

**GATEWAY 286 – WATER AND SEWER PROJECT CONTRIBUTION AGREEMENT [NTD:
This Agreement will not be signed until the City, Spayum and Ladner Ventures have all
approved the tender price]**

THIS AGREEMENT dated for reference _____, 2022 is

BETWEEN:

CITY OF MERRITT, Box 189, 2185 Voght Street, Merritt BC V1K 1V8 (Attention: Sean Smith, ssmith@merritt.ca)

(the “**City**”)

AND:

SPAYUM HOLDINGS LIMITED PARTNERSHIP, 2090 Coutlee Avenue, P.O. Box 188, Merritt, BC V1K 1B8 (Attention: Susan Roline, susanroline@gmail.com)

(the “**Developer**”)

GIVEN THAT:

A. The Developer is the registered owner in fee simple of the land legally described as:

PID: 013-339-859 Block F, Section 11, Township 91, KDYD

containing approximately 11.6 ha (the “**Developer’s Property**”).

B. 0742913 B.C. Ltd. (“**Palomino**”) is the registered owner in fee simple of the land legally described as:

PID: 013-188-542 District Lot 3638, KDYD Except: (1) Plans 37177 and 43275 (2) Part Lying North of Plan 43275

containing approximately 25.73 ha (“**Palomino's Property**”),

C. The Developer and Ladner Ventures Inc., on behalf of Palomino, jointly submitted a petition dated January 28, 2021 to the City, a copy of which is attached as **Schedule A** hereto (“**LAS Petition**”), for the City to provide water and sewer services to the Developer's Property and Palomino's Property as local area services pursuant to the *Community Charter*.

D. In connection with the LAS Petition, the Council of the City has adopted:

- a. the "Water and Sanitary Sewer Services to Gateway 286 Local Area Service Bylaw No. 2312, 2021", a copy of which is attached as Schedule B hereto (the "**LAS Bylaw**") which establishes the works and services described in section 2 of that bylaw as local area services (the "**Local Area Service**"); and
 - b. the "Loan Authorization Bylaw # 2307, 2021", a copy of which is attached as **Schedule C**, authorizes the City to borrow up to \$7,554,000.00 (the "**Authorized Loan Amount**") being the estimated costs of the Local Area Service.
- E. The Developer and the City wish to enter into this Agreement to provide for the terms and conditions upon which the Developer will reimburse the City in the event that the costs of the City to provide water and sewer services to the Developer's Property and Palomino's Property exceed the Authorized Loan Amount.
- F. Concurrent with this Agreement, it is the expectation of the City and the Developer that the City will enter into an agreement with Palomino on substantially the same terms and conditions as this Agreement to ensure that 100% of the costs of the City to provide water and sewer services to the Developer's Property and Palomino's Property, in excess of the Authorized Loan Amount, will be reimbursed by the Developer and Palomino, in the same proportions as provided for in the LAS Bylaw.

THIS AGREEMENT is evidence that in consideration of the promises contained in this Agreement, the payment of \$1.00 by the City to the Developer and other good and valuable consideration (the receipt and sufficiency of all of which the City and the Developer each acknowledge), the Developer and the City agree as follows:

1. "**Excess Costs**" and "**Total Costs**"- The phrase "**Excess Cost**" as used in this Agreement means the amount, if any, by which the "**Total Costs**" (as hereinafter defined) exceed the Authorized Loan Amount.

"**Total Costs**" means:

- a. the costs to the City to construct and install infrastructure works, engineered to the City's current engineering standards and specifications, for the provision of water and sanitary sewer services to the Developer's Property and Palomino's Property (the "**Construction Costs**"). The construction and installation of such infrastructure works shall hereinafter be referred to as the "**Project**";
- b. engineering and administration expenses in connection with the Project; and

- c. costs to acquire all such property, easements, rights of way, licences, rights or authorities that may be necessary or desirable for and in connection with the Project,

subject to section 2. For greater certainty, Total Costs will not include any costs that are required for purposes other than for the Project.

2. **Consultation on Costs** - The Parties acknowledge and agree that the City will accept a tender for the Project, and enter into a contract for the construction of the Project, on the terms and conditions set out in [description of contract] (the "**Construction Contract**"), for the price of \$ [redacted]. The City agrees that it will not authorize any change pursuant to the Construction Contract, including a change order thereunder, unless the change is required for the provision of water and/or sewer services to the Developer's Property and Palomino's Property and for no other purpose. If the proposed change is so required, the City will provide reasonable notice of such proposed change to the Developer and seek to obtain the Developer's consent to it. If the Developer fails to provide its consent but is also unable to propose an alternative to the proposed change that is acceptable to the City, the Developer acknowledges that the City has sole control and discretion in making the change.
3. **Payment for Excess Costs** –The Developer agrees to pay the City the following percentages of the Excess Costs:
 - a. 46% of any Excess Costs related to water infrastructure; and
 - b. 42% of any Excess Costs related to sewer infrastructure.

