

BYLAW 1419

**A bylaw to authorize highway encroachments.**

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WHEREAS Section 546(1) of the Municipal Act allows Council, by bylaw and subject to the Motor Vehicle Act, to regulate all uses of or involving a highway or portion of it (other than uses referred to in Section 545) and all uses of or involving a public place;

NOW THEREFORE the Council of the Town of Creston in, open meeting assembled, enacts as follows:

1. This bylaw may be cited for all purposes as "Highway Encroachment Agreement Bylaw 1419".
2. No person shall encumber or obstruct any highway in the possession of the Town of Creston by a structure, building, excavation, chattel, or landscape feature except under the terms and conditions set out in an agreement in the form of Schedule "A", which is attached to a forms a part of this bylaw.
3. Every person proposing to encumber or obstruct a highway in the Town's possession shall execute and submit a copy of an agreement, in the form of Schedule "A" of this bylaw, together with a plan of the proposed encumbrances or obstruction, drawn to scale.
4. Every proposal for placement or construction of an encroachment shall be submitted to Council for approval.
5. Authorization for an encroachment may be refused in any case where the proposed encroachment may create a hazard to persons or property or interfere with the construction or operation of existing or proposed highway improvements.
6. The Mayor and Clerk are authorized to execute and affix the corporate seal to every agreement authorized in accordance with this Bylaw.
7. This bylaw shall come into full force and effect upon final adoption.

READ A FIRST TIME by title and SECOND TIME by content this 6th day of October, 1997.

READ A THIRD TIME by title this 6th day of October, 1997.

RECONSIDERED AND ADOPTED this 27th day of October, 1997.

\_\_\_\_\_  
"Don Leben"  
Mayor

\_\_\_\_\_  
"Wm. F. Hutchinson"  
Clerk

SCHEDULE "A"

HIGHWAY ENCROACHMENT AGREEMENT

Agr. # \_\_\_\_\_

**MADE AND ENTERED INTO** this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

**BETWEEN:** (Name)

(hereinafter called the "**Owner**")  
OF THE FIRST PART

**AND**

**THE TOWN OF CRESTON**  
P.O. Box 1339  
Creston, B.C.  
V0B 1G0

(hereinafter called the "**Municipality**")  
OF THE SECOND PART

**WHEREAS** the Party of the First Part is the owner of:

(Legal)  
(Civic)  
Folio #

in the Town of Creston and has requested the Municipality to grant permission to construct, use and continue the use and existence of an encroachment appurtenant to the above described lands, subject to the provisions of all Municipal Bylaws and subject to the terms and conditions herein set forth.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT:**

1. In consideration of the premises and the covenants contained herein by the Owner to be performed and observed, the Municipality grants unto the Owner permission to construct and maintain an encroachment comprising of:

(Description)

as shown on the Plan attached, which said encroachment including all excavation and other work on or hereafter performed in connection therewith, is hereafter referred to in this Agreement as "**the said works**" or "**the encroachment**".

2. It is hereby understood, covenanted and agreed by and between the parties hereto that no act or omission or finding of negligence against the Municipality, in favour of any third party, shall operate to relieve or be deemed to relieve the Owner in any manner whatsoever from any liability to the Municipality.
3. The Owner covenants and agrees that:
  - (a) he shall pay to the Municipality in recognition of the permission hereby granted, inclusive of administration fees, the sum of Twenty Five Dollars (\$25.00) prior to execution of the said Highway Encroachment Agreement; **Bylaw #1534**
  - (b) to save harmless the Municipality from any and all liability whatsoever arising out of the Owner's construction, maintenance, occupation or use of the highway or lands occupied by the encroachment. The Owner does hereby charge his interest in the lands, hereinbefore described, in favour of the Municipality for the payment of all sums which may at any time hereafter be payable by the Municipality in respect of any claims, loss, damage or expense whatsoever arising from the construction, maintenance or existence of the said Works or from the permission hereby granted, and to answer any indemnity or payment provided in the said bylaws referred to herein, or under the terms of this Agreement;
  - (c) will, sign a "Waiver of Liability", as attached, which waives all rights of action he/she/they might otherwise have against the Town, its officers, servants, agents and employees for loss or damage to any personal property; and, indemnifies the Town of Creston against any action, claim, suit or legal liability for loss, costs, or damages resulting from bodily injury, including death of or to any person or persons or from damage to the property of others which may arise out of the use or existence of the encroachment;
  - (d) the Municipality's servants or agents shall have the right at any and all reasonable times of entering into and upon the premises of the Owner for the purpose of constructing, maintaining, inspecting or removing any public structure, service or utility running underneath any lands or in the vicinity of the said works;
  - (e) in the event of any alternation or change being rendered necessary by the construction, maintenance, use or removal of the said Works to any meter, water service, sewer or other public works or utility in the vicinity of the hereinbefore described property, the Owner will reimburse the Municipality for whatever sums may be incurred by the Municipality in making such alterations or changes as may be deemed necessary by the Municipal Works Superintendent; and

