



CITY OF EDMONTON

BYLAW 18011

**BYLAW TO DESIGNATE THE BARTO RESIDENCE AS
A MUNICIPAL HISTORIC RESOURCE**

(CONSOLIDATED ON JUNE 4, 2019)

CITY OF EDMONTON
BYLAW 18011
BYLAW TO DESIGNATE THE BARTO RESIDENCE AS A
MUNICIPAL HISTORIC RESOURCE

WHEREAS the *Historical Resources Act*, R.S.A. 2000, c. H-9, as amended, permits the municipal council of a municipality to designate any Historic Resource within the municipality whose preservation it considers to be in the public interest together with any specified land in or on which it is located, as a Municipal Historic Resource; and

WHEREAS it is deemed in the public interest to designate the building located at 11425 – 95A Street NW, known as the Barto Residence and the land on which the building is located as a Municipal Historic Resource; and

NOW THEREFORE the Municipal Council of the City of Edmonton, having complied with the *Historical Resources Act*, and duly assembled, hereby enacts as follows:

1. BUILDING AND LANDS DESIGNATED AS A MUNICIPAL HISTORIC RESOURCE

The building known as the Barto Residence (specifically described in Schedule “A”) (the “Building”) and the land on which the building is located being legally described as:

Plan RN43 (XLIII)

Block 23

Lot 8

(the “Land”) are hereby designated as a Municipal Historic Resource.

2. PERMITTED REPAIRS AND REHABILITATION

Subject to Section 3 hereof, the Building and Land shall not be removed, destroyed, disturbed, altered, rehabilitated, repaired or otherwise permanently affected, other than in

accordance with the terms of Schedule “A” attached, and the General Guidelines for Rehabilitation and Guidelines for Development on the Regulated Land attached as Schedule “B”, to this Bylaw.

3. ADMINISTRATOR

The City Manager is hereby appointed to administer the implementation of any matters arising from the matters set out in this Bylaw, and the Schedules attached hereto which form part of this Bylaw, including, without limitation, the execution of a Rehabilitation Incentive and Maintenance Agreement as set out in Schedule "C" and the execution of a Rehabilitation Incentive and Maintenance Agreement Amending Agreement as set out in Schedule "D".

(S.2, Bylaw 18805, June 4, 2019)

4. EFFECTIVE DATE

This Bylaw shall come into effect on the date on which this Bylaw is passed by Council.

(NOTE: Consolidation made under Section 69 of the *Municipal Government Act*, R.S.A. 2000, c.M-26 and Bylaw 16620 Section 16, and printed under the City Manager’s authority)

Bylaw 18011, passed by Council June 13, 2017

Amendments:

Bylaw 18805, June 4, 2019

SCHEDULE "A"

THE IDENTIFICATION OF REGULATED PORTIONS OF THE BARTO RESIDENCE

The purpose of this Schedule is to identify by written description and photographs, those portions of the Building known as the Barto Residence, which shall be regulated by the “General Guidelines for Rehabilitation” (Schedule “B”) and must be preserved (“the Regulated Portion”).

The Regulated Portion of the Building includes the north, west and south historic exterior façades only. This includes the unusual style and eclectic influences in style, form, scale, and mass of the Barto Residence as described below. These features of the Building shall be rehabilitated in accordance with the “Rehabilitation Work” which is part of Schedule “C”.

Non-regulated portions of the Building, being all other portions of the Building not specifically identified as a Regulated Portion, may be rehabilitated, altered, repaired or otherwise permanently affected in any manner provided that such rehabilitation, alteration or repair does not impact on the regulated historic features of the Building. Any development or alterations considered to be non-regulated portions of the Municipal Resource, however, must meet the General Guidelines for Rehabilitation of Designated Historic Resources as identified in the *“Standards and Guidelines for the Conservation of Historic Places in Canada.”* Any development of any portion of the Land shall be undertaken in a manner that is sympathetic to the historic north, west and south façades of the Barto Residence. New development should also make reference to this resource’s Statement of Significance as identified on the Alberta Register.

