

To: **COUNCIL**

Meeting Date: **11/09/21**

Subject: **Speedsville Pumping Station - Amending Agreement**

Submitted By: **Lisa Shields, City Solicitor**

Prepared By: **Nicole Auty, Assistant City Solicitor**

Report No.: **21-307(OCM)**

File No.: **C1101**

Recommendation(s)

THAT report 21-307(OCM) be received for information;

AND THAT the Mayor and Clerk be authorized to execute the Speedsville Pumping Station Amending Agreement between the City and Arriscraft Canada Inc. (Arriscraft) and River Mill Development Corporation (River Mill), subject to the satisfaction of the City Solicitor.

Executive Summary

Purpose

- The purpose of this report is to seek Council's authorization to enter into an Amending Agreement for the Speedsville pumping station between the City and Arriscraft and River Mill to:
 - acknowledge the Record of Site Condition ("RSC") work completed;
 - authorize conveyance of the pumping station lands once the RSC is complete; and
 - grant access and easements from the date of execution until the conveyance is complete.

Key Findings

- Further to the draft plan of subdivision approval granted by Council, the City entered into an agreement in 2016 with General Shale Canada Inc. now

Arriscraft and Hunt Club Valley Inc. (now River Mill Development Corporation; (“River Mill”) to secure the construction of the Speedsville Pumping Station.

- In accordance with the subdivision approval process, the City would typically take ownership of the pumping station and the lands on which it is situated. However, as part of the pre-construction work for the pumping station it was determined that the lands were contaminated and therefore, the City did not take ownership of the pumping station lands. In order to facilitate the transfer of the lands to the City, a RSC is required before the City will take ownership of the pumping station.
- The amending agreement which is attached as Appendix “A” to this report provides the conditions under which the City will take ownership of the lands and the responsibilities of the parties until the conveyance is complete.

Financial Implications

- Engineering staff have reviewed the Risk Assessment Management Plan (RMP) undertaken as part of the RSC process and advise that there are no additional costs associated with the ongoing maintenance of this facility.

Background

In 2016 the City entered into a Sanitary Pumping Station Agreement with General Shale (now Arriscraft) and Hunt Club Valley Inc. (now River Mill Development Corporation (River Mill)).

This agreement was required as a condition of a land division approval and draft plans of subdivision 30T-12103 (a subdivision owned by River Mill) and 30T-12104 (a subdivision owned by Arriscraft). Since draft plan approval, River Mill now owns both plans of subdivisions and is in the process of developing the lands.

The pumping station serves the subdivision lands and lands beyond.

The original agreement required that River Mill construct the pumping station and that Arriscraft convey the pumping station lands and an access easement to the City upon substantial completion of the pumping station.

During the construction project it was discovered that the pumping station lands were contaminated. The City therefore did not take ownership of the lands despite the construction of the pumping station being completed and operational. The City will not take ownership of the station lands until a RSC is filed. River Mill has been pursuing a RSC but it is not expected to be completed until mid 2022.

In addition, the City added a new condition of draft plan approval for the River Mill draft plan of subdivision (30T-12104) to address the concerns regarding the contamination

and the requirement for a RSC. The condition prevents registration of any further blocks in the draft plan until River Mill conveys the pumping station lands or grants the City access to the lands prior to the conveyance.

The Phase One Environmental Site Assessment (ESA) was completed in March 2018. The Phase One ESA identified areas of potential environmental concerns as a result of the property being utilized as a storage yard for the Arriscraft industrial operation and identified the need for a Phase Two ESA.

The Phase Two ESA was submitted to the MECP in May 2019 and required preparation of the Risk Assessment Management Plan (RMP) was completed between March and October 2020. The RMP was submitted to the MECP in November 2020.

The on-going monitoring and maintenance requirements outlined in the RMP were limited to semi-annual inspections of the topsoil and parking lot surface caps and the continued maintenance of the ventilation controls already installed in the Pumping Station building. Also, although the site is developed, the RMP outlines measures to properly remove, handle, and dispose of excavated soil and groundwater should infrastructure need to be excavated for maintenance and repairs on the site.

The next steps for finalization of the RSC include, MECP approval of the RMP and registration of a Certificate of Property Use (CPU). Once the CPU is registered, the RSC can be submitted to the MECP. As noted above a completed RSC from the MECP is not expected until mid 2022.

River Mill and Arriscraft have been working cooperatively with the City on the amending agreement which would satisfy the above noted conditions.

The Amending Agreement is provided with this report at Attachment No. 1.

