



Please return to:  
Municipality of Anchorage  
Project Management & Engineering  
P.O. Box 196650  
Anchorage, Alaska 99519-6650  
Attn: PM&E ROW Acquisition

Resolution Pointe  
Plat No. 82-302

### **MAINTENANCE AND ACCESS AGREEMENT**

**This instrument was not recorded at the time of construction and is being recorded at this time to perpetuate the agreement for Maintenance and Access of dam facilities at Campbell Lake between the Municipality of Anchorage and Campbell Lake Owners Inc.**

*for*

***Resolution Pointe Subdivision, according to the official plat thereof, filed under Plat Number 82-302 in the records of the Anchorage Recording District, Third Judicial District, State of Alaska.***

CAMPBELL LAKE DAM  
MODIFICATION AGREEMENT

THE MUNICIPALITY OF ANCHORAGE (hereinafter the "Municipality"), a Municipal corporation, and Campbell Lake Owners Inc., (hereinafter the "Corporation"), enter into the following Agreement this 27 day of March, 1989.

John Lambe, President of Campbell Lake Owners Inc., executes this Agreement on behalf of the Corporation. It is understood that the Campbell Lake Owners Inc., is a Corporation, and that the person who executed the Agreement on behalf of the Corporation does so in the capacity of its president. The Corporation warrants that John Lambe has the authority to execute this Agreement on behalf of the Corporation. The parties to this Agreement shall accept notices at the following addresses and telephone numbers:

ASSOCIATION

Campbell Lake Owners Inc.  
John Lambe, President  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_

MUNICIPALITY

Municipality of Anchorage  
Department of Public Works  
Engineering Division  
3500 E. Tudor Road  
Anchorage, Alaska 99507  
786-8135

WITNESSETH:

WHEREAS, Campbell Lake Dam is a man-made dam on private land constructed in the late 1950's and reconstructed after the 1964 earthquake; and

WHEREAS, Campbell Lake is a lake created for private use; and

WHEREAS, Campbell Lake Dam is near where Campbell Creek discharges into the Turnagain Arm of Cook Inlet; and

WHEREAS, when Campbell Lake Dam was constructed, the drainage basin was primarily undeveloped land; and

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WHEREAS, the Municipality is constructing a storm drain system (97th Avenue/Old Seward Highway system) which outfalls into Campbell Lake which has resulted in substantial cost savings to the Municipality; and

WHEREAS, the Municipality has constructed other storm drains which outfall into the lake; and

WHEREAS, said storm drain systems increase the drainage area and volume of water discharging into Campbell Lake; and

WHEREAS, the Corporation allows the continued outfall of storm water into Campbell lake; and

WHEREAS, the Municipality desires to contribute to protection of the dam commensurate with the additional storm water entering Campbell Lake.

NOW THEREFORE, for and in consideration of the mutual covenants, stipulations, and agreements herein contained, the Municipality agrees to design, and construct a dam weir structure with over flow capacity, facilities for discretionary lowering of the lake and spillway reinforcement, hereinafter "improvements," sufficient to protect the dam and spillway from the additional storm water entering Campbell Lake, at its expense, in accordance with the following terms and conditions.

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ARTICLE I  
GENERAL PROVISIONS

1.01 Application of Article

Unless this Agreement expressly provides otherwise, all provisions of this article apply to every part of this Agreement.

1.02 Relationship of Parties

Neither by entering into this Agreement, nor by doing any act hereunder, may either party be deemed an agent, employee, or partner of the other. Neither party shall represent itself to be an agent, or partner of the other.

1.03 Engineer's Relation to Municipality and the Corporation

Notwithstanding the Municipality's obligation in Section 2.02 of this Agreement to retain an engineer to design the dam modification improvements, the Corporation may hire its own engineer at no cost to the Municipality to review the design, plans and specifications developed by the Municipality's engineer to determine if the Municipality's engineer has committed errors, omissions or negligence in preparing the design, plans and specifications for the dam modification. The Corporation will be reimbursed by the Municipality for the cost of professional services obtained by the Corporation only if it is determined that substantial errors, omissions or negligence on the part of the Municipality's engineer would affect the safe operation of the dam modification improvements. Such reimbursement shall not exceed \$10,000.

1.04 Allocation of Liability

Insofar as Campbell Lake remains a private lake, the Corporation shall hold the Municipality harmless and indemnify it from claims including reasonable attorney fees resulting from the continued operation of Campbell Lake and Campbell Lake Dam,

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except that portion of the Dam identified as Exhibit A, to be maintained by the Municipality. The Municipality shall defend, indemnify, and hold harmless the Corporation from any liability including reasonable attorney fees resulting from the construction of the improvements identified in Article 3 of the Agreement and its operation and maintenance of the same.

1.05      Non-Discrimination

In performing its obligations under this Agreement, the Municipality and Corporation shall not discriminate against any person on the basis of race, creed, color, national origin, sex, marital status, or age.

