



**Council - Special Meeting  
Agenda**

Thursday, July 23, 2020

3:00 p.m.

Council Chambers

**Pages**

1. CALL TO ORDER
2. ADOPTION OF AGENDA
3. DISCLOSURE OF INTEREST
4. NEW BUSINESS
  - 4.1 Encroachment Agreement Request EA20-002
5. ADJOURNMENT

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## STAFF REPORT

**Title:** Encroachment Agreement Request EA20-002

**Meeting Date:** July 23, 2020

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### **Executive Summary:**

Request from the owner of 5026 41 Street (Lot 23, Block 33, Plan 782 2950) to enter into an encroachment agreement for a retaining wall encroaching on the City's adjacent lane.

### **Background:**

Administration has received a request from the owner of 5026 41 Street (Lot 23, Block 33, Plan 782 2950) seeking an encroachment agreement with the city. A recently submitted Real Property Report (attached) indicates that the retaining wall encroaches slightly onto the City's lane; however, the extent of the encroachment is minimal.

We understand that the house is for sell of which the owners are in a purchase contract with a buyer who of which will not accept the results of the Real Property Report unless a resolution to the encroachments can be obtained. We also understand that the owners have been threatened for breaching a contract unless a resolution to the encroachments can be obtained. Please note that administration has no details relating to the purchase agreement.

Under the City's Encroachment Policy 104-DA-08, all encroachments that come to the City's attention must be regularized through approval of an encroachment agreement, or, must be removed. Given the small extent of the encroachment, and the fact that the retaining wall is immovable, Administration does not have a concern with entering into an encroachment agreement in this case.

Administration has been advised that the encroachment issue may potentially jeopardize the sale of the property, as there is currently no encroachment agreement in place. Typically, encroachment agreements are terminated upon sale of a property; however, Administration has adjusted the standard encroachment agreement in order to include the following clause to allow the agreement to survive the impending transfer of the property and be assigned to the purchaser:

#### *"21. Assignment*

*Notwithstanding section 10 of this agreement, in the event that the Grantee sells or otherwise transfers the Grantee's Lands to a third party purchaser within sixty*



*(60) days of execution of this agreement, the parties agree that the Grantee's interest in this agreement shall be assigned to the new owner of the Grantee's Lands."*

Administration recommends that Council pass a motion directing Administration to enter into an encroachment agreement with the owner of Lot 23, Block 33, Plan 782 2950 for a term of five years with an option to renew for an additional five year term.

**Alternatives:**

Council may consider the following alternatives:

- 1) Pass a motion directing Administration to enter into an encroachment agreement with the owner of Lot 23, Block 33, Plan 782 2950 for a term of five years with an option to renew for an additional five year term.
- 2) Defeat a motion directing Administration to enter into an encroachment agreement with the owner of Lot 23, Block 33, Plan 782 2950 for a term of five years with an option to renew for an additional five year term.
- 3) Accept as information only.

**Recommended Action:**

Administration recommends that Council pass a motion directing Administration to enter into an encroachment agreement with the owner of Lot 23, Block 33, Plan 782 2950 for a term of five (5) years with an option to renew for an additional five (5) year term.

**Budget Implications (Yes or No):**

No

**Submitted by:**

Kevin Nagoya, Chief Administrative Officer

**CITY OF COLD LAKE  
ENCROACHMENT AGREEMENT**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BETWEEN:

**CITY OF COLD LAKE**  
a municipal corporation in the Province of Alberta,  
(hereinafter referred to as the "City")

OF THE FIRST PART

- and –

**RODERICK MacLEAN & MELANIE SMITH**  
**5026 41 STREET**  
**COLD LAKE, AB T9M 2A6**

(hereinafter referred to as the "Grantee")

OF THE SECOND PART

WHEREAS City of Cold Lake has an interest in certain lands within City of Cold Lake, in the Province of Alberta, (the Municipal Lands);

AND WHEREAS the Grantee is the registered owner of certain lands legally described as Plan 782 2950, Block 33, Lot 23, (the "Grantee's Lands");

