|  |  |
| --- | --- |
|  | Standard Form Agreements  Development Permit & Subdivision  Applications  **Development Engineering** |

**Your application to The City of Calgary for either a Development Permit or Subdivision has been processed and various documents may be required as a condition of the development or subdivision.**

**When completing the attached Screening Fence Access Easement Agreement**, **please follow the instructions below.**

* The agreement provided by The City of Calgary is locked and only the field areas indicated may be completed. Each field specifies the information required to be keyed into each space. You may tab from field to field.
* The Plan number space in clause 1.01(a) should be left blank and will be filled in at the time the document is registered at the Land Titles office. A survey plan prepared by an Alberta Land Surveyor that delineates the easement area must accompany the agreement package.
* Once all the field areas have been filled in, save the document.

**NOTE: THIS PAGE IS FOR INFORMATION ONLY AND IS NOT PART OF THE AGREEMENT.**

* The order of assembly of the agreement should be:
  1. the agreement
  2. Affidavits after the signing page, if required; and
  3. last, the required Schedule(s).
* Print three (3) copies of the agreement and have each copy signed by the Grantor. **PLEASE DO NOT DOUBLE SIDE THE AGREEMENT, AFFIDAVIT(S) OR SCHEDULE(S) WHEN PRINTING.**
* Ensure that the corporate seal is affixed to each copy of the agreement.
* **If the Grantor does not have a corporate seal**, complete the Affidavit of Corporate Signing Authority and the Affidavit of Execution. These affidavits are also available for completion in locked form. Both affidavits will be required, originally sworn and signed, for each copy of the agreement.
* Include a recent corporate search for all corporations indicated in the agreement in the package to the City.

Once the copies of the agreement have been signed, sealed with the corporate seal, or the appropriate Affidavits have been attached to each copy of the agreement, mail, courier or deliver the copies of the agreement, the corporate search(es) and a **cover letter setting out the DP or SB number** to:

By Delivery or Courier: Development Engineering (#8032), The City of Calgary

Mail Room, Basement Floor, Municipal Building

800 Macleod Trail SE, Calgary

If by Mail: Development Engineering (#8032), The City of Calgary

P.O. Box 2100, Postal Station “M”, Calgary, Alberta T2P 2M5

Click here to enter text. Choose an item.Click here to enter text.

Click here to enter text.

This Agreement dated on the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

BETWEEN:

Click here to enter text., having corporate offices and carrying on business in the City of Calgary, in the Province of Alberta

(“the Grantor”)

- and -

**THE CITY OF CALGARY,** a municipal corporation carrying on business in and pursuant to the Province of Alberta

(“the City")

**SCREENING FENCE ACCESS EASEMENT AGREEMENT**

**Recitals:**

**WHEREAS** the Grantor is the registered owner of the Servient Lands;

**AND WHEREAS** the City is the registered owner or otherwise has an interest in the Dominant Lands;

**AND WHEREAS** pursuant to the Grantor’s Choose an item. file number Choose an item.Click here to enter text., the City approved the development of the Servient Lands subject to certain conditions of approval, including a condition requiring the parties enter into an Access Easement Agreement and register such agreement Choose an item.;

**AND WHEREAS** the Grantor intends to grant an access easement over the Servient Lands in favour of the Dominant Lands, for the benefit of the City;

**IN CONSIDERATION** of the approval of Choose an item. Choose an item.Click here to enter text., the mutual covenants contained herein, the payment of Ten Dollars ($10.00) from the City to the Grantor and such other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **DEFINITIONS** 
   1. In this Agreement, the following words and phrases when capitalized shall have the following meanings:
      1. “Access Easement Area" means that portion of the Servient Lands which lies within the access right of way plan, registered as Plan number **\_\_\_\_\_\_\_\_\_\_\_\_**;
      2. "Dominant Lands" means all land and/or public road right of ways owned by the City or the Province located adjacent to or connecting with the Servient Lands, including but not limited to:

Click here to enter text.

* + 1. “Effective Date” means the date at the top of this Agreement;
    2. "Grantor" means the registered owner(s) from time to time of the Servient Lands, or any portion thereof, and their successors and assigns and any subsequent purchasers or transferees of the Servient Lands;
    3. “Manager, Development Engineering” means the City employee appointed to the position of Manager, Development Engineering, or the individual authorized to act in his place generally or for the purpose of administering this Agreement;
    4. "Servient Lands" means the lands owned by the Grantor and legally described as:

**ATTACHED SCHEDULE** Choose an item.

* + 1. “Subdivision Authority” means a person or body appointed as a Subdivision Authority as contemplated by and in accordance with the *Municipal Government Act,* R.S.A. 2000, c.M-26, as amended;
    2. “Term” has the meaning ascribed in Clause 2 herein.

1. **TERM OF AGREEMENT**

2.01 The Grantor and City agree that this Agreement and the rights and privileges granted herein comes into full force and effect on the Effective Date and continues for as long as required by the Subdivision Authority in connection with approval of Choose an item.Click here to enter text.. This Agreement may be extinguished with the consent of the Manager, Development Engineering which may be obtained through an application in writing to the Manager, Development Engineering accompanied by a registerable discharge of easement and a copy of the certificate of title downloaded or obtained from Alberta Land Titles within one week of submission of the application.

