



Policy Title: **Enhanced Maintenance Agreement and Infrastructure Agreements**

Policy Number: **CSPS007**

Report Number: **CPS2004-61, CPS2009-05**

Approved by: **City Council**

Effective Date: **13th September 2004, amended 2009 February 10**

Business Unit: **Parks**

BACKGROUND

- In 2002 the City recognized a need to review and develop consistent corporate policies and procedures and template for the use of Enhanced Maintenance Agreement and Infrastructure Agreements and Optional Amenities Agreements. This was as a result of a proliferation of requests from the public and development industry.
- As a result, CPS 2003-09 was created as a template for all future agreements.
- CPS 2004-61 was created as a result of further revisions to CPS 2003-09 from feedback given in Stakeholder Workshops held with Residents and Community Associations.

PURPOSE

- This policy is a tool used for the development industry (landscape architects, engineers, consultants, Resident and Community Associations) for the management and administration of enhanced park features - Optional Amenities. More specifically addresses the issues of lifecycle, on-going maintenance, financial concerns and legal implications.
- This policy also addresses the need for consistent administration of Maintenance Agreements and Special Tax Levies and operates as a manual for both Residents and Community Associations effected.

POLICY

[See attached Policy document](#)

PROCEDURE

[See attached Policy document](#)



AMENDMENTS

CPS 2003-09

CPS 2002-50

CPS 2009-05 Parks Special Tax Levy Bylaw-Amendment pg 5 and 7

**PARKS ENHANCED LANDSCAPE MAINTENANCE AND INFRASTRUCTURE AGREEMENTS
(CPS2004-61)**

	AGREEMENT TYPE			
ITEM	OPTIONAL AMENITY AGREEMENTS	LANDSCAPE MAINTENANCE AGREEMENTS	SPECIAL TAX LEVIES	ENDOWMENT FUNDS
Purpose	A legal agreement between The City and an operator (i.e. developer, residents or community association) that facilitates a higher level of non-standard infrastructure development (i.e.; ornamental fencing, water features, gazebos, sculptures, entrance features/signs, decorative fixtures, etc.) in a public park or road right-of-way. Note: If the City requests the construction of Optional Amenities, and they are identified in the Community Plan, the City will take the responsibility for their maintenance	A legal contractual agreement between The City and an operator, (i.e. residents or community association) that facilitates enhanced landscape maintenance on a public park or road right-of-way within a single identifiable community (not part of a community), and may also facilitate a higher level of non-standard infrastructure development (e.g. irrigation on boulevards).	<ul style="list-style-type: none"> • A funding mechanism authorized under Sections 382 and 387 of the Municipal Government Act, by way of a tax applied to property, for enhanced maintenance; i.e. mowing and trimming; tree well & shrub bed maintenance; perennial & annual flowers; and litter control. • Only duly organized resident or community associations may petition for the enhance maintenance. 	A fund to be provided by a developer, residents association or community association for the perpetual maintenance and lifecycle of a non-standard infrastructure development within a public park or road right-of-way when there is no intent to enter into either an Optional Amenities Agreement or a Landscape Maintenance Agreement with either the developer, residents association or community association.
Funding	<ul style="list-style-type: none"> • Amenity removal and landscape rehabilitation fund provided by the operator and held by the City. • Note: If an agreement is assigned (see assignment below) from 	Associations operating with Landscape Maintenance Agreements are typically funded by three sources of revenue. <ol style="list-style-type: none"> 1) The operating Grant <ul style="list-style-type: none"> • The City agrees to pay the operator an operating grant equal to the Council 	<ul style="list-style-type: none"> • Funding from a special tax levy to cover the enhanced maintenance. • Funding will be spent for the purpose intended and as outlined in the petition. • The City will pay the operator 4 installments of 	In establishing an endowment fund, it is the intention of the City to ensure there is enough monies available to look after the amenity for 20 years. The formula the City will use

