

COUNCIL REPORT

Date: 1 February 2017
File: 7.13.3.13
To: Warren Waycheshen, CAO - for Mayor and Council
From: Gwendolyn Sewell, MCIP, RPP
Director of Community Planning & Development
Re: Loganberry Avenue Encroachment Agreement



Recommendation:

THAT notice be issued announcing the District's intention to enter into an agreement to allow Civeo's private sewer forcemain within the dedicated roadway for Loganberry Avenue.

AND THAT the Mayor and Corporate Officer be authorized to execute Loganberry Avenue Agreement, in the absence of objection during public comment period.

Background

Civeo has requested an encroachment agreement to locate a forcemain within the dedicated roadway of Loganberry Avenue. Title to road has been raised to allow this encroachment.

Consideration

Municipal Engineer supports this request. No adverse impacts on municipal interests or operations are anticipated.

Notice of intention to enter into an encroachment agreement is required, and will be posted on the municipal website and bulletin boards, and advertised in the local newspaper. Civeo's request will return for consideration following the public notice period.

Alternative Options

1. THAT Civeo's request to permit a forcemain within a dedicated roadway be denied.
2. Another option as developed through discussion of Council.

Budget Implications:

N/A - Legal fees and cost of registration are borne by the applicant.

Director of Finance Initials

Budgeted:

Unbudgeted:

Council Initiative/Other Relevant Plans:

3. Community Planning must be disciplined with a long-term view
 - Ensure the community receives long-term benefits from industrial investment

Submitted by:
Gwendolyn Sewell, MCIP, RPP
Director of Community Planning & Development

Approved for Submission:
Warren Waycheshen, CAO

TERMS OF INSTRUMENT – PART 2

HIGHWAY ENCROACHMENT AGREEMENT

THIS AGREEMENT dated for reference the 8th day of February, 2017

BETWEEN:

DISTRICT OF KITIMAT
270 City Centre, Kitimat, BC V8C 2H7
(the "**Grantor**")

AND:

CIVEO PREMIUM CAMP SERVICES LTD.
3790 – 98 Street NW, Edmonton, AB T6E 6B4
(the "**Grantee**")

WHEREAS:

- A. The Grantor owns a highway in Kitimat, BC, a portion of which the Grantor owns in fee simple and is legally described as:

PID NPA
Parcel A District Lots 6014 and 6025 Range 5 Coast District Plan
EPP57319

(the "**Lands**"), and includes sidewalks, boulevard, curb, gutter and underground development;

- B. The Grantee is the registered owner of the property adjacent to the Lands, at 100 Loganberry Street, Kitimat, BC, legally described as:

PID 029-178-657
Lot 2 District Lots 6014, 6025, 6026, AND 6032 Range 5 Coast District
Plan EPP21889 except part dedicated on Plan EPP56602

(the "**Dominant Tenement**");

- C. The Dominant Tenement is subject to a number of restrictions and requirements secured under a statutory right of way, section 219 covenant and section 44 road reservation agreement which was registered against the Dominant Tenement in the Land Title Office under numbers CA3346452 and CA3346453 on September 12, 2013 (the "**Loganberry Agreement**"), and a subsequent modification of the

Loganberry Agreement which was registered under number CA4296013 on March 24, 2015 (the "**Modification Agreement**");

- D. The Modification Agreement, which is to be discharged upon the registration of this Agreement, permitted the Grantee to install, use and maintain private sanitary sewage works and services on the Lands, in particular a 150 mm C900 force main and ancillary works thereto, as shown on the final as-built construction drawings numbered 20C-DD-102 and 20C-DD-103 and prepared by Stantec and dated October 6, 2015 (collectively, the "**Works**"), reduced copies of which are attached as Schedule "A" to this Agreement;
- E. The Grantor has authority under section 35(11) of the *Community Charter* to permit encroachments and/or grant a licence of occupation or easement in respect of the Lands;
- F. The Grantee has requested from the Grantor permission to exclusively encroach upon, use and occupy the underground portion of the Lands shown on the attached Schedule "B" (the Encroachment Area as hereinafter defined) for the purpose of using, operating, maintaining and repairing the Works, consistent with and for the benefit of the Dominant Tenement; and
- G. The Grantor has agreed to grant the Grantee this Easement with respect to the Encroachment on the terms in this Agreement.