AND WHEREAS the Grantee has requested the City grant a licence to permit an encroachment on the Municipal Lands as outlined in yellow on the attached Schedule "A"

AND WHEREAS City of Cold Lake has agreed to grant the Grantee a licence to encroach subject to the terms of this agreement:

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, covenants, conditions and terms contained herein, the parties hereto agree as follows:

1. **Definitions**

In this Agreement

- (a) "Agreement" means this encroachment agreement and any amendments, schedules and supplements to it;
- (b) "Municipal Lands" means the interest in those lands of City of Cold Lake consisting of a portion of Plan 782 2950 as shown in Schedule "A" attached hereto;
- (c) "Development" means the sole purpose for which the Grantee is entitled to encroach on the Municipal Lands with a moveable fence and shed, more particularly described in Schedule "A" attached hereto and forming part of this Agreement;

- (d) "Encroachment" means that portion of the retaining wall and fence that is licensed to encroach onto the Municipal Lands;
- (e) "Encroachment Area" means the portion of the Municipal Lands licensed by the City occupied by the Encroachment as more particularly dimensioned and further identified on the real property report attached to this Agreement as Schedule 'B';

2. **Consideration and Right to Maintain**

In consideration of the sum of **One Thousand Dollars (\$1,000.00)** paid to City of Cold Lake by the Grantee at the commencement of this Agreement and the further sum of **One Dollar(s) (\$1.00)** plus municipal taxes applicable to the Encroachment Area every year thereafter until termination (such sum having been received satisfactorily by City of Cold Lake) and subject to the terms and conditions of this Agreement, City of Cold Lake gives to the owner the right, license, and privilege to continue the Encroachment subject to terms and conditions of this Agreement.

3. **Limited Purpose**

The Encroachment granted hereby shall be limited solely to that portion of retaining wall and fence as identified in Schedule "A" and the Grantee shall not cause or permit any other development whatsoever within the permitted Encroachment Area.

4. **Permits**

Nothing in this Agreement in any way constitutes a development permit or a building permit in the Encroachment Area as shown in Schedule "A" hereto and the Grantee shall not cause or permit any new development whatsoever within the permitted Encroachment Area without receiving a development permit and/or building permit;

5. **Municipality's Rights**

City of Cold Lake shall have the full right to occupy and use the Encroachment Area in any manner whatsoever deemed appropriate by City of Cold Lake; provided, that City of Cold Lake shall not unreasonably interfere with the rights herein conferred upon the Grantee;

6. **Environmental Obligations**

Notwithstanding any other term or condition of this Agreement, the Grantee shall accept the granting of the Encroachment as contemplated herein on the understanding and agreement that there are no agreements, conditions, warranties or representations relating to the Encroachment Area other than as stated in this Agreement and the City does not warrant the quality, condition or sufficiency of the Encroachment Area for any use or purpose and the grant of the Encroachment is taken by the Grantee on a strictly "as is, where is" basis.

Without restricting the generality of the foregoing, the Grantee shall comply with all legislation dealing with any environmental issues related to the Encroachment Area including, but not limited to, the Environmental Protection and Enhancement Act, R.S.A. 2000 c. E-12, as amended, and regulations thereunder or any successor legislation. The responsibility of the Grantee with respect

to environmental obligations will continue to be enforceable during and after the term of this Agreement.

7. **Utilities and Drainage**

- (a) In the event that City of Cold Lake deems it necessary or appropriate to cause or allow third parties to construct or install permanent underground or above ground utility lines, pipelines facilities, transmission lines, drainage swales and sidewalks etc. (the "work"), which will cross the Encroachment Area, or to perform such other work upon the Encroachment Area as may be deemed necessary in the sole discretion of City of Cold Lake, the Grantee shall in no way interfere with or hinder the construction, installation, repair or maintenance undertaken by City of Cold Lake or any person to whom City of Cold Lake has granted such permission. The Grantee shall provide further documentation as may be deemed appropriate in the sole discretion of City of Cold Lake for the purposes of expediting or permitting the "work" within the Encroachment Area by City of Cold Lake or the nominee of City of Cold Lake.
- (b) In the event City of Cold Lake or members of the Public Body request and deem it necessary to perform such work within the Encroachment Area, the Grantee is responsible for the removal of the development within the Encroachment Area, at the request of City of Cold Lake.