CPS2009-05
ATTACHMENT

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	<p>a developer to a residents or community association the fund provided by the developer will stay in the City account and the residents or community association will not be required to provide a fund.</p> <ul style="list-style-type: none"> The amount of the fund shall equal the average of 3 quotes as provided by the operator to remove the amenity and rehabilitate the landscape. Note: it is assumed that yearly interest equals inflation. The City shall have the right to reject any or all of the quotes. 	<p>approved budget for the lands less:</p> <ul style="list-style-type: none"> 8% or the cost to administer the agreement, whichever is less; the cost of utilities, used for maintenance; the cost of tree & shrub pruning and new planting; the value of adopt-a-park maintenance; the cost of pesticide applications; the cost of maintenance on pathways, irrigation systems and playgrounds. The City will pay the operator 4 installments of the operating grant on June 1st, August 1st, October 1st and November 1st. The operator will repay the unspent portion of the operating grant to the City if it is wound up, dissolved or substantially changed or 	<p>the Tax Levy funds on June 1st, August 1st, October 1st and November 1st.</p> <ul style="list-style-type: none"> Should a surplus exist in funding at year-end, the entire amount of the surplus shall be returned to the City no later than January 15th of the following year. The municipality must advertise the use to which the surplus funds are to be put. The surplus may be used to reduce the subsequent year's tax levy, subject to the approval of the taxpayers taking part in the levy area. If the surplus is used to reduce the following year's tax levy, the levy may be returned to its original level in subsequent years. A deficit is not permitted. Increases to a tax levy are limited to the rate of inflation as defined by the 	<p>to determine the amount of the Endowment Fund is as per the following:</p> <p>Total annual recurring maintenance cost X the 20th year recurring present worth factor</p> <p style="text-align: center;">Plus</p> <p>The sum of individual nonrecurring costs X their individual nonrecurring present worth factors.</p> <p>Note:</p> <ul style="list-style-type: none"> The above formula is the industry standard for calculating present worth costs. <p>The present worth factors currently used are assuming an average 4% inflation rate over a 20 year period.</p>

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		if the operator realizes an operating surplus after accounting for all expenditures. 2) Special Tax Levy (see column three) 3) Private funds, collected and managed by the Operators, usually raised through a caveat or encumbrance registered to a property title.	City for budget purposes, or the percentage increase to the tax rate.	
Release of Funds	Those funds paid to The City shall be kept in a separate account and used only for the repair, maintenance or removal of the Amenities when this Agreement ends or is earlier terminated.	Prior to release of funds the Operator shall submit a request for payment to the Parks Operations Area Manager complete with the following information: <ul style="list-style-type: none"> • Copies of current contractor invoices. • Copies of contractor invoices for which funding has been released, but had not been forwarded to the City. • Maintenance report, complete with copies of contractor log books for work done during the invoice period. • The Operator shall include 	Prior to release of funds the Operator shall submit a request for payment to the Parks Operations Area Manager complete with the following information: <ul style="list-style-type: none"> • Copies of current contractor invoices. • Copies of contractor invoices for which funding has been released, but had not been forwarded to the City. • Maintenance report, complete with copies of contractor log books for work done during the invoice period. 	Those funds paid to The City shall be kept in a separate account and used only for the repair or maintenance of the Amenities

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		with the Nov. 1 st request for a payment a budget variance report. This report shall identify any changes or discrepancies in the previously submitted requests.	<ul style="list-style-type: none"> The Operator shall include with the Nov. 1st request for payment a budget variance report. This report shall identify any changes or discrepancies in the previously submitted requests. 	
Financial Reporting	In accordance with the City's established financial reporting policies and procedures	The operator must submit its annual audited financial statements to the Director of City of Calgary Parks within 10 days of its annual general meeting.	The operator must submit its annual audited financial statements to the Director of City of Calgary Parks within 10 days of its annual general meeting.	In accordance with the City's established financial reporting policies and procedures
Recovery of Administrative Costs	<ul style="list-style-type: none"> \$750 provided by the operator and put into general revenue to cover the City's cost for contract development, execution & administration. To be reviewed annually 	<ul style="list-style-type: none"> 8% of the Operating Grant as per "Funding above" To be reviewed annually 	The City shall track all costs related to the implementation and administration of Special Tax Levies. The City shall submit a summary report to the operator no later than Jan. 15 th of the subsequent year. All costs incurred by the City shall be deducted from the Special Tax Levy for that year.	N/A
Notification of Intent	The intent to construct optional amenities must be identified at the tentative plan stage via letter of intent or other suitable	The intent to enter into a Landscape Maintenance Agreement must be identified at the tentative plan stage via letter of intent or other suitable	<ul style="list-style-type: none"> The community may apply for a special tax levy when it reaches 2/3 build out. They will need 2/3 of the 	The intent to construct optional amenities must be identified at the tentative plan stage via letter of intent or other suitable mechanism.

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	mechanism.	mechanism.	property owners to be in favour of the initiative.	
Approval Authority	<ul style="list-style-type: none"> • Parks for all non-standard infrastructure within a public park • Roads for all non-standard infrastructure within road rights-of-way 	<ul style="list-style-type: none"> • Parks for all landscape enhanced maintenance and non-standard infrastructure within a park • Roads for all enhanced landscape maintenance and non-standard infrastructure within road rights-of-way. 	<ul style="list-style-type: none"> • Parks for all enhanced landscape maintenance within a public park • Roads for all enhanced landscape maintenance within road rights-of-way • City Council for annual Special Tax Bylaws. 	<ul style="list-style-type: none"> • Parks for all non-standard infrastructure within a public park • Roads for all non-standard infrastructure within road rights-of-way
Ownership	Only the non-standard infrastructure shall be owned by the operator. If the agreement is terminated ownership shall be transferred to the City	Only the non-standard infrastructure, including irrigation on road rights-of-way, shall be owned by the operator. If the agreement is terminated ownership shall be transferred to the City	The City of Calgary	The City of Calgary
Term	5 year	25 Year	<ul style="list-style-type: none"> • THE SOCIETY OF ENTITY RESPONSIBLE FOR ADMINISTRATION OF THE FUND SHALL CONDUCT A VOTE AT ITS ANNUAL GENERAL MEETING TO MAINTAIN THE CONTINUATION OF THE EXISTING AGREEMENT. • A VOTE OF 50% PLUS 1 IS DEEMED 	In perpetuity

