

THIS AGREEMENT dated and effective this 16TH day of March, 2018.

BETWEEN:

THE CITY OF CALGARY, a municipal corporation
carrying on business in and pursuant to the Province
of Alberta

(the "City")

- and -

QUARRY PARK LAND OWNERS' ASSOCIATION,
a corporation having offices and carrying on business
In the City of Calgary, in the Province of Alberta

(the "Association")

PERPETUAL MAINTENANCE, OPERATION AND ACCESS AGREEMENT

WHEREAS the City is the registered owner of an estate in fee simple, subject however to such encumbrances, liens, and interests as noted in this Agreement or as endorsed on the existing Certificate of Title of lands legally described as:

LOT 2
BLOCK 3
PLAN 0712810
EXCEPTING THEREOUT ALL MINES AND MINERALS

LOT 2
BLOCK 4
PLAN 0712810
EXCEPTING THEREOUT ALL MINES AND MINERALS

LOT 3
BLOCK 4
PLAN 0712810
EXCEPTING THEREOUT ALL MINES AND MINERALS

Bubble up manhole and associated piping located within:
LOT 42
BLOCK 1
PLAN 1112051
EXCEPTING THEREOUT ALL MINES AND MINERALS

Remington Development Corporation
RECEIVED
MAR 28 2018

Stormwater pump house and associated piping located within:
LOT 3
BLOCK 9
PLAN 1112713
EXCEPTING THEREOUT ALL MINES AND MINERALS

("City Lands")

AND WHEREAS the Association has accepted responsibility for the operation and maintenance of the Improvements which received approval pursuant to SB2006-0355

AND WHEREAS according to the Master Drainage Plan the Improvements were to be constructed contrary to the City's standards that did not conform to City standards;

AND WHEREAS the Association agrees to maintain the Improvements in perpetuity, at its cost and expense;

IN CONSIDERATION OF the City permitting the installation of the Improvements on the City Lands, and the performance of the covenants herein contained, **THE PARTIES AGREE AS FOLLOWS:**

1. DEFINITIONS

1.01 In this Agreement:

- (a) "Agreement" means this Agreement and all Schedules and Addendums thereto and the above recitals;
- (b) "Director, Water Services" means the City official with the title Director, Water Services, or such person as designated by the Director, Water Services to undertake any responsibilities on the part of the Director, Water Services, to be observed pursuant to the terms of this Agreement;
- (c) "Government Authority" means the City of Calgary and/or any federal, provincial, municipal and/or other governmental body, agency, tribunal and/or authority having jurisdiction and lawfully empowered to make or impose bylaws, codes, directions, laws, licenses, orders, permits, rules, regulations, statutes, and/or technical standards;
- (d) "Improvements" means the required infrastructure including the stormwater management facility consisting of the east-west linear storm pond, any associated inlets and outlets, the stormwater pump house and related equipment and access road and the east-west regional pathway and associated landscaping to be maintained and operated by the Association on the City Lands as noted on the site map in Schedule A;
- (e) "Laws" means any bylaws, certificates, codes, codes of practice, directions, guidelines, laws, licenses, orders, permits, rules, regulations, statutes and/or technical standards imposed by any Government Authority with respect to the City Lands and the Association's City Lands, as amended;

- (f) "Term" has the meaning ascribed thereto in Article 2 hereof;
- (g) "Work" means the maintenance and operation of the Improvements on the City Lands in accordance with this Agreement.

2. OWNERSHIP AND TERM

- 2.01 The Association hereby acknowledges that this Agreement in no way gives it any right, title or interest in the Lands or the Improvements.
- 2.02 The Term of this Agreement shall carry on for the duration of the operation and maintenance of the Improvements.