1.06      Time Is Of The Essence

Unless otherwise expressly provided herein, time is of the essence of each and every term, covenant, and condition of this Agreement.

1.07      Assignments

Any assignment by either party of its interest in any part of this Agreement or any delegation of duties under this Agreement shall be void unless such party has received express written permission from the other party, and any attempt by either party to assign any part of its interest or delegate any duty under this Agreement without said express written permission shall constitute a default entitling such party to invoke any remedy available to it.

1.08      Non-Waiver

The failure of the Municipality or the Corporation at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of the Municipality or the Corporation thereafter to enforce each and every provision hereof.

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1.09      Interpretation

Each document incorporated by reference herein is an essential part of this Agreement, and any requirement, duty, or obligation stated in one document is as binding as if stated in all. All documents shall be construed to operate in a complementary manner and to provide for a complete project.

1.10      Amendment

The parties may amend this Agreement only by written agreement, which shall be attached as an appendix hereto.

1.11      Jurisdiction

Any civil action arising from this Agreement shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage.

1.12      Severability

Any provision of this Agreement that may be declared invalid or otherwise unenforceable by a court of competent jurisdiction shall be ineffective to the extent of such invalidity without invalidating the remaining provisions of the Agreement.

1.13      Integration

This instrument, and any writings incorporated by reference herein, embody the entire agreement of the parties. This Agreement shall supersede all previous communications, representations, or agreements, whether oral or written, between the parties hereto.

1.14      Definition

Unless this Agreement expressly provides otherwise, the following definitions shall apply herein.



A. "Municipality," for the purposes of administering this Agreement, means that Director of the Department of Public Works of the Municipality, or his designee.

B. "Substantial completion" means the specified portion of the project is essentially complete and is available for beneficial use and purpose in the manner intended by the contract documents.

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ARTICLE II

IMPROVEMENT CONSTRUCTION STANDARDS AND PROCEDURES

2.01 Prerequisites to Construction

The Municipality shall acquire and maintain in good standing all permits, licenses, and other entitlements necessary to its performance under this Agreement. The Municipality's obligations to perform the work are conditioned upon its ability to obtain required permits from state or other agencies and the availability of funds lawfully appropriated by the Anchorage Assembly for the construction of the improvements. The Corporation shall sign all documents necessary to effectuate this in a timely manner. All actions taken by the Municipality and the Corporation under this Agreement shall comply with all applicable statutes, ordinances, rules, and regulations. Construction of improvements shall not occur until the requirements of Section 2.04 have been met.

2.02 Engineer

A. The Municipality shall retain an engineer, registered as a professional engineer under the laws of the State of Alaska, to design the dam modification improvements to include preparing plans and specifications. The engineer shall perform the work described herein in accordance with the Municipality's recommended procedures for consulting engineers and good engineering practice for the type of work involved which shall meet all applicable codes and ordinances, Federal and State.

B. The Municipality shall inform the Corporation of the name and mailing address of the engineer he has retained to perform the duties described in subsection A of this section and shall provide the Corporation with copies of all plans and specifications as they become available.

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2.03      Construction

Construction shall be in accordance with the plans and specifications prepared by the engineer.

2.04      Liability Insurance

The Municipality shall provide proof to the Corporation that its prime contractor has acquired the insurance required under the standard construction specifications of the Municipality in effect at the time of the execution of this Agreement, in the form prescribed in those standard specifications.

2.05      Access

It is the intent of this document not to interfere with the private ownership of Campbell Lake. Access is provided for construction and maintenance of the improvements only.

2.06      Maintenance

The Municipality and the Corporation shall share responsibility for maintenance. Maintenance of those improvements inside the area identified by "to be maintained by the Municipality of Anchorage," Exhibit A, and erosion control down stream shall be the responsibility of the Municipality. The remainder of the dam shall be maintained by the Corporation.

The Municipality will be responsible for removal of sediment deposited in the lake by Municipal storm drains. Within the area defined on Exhibit B, the Municipality shall maintain the lake bottom at or below the contour shown.

The Municipality will remove the present accumulation of sediment at the outlet of the 97th Avenue Storm Drain and the storm drain at North Point Drive between Lots 4 and 5 of the North Lake Shore Subdivision before September 15, 1990. The work will be performed at a time and in a manner that does not adversely affect aviation activities on the lake.

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If the Municipality fails to remove sediment then the Corporation may perform the removal and recover all reasonable costs from the Municipality.

The Municipality shall maintain and modify the dam weir structure as required to maintain the lake elevation not lower than elevation 17.5 and not higher than elevation 21.2. The Corporation shall retain control of discretionary water fluctuations, subject to appropriate authority. The Municipality will not raise or lower the lake without the Corporation's approval.

2.07      Project Timing

Substantial completion of the construction improvements required by this Agreement shall occur on or before May 15, 1990.