NOW THIS AGREEMENT WITNESSES that in consideration of the sum of Four Thousand (\$4000.00) Dollars of lawful money of Canada, now paid by the Grantee to the Grantor (the receipt and sufficiency of which is hereby acknowledged by the Grantor), and in consideration of the covenants and conditions hereinafter contained to be observed and performed by the Grantee and for other valuable consideration:

1.0 ENCROACHMENT ON LANDS

- 1.1 The Grantor hereby grants to the Grantee, with respect to those portions of the Lands which are shown in heavy black on Plan EPP57319, which was prepared by William J. Houghton, B.C.L.S., dated 2nd day of December, 2015 (the "**Encroachment Area**"), a copy of which is attached as Schedule "B", for the benefit of and appurtenant to the Dominant Tenement for the use and enjoyment of the Grantee and its respective servants, agents, tenants, invitees and licensees the full, free and uninterrupted (but non-exclusive) right, liberty and easement on and within the Encroachment Area, in common with the Grantor and all other persons now or hereafter having the express or implied permission of the Grantor, subject to the terms, conditions and limitations stated herein:
 - (a) to maintain the Works on the Lands;

- (b) to enter over, on, in and under the Encroachment Area, with or without supplies or equipment, for the purpose of using, operating, maintaining and repairing the Works; and
- (c) to do all acts which are incidental to the foregoing, and consistent with the use of the Lands as highway, and subject to prior written notice to and approval of the Grantor, acting reasonably.

2.0 DURATION OF THE AGREEMENT

- 2.1 The Grantor agrees that the Works are permitted to remain within the Encroachment Area until such time as the buildings on the Dominant Tenement to which the Works relate are demolished, at which time the Agreement shall terminate and the Grantee shall restore the Encroachment Area and the Lands to a state similar to the adjacent highway, and restore any sidewalks, curbs, gutters, road markings and other improvements therefor to the satisfaction of the District of Kitimat's director of engineering, or his or her designate from time to time (the "**Director of Engineering**").

3.0 ACKNOWLEDGMENT OF HIGHWAY

- 3.1 The Grantee acknowledges and agrees that the Encroachment Area is part of a highway and that the Grantor has limited power to authorize the private use of highways. The Grantee further acknowledges and agrees that any rights granted by the Grantor to the Grantee by this Agreement are not exclusive and are subject to the public's right to pass and repass.

4.0 NO RESTRICTIONS OR REQUIREMENTS ON GRANTOR

- 4.1 The Grantee covenants and agrees that this Agreement shall not in any way restrict the right of the Grantor (or require the Grantor) at any time to:
 - (a) alter or widen the highway, sidewalk, boulevard, curb or gutter above, abutting or adjoining the Encroachment Area;
 - (b) inspect, construct or maintain any form of structure, service or utility on, over or under any portion of the Lands on or in which the Works encroach and for such purpose require that the Works be temporarily obstructed in part or in whole;
 - (c) temporarily block off access to the Works and Encroachment Area as needed in its sole discretion when conducting highway maintenance or making highway improvements; and
 - (d) permit other encroachments or use of the Lands, including within the Encroachment Area, provided however that such other encroachments

and uses in the Encroachment Area do not prevent or unreasonably obstruct the Works or the Grantee's ability to use, operate, maintain and repair the Works.

- 4.2 In the event of the Grantor taking any of the actions provided at section 4.1, the Grantee will release and forever discharge, and hereby releases and forever discharges, the Grantor from all manner of claims of any nature whatsoever, which may arise by reason of such action, except to the extent caused by the negligence or wilful misconduct of the Grantor.