3. INDEMNIFICATION

- 3.01 The Association shall indemnify, hold and save completely harmless and defend at its own expense the City, its agents, contractors, sub-contractors, employees, officials, officers and authorized representatives (the "Indemnitees") from and against all claims, demands, losses, expenses, damages, actions, suits and other proceedings, judgments, settlements or any other matter similar or dissimilar in any way ("Claims") arising from, by reason of, in connection with or based upon, including costs and expenses arising out of any negligent act or omissions occasioned by or otherwise attributable to the Association or those for whom it is responsible in law, and the services rendered by the Association or those for whom it is responsible in law, pursuant to this Agreement and the Work. The Association further agrees to indemnify, hold and save completely harmless the Indemnitees from Claims in connection with normal or emergency City operations, save and except if caused by the gross negligence or willful misconduct of the Indemnitees.
- 3.02 Without limiting the foregoing the Association, in connection with the obligations contained in this Agreement, shall indemnify, hold and save completely harmless the Indemnitees from and against any indirect, special or consequential damages, whether in contract or in tort, save for those caused by the gross negligence or willful misconduct of the Indemnities.

4. ACCESS

- 4.01 The City hereby grants to the Association for the benefit of the City Lands, a right of access in common with the City in, on, through and over those portions of the City Lands, at all times necessary, for the Association, its employees, agents and contractors to enter upon and to do all things necessary to either make any modifications to the City Lands required for the maintenance of the Improvements or to remove any portion of the Improvements, make any modifications required for the installment of Improvements.

5. INSURANCE

- 5.01 During the term of this Agreement, the Association shall, at its own expense, maintain insurance policies in a form and substance satisfactory to the City Solicitor and with an insurer allowed by the laws of Alberta to provide insurance in Alberta the following insurance:

- (a) Commercial General Liability (CGL) insurance policy for bodily injury (including death) and property damage in an amount not less than Five Million Dollars (\$5,000,000.00) inclusive limit for any one occurrence and shall include:
 - (i) The City as an Additional Insured (if a third party is providing the insurance then the Association must also be shown as an additional Insured);
 - (ii) a cross liability clause;
 - (iii) broad form contractual liability coverage;
 - (iv) products and completed operations coverage;
 - (v) non-owned automobile liability extension; and
 - (vi) operation of attached machinery clause.
 - (b) An automobile third party liability insurance policy (Owner's form) for bodily injury (including death) and property damage in an amount of not less than Two Million Dollars (\$2,000,000.00) inclusive limit for any one occurrence insuring each and every automobile used in the performance of this Agreement, and such insurance policy shall include specific clauses or coverage as may be required by the City Solicitor. If automobiles are not used in connection with this Agreement, the requirement for automobile third party liability insurance may be waived if requested by the Association in writing, and at the sole discretion of The City.
 - (c) During the term of any construction (and until work is completed and accepted by The City) the Association will ensure that any contractor hired by it maintains a commercial general liability insurance policy for bodily injury (including death) and property damage in an amount of not less than FIVE MILLION (\$5,000,000.00) DOLLARS inclusive limit for any one occurrence, including products and completed operations coverage, contractual liability coverage, a cross liability clause and naming The City as an additional insured.
 - (d) Any other insurance in amounts that a prudent Association acting reasonably would deem appropriate given the scope of work, with associated risks, to be carried out under this Agreement.
- 5.02 The said insurance policies shall be in effect from the date of this Agreement and shall remain in effect for the entire Term of this Agreement.
- 5.03 The insurance policies mentioned within this part shall include provision for The City to be given thirty (30) days written notice prior to cancellation or material change of said policies of insurance. The Association shall immediately advise The City should said policies of insurance lapse or otherwise be discontinued.
- 5.04 The Association shall provide a Certificate of Insurance indicating compliance with the insurance requirements listed above to The City, and furnish documentary evidence satisfactory to The City of the renewal or continuance of such insurance during the life of this Agreement within ten (10) business days of any expiry date(s) thereof.
- 5.05 The City shall have the right to demand at any time and the Association shall be obligated to provide proof of insurance when so requested by and in a form satisfactory to The City.
- 5.06 If the Association fails to provide The City with any of the documents mentioned in this part, or otherwise failing to prove to The City the existence of any required insurance, The

City may, at its option, purchase on behalf and at the expense of the Association the required insurance coverage.

- 5.07 Nothing contained in this part or in any policy of insurance required or provided under this Agreement shall in any way whatsoever limit the liability of the Association under this Agreement or otherwise howsoever.