1. **ACCESS EASEMENT**
   1. Subject to Clause 8.01, the Grantor grants to the City for the use by the City (including its nominees, appointees, contractors, subcontractors, officers, servants, tenants, agents, employees, and invitees) in common with the Grantor, the non-exclusive right, privilege and easement, in, across, through and over the Access Easement Area, and to and from the Dominant and Servient Lands, as may be necessary, at any time, without notice, for the following purposes:
      1. To construct, operate, inspect, maintain, repair and replace a fence or wall in, over, across and through the Access Easement Area; and
      2. To have ingress and egress and to pass and to repass over those portions of the Servient Lands either on foot or by means of vehicles or necessary machines whatsoever, and to remain on such portion of the Servient Lands in order to exercise any of the rights herein granted.

3.02 The Grantor shall retain a right of egress and ingress in, through on and over the Access Easement Area subject to any restrictions contained in this Agreement.

1. **GRANTOR COVENANTS**
   1. Subject to Clause 8.01, the Grantor covenants and agrees that it shall not:
      1. do any act or thing that would damage the Access Easement Area or infrastructure located thereon or which could interfere in any way with the City’s rights pursuant to this Agreement;
      2. build, erect, plant or maintain or permit to be built, erected, planted or maintained on or near the Access Easement Area any fence, building, structure, including a sign, tree, shrub, vegetation, landscaping or other works which could interfere in any way with the City’s rights pursuant to this Agreement unless approved by the Manager, Development Engineering.

4.02 The Grantor covenants and agrees that:

1. the City has the full and free right and liberty to erect, maintain and remove signage on the Access Easement Area pertaining to the use of the Access Easement Area;
2. the Grantor shall keep the Access Easement Area open at all times for the use of and access by the City and its nominees, appointees, contractors, subcontractors, officers, servants, tenants, agents, employees, assigns, invitees, unless otherwise approved or directed by the Manager, Development Engineering;
3. the Grantor shall pay all taxes levied over the Servient Lands, including the Access Easement Area, by any government authority;
4. this Agreement will constitute a charge against the Servient Lands for all sums payable or which may become payable to the City pursuant to the terms of this Agreement and the Grantor does hereby encumber the Servient Lands for the benefit of the City with such sums to be paid pursuant to the terms of this Agreement.
5. **CONSTRUCTION AND MAINTENANCE OF ACCESS EASEMENT AREA**

5.01 The City is under no obligation to inspect, repair, or maintain the Access Easement Area, or any portion thereof, to ensure that this Agreement is complied with and it is the Grantor’s obligation to maintain, repair and replace the fence or wall.

5.02 The Grantor shall, at its sole cost and expense, construct the fence or wall on the Access Easement Area.

5.03 The Grantor shall, at its sole cost and expense, maintain, repair and replace the fence or wall located on the Access Easement Area.

5.04 If the Grantor fails to maintain, repair and replace the fence or wall on the Access Easement Area, the City may use all necessary equipment to fulfil its rights hereunder, including but not limited to the use of bobcats, shovels, sand, salt and other similar equipment and materials and the costs of such action shall be paid by the Grantor within thirty (30) days of the mailing of an invoice by the City, which shall immediately become a debt due and owing to the City.

5.05 If payment of the invoice referred to section 5.04 has not been received by the City within thirty (30) days of mailing the invoice, the City shall be entitled to recover the amount by any or all methods of recovery or any one of them deemed advisable or expedient by the City including any methods of recovery available to the City pursuant to the *Municipal Government Act*.

5.06 All work performed on the Access Easement Area by the Grantor and City shall be carried out in a good and workmanlike manner.

1. **INDEMNITY**
   1. The City shall indemnify and hold harmless the Grantor from and against all claims, damages, suits, actions, liabilities and causes of action, costs, or sums of money, including all claims for personal injury, death or property damage, whatsoever, that the Grantor may suffer by reason of the City failing to comply with this Agreement or by the City’s gross negligence or misconduct in carrying out the provisions of this Agreement.
   2. The Grantor shall indemnify and hold harmless the City from and against all claims, damages, suits, dues, actions, liabilities and causes of action, costs, or sums of money, including all claims for personal injury, death or property damage, whatsoever that the City may suffer by reason of the Grantor failing to comply with any provisions in this Agreement or by the Grantor’s negligence or misconduct in carrying out the provisions of this Agreement.
   3. In the event of any loss, claim or demand advanced against the City, to which the Grantor has caused or contributed, nothing in this Agreement prevents the City from seeking contribution or indemnity from the Grantor to the extent of the Grantor's contribution to the loss.
   4. In the event of any loss, claim or demand advanced against the Grantor, to which the City caused or contributed, nothing in this Agreement prevents the Grantor from seeking contribution or indemnity from the City to the extent of the City’s contribution to the loss.
   5. The parties acknowledge and agree that the provisions of this Agreement do not modify the standard of care owed in law either by the Grantor or City to any person with respect to the maintenance, repair and replacement of the Access Easement Area and infrastructure located thereon.
2. **ASSIGNMENT ON DISPOSITION AND POSTPONEMENT**

7.01 Concurrent with the assignment, sale or transfer of the entirety of the Servient Lands or any interest therein by which the rights and obligations under this Agreement are assigned, sold or transferred, the Grantor shall cause its assignee, purchaser or transferee to enter into an Assumption Agreement duly executed by the assignee, purchaser or transferee, in a form acceptable to the City, which shall provide for the assumption by such assignee, purchaser or transferee of all of the obligations imposed by this Agreement with respect thereto, at which time the assignor, vendor or transferor shall be deemed to be released from such obligations.