The following character-defining architectural elements as expressed in the form, massing and materials of the north, west and south façades of the building must be retained:

- Wood frame construction, two-storey Foursquare
- Horizontal siding on lower and upper levels and verandah
- Medium pitch hip roof
- Original wood soffits and fascia
- Three hip gable dormers with original horizontal wood siding on west, north and south elevations
- Original fenestration pattern, apart from the large window on the lower level of the façade
- Wood lintels and plain sills on most windows
- Open verandah with low-pitch hip roof, horizontal wood siding and closed balustrade
- Plain pillars and dentillation along the eaves of the verandah
- Moulded wood lintel over main entrance
- Brick chimney

PHOTOGRAPHIC DETAILS

Barto Residence, 2016 – West and South Elevations



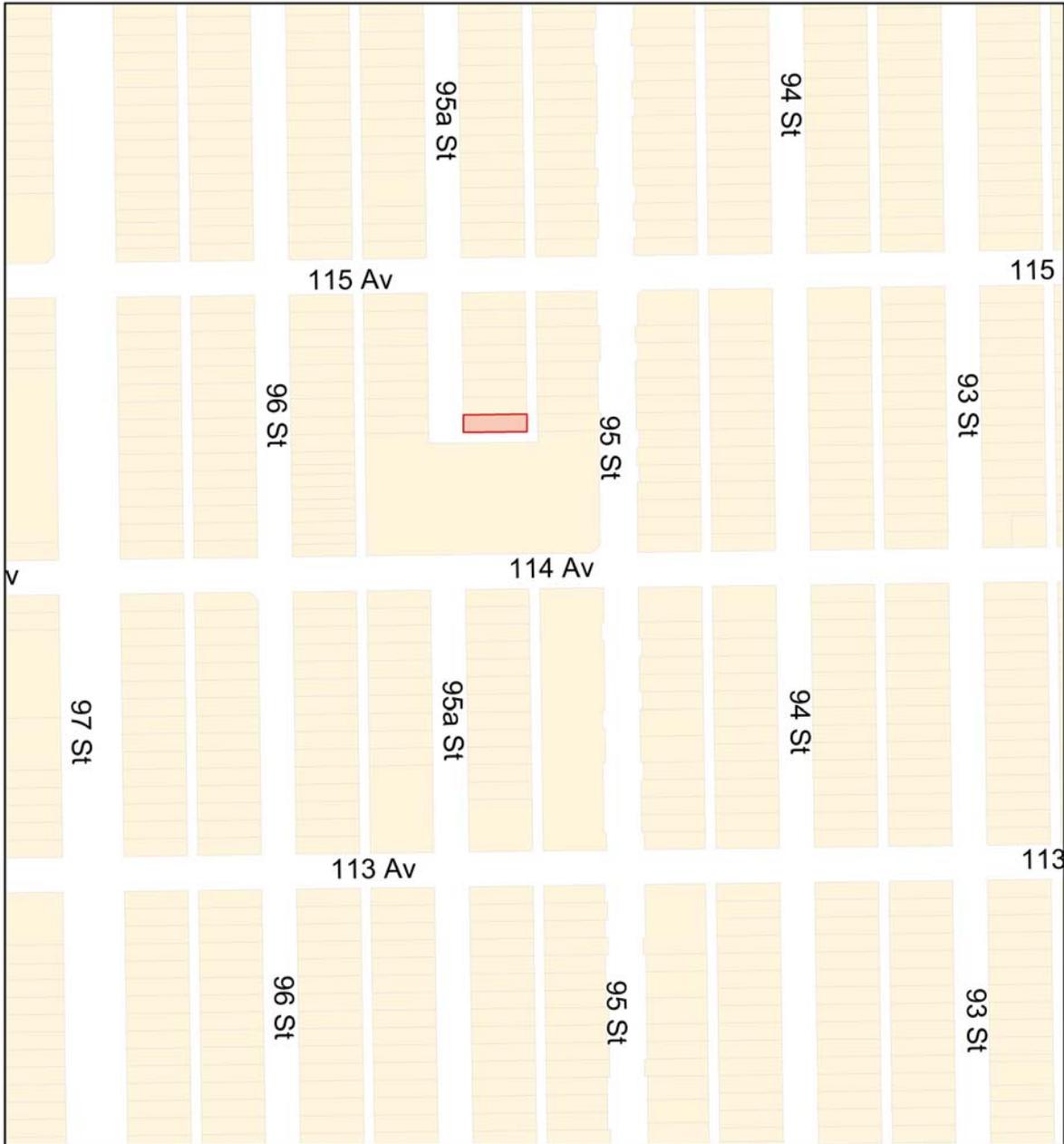
Barto Residence, 2016 – West and North Elevations