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			<p>SUFFICIENT TO CONTINUE THE EXISTING AGREEMENT.</p> <ul style="list-style-type: none"> • IF THE VOTE IS NOT SUFFICIENT TO CONTINUE THE EXISTING AGREEMENT, THE CITY OF CALGARY WILL FACILITATE THE PETITIONING PROCESS TO DISCONTINUE THE ENHANCED LANDSCAPE MAINTENANCE AGREEMENT BASED ON 50% PLUS ONE OF THE HOMEOWNERS SUPPORTING DISCONTINUANCE OF THE EXISTING AGREEMENT. • If the property owners vote to terminate the levy, the levy and the landscape maintenance agreement shall be terminated in the following calendar 	

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			<p>year.</p> <ul style="list-style-type: none"> • THE SOCIETY OF ENTITY RESPONSIBLE FOR ADMINISTRATION OF FUNDS SHALL PROVIDE SUFFICIENT NOTIFICATION THROUGH APPROPRIATE MEANS TO ENSURE THE BROADEST NUMBER OF COMMUNITY RESIDENTS ARE AWARE OF THE UPCOMING VOTE AND ITS PURPOSE, TO ENSURE ALL RESIDENTS HAVE A REASONABLE OPPURTUNITY TO PARTICIPATE IN THE ANNUAL GENERAL MEETING. <p>All costs for the process noted above shall be recovered from the levy. A budget for the process will be prepared and the recovery of costs will be spread over a</p>	

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			five-year period.	
Termination	Either party may terminate the agreement upon written notice to the other.	<ul style="list-style-type: none"> • Either party may terminate the agreement upon written notice to the other. • Notice must be given: <ul style="list-style-type: none"> • No later than December 31st of any year during the term; or • Within 30 days of written notice by the City to the Operator of the amount of the yearly operating grant, whichever occurs last. • Notice will be effective April 1st thereafter. <p>The City has the right to immediately terminate the agreement by notice to the operator in event of default to the agreement by the operator.</p>	<ul style="list-style-type: none"> • Council does not approve the Tax Levy Bylaw. • Through a successful petition against the Levy. • By property owners voting to terminate the levy as described in "Term" above. • The City may terminate a Tax Levy if the operator is in default of the terms of the Landscape Maintenance Agreement • The City may terminate a Tax Levy if the Landscape Maintenance Agreement terminates and is not renewed. 	In accordance with the endowment fund agreement.
Management of the lands	The City of Calgary	<ul style="list-style-type: none"> • The operator must comply with all provisions of law. • The operator will have no policing obligations. • The operator must not use or occupy the lands: <ul style="list-style-type: none"> • For illegal purposes; • For use not permitted pursuant to the MGA; 	<ul style="list-style-type: none"> • The City of Calgary • A Community, Homeowners or Residents Association through a Landscape Maintenance Agreement. (see column two) 	The City of Calgary

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		<ul style="list-style-type: none"> • In a manner that would create a fire hazard; • In a manner that would cause cancellation of any insurance; • With any harmful, noisy or offensive act; • With anything that is or may become an annoyance, nuisance damage or disturbance. • The operator must not store or bring on to the lands any articles of a dangerous nature. <p>The operator must not permit any waste or damage to the lands.</p>		
Design & Construction	<ul style="list-style-type: none"> • The operator must submit for approval by the City detailed designs, plans, elevation drawings, specifications and cost estimates for the design & construction of non-standard infrastructure. • If a residents or community association applies to build non-standard infrastructure 	<ul style="list-style-type: none"> • Design and construction of non-standard infrastructure shall be as per current policy for Optional Amenity Agreements. • Design and construction of standard infrastructure that is considered non-standard for the classification of open space (e.g. irrigation within road rights-of-way) shall 	The use of a Special Tax Levy is limited to service enhancements only.	<ul style="list-style-type: none"> • Design and construction of non-standard infrastructure shall be as column 2, Optional Amenity Agreements. • Design and construction of standard infrastructure that is considered non-standard for the classification of open space (e.g. irrigation within road rights-of-way) shall be in accordance to

