

**DISTRICT OF HOUSTON
BYLAW NO. 691, 1996**

A bylaw to authorize highway encroachments

The Council of the District of Houston, in open meeting assembled, enacts as a bylaw as follows:

1. CITATION

This Bylaw may be cited as the "**District of Houston Highway Encroachment Bylaw No. 691, 1996.**"

- 2.** The Mayor and Clerk Administrator are authorized to execute agreements with owners of property in the District substantially in the form of Schedule "A" attached to and forming part of this bylaw for the purpose of authorizing encroachments on highways in the District.

READ A FIRST TIME ON THE 14th DAY OF March, 1996

READ A SECOND TIME ON THE 14th DAY OF March, 1996

READ A THIRD TIME ON THE 14th DAY OF March, 1996

RECONSIDERED AND FINALLY ADOPTED ON THE 19th DAY OF March, 1996



MAYOR T. EUVERMAN



CLERK, BILL BEAMISH

SCHEDULE "A"

District of Houston
Bylaw No. 691, 1996

HIGHWAY ENCROACHMENT AGREEMENT

THIS AGREEMENT dated for reference the _____ day of _____, 199__

BETWEEN:

DISTRICT OF HOUSTON, a municipality incorporated under the Municipal Act, R.S.B.C., c290
and having a postal address at Box 370, Houston, B.C. VOJ IZO

("Houston")

OF THE FIRST PART

AND:

(the "Developer")

OF THE SECOND PART

WHEREAS:

- A. The Developer has requested permission from Houston to encroach upon lands which Houston possesses for highway purposes for the benefit of the public; and
- B. Houston may by bylaw regulate the use of highways and establish terms and conditions according to which a person may obstruct and encumber a highway; and
- C. Houston has enacted Highway Encroachment Bylaw No. 691, 1996 authorizing encroachments on highways in the District;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and covenants herein contained, and the sum of Fifty (\$50.00) Dollars now paid by the Developer to Houston, the receipt of which is hereby acknowledged by Houston, the parties agree as follows:

Permission to Encroach

- 1. Houston hereby grants to the Developer permission to encroach upon those portions of highway in Houston which are shown outlined in heavy black line on the drawing attached as Schedule "A" hereto (the "Encroachment Areas") for the sole purpose of installing, operating and maintaining thereon "the Works" shown on the plan attached as Schedule "B" hereto (the "Works"), strictly in accordance with that plan and on the terms and conditions contained herein.

. . . /2

2. Houston grants to the Developer permission to enter on the Encroachment Areas and to place, construct, operate, use, maintain, renew, alter, repair, replace and remove the Works.
3. As security for the performance by the Developer of its obligation to maintain the Works in accordance with this Agreement and remove the Works in accordance with Section 7, the Developer shall upon execution of this Agreement deposit with Houston a clean, unconditional letter of credit valid for at least one year drawn on a Canadian chartered bank in a form approved by Houston, in the amount of \$_____ (the "Maintenance Security"). The Developer agrees that Houston may draw down the Maintenance Security to maintain or remove the Works or any portion of them on the Developer's default, and if the Maintenance Security is insufficient to pay the costs of maintenance or removal of them the Developer agrees to pay such deficiency to Houston immediately on receipt of Houston's invoice and immediately replace the Maintenance Security if any portion of the Works remains in the Encroachment Areas. The Developer agrees to renew the Maintenance Security as required from time to time and agrees that, if at any time the Maintenance Security is not renewed at least 30 days prior to its expiry, Houston may draw down the Maintenance Security and hold the funds as security.

Acknowledgment of Highway

4. The Developer acknowledges and agrees that the Encroachment Areas are highways and that Houston has limited power to authorize the private use of a highway. The Developer further acknowledges and agrees that any rights granted by Houston to the Developer herein are subject to the public's right to pass and repass over a highway and that Houston has full authority pursuant to this Agreement to require the removal of the encroachments permitted herein, at any time, without notice and without compensation to the Developer. Houston agrees to act reasonably in requiring the removal of the encroachments and in particular agrees not to require their removal except in circumstances where and to the extent that such removal is required to enable Houston to occupy and use the Encroachment Areas as a highway.

Maintenance:

5. The Developer shall upon execution of this Agreement provide to Houston evidence of insurance required by Section 12.
6. The Developer shall at all times maintain the Works in accordance with sound building maintenance practices, and shall within a reasonable period of time remedy such deficiencies in the Works as may be noted in writing to the Developer by the Superintendent of Public Works.
7. The Developer shall give written notice to Houston of its intention to enter on the Encroachment Areas to construct the Works not less than 3 clear days before the beginning of such work unless otherwise authorized by the Superintendent of Public Works.
8. The Developer shall use all reasonable efforts to cause a minimum of obstruction and inconvenience during construction of the Works, and shall place and maintain such warning signs, barricades, lights or flares at or near the site of any work in progress as will give reasonable warning and protection to members of the public.

Relocation

9. If any highway under or on which any part of the Works is constructed is required for the installation of municipal utilities or other highway purposes such that the removal or relocation of the Works or a portion of the Works is in the opinion of Houston reasonably required, Houston shall give the Developer notice and the Developer shall within a reasonable period of time after receipt of such notice remove or relocate the Works or the portion of the Works affected, all at the sole expense of the Developer.

Ownership

10. The Parties agree that the Works shall remain the property and responsibility of the Developer but that Houston shall have the right to maintain and remove the Works or any part of them upon the default of the Developer.

Indemnification

11. The Developer shall indemnify and save harmless Houston, its officers, employees, elected and appointed officials, contractors and agents from and against all actions, proceedings, claims and demands by any person and shall reimburse Houston for all damages and expenses caused or contributed to by the negligence or other default of the Developer, its servants or agents in respect of anything done pursuant or ostensibly pursuant to this Agreement including without limitation the maintenance and operation of the Works.

Insurance

12. The Developer shall purchase and maintain in force for so long as the Works or any part of them are located in the Encroachment Areas a policy of insurance providing coverage of at least two million dollars for repair of the Works and liability to third parties in the event of damage resulting from the construction of the Works in the Encroachment Areas and liability to third parties. The policy shall include Houston as a named insured and shall contain an endorsement prohibiting its cancellation or amendment of its terms until 30 days after written notice of such cancellation or change is given to Houston. The Developer shall provide Houston with evidence of each renewal of the policy to the satisfaction of the Clerk Administrator.

Notice

13. Any notice or other communication required or contemplated to be given or made by any provision of this Agreement shall be given or made in writing and either delivered personally (and if so shall be deemed to be received when delivered) or mailed by prepaid registered mail in any Canada Post Office (and if so shall be deemed to be delivered on the sixth business day following such mailing except that, in the event of interruption of mail service notice it shall be deemed to be delivered only when actually received by the party to whom it is addressed), so long as the notice is addressed as follows:

to the Developer at:

and:

to Houston at:

District of Houston
Box 370
Houston, B.C.
VOJ IZO

or to any other address of which a party hereto from time to time notifies the other party in writing.

Enurement

14. This Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors and assigns.
15. Schedules "A" and "B" are annexed to and form part of this Agreement.

IN WITNESS WHEREOF the parties have hereunto caused their corporate seals to be affixed, attested to by the signature of their officers in that behalf, the day and year first above written.

The Corporate Seal of the
DISTRICT OF HOUSTON was
hereunto affixed in the
presence of:

Mayor

(Corporate Seal)

Clerk Administrator

The Corporate Seal of

was hereunto affixed in the
presence of:

Authorized Signatory

(Corporate Seal)

Authorized Signatory