8. **Grantee's Obligations**

The Grantee Shall:

- (a) **Grantee's Sole Expense** - keep, maintain, and repair the Encroachment and the Encroachment Area in good order and condition. In the event that the Municipality or any franchise utility deem it necessary to access services within the Encroachment Area, at any time, the Grantee shall be responsible for any and all costs which may incur from work undertaken as a result of the Encroachment. If the Encroachment must be removed, the Grantee shall be responsible for the removal of the Encroachment at the Grantee's sole expense within 30 (Thirty) days of written notification or other mutually agreed to time period. If emergency access is required, the Municipality may remove the Encroachment at the Grantee's sole expense at any time.
- (b) **No increase, rebuilding or alterations in Encroachment Area** - ensure that the Encroachment Area is not enlarged, added to, rebuilt, or structurally altered except as may be necessary to maintain and repair the permitted encroachment;
- (c) **Re-development** - ensure that any further development built on the Grantee's Land will not encroach in, on, over or under the Municipal Lands;
- (d) **Taxes** - promptly pay when due any additional municipal property taxes (including without limitation local improvement taxes) that are assessed and levied against the Grantee's Lands by virtue of the Encroachment. The Grantee acknowledges and agrees that the municipal assessment and tax records for the Grantee's Lands may be amended to include the Encroachment and the Encroachment Area;
- (e) **Discharges** - promptly discharge any and all encumbrances registered against the Encroachment Area, including Builder's Liens which are registered as a result of any action

of the Grantee, its agents, officers, employees or independent contractors. In the event the Grantee fails to discharge any such encumbrance within fifteen (15) days of receiving notice from City of Cold Lake, City of Cold Lake may forthwith terminate this Agreement;

- (f) **Real Property Report** - The Grantee, at their sole expense, shall obtain and provide to the City a current Real Property Report, prepared by a registered Alberta Land Surveyor (ALS) detailing the encroachments upon the Municipal Lands as of the date of signing of this Agreement.

9. **Landscaping**

The Grantee shall not install or erect any trees, landscaping other than grass, buildings, improvements or structures on the Encroachment Area, other than the Encroachment permitted herein without the express written consent of the City of Cold Lake which consent may be arbitrarily withheld. If the City of Cold Lake permits the Grantee to install or erect any trees, landscaping, buildings, improvements or structures, the same are to be constructed in a workmanlike manner so as to minimize damage to the Encroachment Area, and the Grantee shall, after any such work, restore the Encroachment Area to a level and condition equivalent to that which existed prior to the commencement of any such construction and the existing grading running the length of the Municipal Lands shall not be altered or obstructed by any such construction;

10. **Termination**

This agreement shall be in force and effect for a period of five (5) years from the date of signing but may be terminated by the City as follows:

- (a) The City of Cold Lake gives to the owner the right, license, and privilege to continue the Encroachment until such time as the Municipality determines that the affected area of the Municipal Lands are required for public use and shall give to the Grantee not less than Thirty (30) days written notice of such termination, which notice shall terminate this Agreement at the expiration of notice period given, or
- (b) If the Grantee defaults in the performance of any covenant, condition or term of this agreement and such default is not remedied within (10) days' notice of such default, this Agreement shall thereupon terminate without further notice, or
- (c) If the Grantee sells the property, or any part of the property, the Agreement shall be terminated.

11. **Grantee's Obligations on Termination**

Upon termination of this Encroachment, the Grantee shall remove all property belonging to the Grantee from the Encroachment Area and restore the Encroachment Area to a level and condition equivalent to that which existed prior to the commencement of the Encroachment and to the City of Cold Lake Municipal Engineering Standards.