Analysis

Strategic Alignment

PROSPERITY: To support and encourage the growth of a highly competitive local economy where there is opportunity for everyone to contribute and succeed.

Goal #7 - Transportation and Infrastructure

Objective 7.3 Provide innovative leadership in the management of city assets to help plan, fund and maintain city assets in a sustainable way.

Finalizing the Amending Agreement will allow for the City to take ownership of the pumping station lands, an important City asset, under revised terms and conditions beneficial to the City.

Comments

In 2016, following draft plan approval of two plans of subdivision now owned by River Mill, the City and the developers entered into an agreement whereby the developers would construct the sanitary pumping station at their cost and subsequently convey the pumping station and lands to the City for ongoing monitoring and maintenance.

Prior to the construction of the pumping station and before the pumping station lands were conveyed to the City it was discovered that the lands were contaminated. The developers were required to undertake ESAs and other necessary work in order to complete a RSC and obtain a CPU.

In order for further development to proceed in accordance with the remaining draft plan, 30T-12104, the developers are required to either transfer the lands to the City with the appropriate indemnification or provide the City with a License Agreement to access the pumping station.

The amending agreement now before council will fulfill both of these conditions as the amending agreement sets out both: 1) the conditions the City will take ownership of the lands and provides for the City and River Mill to indemnify each other; and 2) grants the City access the lands to operate the pumping station until the lands are conveyed.

Engineering staff have reviewed the RMP submitted by the owners as part of the RSC process and have determined that the ongoing maintenance requirements are reasonable and can be undertaken by the City once the lands are conveyed. The City will be responsible for the ongoing monitoring and maintenance responsibilities set out in the RMP once the City owns the land. In addition, any future upgrades or changes to the pumping station will require the City to apply for an amendment to RSC.

Existing Policy/By-Law

N/A

Financial Impact

There are no additional maintenance costs associated with this facility.

Public Input

N/A

Internal/External Consultation

This report was prepared in consultation with Risk Management and Community Development staff.

Conclusion

The original approval of this development required transfer of the pumping station lands once the pumping station was constructed. While the pumping station is now built and in operation the City has not taken ownership of the lands because of the contamination discovered on the pumping station land.

The amending agreement sets out the conditions for the City to now take ownership of the pumping station lands once the RSC is filed, and in addition, provides the City access to the lands to operate the pumping station until the transfer is complete.

Signature

Division Approval

Reviewed by the CFO



Name: Lisa Shields

Title: City Solicitor

Departmental Approval

Name: David Calder

Title: City Manager

City Manager Approval



Name: David Calder

Title: City Manager

Attachments

- Attachment No 1. Amending Agreement
- Attachment No 2. Site Map

SANITARY PUMPING STATION AMENDING AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2021 BETWEEN:

THE CORPORATION OF THE CITY OF CAMBRIDGE

(the “City”),

- and –

ARRISCRAFT CANADA INC.

(“Arriscraft”),

- and -

RIVER MILL DEVELOPMENT CORPORATION

(collectively, “River Mill”).

WHEREAS the City, General Shale Canada GP Inc. and Hunt Club Valley Inc. and Hunt Club Valley (ARR) Inc. entered into a Sanitary Pumping Station Agreement dated August 12, 2016 (the "Pumping Station Agreement"), in respect of the Pumping Station Lands;

AND WHEREAS on or about the 1st day of January, 2017, General Shale Canada GP Inc. amalgamated with one or more other corporations and continued under the name of Arriscraft Canada Inc. (“Arriscraft”);

AND WHEREAS on or about the 30th day of September, 2019, Hunt Club Valley Inc. and Hunt Club Valley (ARR) Inc. amalgamated with one or more other corporations and continued under the name of River Mill Development Corporation ("River Mill");

AND WHEREAS the Pumping Station Agreement provided for, among other items, the Pumping Station Lands to be conveyed to the City by Arriscraft (the "Conveyance") **within thirty (30) days after receiving written notice from the City that the Pumping Station has been Substantially Completed:**

AND WHEREAS the City requires, prior to accepting the Conveyance, the completion of a record of site condition in respect of the Pumping Station Lands (the "RSC") in accordance with the *Environmental Protection Act*, R.S.O. 1990, c. E.19 (the "EPA");

AND WHEREAS the parties hereto anticipate Substantial Completion of the Pumping Station to occur prior to completion of the RSC:

AND WHEREAS the City currently maintains control of and access to the Pumping Station Lands;

AND WHEREAS the City, Arriscraft and River Mill have agreed to amend the Pumping Station Agreement on the terms and conditions set out herein in order to alter the date of the Conveyance;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and the sum of TWO (\$2.00) DOLLARS now paid by each of the parties hereto to the other, and other consideration, the receipt of which is hereby acknowledged, the parties hereto do acknowledge, covenant and agree as follows:

1. The parties confirm the accuracy of the recitals set out above.
2. Capitalized terms herein shall bear the meanings ascribed to them in the Pumping Station Agreement unless indicated otherwise.
3. The Pumping Station Agreement is hereby amended as follows:
 - (i) The following recital of the Pumping Station Agreement is hereby deleted:

"AND WHEREAS it is understood that the Pumping Station Lands, the Pumping Station Lands Access Easement and the Sanitary Sewer Easement are to be conveyed to the City by General Shale upon substantial completion of the construction of the Pumping Station."

and is hereby replaced with the following:

“AND WHEREAS it is understood that the Pumping Station Lands, the Pumping Station Lands Access Easement and the Sanitary Sewer Easement are to be conveyed to the City by Arriscraft in accordance with the terms of this Agreement.”

- (ii) The definition of “Pumping Station Lands” in section 1 of the Pumping Station Agreement is hereby deleted and replaced with the following:

"Pumping Station Lands" means the lands to be conveyed to the City in accordance with the terms of the Agreement, the approximate location of which is set out in Schedule C, Sketch A and Sketch B.

- (iii) Section 11 of the Pumping Station Agreement is hereby deleted and replaced with the following:

11. Arriscraft and the City agree

- (i) to complete the Conveyance, free and clear of all encumbrances save and except for the encumbrances listed in Schedule “F” (the “**Permitted Encumbrances**”), on the earlier of:

- a. the date that is thirty (30) days after the delivery of written notice from City to Arriscraft that that the Pumping Station has been Substantially Completed and the RSC has been completed; and
- b. the date that is thirty (30) days after the delivery of written notice from City to Arriscraft that the City will accept the Conveyance, regardless of the status of the construction of the Pumping Station and/or the completion of the RSC.

- (ii) if the Conveyance completes prior to the RSC being completed, the Conveyance agreement between Arriscraft and the City must include a condition, covenant or term that the City will file an RSC for the Pumping Station Lands in the Ministry of the Environment, Conservation and Parks (the “MECP”) Environmental Site Registry (the “ESR”) in accordance with section 20 of O. Reg. 153/04 under the EPA.

- (iii) if the Conveyance completes prior to the RSC being completed, the City shall file an RSC for the Pumping Station Lands in the MECP ESR in accordance with section 20 of O. Reg. 153/04 under the EPA.

- (iv) A new Section 11A is added to the Pumping Station Agreement, immediately following section 11, as follows:

11A. Arriscraft acknowledges and agrees that from the time the Pumping Station has been Substantially Completed, the City intends to operate the Pumping Station in the ordinary course and Arriscraft agrees:

- (i) to grant to the City the Pumping Station Land Access Easement and the Sanitary Sewer Easement, free and clear of all encumbrances save and

except the Permitted Encumbrances, within thirty (30) days after receiving written notice from the City that the Pumping Station has been Substantially Completed; and

- (ii) from the date of Substantial Completion until such time as the Conveyance is completed, to grant to the City all such reasonable access over and additional registered easements against the Pumping Station Lands as the City may require for the safe and complete operation of the Pumping Station.

- 4. A new Section 11B is added to the Pumping Station Agreement, immediately following the new Section 11A, as follows:

11B.

- (i) For the Purpose of this section:

- (1) “Environment” means all components of the earth, including air, land, soil and water (both surface and ground water), organic and inorganic matter and living organisms.
- (2) “Environmental Laws” means the common law and all federal, provincial and municipal laws, regulations, by-laws, standards, requirements, ordinances, codes, policies, guidelines, Orders, Notices, Environmental Permits and directives that have the force of law pertaining to the protection, conservation, utilization, impairment or degradation of the Environment in effect from time to time.
- (3) “Environmental Permit” means any permit, certificate, approval, registration, authorization, licence, right or exemption issued or granted by any Governmental Authority pursuant to or under any Environmental Laws.
- (4) “Governmental Authority” means any federal, provincial or municipal government or any regulatory body, agency, ministry, bureau, department, commission, tribunal or board, or any court or any other law, regulation or rule-making entity, having jurisdiction, or any person acting under the authority of any of the foregoing or any other authority charged with the administration or enforcement of Environmental Laws.
- (5) “Hazardous Substance” means any substance or material whose Release, transport, use, storage, or handling is regulated or prohibited by any Governmental Authority under any Environmental Laws, including, without limiting the generality of the foregoing, any contaminant, pollutant, deleterious substance, flammable or inflammable liquid, chemical, explosive material or material which may impair life or health, any petroleum or other hydrocarbon and any derivative or by-

product thereof, any dangerous substance or goods, asbestos, any gaseous, solid or liquid waste, any special waste, toxic or hazardous substance or chemical, any hazardous waste, material or substance, either in fact or as defined in or pursuant to any Environmental Laws.