("Developer's Share of the Excess Costs")

For greater certainty, the percentage allocations described above for the Developer's Share of the Excess Cost are the same percentages allocated to the Developer's Property pursuant to the LAS Law.

4. **Invoicing for Excess Costs** – As Excess Costs are incurred by the City, the City will invoice the Developer for the Developer's Share of the Excess Costs. The Developer must pay the amount invoiced to the City within 30 days of receipt of such invoice.
5. **Security** – As security for the Developer's obligation to pay the Developer's Share of the Excess Costs to the City under this Agreement, the Developer has, concurrently with its execution of this Agreement, provided to the City an irrevocable and unconditional letter

of credit in an amount equal to \$_____, a copy of which is attached as **Schedule D** (the “**Letter of Credit**”).

6. **Letter of Credit Drawdown** – The City may, without notice to the Developer, draw down the Letter of Credit, in whole or in part if:
- (a) the Developer does not pay, when due, any amount from time to time payable by the Developer to the City under this Agreement;
 - (b) the City receives a notice of non-renewal of the Letter of Credit; or
 - (c) there is an Insolvency Event.

If the City draws down the Letter of Credit, the drawn down funds shall be the property of the City and the City may use such funds to pay any Excess Costs paid or payable by the City at any time without any obligation to first notify, invoice or demand payment from the Developer, provided that all such payments will be credited to the Developer's Share of the Excess Cost payable under this Agreement.

7. **Insolvency Event** – In this Agreement, “**Insolvency Event**” means occurrence of any of the following:
- (a) a receiver, receiver manager, trustee or similar official is appointed in respect of any of the Developer’s Property;
 - (b) the holder of any Charge on or claim against any of the Developer’s Property does anything to enforce or realize on such Charge or claim, or any execution, sequestration or other process becomes enforceable against the Developer or a distress, seizure or similar process is levied upon or exercised against any of the Developer’s Property;
 - (c) the Developer commits or threatens to commit an act of bankruptcy under applicable bankruptcy or similar legislation (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies Creditors Arrangement Act* (Canada)); or
 - (d) the Developer becomes insolvent or files a proposal, a notice of intention to file a proposal or an assignment for the benefit of creditors under applicable bankruptcy or similar legislation (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies Creditors Arrangement Act* (Canada)), or a petition is filed, an order is made, a resolution is passed or any other step is taken for the

bankruptcy, liquidation, dissolution, winding-up or reorganization of the Developer.

In this section, “**Charge**” means any mortgage, charge (fixed or floating), pledge, lien (statutory or otherwise), assignment, lease, trust, security interest, title retention agreement, trust or other encumbrance of any nature however arising.

8. **Developer's Representations and Warranties** – The Developer represents and warrants to the City that:
 - (a) the Developer is duly formed and validly existing under the law of British Columbia;
 - (b) the Developer has full power, authority and capacity to enter into this Agreement and to perform its obligations under this Agreement;
 - (c) the Developer has taken all necessary actions, steps and other proceedings to approve and authorize, validly and effectively, the entering into, execution, delivery and performance of this Agreement; and
 - (d) neither entering into of this Agreement by the Developer nor the performance of its terms will result in the breach of or constitute a default under any term or provision of any indenture, mortgage, deed of trust or other agreement to which the Developer is bound or subject.

9. **Project Completion & Return of Unused Security** – Upon completion of the Project and the payment of all costs to construct the Project, all to the satisfaction of the City, the City shall return to the Developer the unused portion, if any, of the security (be it the Letter of Credit or drawn down funds) provided by the Developer to the City under this Agreement, without interest.

10. **No Assignment** – The Developer may not assign this Agreement or the benefit of this Agreement, without the prior written consent of the City, not to be unreasonably withheld.

11. **Remedies Cumulative** – No reference to or exercise of any specific right or remedy by the City shall prejudice or preclude the City from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such right or remedy and the City may from time to time exercise any one or more of such rights and remedies independently or in combination.