Barto Residence, 2016 – South Elevation



LOCATION PLAN



The Barto Residence
11425 - 95A Street NW

SCHEDULE "B"

GENERAL GUIDELINES FOR REHABILITATION

The General Guidelines for Rehabilitation are intended to assist in applying accepted principles and practices to the conservation of Historic Resources. The guidelines are set out in the “*Standards and Guidelines for the Conservation of Historic Places in Canada.*” In a manner consistent with accepted practice, City Heritage Policy C450B requires that the standards be used in conjunction with the guidelines to ensure that the basis for a clear and consistent interpretation of the guidelines is provided to assist owners of Historic Resources throughout any rehabilitation process. The following guidelines and the referenced standards shall apply to the Barto Residence and the land on which the building is located (the “Municipal Historic Resource”) and any rehabilitation or maintenance work undertaken with respect to the Municipal Historic Resource at any time.

1. Compatible Uses:

Wherever possible, the uses proposed for a Municipal Historic Resource shall be compatible with the existing building such that only minimal changes are required to the building. The use of a Municipal Historic Resource for its original purpose is desirable.

2. Original Character:

The original distinctive qualities and character of the building as designated by the Municipal Historic Resource Bylaw should be preserved. The removal or alteration of any historical materials or features shall be avoided whenever possible.

3. The Historic Period:

The Municipal Historic Resource should be recognized as a product of its own time. Alterations which are not based on historical fact or which recreate an earlier or a later design idiom shall be discouraged.

4. Witness to Change:

Changes to the Municipal Historic Resource may have occurred over time. These alterations are evidence of the history and development of the building. Because this evolution may have acquired a significance in its own right, alterations to the original building should be recognized and respected where indicated.

5. Style and Craftsmanship:

Distinctive stylistic features and examples of skilled craftsmanship which have been designated by the Municipal Historic Resource Bylaw shall be preserved and treated sensitively.

6. Repair and Replacement:

Deteriorated architectural features shall be repaired rather than replaced whenever possible. Where replacement is necessary, the new material should match the original as to composition, color, texture, design, etc. The repair or replacement of architectural features shall be based on a sound knowledge of the original characteristics of the feature. Such knowledge shall be based on historical or pictorial evidence and not upon conjecture.

7. Cleaning:

In all cases, surface cleaning shall be undertaken with the gentlest means available. Sandblasting in particular, but also other cleaning methods, damage historic buildings and should not be undertaken without thorough testing prior to use on a building. Sandblasting is not recommended on brick, stone or wood. In all instances, it should be ascertained that a building exterior is really in need of cleaning prior to undertaking the work.

8. Reversibility of Improvements:

When the introduction of new elements or materials is necessary to stabilize or preserve a municipally designated historic resource, alteration shall be undertaken such that the new materials, should they fail, may be removed at a later date without damage to the original fabric of the Municipal Historic Resource. Where this is not possible (i.e. use of epoxy) only those methods and materials which have been thoroughly tested and found satisfactory in situ, shall be used.

9. Recording:

Prior to undertaking any alterations, particularly in cases where alterations may threaten the building fabric (underpinning, moving structures), the applicant shall compile a complete record of the architectural features of the Municipal Historic Resource. Measured drawings and photographs of details may prove invaluable if major features are damaged or lost during the subsequent repair work.