6. PERMITS

- 6.01 Nothing in this Agreement shall be construed as a development permit, building permit, or any other permit, permission or approval required for the Work under any municipal, provincial or federal legislation or approvals process.

- 6.02 The Association shall be responsible for obtaining all required permissions and permits for the Work and any approved maintenance and repair to the Improvements.

7. NO AGENCY

- 7.01 The Association and the City agree that nothing in this Agreement shall be construed to create any relationship of agency between the parties, notwithstanding that the Association is installing and maintaining Improvements on the City Lands.

8. OPERATION AND MAINTENANCE

- 8.01 The Association shall obtain all necessary regulatory approvals from the City of Calgary and/or (if necessary) the Government of Alberta for the Improvements.

- 8.02 The Association at its expense shall:

- (a) be responsible for the quantity and quality of the water contained in the Improvements;
- (b) clean up all debris, skim of petroleum products, control vegetation (including algae), control sediment, control insect populations, control odours, or such other conditions which are similar, in the opinion of the Director, Water Services and perform other necessary general maintenance of the Improvements acting reasonably;
- (c) be responsible for any erosion or repairs required in the City Park lands as a result of any pumping of the stormwater from the system to the river;
- (d) be responsible for operation, repair and maintenance of the Improvements to the extent necessary to keep the Improvements in service and good operating condition;

all to the satisfaction of the Director, Water Services acting reasonably.

- 8.03 For the purposes of this Agreement "operation, repair and maintenance" includes emergency work of a temporary or permanent nature, the normal operation, repair, testing, inspecting, measuring, maintaining, fortifying, modifying or replacing of the Improvements.

- 8.04 If at any time the Director, Water Services in his discretion, determines that the Improvements operated by the Association are not performing adequately, or are otherwise in any way unsafe the Association may elect to either:
- (a) repair the Improvements in accordance with the approved development permit drawings within THIRTY (30) days of receipt of the notice, at the Association's cost and expense, or
 - (b) have the City repair or replace the Improvements or any portion thereof and be invoiced the cost by the City.
- 8.05 Upon receiving notice under clause 8.04, the Association shall notify the City within TEN (10) days of its election.
- 8.06 If the Association does not notify the City of its election within TEN (10) days, the City may repair or replace damaged features and invoice the Association for the cost of such repair or replacement.
- 8.07 If the Association elects to repair the Improvements but has not repaired the Improvements within a reasonable amount of time as determined by the Director, Water Services, the City may repair or replace damaged features and invoice the Association for the cost of such repair or replacement.
- 8.08 The Association shall not replace the Improvements with other materials, install additional improvements on the City Lands, or modify the Improvements on the City Lands unless the Association receives written approval of such modifications from the Director, Water Services which may be withheld at the discretion of the Director, Water Services, and the Association must obtain any other permissions, permits and approvals as necessary for the replacement, installation or modification of such materials. Upon completion of such addition, modification, replacement or improvements, new "as-built" drawings shall be immediately provided by the Association to the Director, Water Services.
- 8.09 Any improvements or objects placed on or under the City Lands that are not approved by the Director, Water Services, in consultation with the Director of Parks may be removed without notice by the City and the cost of such removal will be invoiced to the Association.
- 8.10 The Association shall keep the City Lands open to the public as a publicly used Park unless construction or repair is required pursuant to Article 8.
- 8.11 The Association agrees that it is the occupier of the City Lands under the Occupiers Liability Act, R.S.A. 2000, c.O-4.
- 8.12 In the event the Director of Water Services determines that an emergency state has arisen no notice will be provided to the Association and the Director of Water Services will operate and maintain the Improvements for the duration of the emergency and the Association will be invoiced the cost by the City.

9. TERM OF AGREEMENT

- 9.01 This Agreement shall come into full force and effect on the date of execution of this document and shall continue in full force and effect in perpetuity, subject to Article 10.02 herein.
- 9.02 If the City or the Association removes the Improvements pursuant to Article 8 this Agreement shall terminate at the option of the Director, Water Services and Director of Parks.

