

THIS AGREEMENT MADE EFFECTIVE this ____ day of _____, 2018.

BETWEEN:

COUNTY OF ST. PAUL NO. 19
(hereinafter called the "Municipality")

- AND -

ST. ARNAULT LUMBER & BUILDING SUPPLIES LTD.
(hereinafter called the "Owner")

ENCROACHMENT AGREEMENT

WHEREAS:

A. The Owner is the registered owner of the lands located within the County of St. Paul No. 19, in the Province of Alberta, municipally described as 3306 Park Avenue, and legally described as:

PLAN 1005EO
BLOCK 3
LOTS 5, 6 and 7
EXCEPTING THEREOUT ALL MINES AND MINERALS

(hereinafter referred to as the "Owner's Land");

B. The Municipality has control and management of the open road allowance located along the south boundary of the Owner's Land (hereinafter referred to as the "Road Allowance");

C. The Municipality has constructed a lift station on the Road Allowance, a portion of which encroaches upon the Owner's Land (which encroaching portion is hereinafter referred to as the "Encroachment");

D. The Owner is prepared to permit the Encroachment to exist upon or over a portion of the Owner's Land, subject to the terms and conditions contained herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the payment of ONE (\$1.00) DOLLAR paid by the Municipality to the Owner, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants and agreements contained herein, the Municipality and the Owner hereby agree as follows:

Grant of Encroachment

1. The Owner hereby permits the Encroachment to exist upon the Owner's Land in the manner and location as is shown in red on the Surveyor Sketch which is attached hereto as **Schedule "A"** to this Agreement, subject to the terms, covenants and conditions contained within this Agreement.

Taxes

2. The Municipality shall pay all municipal property taxes or assessments attributable to the Encroachment on the Owner's Land. The Owner agrees that the Municipality shall only be responsible for the municipal property taxes assessed in relation to the lift station structure and not the assessment related to the land.

Term and Termination

3. The term of this Agreement shall be for the lifetime of the Encroachment, subject to the earlier termination of this Agreement as provided for within this Agreement.

4. In the event that the Encroachment at any time after the date of this Agreement is destroyed or removed from the Owner's Land, this Agreement shall automatically terminate, save and except for those terms which survive termination, and all rights and privileges granted to the Owner pursuant to the terms of this Agreement shall immediately expire.

5. In the event that the Encroachment is only partially destroyed, the rights and privileges granted to the Owner pursuant to the terms of this Agreement shall expire with respect to the partially destroyed portion of the Encroachment. In the event that the Owner and the Municipality cannot come to an agreement as to what would be reasonable in the circumstances with respect to the reconstruction of the damaged portion of the Encroachment, the parties may refer the dispute to be determined by arbitration in accordance with any existing Arbitration Act in force in the Province of Alberta. Any decision resulting from such arbitration proceeding shall be binding upon the Owner and the Municipality.

6. The Municipality hereby assumes, and shall remain responsible for, all risk of personal injury and damage to all real or personal property, including the lift station comprising the Encroachment, arising out of the presence of the Encroachment upon the Road Allowance and the Owner's Lands, regardless of how such injury or damage is caused.

7. The Municipality shall be entitled to terminate this Agreement upon 30 days written notice to the Owners, as required pursuant to section 13(1)(o) of the *Traffic Safety Act*.

General

8. Pursuant to section 651.2 of the *Municipal Government Act* this Agreement, and each of the terms, covenants and conditions contained herein, shall be of the same force and effect for all intents and purposes as a covenant running with the Owner' Land and the Road Allowance, and subject to the terms of this Agreement shall be binding upon, and enure to the benefit of, all future Owner of the Owner's Land throughout the existence of this Agreement.

9. The Municipality shall be at liberty to register this Agreement by way of Caveat against the title to the Owner's Lands in order to protect the Municipality's interests under the terms of this Agreement. Any such Caveat or other registration shall expire and shall forthwith be discharged upon the termination of this Agreement.

10. All notices to be given in relation to this Agreement, as well as all requests for prior written consent required under this Agreement, may be hand delivered or sent by prepaid courier or registered mail addressed to the parties as follows:

- | | | |
|-----|-------------------------|---|
| (a) | to the Owner at: | the address of the registered owner of the Owner' Land, as stated on the title to that parcel; and |
| (b) | to the Municipality at: | County of St. Paul No. 19
5015-49 Avenue
St. Paul, Alberta T0A 3A4
Attention: Chief Administrative Officer |

or at such other address, in either case, as the Owner or the Municipality respectively may from time to time appoint in writing. Any notice sent in accordance with this paragraph shall be deemed to be given to and received by the addressee seven (7) days after the mailing thereof, postage prepaid, save and except for during periods of postal interruption and seven (7) days thereafter, in which case all notices required herein shall be sent by pre-paid courier or hand delivered and shall be deemed to have been given upon delivery.

11. The terms contained within this Agreement, including any recital and any Schedules attached hereto, shall constitute the entire agreement between the parties. Words within this Agreement importing number or gender shall be construed in grammatical conformance with the context or the party or parties in reference. Any term or provision of this Agreement which is found to be invalid or unenforceable shall be severed from the balance of the document, and shall not affect the enforceability of the remainder of this Agreement.

12. The parties hereby acknowledge and confirm that each was advised by the other to obtain independent legal or other professional advice, and that each has had an opportunity to read, review and understand the nature and effect of the provisions of this Agreement prior by executing this Agreement. Each hereby confirms that it has had the opportunity to seek independent legal or professional advice prior to executing this Agreement and has either:

- (a) obtained such legal or other professional advice; or
- (b) waived the right to obtain such independent legal or other professional advice.

IN WITNESS WHEREOF the parties have executed this Agreement to be effective the year and date first above written.

COUNTY OF ST. PAUL NO. 19

Per: _____ c/s

Per: _____

**ST. ARNAULT LUMBER & BUILDING
SUPPLIES LTD.**

Per: _____ c/s

Per: _____

SCHEDULE "A"

The Encroachment

