouver, British Columbia time.

- 5.15 **Amendments.** Any amendment to this Agreement will have no force or effect unless the City and the Owner have signed the amendments.
- 5.16 **Opinion of the City.** Any opinion which the City is entitled by virtue of this Agreement to form may be formed on behalf of the City by the City Engineer or his or her designate, in which event the opinion of the City Engineer or his or her designate shall be deemed to be the opinion of the City for the purposes of this Agreement.
- 5.17 **Effect of Agreement.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, personal representatives, and assigns.
- 5.18 **Headings.** With the exception of Articles 2 and 4, which are created pursuant to Section 218 and Section 219 of the *Land Title Act* respectively, the division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement.
- 5.19 **Gender and Number.** Wherever the singular or the masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties hereto so require.
- 5.20 **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 in British Columbia.
- 5.21 **Reference to Statute.** Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is executed by the City and to subsequent amendments to or replacements of the statute or regulations.
- 5.22 **Effect of Grants and Agreements.** The Owner shall not be liable under any of the covenants and agreements herein contained where such liability arises by reason of an act or omission occurring after the Owner ceases to have any further interest in the Lands.
- 5.23 **Entire Agreement.** This Agreement represents the entire agreement between the City and the Owner regarding the matters set out in this Agreement, and supersedes all prior agreements, letters of intent or understandings about these matters.

IN WITNESS WHEREOF the parties have executed this Agreement on the General Instrument - Part 1 which is a part hereof.

**EXPLANATORY PLAN OF STATUTORY RIGHT OF WAY OVER PART OF
LOTS 1, 2, AND 3 SECTION 36 BLOCK 5 NORTH RANGE 3 WEST
NEW WESTMINSTER DISTRICT PLAN EPP58440**

PLAN EPP136312

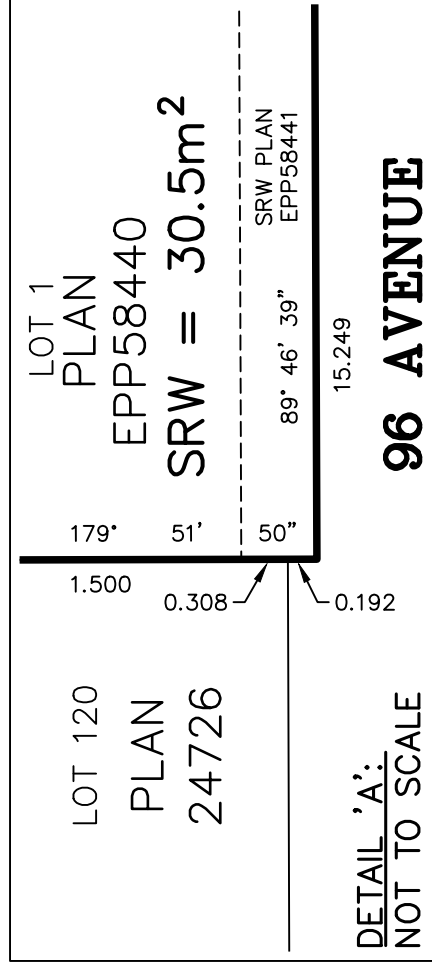
PURSUANT TO SECTION 99(1)(e) OF THE LAND TITLE ACT
FOR TEMPORARY WORK AREA PURPOSES
B.C.G.S. 92G.016

THE INTENDED PLOT SIZE OF THIS PLAN IS 280mm IN HEIGHT
BY 432mm IN WIDTH (B SIZE SHEET) WHEN PLOTTED AT A
SCALE OF 1:350



ALL DISTANCES ARE IN METRES

BOOK OF REFERENCE		AREA
DESCRIPTION		
PART OF LOT 1 Sec. 36 Bk. 5 NORTH Rge. 3 WEST NWD PLAN EPP58440		30.5m ²
PART OF LOT 2 Sec. 36 Bk. 5 NORTH Rge. 3 WEST NWD PLAN EPP58440		30.5m ²
PART OF LOT 3 Sec. 36 Bk. 5 NORTH Rge. 3 WEST NWD PLAN EPP58440		30.5m ²
TOTAL		91.5m ²



LEGEND

- SRW DENOTES STATUTORY RIGHT OF WAY
- m² DENOTES SQUARE METRES
- Sec. DENOTES SECTION
- Bk. DENOTES BLOCK
- Rge. DENOTES RANGE
- NWD DENOTES NEW WESTMINSTER DISTRICT
- EXP DENOTES EXPLANATORY

THIS PLAN SHOWS HORIZONTAL GROUND-LEVEL DISTANCES, UNLESS OTHERWISE SPECIFIED.
TO COMPUTE GRID DISTANCES, MULTIPLY GROUND-LEVEL DISTANCES BY THE AVERAGE
COMBINED FACTOR OF 0.9995908. THE AVERAGE COMBINED FACTOR HAS BEEN
DETERMINED BASED ON GEODETIC CONTROL MONUMENT 5370.

BEARINGS ARE GRID AND DERIVED FROM PLAN EPP58440.



13450 - 104 AVENUE
SURREY, BC V3T 1V8
TEL: (604) 591-4253

THIS PLAN IS BASED ON THE FOLLOWING LAND TITLE
AND SURVEY AUTHORITY OF BC RECORDS:
PLANS EPP58440, EPP58441, EPP58442

WILLIAM C. OLEKSUIK, BCLS 1026
21st DAY OR MARCH, 2024

