

58

DRAINAGE SWALE
(AREA "B")
PLAN 122-5115

**ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE**

IMAGE OF DOCUMENT REGISTERED AS:

122421096

ORDER NUMBER: 22666106

ADVISORY

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Neighbourhood: Hollick Kenyon
Stage: 10D

Drainage Conveyance
Utility Right-of-Way
Swale

The Land Titles Act

Utility Right-of-Way
("URW")

THIS AGREEMENT MADE BETWEEN:

The City of Edmonton
(the "City")

- and -

The City of Edmonton
(the "Owner")

WHEREAS:

A. The Owner is the registered owner or is entitled to become the registered owner under an Agreement for Sale or unregistered Transfer or otherwise, of the land legally described as:

PLAN ~~112~~ 122 5114
BLOCK 32
LOTS 54 TO 58 INCLUSIVE

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Land").

B. The Owner has agreed to grant to the City a URW across all or a portion of the Land in accordance with the terms and conditions contained in this Agreement.

THEREFORE the Owner and the City agree as follows:

HOLL100714City

CITY CLERKS
FILE No. 071826

M-252ma-2 (Template B: Swale)
last updated November 2005

AMPW

1. GRANT

1.1 The Owner grants to the City the right to use that portion of the Land being described as follows:

All that portion shown as Area "B" on utility right of way Plan ~~12~~ 1225115

(the "Swale Right-of-Way"); for the installation, construction, operation, inspection, maintenance, repair, removal and replacement of surface drainage swales and any other utility lines and systems as may be required by the City (the "Swale Utilities").

1.2 In this Agreement the phrase "Right-of-Way" means the Swale Right-of-Way and the phrase "Utilities" means the Swale Utilities.

1.3 The City may exercise its right to use the Right-of-Way in the manner stated in this Agreement for as long as the City may desire to exercise the right.

2. FEE

2.1 The City shall pay the Owner One Dollar (\$1.00 exclusive of Goods and Services Tax) (the "Fee"), the receipt of which the Owner acknowledges. The payment of the Fee by the City is the sole consideration and inducement for the execution of this Agreement by the Owner and is the total compensation payable by the City to the Owner for the right to use the Right-of-Way as stated in this Agreement.

3. RIGHT OF ACCESS

3.1 The City shall have the right to do whatever may be required for the enjoyment of the rights granted under this Agreement, including the trimming and removal of all trees and shrubs.

3.2 The City may enter the Right-of-Way with its agents, employees, contractors, vehicles, machinery or equipment, for the purpose of exercising the rights granted pursuant to this Agreement.

3.3 The City shall have a right of access to the Right-of-Way for the purposes of exercising the rights granted under this Agreement, across the remainder of the Land. This right of access shall be used only in cases of necessity as determined by the City. The City shall pay reasonable compensation to the Owner for any damage caused by the City, its agents, employees, and contractors in the exercise of the right of access as granted to the City under this Clause 3.3.

4. UTILITIES

4.1 Notwithstanding any rule of law to the contrary, the Utilities shall remain chattels and the property of the City and shall not become part of the Land.

4.2 The City shall install, construct, operate and maintain the Utilities in a responsible manner so as to minimize damage to the Right-of-Way and shall, where practicable, after any such work restore the Right-of-Way to substantially its original level and condition. The City shall not be responsible for any damages caused by subsidence after levelling is completed, provided the subsidence does not occur as a result of the negligence on the part of the City.

4.3 The City may, at its sole discretion, abandon the Utilities. If the City abandons the utilities, the City shall (as far as reasonably possible) remove all visible, above-ground parts of the Utilities and restore the surface area of the Right-of-Way to the condition that existed prior to the abandonment. Upon abandonment, the City shall have no further obligation or liability to the Owner pursuant to this Agreement.

5. OWNER'S USE OF RIGHT-OF-WAY

5.1 The Owner shall not, without the prior written consent of the City, stockpile, excavate, drill, install, erect, construct or place above, on or under the Right-of-Way, any pavement, building, fence, pit, sidewalk, or other structure or improvement. The Owner shall not permit any of these activities to occur by others without the City's prior written consent.

5.2 The Owner shall not alter the surface grade level of the Right-of-Way in any manner which would affect the rights granted to the City pursuant to this Agreement.

5.3 The Owner shall not plant any trees within the Right-of-Way.

5.4 The Owner shall not use the Right-of-Way in any manner which may conflict with the rights of the City as granted to the City pursuant to this Agreement.

5.5 The Owner shall be responsible for the maintenance of the Right-of-Way, including but not limited to grass cutting and clean-up, and replacement and repair of the Right-of-Way in such a manner that it shall be suitable at all times for the City's use as permitted by this Agreement. The Owner shall commence any maintenance directed by the City to maintain the Right-of-Way within sixty (60) days of receiving written notification and shall carry out the maintenance with reasonable speed.