12. **Payments Generally** – All payments, including interest, required to be made by the Developer to the City under the terms of this Agreement shall be:
- (a) payable in lawful money of Canada;
 - (b) paid to the City at the office of the City or at such other place as the City may designate from time to time in writing;
 - (c) made when due hereunder, without the need for prior demand and without any set-off, abatement or deduction; and
 - (d) applied towards amounts outstanding in such a manner as the City sees fit.
13. **Interest** – All payments due by the Developer to the City under this Agreement shall bear interest at the rate of interest established from time to time by the Royal Bank of Canada, Main Branch, Vancouver, B.C. as the base rate used to determine interest rates charged by it for Canadian dollar loans to customers in Canada designated by them as the “prime rate” plus 6% per annum calculated monthly not in advance from the date due until paid.
14. **Interpretation** – In this Agreement:
- (a) reference to the singular includes a reference to the plural and vice versa, unless the context requires otherwise;
 - (b) a particular numbered section or lettered Schedule is a reference to the correspondingly numbered section or lettered Schedule of this Agreement;
 - (c) an "enactment" is a reference to an enactment as that term is defined in the *Interpretation Act* (British Columbia) on the day this Agreement is made;
 - (d) any enactment is a reference to that enactment as amended, revised, consolidated or replaced from time to time, unless otherwise expressly stated;
 - (e) section headings are inserted for ease of reference and are not to be used in interpreting this Agreement;
 - (f) a “party” is a reference to a party to this Agreement;
 - (g) time is of the essence; and

- (h) where the word “including” is followed by a list, the contents of the list shall not circumscribe the generality of the expression immediately preceding the word “including”.
15. **Notices** – Any notice, invoice, request, direction or other communication (any of which is a “Notice”) to be given or made under the Agreement, shall be in writing and shall be effectively given if delivered in person, sent by express mail or emailed to the address or email address above, to the attention of the contact person identified on the first page of this Agreement. A Notice shall be deemed given and received if delivered in person, when delivered; if by express mail, the earlier of 5 days following deposit with Canada Post and the date the postal receipt is acknowledged by the other party; and, if by email, when transmitted.
16. **City Discretion** – Wherever in this Agreement the approval or consent of the City is required, some act or thing is to be done to the City’s satisfaction, the City is entitled to form an opinion, or the City is given the sole discretion:
- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, consent, opinion or expression of satisfaction is in writing signed by the City or its authorized representative;
 - (b) the approval, consent, opinion or satisfaction is in the sole, absolute and unfettered discretion of the City; and
 - (c) no public law duty of procedural fairness or principle of natural justice shall have any application to such approval, consent, opinion, satisfaction or discretion.
17. **No Effect on Laws or Powers** – As the City is a municipality under the *Community Charter* and the *Local Government Act*, the Developer acknowledges and agrees that nothing contained or implied herein prejudices or affects the City’s rights and powers in the exercise of its functions under to the *Community Charter*, the *Local Government Act* (British Columbia) or any other enactment.
18. **Binding on Successors** – This Agreement enures to the benefit of and is binding upon the parties and their respective successors and assigns, notwithstanding any rule of law or equity to the contrary.
19. **Applicable Law**– This Agreement and all matters arising hereunder will be governed by and construed in accordance with the laws of British Columbia and laws of Canada applicable therein, which will be deemed to be the proper law hereof, and the courts of British Columbia will have the exclusive jurisdiction to entertain and determine all claims

and disputes arising out of or in any way connected with this Agreement and the validity, existence and enforceability hereof.

20. **Entire Agreement** – This Agreement, including the Schedules hereto, constitutes the entire agreement between the parties regarding its subject matter and supersedes all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Agreement, and may not be modified except in writing, signed by the parties hereto.
21. **Schedules** – The following are the Schedules to this Agreement and form an integral part of this Agreement:

Schedule A – Local Area Service Petition

Schedule B – Local Area Service Bylaw

Schedule C- Loan Authorization Bylaw

Schedule D- Letter of Credit

22. **Counterpart Execution and Email Delivery Permitted** – This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

As evidence of their agreement to be bound by this Agreement, the City and the Developer have executed this Agreement below:

CITY OF MERRITT

by its authorized signatories:

Mayor:

Clerk:

SPAYUM HOLDINGS LIMITED PARTNERSHIP

by its authorized signatories:

Name:

Name:

- Attach:** Schedule A – Local Area Service Petition
 Schedule B – Local Area Service Law
 Schedule C- Loan Authorization Law
 Schedule D – Letter of Credit