- (f) will at all times observe and perform the provisions of the Bylaws of the Municipality and this Agreement shall be at all times subject thereto and , in case the Owner shall fail to comply with the provisions of the said bylaws or this Agreement, all rights of the Owner accruing hereunder shall, unless the Municipality otherwise decides in response to a request by the Owner, terminate and allow the Municipality to proceed with the enforcement of any security or indemnity herein provided, or upon any bond or otherwise in satisfaction of any claim, loss or expenses whatsoever arising under this Agreement, or from the permission hereby granted.
4. It is hereby understood and agreed between the parties hereto that this Agreement shall not in any way operate to restrict the right of the Municipality at any time to:
- (a) alter the road by widening and/or raising or lowering the elevation, of the lands hereinbefore described, and notwithstanding that the effect of such alteration in width and/or elevation may be to render the said works useless for the purposes of the Owner;
  - (b) construct any form of structure or utility on, over or under any portion of the highway or lands and for such purpose require that the works be removed in part or in whole; and the Owner covenants that, in the event of the Municipality effecting any such alteration as aforesaid in the width and/or elevation of the said roadway or in requiring removal of all or part of the Works, he will release and forever discharge the Municipality from all manner of claims of any nature whatsoever, which may arise by reason of such alteration in width and/or elevation as aforesaid, or by reason of the discontinuance and removal of the subject of this Agreement, as a result of such alteration in width and/or elevation or construction.
5. In particular, but without restricting the generality of the foregoing, it is understood and agreed that:
- (a) this Agreement may be revoked at any time by the Municipality;
  - (b) the Owner will at all times, and at his own expense, keep and maintain the said Works in good and sufficient repair to the satisfaction of the Municipal Works Superintendent, and no structural alterations shall be made to the Works without the permission of the Municipal Works Superintendent;
  - (c) in the event of the termination of this Agreement from any cause whatsoever, the Owner will at his own expense and within a period of one (1) month from the date of such termination, or such further or shorter period as may be specified by the Municipal Council, remove any structure or works and fill up any excavation made, constructed or maintained, with respect to such encroachment and replace and put the lands, hereinbefore described, in the same condition as prior to the encroachment and to the satisfaction of the Municipal Works Superintendent;
  - (d) in the event of the Owner failing to keep any encroachment in good and sufficient repair, to the satisfaction of the Works Superintendent, or failing to remove any structure or works or to fill up any excavation, the Works Superintendent shall cause to be made such repairs, including structural changes, when by him deemed necessary, or remove such structures or works, or fill up such excavation, as the cause may require and the Owner shall pay the costs of such work to the Municipality forthwith; and in the default of payment thereof, the amount of such costs and interest at the prevailing bank rate may be recovered in any Court of competent jurisdiction, or the same may be recovered as overdue taxes against the lands to which such area is appurtenant.

6. This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

**IN WITNESS WHEREOF** the said parties have hereto set their hands and seals on the day and year first above written.

SIGNED, SEALED AND DELIVERED )  
by its proper officers authorized )  
to sign on its behalf: )  
)  
)  
)

Per: \_\_\_\_\_

Per: \_\_\_\_\_

THE CORPORATE SEAL OF THE )  
Town of Creston was affixed in the )  
presence of: )  
)  
)  
\_\_\_\_\_)  
Mayor )  
)  
)  
\_\_\_\_\_)  
Clerk )  
)

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**WAIVER OF LIABILITY**

**WITH REGARD TO:** (Name/address) (hereinafter called "**the applicant**")  
OF THE FIRST PART

**AND** (Description) (hereinafter called "**the encroachment**")

**LOCATED AT** (Legal) (hereinafter called "**the location**")  
(Civic)

**IN CONSIDERATION** of the Town of Creston agreeing to allow the use and existence of an encroachment at the location, the applicant hereby waives all rights of action he/she/ they might otherwise have against the Town, its officers, servants, agents and employees, for loss or damage to any personal property;

**AND** hereby agrees to indemnify the Town of Creston against any action, claim, suit, or legal liability for loss, costs, or damages resulting from bodily injury, including death, of or to any person or persons, or from damage to the property of others which may arise out of the use or existence of the encroachment.

**DATED** at the Town of Creston, in the Province of British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_.

The Applicant, by its proper )  
officers authorized to sign )  
on its behalf )  
)  
) (C/S)  
\_\_\_\_\_)  
Authorized Signatory )  
)  
\_\_\_\_\_)  
Authorized Signatory )

INDEX OF AMENDING BYLAWS

Bylaw 1534..... Adopted June 25, 2001

NOTE TO USERS

*"WHEREAS each bylaw consolidation shall be proof, in the absence of evidence to the contrary, of the original bylaw, of all bylaws amending it and of the fact of passage of the original and all amending bylaws",* pursuant to 'Authority to Consolidate Municipal Bylaws No. 1533', which was adopted on the 11th day of June, 2001.