5.6 Notwithstanding Clause 5.5, above, the Owner shall not be responsible for repairing or replace concrete channel invert in a concrete surface drainage swale.

6. ENVIRONMENTAL OBLIGATIONS

6.1 The City and the Owner shall comply with all legislation dealing with environmental issues related to the Right-of-Way including, but not limited to, the Environmental Protection and Enhancement Act R.S.A. 2000 Ch. E-12 and its regulations or any successive legislation.

6.2 The responsibility of the City and the Owner with respect to environmental obligations, as required by this Agreement, shall continue to be enforceable during and after the termination of this Agreement.

7. INDEMNITY AND COMPENSATION

7.1 Except for the negligence of the Owner, its employees, agents, contractors and for those persons for whom the Owner is responsible in law, the City shall:

- (a) be liable to the Owner for; and
- (b) indemnify and save harmless the Owner, its servants, agents and employees from and against;

any and all claims, suits, actions, demands, expenses, damages and costs which may be brought or made against the Owner or which the Owner may pay or incur by reason of any breach, violation or non-performance by the City of any covenant, term or provision of this Agreement, or by reason of the negligence of the City, its employees, agents, contractors and for those persons for whom the City is responsible in law, in the exercise of the rights as granted to the City under this Agreement.

8. QUIET ENJOYMENT

8.1 The City by performing and observing the terms and conditions of this Agreement shall peaceably hold and enjoy all the rights granted under this Agreement, without hindrance or interruption from the Owner or any person claiming through, under or from the Owner.

9. ADDRESS FOR CONSENT

9.1 Any prior written consent required to be obtained from the City pursuant to this Agreement shall be obtained by delivering the request to the City by registered mail, postage prepaid, addressed as follows:

General Manager
Asset Management and Public Works Department
3rd Floor, Century Place
9803 - 102A Avenue
Edmonton, Alberta T5J 3A3

10. DISPUTE RESOLUTION

10.1 In the event of a determination by either party in regard to a matter in dispute between the City and the Owner as to the interpretation or effect of any of the terms or conditions of this Agreement, the determination shall be conclusively deemed to have been accepted by the parties, unless, within ten (10) days of the determination, a party shall give written notice to the other party (the "Arbitration Notice") of their desire to have the matter in dispute resolved by arbitration.

10.2 Within seven (7) days of receipt of the Arbitration Notice, the parties shall mutually appoint an arbitrator (the "Arbitrator"). In the event that the parties shall fail to agree on the appointment of the Arbitrator, then either party may, on written notice to the other, apply to the President of the Alberta Arbitration and Mediation Society to name the Arbitrator.

10.3 The decision of the Arbitrator is final and binding on the parties and there shall be no appeal of the decision to the courts.

10.4 Except as modified by this Agreement, the provisions of the Arbitration Act R.S.A. 2000 Ch. A-43, as amended, shall apply.

11. GENERAL

11.1 There are no conditions, either subsequent or precedent, except as stated in this Agreement. This Agreement is the entire agreement between the City and the Owner and no representations or warranties have been made by the City, except as stated in this Agreement.

11.2 The City shall, without the consent of the Owner, have the right to assign to any person or corporation to whom a franchise is granted, or to any person, partnership, trust, government, agency or corporation, the right to use the Right-of-Way, in whole or in part, in accordance with the terms and conditions contained in this Agreement.

11.3 This Agreement is and shall be of the same force and effect to all intents and purposes as a covenant running with the Land.

11.4 If any term or condition of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected and each remaining term and condition shall be valid and be enforced to the fullest extent permitted by law.

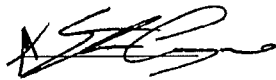
11.5 In this Agreement:

- (a) the word "shall" is to be read and interpreted as mandatory;
- (b) the word "may" is to be read and interpreted as permissive; and
- (c) the word "Owner" shall be read and interpreted as meaning an individual, a partnership, a corporation, a trust, an unincorporated organization, a government, or any department or agency thereof, and the heirs, executors, administrators or other legal representatives of any individual.

THE CITY AND THE OWNER HAVE EXECUTED THIS AGREEMENT ON
THE 23 DAY OF March, 2011.

APPROVED:

AS TO CONTENT:



THE CITY OF EDMONTON, as
Represented by the General Supervisor of
Private Development, Drainage Services
Branch, Asset Management and Public
Works Department

Per: 

Justin Guanlao, P.Eng.

(City Seal)

DATED this ____ day of _____, 20____

The City of Edmonton

to

The City of Edmonton

Drainage Conveyance
Utility Right-of-Way
Swale

The City of Edmonton
Law Branch
Corporate Services Department
9th Floor, Chancery Hall
3 Sir Winston Churchill Square
Edmonton, AB T5J 2C3

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UTRW - UTILITY RIGHT OF WAY
DOC 6 OF 8 DRR#: F07BDEB ADR/CRJONES



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