10. LAW GOVERNING THE AGREEMENT

- 10.01 This Agreement must be interpreted under and governed by the laws of Alberta.
- 10.02 All Work must be done in accordance with the laws of Alberta.
- 10.03 Nothing in this Agreement relieves the Association from compliance with all applicable municipal bylaws, laws or regulations established by any other government body that may have jurisdiction over the City Lands or activities thereon.

11. NOTICES

- 11.01 Unless otherwise specified within this Agreement, any notice, communications or request to be given to either party shall be in writing and delivered by personal delivery, email or registered mail addressed to such party at the following address:

As to the City: The City of Calgary
Water Services
P.O. Box 2100, Postal Station "M"
Calgary, Alberta T2P 2M5
Attention: Manager of Water Services (#XXX)

As to the Association: Quarry Park Land Owners' Association
300, 200 Quarry Park Blvd. SE
Calgary, Alberta, T2C5E3
Attention: Mr. Randall MacFarlane, General Counsel

Either party may change its address for the notice by a notice given as herein provided. Notice which is mailed will be considered as having been at such time as it would in the ordinary course of mail be received by the party to which it is directed.

- (a) When the notices and demands that are made in connection with this Agreement are sent by mail, they shall be deemed received on the seventh (7th) day after posting;
- (b) When the notices and demands that are made in connection with this Agreement are delivered or sent by fax, they are deemed to be received on the business day

following the day on which they were delivered or faxed.

12. SUCCESSORS AND ASSIGNS

12.01 Prior to any assignment, sale or transfer of all or any portion of the Association's obligations, the Association shall cause the assignee, or transferee to enter into an assumption agreement with the City, in a form satisfactory to the City Solicitor, duly executed by the assignor or transferor and the assignee, or transferee, whereby the assignee, or transferee covenants and agrees to be bound by, observe, assume, perform and cause to be performed all of the covenants, terms and conditions contained in the Agreement, irrespective of whether said covenants, terms and conditions should have been performed prior to the date of this Agreement. Upon the receipt by the City of such assumption agreement, which shall provide for the assumption by the assignee, purchaser or transferee of any such portion of the Association's obligations imposed by this Agreement with respect thereto which are then unsatisfied, the assignor of such portion shall be deemed to be released from such obligations.

13. INTERPRETATION OF AGREEMENT

13.01 The part, numbers, headings, subheadings, paragraphs, subparagraphs, and associated numbers are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement.

13.02 The above Recitals and Schedules attached hereto form part of this Agreement.

13.03 Throughout this Agreement, the singular includes the plural and the masculine includes the feminine as the case may be, and vice versa. Should the Association at any time and from time to time comprise two or more persons, each such person shall be jointly and severally bound with the other and others for the performance of the obligations in this Agreement.

13.04 Every provision of this Agreement by which the Association is obligated in any way must be deemed to include the words "at the expense of the Association" unless the context otherwise requires.

13.05 References herein to any statute, City specifications, or provision thereof include such statute, City specifications, or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.

13.06 Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference must not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" or "including but not limited to" do not precede such list or reference.

13.07 All covenants and conditions contained in this Agreement are severable, and should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement remain valid and do not terminate thereby.

13.08 A term of this Agreement must not be waived or varied except in writing signed by the Director, Water Services and the Association.

13.09 The Parties acknowledge that this Agreement contains the entire terms, conditions and warranties agreed to by the parties respecting the City Lands and that are no terms, conditions or warranties except as stated in herein.

IN WITNESS WHEREOF the parties hereto have caused their corporate seals to be affixed duly attested by the hand(s) of their proper officer(s) duly authorized in their behalf, all as of the day and year first above written.

APPROVED	
AS TO CONTENT	
Water Services	AK
AS TO FORM	
Solicitors	

THE CITY OF CALGARY

Per: [Signature]
Director, Water Services
Mark Teckway on behalf of Nancy Stalker

Per: [Signature]
City Clerk
MAR 16 2018
GENERAL MANAGER, DEP.
David Duckworth

QUARRY PARK LAND OWNERS' ASSOCIATION

Per: [Signature]
Randy Bevington
President
(Corporate Seal)

Per: [Signature]
Randal MacFarlane
Secretary / Treasurer