1. **GENERAL**
   1. If the Grantor or the City reasonably believes the Access Easement Area is unsafe for the purpose of the easement, the Grantor or the City may take reasonable measures to restrict access to the Access Easement Area until such time as the Access Easement Area is safe and fit for the purpose of the easement.
   2. If any provision of this Agreement or application thereto to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, other than such term, shall be valid and enforced to the extent permitted by law.
   3. This Agreement shall be interpreted and enforced in accordance with the laws of the Province of Alberta.
   4. No action shall lie against either the Grantor or the City for damages, for breach of any one or more of the covenants contained in this Agreement unless the Grantor or City were, at the time of the alleged breach, an owner of either the Servient or Dominant Lands and alleged and found by a court of competent jurisdiction to be in breach of this Agreement. This covenant shall constitute an absolute defence to any such action and may be pleaded as such.
   5. Throughout this Agreement, the singular shall include the plural and the masculine shall include the feminine as the case may be, and vice versa.
   6. Should the Grantor at any time and from time to time comprise two or more persons, each such person shall be jointly and severally bound with the other and others for the performance of the obligations of the Grantor of such rights.
   7. The parties hereby acknowledge and agree that every obligation or duty imposed upon them under this Agreement shall constitute a covenant, whether expressed as covenant or not.
   8. All obligations contained herein, although not expressly covenants shall be deemed to be covenants running with the Dominant Lands and Servient Lands.
   9. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors, successors in title and assigns.
   10. Nothing in this Agreement shall relieve the Grantor from compliance with all applicable municipal bylaws, laws or regulations established by any other government authority which may have jurisdiction over the Servient Lands.
   11. Every provision of this Agreement by which the Grantor is obligated in any way shall be deemed to include the words "at the expense of the Grantor" unless the context otherwise requires.
   12. This Agreement does not constitute a development permit or any other permit issued by the City.
   13. The failure of the City at any time to require strict performance by the Grantor of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the City of the performance of any obligation hereunder be taken or held to be a waiver of the performance of any other obligation herein.
   14. The City's waiver of all or any portion of this Agreement must, without the exception, be in writing and signed by the Manager, Development Engineering, and any action that fails to comply with this requirement shall under no circumstances be considered or construed to be a waiver.
   15. The parties acknowledge and agree that the covenants contained herein are deemed to be, and shall be, covenants running with the Dominant and Servient Lands, and shall be registered by the Grantor against title to the Servient Lands.
   16. Time shall be of the essence of this Agreement.
   17. The above recitals and attached schedules shall form part of this Agreement.
2. **NOTICES**
   1. Any notice or communication to be given or made to either party shall be in writing and may be sufficiently given if messenger delivered or faxed to such party at the following addresses:

To the Grantor: Click here to enter text.

Click here to enter text., Click here to enter text.

Email: Click here to enter text.

Fax: Click here to enter text.

Attention: Click here to enter text.

To the City: The City of Calgary, Development Engineering (#8032)

5th Floor, Municipal Building, 800 Macleod Trail S.E.

Calgary, Alberta T2P 2M5

Fax: 403-268-3636

Attention: Manager, Development Engineering

With a copy to: The City of Calgary, Law, Legal Services (#8053)

12th Floor, Municipal Building, 800 Macleod Trail S.E.

Calgary, Alberta T2P 2M3

Fax: 403-268-4634

Email: law.reception@calgary.ca

Attention: Manager, Planning & Real Estate Section

Either party may change its address by notice given to the other in accordance with this section in which event this section shall be deemed to have been amended accordingly.

Any notice or communication given in the foregoing manner shall be deemed to have been given and received on the date of delivery or fax.

**IN WITNESS WHEREOF** the parties have executed this Agreement as evidenced by their signatures, as of the date first above written.

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| |  |  | | --- | --- | | **Approved as to Content** | **Initials** | | Bus. Unit: Development Engineering  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | | **Approved as to Form**  **by Law, Legal Services** | **Initials** | | Name:  File: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | | Click here to enter text.  Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Corporate Seal)  Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   |  | | --- | | **Affix Corporate Seal OR**  **use Affidavit of Corporate Signing Authority AND Affidavit of Execution** |   **THE CITY OF CALGARY**  Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Coordinator, Utility Generalists  Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  City Clerk |

**SCHEDULE** “A”

Click here to enter text.

**SCHEDULE** Choose an item.

Click here to enter text.