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	<p>on public lands they must meet the criteria set out in the Public Use and Social Recreation Lease Policies.</p> <ul style="list-style-type: none"> • The operator shall provide the City with as-build drawings upon completion of construction. • The operator shall obtain all relevant federal, provincial or municipal licences, permits or authorizations that are required to construct the infrastructure. • The operator will comply with all provisions of law related to the construction of the infrastructure. • The operator will construct the infrastructure free and clear of any claims. <p>The operator must comply with the provisions of the Builder's Lien Act.</p>	<p>be in accordance to the current issues of the:</p> <ul style="list-style-type: none"> • "Development Guidelines and Standard Specifications – Landscape Construction; • Standard Specifications – Streets Construction; and the • Land Use Bylaw 		<p>the current issues of the:</p> <ul style="list-style-type: none"> • "Development Guidelines and Standard Specifications – Landscape Construction". • Standard Specifications – Streets Construction; and the <p>Land Use Bylaw</p>

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Repair & Maintenance	<ul style="list-style-type: none"> • The operator agrees to repair and maintain the amenities to the satisfaction of the City. • The City can order repair & maintenance: <ul style="list-style-type: none"> • Immediately if required for public safety; • Within a minimum of 10 days or within a reasonable time for all other situations. <p>If the operator does not complete the repairs & maintenance the City can do the work at the operators sole cost.</p>	<ul style="list-style-type: none"> • Repair and maintenance of optional amenities shall be as per current policy for an Optional Amenities Agreement. • If an irrigation system is constructed within a road right-of-way and future excavation disturbs the system, repair of the system will be the responsibility of the operator. Note: Parks shall be notified prior to any excavation to assist with the location of the irrigation system. Conversely, the operator shall be notified by Parks prior to any excavation to ensure they are aware of a disruption to the system. • The operator will maintain the lands to a good and workmanlike standard and at least to the City standards for the classification of open space. • The operator must keep a log, in a form satisfactory to the City, of all 	<ul style="list-style-type: none"> • The resident or community association is responsible for the enhanced repair & maintenance as outlined in the petition and consistent with the terms and conditions of the Landscape Maintenance Agreement. • All tender/procurement practices involving the use of special tax levies must conform with the most current procurement and purchasing requirements as outlined by the City of Calgary, Supply Management Division. 	The City of Calgary using endowment funds.

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		<p>maintenance done.</p> <ul style="list-style-type: none"> • The City can order repair & maintenance of the lands: <ul style="list-style-type: none"> • Immediately if required for public safety; • Within a minimum of 10 days or within a reasonable time for all other situations. • If the operator does not complete the repairs & maintenance of the lands the City can do the work at the operators sole cost. <p>Repairs to the lands shall be in accordance to the current issue of the City "Development Guidelines and Standard Specifications – Landscape Construction".</p>		
Assignment	<ul style="list-style-type: none"> • If the agreement is with the developer they shall make reasonable efforts to assign the agreement over to the resident or community association prior to 2/3 build-out. • If the developer is unable to assign the 	The operator may assign the agreement over to a non-profit organization subject to consent by the City.	Is not permitted.	N/A

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	<p>agreement over upon 2/3 build-out the agreement shall be terminated and the amenity shall be removed and the landscape rehabilitated by the City.</p> <p>If the agreement is with the resident or community association they may assign the agreement over to a non-profit organization subject to consent by the City.</p>			
Indemnification	The operator shall indemnify the City against any loss or liability.	The City indemnifies the operator and the operator indemnifies the City against any loss or liability.	The City indemnifies the operator and the operator indemnifies the City against any loss or liability.	N/A
Insurance	The operator will maintain insurance policies that will adequately cover their performance of the agreement.	The operator must maintain insurance in a form and substance and with an insurer satisfactory to the City.	The operator must maintain insurance in a form and substance and with an insurer satisfactory to the City.	N/A
Future Opportunities	<ul style="list-style-type: none"> Upon approval by the City the operator may construct other amenities on the lands if: <ul style="list-style-type: none"> They are included 	If a resident or community association would like to contract Calgary Parks to provide enhanced landscape maintenance on public lands they may enter into a	If a resident or community association would like to contract Calgary Parks to provide enhanced landscape maintenance on public lands they may enter into a	N/A

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	<p>as a schedule to the existing agreement;</p> <ul style="list-style-type: none"> • A further monetary contribution is added to the amenity removal and landscape rehabilitation fund. <p>Note: If there are no enhanced facilities within an existing community, a resident or community association must meet the criteria set out in the Public Use and Social Recreation Lease Policies prior to constructing enhanced facilities on public lands. Furthermore, they must enter into an optional amenity agreement for their repair & maintenance.</p>	<p>landscape maintenance agreement for their enhanced maintenance.</p>	<p>landscape maintenance agreement for their enhanced maintenance.</p>	