If the Grantee fails or neglects to restore the Encroachment Area or fails to remove any and all property of the Grantee from the Encroachment Area within thirty (30) days of the termination of the Encroachment, City of Cold Lake shall have the right, but not the obligation, to take such

action as is reasonably necessary in the sole discretion of City of Cold Lake to remove all property of the Grantee from the Encroachment Area, and to restore the Encroachment Area to the level and condition equivalent to that which existed prior to the commencement of this Encroachment.

City of Cold Lake shall not be responsible for any loss or damage, however caused, to any property of the Grantee hereby removed from the Encroachment Area, and the Grantee further agrees to compensate City of Cold Lake, its servants, contractors or agents pursuant to this clause. Any cost incurred by City of Cold Lake pursuant to this clause shall be a charge and encumbrance against the Grantee's Lands and the Grantee hereby charges the Grantee's Lands for such costs;

12. **Quiet Possession**

The Grantee by performing and observing the covenants and conditions contained herein, shall be entitled to peaceably exercise the rights herein granted to the Grantee without any unreasonable hindrance, molestation or interruption from City of Cold Lake, subject always to the terms of the Agreement;

13. **Owner's Possession**

If the Grantee fails or neglects within thirty (30) days of the receipt of notice from City of Cold Lake or a mutually agreed to time period to comply with the requirements of this Agreement, without notice in the case of an emergency or in the event that the City deems it necessary and in the public interest terminate this agreement and have the encroachment removed prior to the expiration date of this agreement specified in Clause 10, the City of Cold Lake may (but is not required to);

- (a) perform or cause to be performed the requirements of this Agreement on behalf of and at the Grantee's cost and expense. The Grantee will reimburse the City of Cold Lake for all costs, charges, and expenses incurred by the City of Cold Lake on behalf of the Grantee within (10) days of receipt by the Grantee of an invoice for them;
- (b) demolish and remove the Encroachment on behalf of and at the Grantee's cost, charges and expenses and terminate the Grantee's rights under this Agreement. The Grantee will reimburse City of Cold Lake for all costs, charges and expenses incurred by City of Cold Lake for undertaking such work within ten (10) days of receipt of an invoice from City of Cold Lake for such costs;
- (c) pursue any right or remedy which City of Cold Lake may be entitled to under this Agreement, or in law or equity;

14. **Compliance with Law**

The Grantee shall at all times and in all respects abide by all laws, bylaws, legislative and regulatory requirements of any governmental or other competent authority relating to the use and occupation of the Encroachment Area by the Encroachment;

15. **Notice of Accidents**

The Grantee shall provide City of Cold Lake prompt written notice of any accident, damage or



injury occurring on the Encroachment Area however caused;

16. **Insurance**

The Grantee shall carry comprehensive liability insurance with insurable limits of no less than TWO MILLION (\$2,000,000.00) DOLLARS for each occurrence or incident and this insurance shall name City of Cold Lake as an insured party and the Grantee shall provide proof of such insurance to the satisfaction of City of Cold Lake upon demand.

The Grantee shall also waive its rights of subrogation against City of Cold Lake. City of Cold Lake reserves the right from time to time to require the Grantee to increase its comprehensive liability insurance coverage where such coverage would be considered necessary by a prudent owner of similar improvements in the Province of Alberta;

18. **Indemnity**

Save and except for the negligent act or willful misconduct of City of Cold Lake, the Grantee shall indemnify City of Cold Lake and save it harmless from and against all claims, actions, damages, liabilities and expenses in connection with losses of life, personal injury, damage to property, or any other damage, loss or injury which are based upon, or arise out of or are in any way connected with the Encroachment or the Encroachment Area and the exercise of the rights and privileges contained in this Agreement, including but not limited to the following:

- (a) loss or damage suffered or incurred by the Grantee or those for whom the Grantee is in law responsible;
- (b) loss or damage suffered or incurred by City of Cold Lake or those for whom City of Cold Lake is in law responsible (including without limitation any additional costs and expenses incurred by City of Cold Lake in carrying out work on the Municipal Lands by reason of the Encroachment);
- (c) damage or expense sustained by the Grantee and related to the removal of the Encroachment;
- (d) any claim for loss or damage made, brought or prosecuted by anyone else;