- (6) “Notice” means any written citation, directive, Order, inspection, proceeding, judgment or other communication.
- (7) “Order” means any order, decision, decree, judgment, ruling, or claim from or by any Governmental Authority under any Environmental Laws.
- (8) “Release” includes any release, discharge, escape, addition, deposit, leak, spill, emission, migration, disposal or dumping.
- (9) “Remediation Costs” means any expenses, costs, losses, fines, penalties, damages, disbursements, fees, relating to a Release of Hazardous Substance;

(ii) The Parties acknowledge and agree that

- (1) River Mill is responsible, at River Mill’s sole cost and expense, for completing the RSC on behalf of the owner of the Pumping Station Lands, whether on behalf of Arriscraft or the City, pursuant to the RSC requirements of this Agreement and the EPA;
- (2) Upon completing the RSC, the owner of the Pumping Station Lands shall be responsible for the associated risk management measures and certificate of property use, and other associated RSC requirements under the EPA (the “**CPU Requirements**”) that will apply to the Pumping Station Lands. For clarity,
 - (a) if the RSC is completed prior to the Conveyance, Arriscraft will be responsible for implementing and maintaining, at River Mill’s sole cost and expense, the CPU Requirements for the Pumping Station Lands on behalf of Arriscraft;
 - (b) if the RSC is completed prior to the Conveyance, the City shall work with Arriscraft to ensure that Arriscraft has access to the Pumping Station Lands so that Arriscraft can implement and maintain the CPU Requirements for the Pumping Station Lands;
 - (c) if the RSC is completed after the Conveyance, the City will be responsible for implementing and maintaining, at the City’s sole cost and expense, the CPU Requirements for the Pumping Station Lands.

- (iii) The City acknowledges and agrees that the City is responsible and liable for:
 - (1) any Hazardous Substance Released and/or stored at, in, on, under, or about the Pumping Station Lands, and/or beyond, (a) by the City or those for whom City is responsible at law, and/or (b) associated with the City's use and ownership of the Pumping Station Lands after the completion of the Conveyance, and/or (c) associated with the City's use of the lands subject to the Pumping Station Land Access Easement and the Sanitary Sewer Easement (collectively the "City's Contamination").
- (iv) Arriscraft acknowledges and agrees that Arriscraft is responsible and liable for:
 - (1) any Hazardous Substance Released and/or stored at, in, on, under, or about the Pumping Station Lands, and/or beyond, (a) by Arriscraft or those for whom Arriscraft is responsible at law, and/or (b) associated with Arriscraft's use of the Pumping Station Lands prior to the completion of the Conveyance, and/or (c) associated with Arriscraft's use of the lands subject to the Pumping Station Land Access Easement and the Sanitary Sewer Easement (collectively "Arriscraft's Contamination").
- (v) The City shall indemnify and save harmless Arriscraft and its servants, agents, employees, officers and directors, contractors, professional advisors, and persons for whom Arriscraft is in law responsible, against any and all liabilities, claims (including third party civil claims, prosecutions, and regulatory Orders, Notices, and directives issued by any Governmental Authority), damages, settlement costs, interest, penalties, fines, monetary sanctions, losses, costs and expenses whatsoever, including without limitation, Remediation Costs and costs of professional advisors, consultants and experts, for investigation, advice, and remediation/clean-up costs and expenses, resulting from the City's Contamination.
- (vi) Arriscraft shall indemnify and save harmless the City and its servants, agents, employees, officers and directors, contractors, professional advisors, and persons for whom the City is in law responsible, against any and all liabilities, claims (including third party civil claims, prosecutions, and regulatory Orders, Notices, and directives issued by any Governmental Authority), damages, settlement costs, interest, penalties, fines, monetary sanctions, losses, costs and expenses whatsoever, including without limitation, Remediation Costs and costs of professional advisors, consultants and experts, for investigation, advice, and remediation/clean-up costs and expenses, resulting from the Arriscraft's Contamination.