5.0 GRANTEE'S COVENANTS

- 5.1 The Grantee shall not use, or place anything within, the Encroachment Area for any purpose other than the Works.
- 5.2 The Grantee shall carry out all work under this Agreement in a proper and workmanlike manner so as to do as little injury to the Lands as possible and to cause a minimum of obstruction and inconvenience to the public highway during any construction, maintenance and repair, and must place and maintain such warning signs, barricades, lights or flares at or near the site of the works in progress as will give reasonable warning and protection to members of the public.
- 5.3 The Grantee shall use the Encroachment Area in such a manner as not to interfere with any existing utilities located in the highway.
- 5.4 The Grantee shall maintain the Works in good and sufficient repair to the satisfaction of the Director of Engineering, and shall promptly attend at its own expense to any breakdown, maintenance, and repair of the Works to the satisfaction of the Director of Engineering.
- 5.5 The Grantee shall not excavate on or under the Lands or construct, install, remove, repair, replace, maintain, amend, expand, add to or change the use of the Works without the prior written consent of the Director of Engineering. For certainty, before commencement of any of the aforementioned actions, the Grantee shall obtain all permits and licenses necessary therefor under the bylaws of the District of Kitimat, and the Grantee shall pay any inspection, license or permit fees in respect thereof.
- 5.6 The Grantee shall make good at its own expense all damage or disturbance caused by the exercise of its rights pursuant to this Agreement, which may include damage or disturbance caused to the surface or support of the Lands, the Encroachment Area or any other services associated with Loganberry Avenue, including but not limited to sanitary sewer, water, storm drainage, street lighting, sidewalk and third party utilities.

5.7 Should the Grantee:

- (a) fail to keep the Works in good and sufficient repair to the satisfaction of the Director of Engineering,
- (b) fail to return the Encroachment Area to the satisfaction of the Director of Engineering upon the termination of this Agreement, or
- (c) fail to otherwise abide by any condition of this Agreement,

then the Director of Engineering, upon thirty (30) days written notification of such failure (except in the case of emergency when no notice is required) and provided that the Grantee has not resolved the failure within that period of time, may:

- (d) make such repairs,
- (e) do any work necessary to fulfill any condition of this Agreement, or
- (f) permit the Grantee to continue such rectification, repairs or work that the Grantee has commenced and is diligently continuing,

as the case may require, in the sole discretion of the Director of Engineering.

5.8 The Grantee shall pay to the Grantor the costs of work done by the Grantor, its officers, employees, agents and contractors under section 5.7 of this Agreement forthwith, and covenants and agrees that if in default of payment, the amount of such cost and interest at CIBC Prime Rate per annum may be recovered in any Court of competent jurisdiction, or as overdue taxes against the Dominant Tenement.

5.9 While making the repairs or doing the maintenance under section 5.7 of this Agreement, the Grantor may bring and temporarily store upon the Dominant Tenement and the Encroachment, the necessary materials, tools and equipment and the Grantor shall not be liable to the Grantee for any inconvenience, annoyance, loss or other injuries suffered by the Grantee by reason of the Grantor doing any work pursuant to section 5.7 of this Agreement.

5.10 In the event of early termination of this Agreement, the Grantee shall restore the Encroachment Area and the Lands as provided at section 2.1.

6.0 INDEMNIFICATION AND RELEASE

6.1 The Grantee covenants and agrees to indemnify and save harmless the Grantor from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity,

which anyone has or may have against the Grantor or which the Grantor incurs as a result of any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with:

- (a) the Grantee's installation, use, operation, maintenance and repair of the Works;
- (b) the Grantee's installation or construction of anything within, upon, under, around or over the Encroachment Area;
- (c) the Grantee's maintenance or lack of maintenance of the Works or the Encroachment and of anything within, upon, under, around or over the Encroachment; and
- (d) any liens for wages or materials, or damage to persons or property in connection with any excavation, construction, repair, alteration, installation or addition that the Grantee may make or cause to be made on, in or to the Lands or the Encroachment.

6.2 The Grantee releases and forever discharges the Grantor of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which the Grantee can or may have against the Grantor for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the Grantee's installation, use, operation, maintenance and repair of the Works.

7.0 INSURANCE

7.1 The Grantee agrees to deposit with the Grantor evidence of Commercial General Liability insurance with limits of no less than Five Million Dollars (\$5,000,000) per occurrence (inclusive of bodily injury and property damage). This coverage shall insure the Grantee and shall name the Grantor as additional insured. Furthermore:

- (a) the Grantee shall provide evidence of such insurance to the Grantor's satisfaction promptly upon execution of this Agreement, and forthwith on an annual basis;
- (b) the insurers shall be required to provide thirty (30) days written notice of termination or cancellation of said coverage to the Grantor;
- (c) if the Grantee fails to maintain such insurance, the Grantor shall have the right, but not the obligation, to do so, and to pay the cost or premium of the insurance, and in such event the Grantee shall repay the Grantor forthwith on demand the amount so paid, failing which the Grantor shall

have the right to add such cost to the property taxes for the Dominant Tenement; and

- (d) if the Grantee repeatedly fails to maintain such insurance, the Grantor shall have cause for termination of this Agreement, and any rights of the Grantee to the Encroachment, at the Grantor's discretion.