17. **Grantee's Risk**

All property of the Grantee which may hereafter be located on, under, or over or adjacent to the Encroachment Area shall be at the sole risk of the Grantee and City of Cold Lake shall not be liable for any loss or damage thereto howsoever caused and the Grantee hereby releases City of Cold Lake from all actions, claims, demands, suits or proceedings whatsoever in respect of any such loss or damage, except and to the extent such loss or damage is caused by the negligence of City of Cold Lake or its servants or agents;

18. **Compensation for Damages**

The Grantee shall compensate City of Cold Lake for all damage to the property of the City of Cold Lake arising out of the activities of the Grantee on or adjacent to the Encroachment, whether or not such activities are in pursuance of the rights herein granted to the Grantee;

19. **Owner's Obligations After Termination**

Any obligation of the Grantee to protect City of Cold Lake shall survive the termination of this Agreement;

20. **Successors**

The Agreement shall be binding upon and enure to the benefit of City of Cold Lake and its successors, licensees and permitted assigns, and the Grantee and its successors and assigns;

21. **Assignment**

Notwithstanding section 10 of this agreement, in the event that the Grantee sells or otherwise transfers the Grantee's Lands to a third party purchaser within sixty (60) days of execution of this agreement, the parties agree that the Grantee's interest in this agreement shall be assigned to the new owner of the Grantee's Lands.

22. **Renewal**

Upon ninety (90) days written notice from the Grantee given before the expiry of the term herein provided, the Encroachment Agreement may be renewed upon a grant by Council for a further term of five (5) years on the same terms and conditions excepting the annual sum of \$1.00. The annual sum to be paid in consideration of the renewed Encroachment Agreement shall be in accordance with the fees set out in the City's User Fee Bylaw at the time of the renewal, failing which the renewal shall not commence.

23. **Charge**

City of Cold Lake shall have a charge upon the Grantee's Lands and the Grantee hereby charges the Grantee's Land for any sum that may at any time be payable to the City of Cold Lake pursuant to this Agreement and City of Cold Lake shall be entitled to file a Caveat against the title to the Grantee's Land to protect such interest under this Agreement;

24. **Registration**

At the Sole cost of the Grantee, the Grantee is required to register this Encroachment Agreement by Caveat with the Northern Alberta Land Titles Office.

25. **Notice**

All notices under this Agreement shall be in writing and sent by registered or certified mail as follows:

TO the Grantor at:

**CITY OF COLD LAKE  
5513 48<sup>th</sup> Ave.  
Cold Lake, Alberta T9M 1A1**

**Attention: General Manager of Planning and Development**

TO the Grantee at:

**RODERICK MacLEAN & MELANIE SMITH  
5026 41 STREET  
COLD LAKE, AB T9M 2A6**

At such time the property is conveyed, City of Cold Lake must receive notice by way of a copy of Certificate of Title registered in the new owners name, delivered or faxed, within fourteen (14) days of registration of same, or this agreement will be considered null and void.

26. **Whole Agreement**

The Grantee acknowledges and agrees that the rights herein conferred to the Grantee are only such rights as are specified herein and that City of Cold Lake has made no representations, warranties, promises or agreements, either expressed or implied, beyond those contained herein;

27. **Severability**

Should part of this Agreement be or become illegal or unenforceable, it will be considered severable from this Agreement and the remainder of this Agreement will remain in effect as though the illegal or unenforceable parts had not been included.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written:

**CITY OF COLD LAKE (Seal)**

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**MAYOR**

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**Kevin Nagoya,  
CHIEF ADMINISTRATIVE OFFICER**