5. A new paragraph 12 is added as a permitted encumbrance under General Encumbrances to Schedule F, as follows:

12. Any certificate of property use and associated certificate of requirement that may be registered on title to the Pumping Station Lands pursuant to the requirements of the RSC and the EPA.
6. Arriscraft consents to the registration of this Agreement on title to the General Shale Existing Lands and River Mill consents to the registration of this Agreement on title to Hunt Club Existing Lands. This Agreement shall be released from the General Shale Existing Lands and Hunt Club Existing Lands upon completion of the Conveyance.
7. Except as amended hereby, all other terms of the Pumping Station Agreement shall continue in full force and effect.
8. This Agreement may be executed in counterparts, 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. Counterparts may be executed either in original or faxed from and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party any original of the signed copy of this Agreement which was so faxed.
9. This Agreement and each of the provisions hereof shall be binding upon and shall enure to the benefit of the parties and their respective successors and permitted assigns.

SIGNATURE PAGE TO FOLLOW

(Signature pages to follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by the hands of their authorized signing officers as of the date first written above.

**THE CORPORATION OF THE CITY OF
CAMBRIDGE**

Per: _____
Mayor

Per: _____
Clerk

ARRISCRAFT CANADA INC.

Per: _____
Name:
Title:

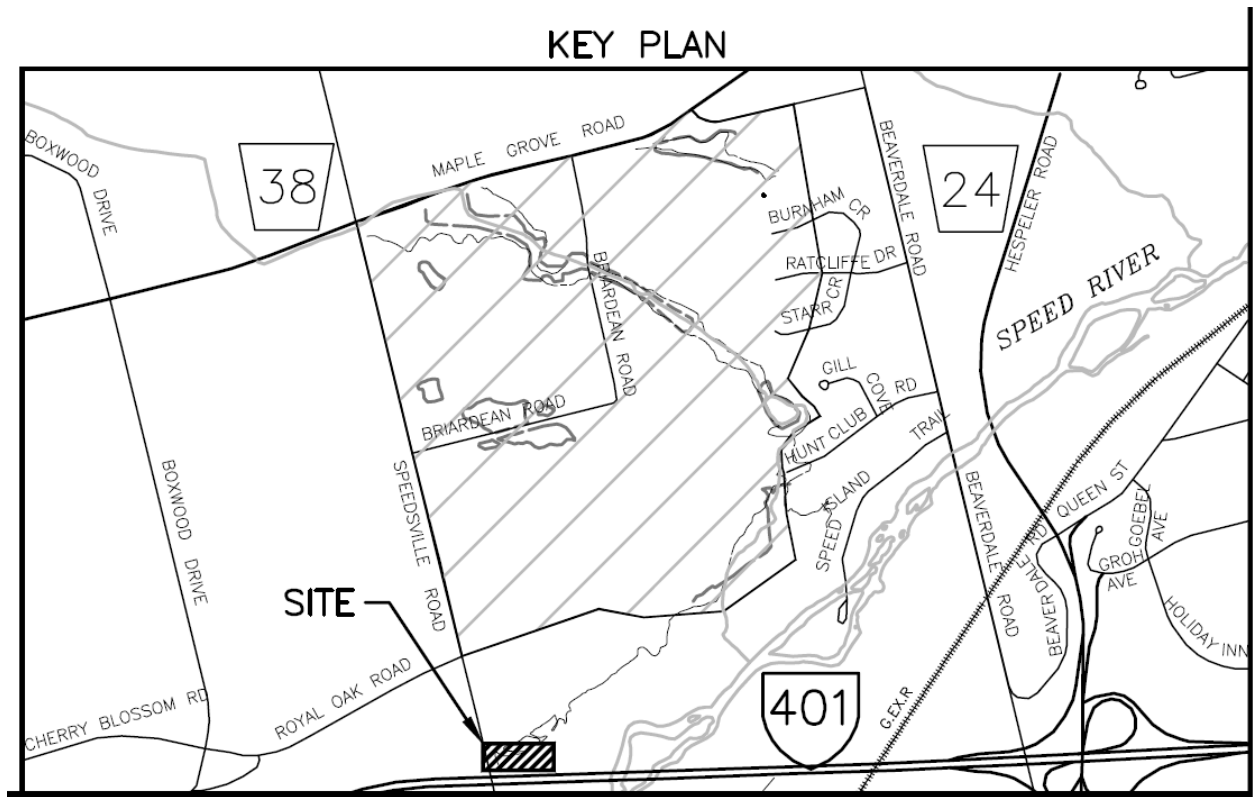
I have authority to bind the corporation

**RIVER MILL DEVELOPMENT
CORPORATION**

Per: _____
Name: Ward Campbell
Title: President

I have authority to bind the corporation

Attachment No 2 – Site Map



Speedsville Pumping Station Lands