7.2 In light of the potentially lengthy duration of this Agreement, on ninety (90) days notice from the Grantor, the Grantee shall increase the limit of the amount of the insurance to such greater amount as directed by the Grantor, in reasonable consideration of prevailing norms at the time of such notice, and the provisions of section 7.1 shall otherwise continue to apply.

8.0 FORFEITURE

8.1 The Grantor, by waiving or neglecting to enforce its rights under this Agreement, including upon breach of this Agreement, does not waive its rights upon any subsequent breach of the same or any other provision of this Agreement.

9.0 NO COMPENSATION

9.1 The Grantee shall not be entitled to compensation for any loss or injurious affection or disturbance resulting in any way from temporary interruption under this Agreement, the termination of this Agreement, or upon cause or the resultant loss of the Grantee's interest in any structure or improvement built or placed under the Lands or in the Encroachment.

10.0 ASSIGNMENT

10.1 The Grantee covenants and agrees not to transfer the Dominant Tenement, or any portion thereof, without advising the purchaser or transferee of this Agreement and without providing to the Grantor evidence that the purchaser or transferee agrees to assume the obligations of this Agreement. The parties agree that this provision shall not apply to subdivision of the Dominant Tenement under the *Strata Property Act*, and related transfers, except with respect to the Strata Corporation.

11.0 NOTICE

11.1 Any notice required or permitted under this Agreement shall be deemed to have been given to the party to whom it is addressed if it is mailed to the address given in this Agreement. Any such notice, demand or request so given shall be deemed to have been received ten (10) days after the date of mailing. Alternatively, any notice under this Agreement may be delivered by hand and shall be deemed to be received upon the date of delivery if delivered on a

Business Day (where a “**Business Day**” means any day which is not a Saturday, Sunday or statutory holiday in the Province of British Columbia), and if not delivered on a Business Day, such notice shall be deemed to be received on the next Business Day following delivery.

