



Policy Name

Encroachment Agreements

Policy Number

PD - 12

Policy Statement

Council recognizes that from time to time requests will be made to the County for an Encroachment Agreement for certain structures that encroach upon a public road right-of-way to be allowed to remain as sited. The purpose of this policy is to set out the procedure to be followed when a request for an Encroachment Agreement is received by the offices of Brazeau County.

Policy

The Director of Planning and Development is authorized to negotiate an Encroachment Agreement on behalf of the County. The form of Agreement shall be as attached to this policy, with Schedule "A" for up to a 12-foot maximum separation distance to the fence line.

Prior to the granting of the Encroachment Agreement, letters shall be directed to owners of land lying adjacent to the subject public roadway to ensure that there are no concerns, or such concerns being addressed by the Director of Planning and Development prior to granting of the Encroachment Agreement.

Chief Administrative Officer: _____
Approved By Council: 01/01/29 _____
Revision Dates: _____
Reviewed: _____

AGREEMENT MADE THIS _____ DAY OF _____ 2001.

BETWEEN:

(hereinafter called the "Owners")

OF THE FIRST PART

- and -

(hereinafter called "Brazeau")

OF THE SECOND PART

ENCROACHMENT AGREEMENT

WHEREAS the Owner is the registered owners of the lands herein defined and has requested Brazeau to grant it permission to continue the encroachment made with Brazeau's knowledge and consent and herein defined; and

WHEREAS Brazeau agrees to grant the Owner's request subject to the provisions of the municipal bylaws an amended from time to time and subject to the terms and conditions of this agreement;

NOW THEREFORE this agreement witnesses that in consideration of the premises, the covenants herein contained and other good and valuable consideration, the parties hereby agree as follows:

1. The Owners are the registered owner of those lands situated in Brazeau, Alberta, which are more particularly described as:

(all of which is hereinafter collectively called the "lands")

2. Brazeau grants to the Owners permission to encroach upon or over that portion of Road Plan 832 0045, which is shown outlined in "red" on the sketch, attached as Schedule "A" hereto (the "encroachment").

3. The sole purpose, (the "works") for which the Owners are entitled to encroach upon the encroachment, is as set out in Schedule "B" hereto and all of the works or encroachment shall be confined to the area as shown on Schedule "A".
4. In consideration of this right to maintain the works on the encroachment pursuant to this agreement, the Owners shall pay to Brazeau the sum of **one dollar (\$1.00)**, the receipt of which is hereby acknowledged by Brazeau.
5. The Owners shall at all times and at his own expense keep and maintain the works in good and sufficient repair to the reasonable satisfaction of Brazeau in conformance with the standards of maintenance in Brazeau from time to time and no structural alterations shall be made to the works except in accordance with a Development Permit.
6. Maintenance by the Owners shall include removal of snow and ice from all areas of the encroachment used by the public to ensure that they are safe.
7. No provision of this agreement and no act or omission or finding of negligence, whether joint or several, as against Brazeau, in favour of any third party, shall relieve the Owners from liability to Brazeau, whether such liability arises under this agreement or otherwise.
8. If the Owners violate any provision of this agreement, or any provision of Brazeau's bylaws relating to the works, all rights accruing to the Owners under this agreement shall, unless Brazeau otherwise decides, cease upon **thirty (30) days** written notice if not remedied within that period, but Brazeau shall retain the right to proceed with the enforcement of any security or indemnity provided in satisfaction of any claim, loss or expense of any kind whatsoever arising under this agreement or from the permission to encroach granted herein.
9.
 - (a) The Owners indemnify, saves harmless, releases and forever discharges Brazeau from and against any and all manner of actions, causes of actions, claims, debts, suits, loss, costs, demands and promises whatsoever whether known or unknown, which the Owners or any other person now has or may at any time have by reason of:
 - (i) the permission to encroach granted hereby, or
 - (ii) the construction, maintenance, existence, use or removal of the works including, without restricting the generality of the foregoing, a claim for loss or injury to persons or property due to the Owner's negligence or failure to comply with Brazeau's bylaws relating to the works or with any provision of this agreement.
 - (b) The Owners shall provide Brazeau with evidence of insurance providing coverage satisfactory to Brazeau with regard to the indemnification given in this clause.

10. Brazeau's officers, employees, agents and contractors shall have the right at any time to enter upon the lands and encroachment for the purpose of reconstruction, maintaining, repairing, inspecting, testing or removing any public works, utility or road existing at the date of this agreement in the vicinity of the works. Brazeau shall in undertaking such activities use reasonable efforts to cause its officers, employees, agents and contractors to minimize any disruption or damage to the works.
11. All costs to repair or replace the works which occur as a result of Brazeau's activities pursuant to Section 10 shall be borne entirely by the owner. In addition, the Owners shall reimburse Brazeau for all necessary and reasonable costs incurred by Brazeau as part of Brazeau's activities pursuant to Section 10 in excess of those costs that would have been incurred if the works did not exist.
12. If the building on which the works are located is rebuilt or substantially renovated, the Owners undertake to remove the works at its own cost.
13. Brazeau may at any time in its sole discretion withdraw the rights it has granted herein to the Owner and resume possession of the encroachment for public purposes, provided that Brazeau gives the Owners **sixty (60) days** notice specifying the public purpose and gives the Owner the right to make submissions to Brazeau Municipal Council in respect of the necessity, methods, and alternative means of achieving the public purpose, and the owner shall at its own expense within a period of **six (6) months** from the date of receiving such notice of withdrawal or within such shorter time as may be specified by Brazeau's Municipal Council remove the works and restore the encroachment to the satisfaction of the Chief Administrative Officer of Brazeau.
14. In the event the Owners fail to keep the works or any covering or structure pertaining thereto in good repair to the reasonable satisfaction of Brazeau in conformance with the prevailing standards of maintenance in Brazeau from time to time, or in the event the Owners fail to remove the works or to restore the encroachment to the satisfaction of the Chief Administrative Officer of Brazeau, pursuant to Sections 12 and 13, the Chief Administrative Officer of Brazeau may in his sole discretion cause such repairs to be made, including structural changes, as he deems reasonable and necessary, and the cost thereof shall be borne by the Owners. Any opinion which is required to be formed by Brazeau by virtue of this agreement, may be formed on behalf of Brazeau by the Chief Administrative Officer of Brazeau in which event his opinion shall be deemed to be the opinion of Brazeau for the purposes of this agreement.
15. If any section, subsection, sentence, clause or phrase of this agreement is for any reason held to be invalid by the decision of a Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this agreement.

16. This agreement shall ensure to the benefit of and be binding upon the parties hereto, and their successors, NOTWITHSTANDING any rule of law or equity to the contrary; and this agreement shall be governed and construed in accordance with the laws of the Province of Alberta.

IN WITNESS the Parties hereto have hereunder executed these presents as of the day, month, and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of:

Witness

Name

Witness

Name

MUNICIPAL DISTRICT OF BRAZEAU NO. 77

per: _____

MEMORANDUM AS TO INTEREST:

_____, Registration No. _____, registered against
(Name of document)

the lands at the Alberta Land Titles Office on the ___ day of _____, 2000,
and is called herein the "Interest").