2.08      Restoration

It is further understood and agreed that upon completion of the permitted use, the Municipality shall restore the premises as nearly as possible to its original condition, specifically; (i) all topsoil shall be replaced; (ii) all landscaped areas reseeded, landscaped and tended until restored to a comparable quality of landscaping; and (iii) all natural areas shall be topsoiled, minimum of 2 inches, reseeded with wild-flower grass mixture, and tended for a minimum of 90 days from seeding.

2.09      Toxic Wastes

Municipality agrees and covenants not to use, store or abandon any toxic wastes, hazardous chemicals, or any other regulated substances which in any way may give rise to liability for contaminated soils and/or waters without the prior written consent of Corporation (which Corporation shall not unreasonably withhold as long as Municipality demonstrates that such material shall be used, kept and stored in a manner that complies with all laws regulating such materials). Should the Municipality breach this clause and contamination result, the hold harmless provi-

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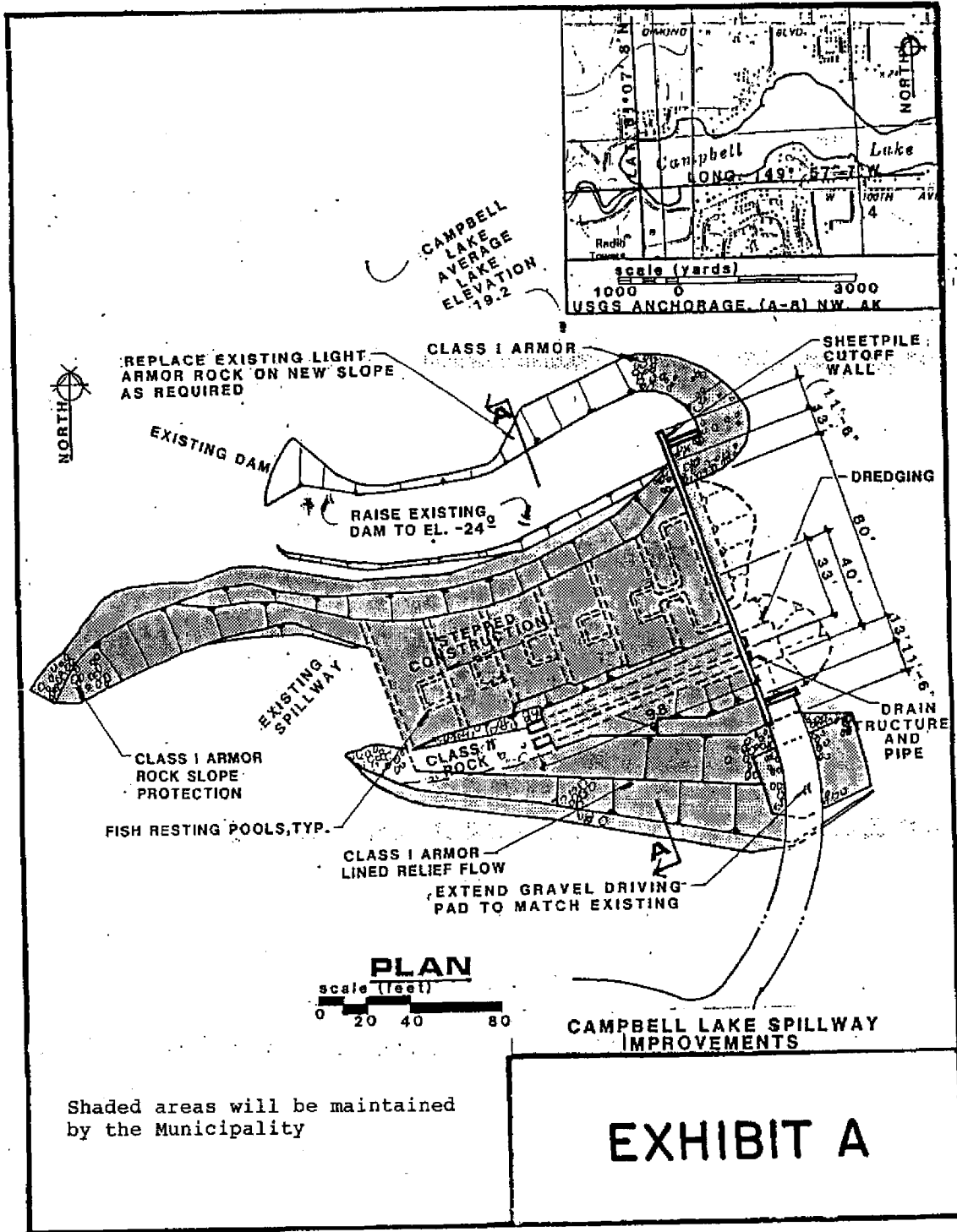
sions hereof shall apply and the Corporation may independently demand and require Municipality to promptly cure and rectify any soil and/or water contamination or other consequences of its actions. Notwithstanding anything in the preceding to the contrary, this paragraph shall not preclude Municipality from the use of oil.

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Shaded areas will be maintained by the Municipality