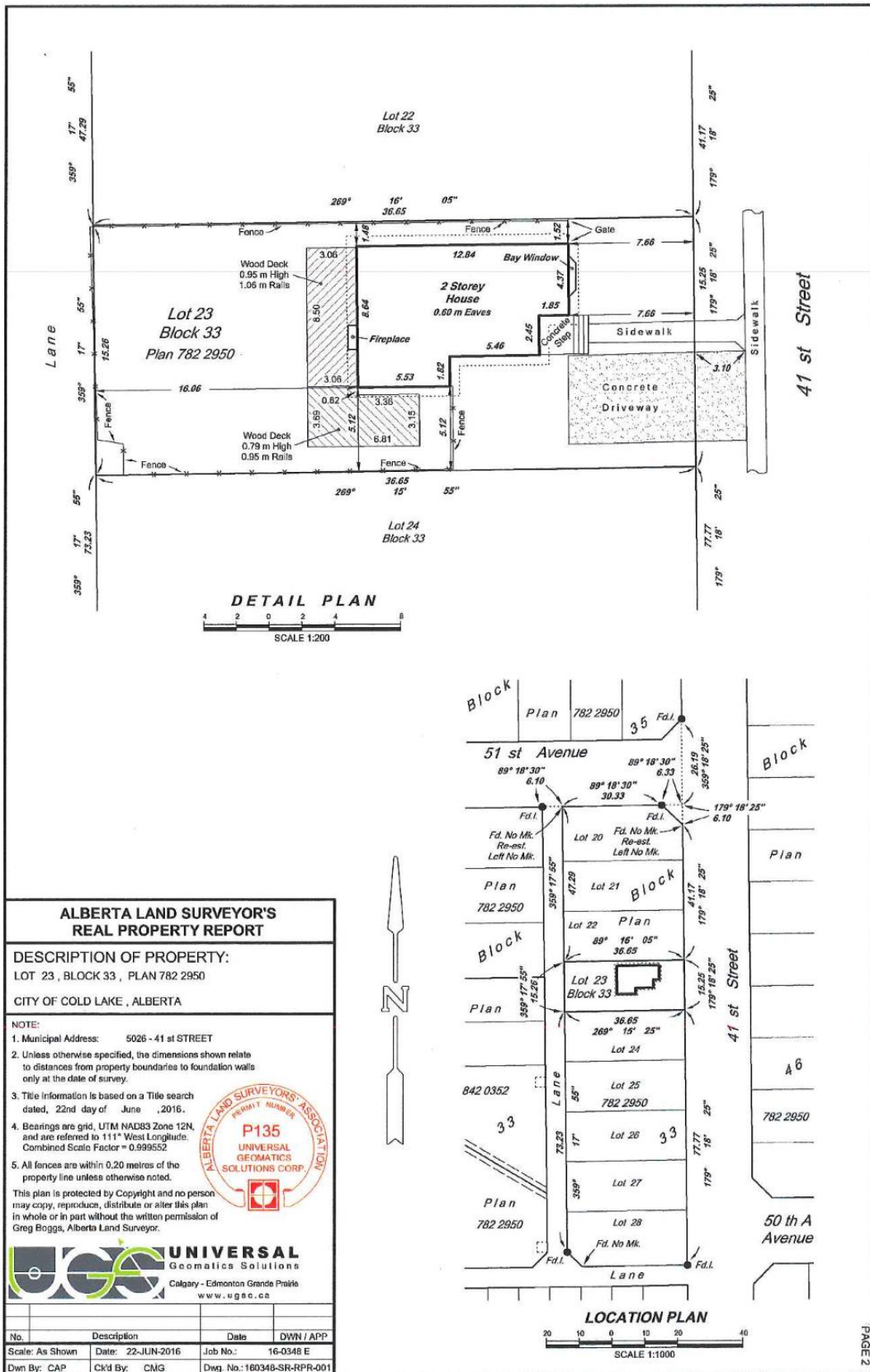
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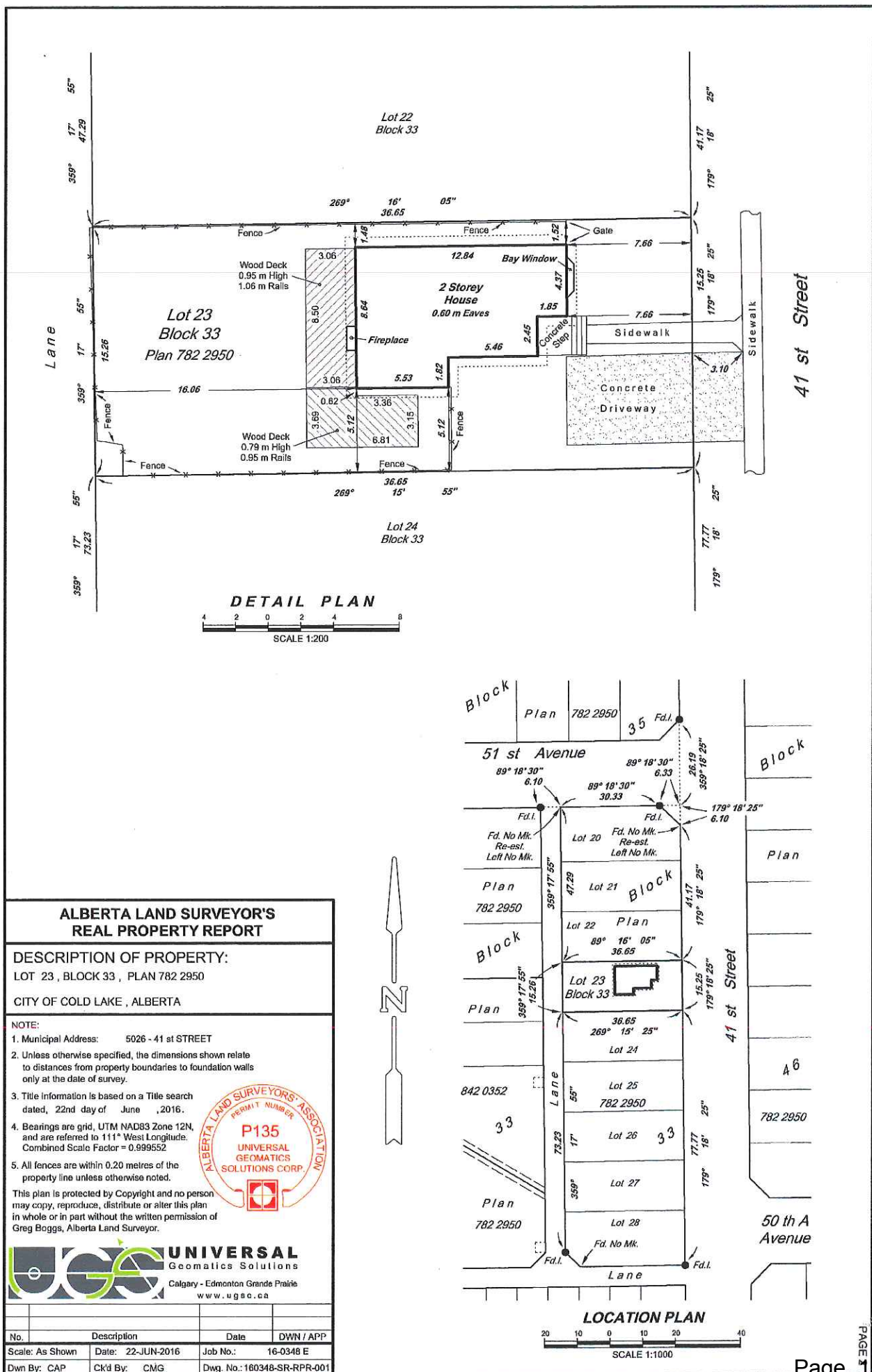
**RODERICK MacLEAN & MELANIE SMITH  
GRANTEE (Seal)**

Schedule 'A'



# Schedule 'B'







# Encroachment Agreement Request

5026 41 Street, Lot 23, Block 33, Plan 782 2950