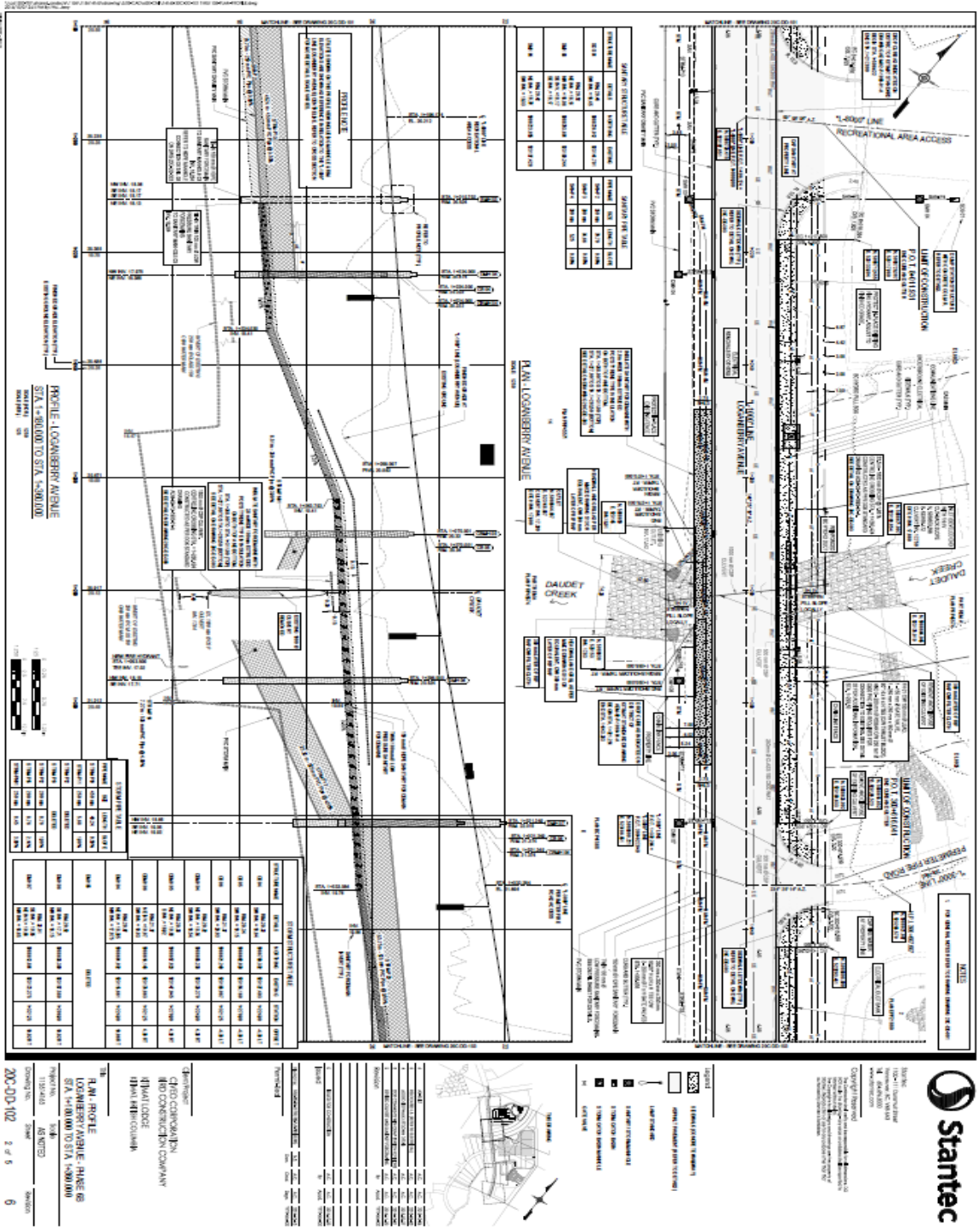
12.0 GENERAL


- 12.1 The Grantee agrees that the Grantor, and any of its officers or employees, may but is not obligated to inspect the Works or the Lands for the purpose of ascertaining compliance with this Agreement.
- 12.2 Nothing in this Agreement exempts the Grantee from complying with all applicable laws, including all municipal bylaws, policies and regulations, or from obtaining all required permits and licenses relating to the use of the highway or the Works.
- 12.3 This Agreement shall only be personally binding on the person or persons comprising the Grantee in respect of matters arising within the period during which such person or persons respectively have any right, title or interest in the Dominant Tenement or any part thereof.
- 12.4 The restrictions and requirements in this Agreement are covenants running with the Lands and shall bind the Dominant Tenement and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated.
- 12.5 The Grantee agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
- 12.6 The Grantee covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement.
- 12.7 Nothing contained or implied in this Agreement:
- (a) prejudices or affects the rights, powers or discretion of the Grantor or the Approving Officer in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Agreement had not been executed and delivered by the Grantee;
 - (b) imposes any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement or the breach of any provision in this Agreement; or

- (c) imposes any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, on the Grantor or the Approving Officer with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.
- 12.8 The Grantor may withhold development permits, building permits and other approvals related to the use, building or subdivision of land as necessary to ensure compliance with the covenants in this Agreement, and the issuance of a permit or approval does not act as a representation or warranty by the Grantor that the covenants of this Agreement have been satisfied.
- 12.9 No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity. Damages will be an inadequate remedy for the Grantor; and the Grantor is entitled to an order for specific performance or a prohibitory or mandatory injunction in order to compel performance of the obligations of this Agreement.
- 12.10 If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 12.11 The Grantee acknowledges having received legal advice prior to executing this Agreement, and the Grantee agrees that it fully and completely understands this Agreement and its impact on the Lands and the Dominant Tenement.
- 12.12 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 12.13 All grants, covenants, provisos, and agreements, rights, powers, privileges and liabilities contained in this Agreement shall be read and held as made by and with, and granted to and imposed upon, the respective parties hereto, and their respective heirs, executors, administrators, successors and assigns, as if the words "heirs, executors, administrators, successors and assigns" had been inscribed in all proper and necessary places. Wherever the singular or masculine is used throughout this Agreement, the same shall be construed as meaning the plural or the feminine or body corporate where the context or parties hereto so require.
- 12.14 Time shall be of the essence of this Agreement.

IN WITNESS WHEREOF the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached hereto.

SCHEDULE "A" Works Plan





Stantec

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WWW.STANTEC.COM

PROJECT: CIVEO HIGHWAY ENCROACHMENT AGREEMENT
DATE: FEBRUARY 8, 2017
DRAWING NO.: 2017-02-0012
SCALE: AS SHOWN
SHEET NO.: 6 OF 6