10. Original Construction Details:

In some historic structures, poor construction details or inappropriate materials resulted in rapid deterioration of certain building elements. In these instances, accurate reconstruction of the original detail will inevitably result in the failure of the element. Therefore, reconstruction should be undertaken in such a fashion as to duplicate the original appearance as closely as possible while using details based on sound construction practice.

11. Codes:

At no time should the life and safety of occupants of a Municipal Historic Resource be deemed of lesser importance than the preservation of the original fabric of the Municipal Historic Resource. The required life and safety standards are those required by the current Alberta Building Code. However, notwithstanding these Code requirements, where the essential character of the structure is threatened by changes for Code reasons, every effort shall be made to achieve an equivalent safety standard by alternate means so as to minimize the impact on the historic fabric.

12. Improvements:

Prior to undertaking any improvements, a schedule of alterations should be prepared. This schedule should include phasing of alterations where necessary due to program or budget restrictions. The type and timing of both short and long term maintenance work shall also be included.

13. Signs:

As a general rule signs should be limited to signs which were originally present on the building. In instances where new uses or interpretive functions dictate the use of additional signs, these new elements should be integrated into the general design of the project. The size, typeface, graphics, and materials should be chosen to suit the period of the Municipal Historic Resource wherever possible. Avoid installing new signs such that the repair, replacement or removal of the signs damages the original fabric of the structure.

14. Enforcement:

The owner and the City shall enter into an agreement to provide that the designated structure will be maintained in such a manner as to prevent any deterioration

15. Alterations and Additions to Historic Resources:

Contemporary design for alterations and additions to existing Historic Resources shall not be discouraged when such alterations and additions do not diminish the overall historic character of the resource and such design is compatible with the size, scale, colour, material and character of the resource, neighbourhood or environment.

GUIDELINES FOR DEVELOPMENT ON THE REGULATED LANDS

1. General Purpose:

To establish guidelines on future development on the lands on which the Barto Residence is located to protect the heritage character of the Barto Residence and the land on which the building is located (the “Municipal Historic Resource”).

2. Area of Application:

The area of application is the portion of land located at 11425 – 95A Street NW and legally described as:

Plan RN43 (XLIII)

Block 23

Lot 8

as shown in Schedule “A” of this Bylaw (the “Land”).

3. Development Criteria:

The Development Officer and the Heritage Planner shall have regard for the following guidelines when reviewing a development permit application for any additions or alterations to the Barto Residence, or any other proposed development on the Land.

4. Historic Integrity:

4.1. Any redevelopment of the Municipal Historic Resource must respect the historic character of the regulated portions of the Municipal Historic Resource. As well, any future development on the Land, including any ancillary structures, must conform to “General Guidelines for Rehabilitation” and the “*Standards and Guidelines for the Conservation of Historic Places in Canada.*”

4.2. There shall be no building development in the front yard of the Barto Residence.

4.3. Additions or additional structures must be sympathetic in either matching material or style, or both, in order that the Barto Residence continues to be read as one unit.

SCHEDULE “C”

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Owner, the parties agree as follows:

1. CONDITION PRECEDENT:

- 1.1. This Agreement is conditional upon Council passing a Bylaw to designate the Land and the Building a Municipal Historic Resource by June 13, 2017, or such later date as the parties may agree to in writing. If the Designating Bylaw is not passed by June 13, 2017, and the parties have not agreed to extend the time for satisfaction of the condition precedent, this Agreement shall be of no force and effect.

2. DEFINITIONS:

In this Agreement:

- 2.1. "Act" means the *Historical Resources Act*, R.S.A. 2000, c. H-9.
- 2.2. "Certification" means the written confirmation provided by the Owner to the City in a form satisfactory to the City certifying that a Phase or Phases of the Rehabilitation Work has been completed, or a Deficiency List has been remedied, which shall include the following:
- 2.2.1. Receipts for all materials, supplies, labour and services and any other relevant documentation or other documents satisfactory to the City;
- 2.2.2. Receipts or other documents satisfactory to the City indicating that all suppliers and contractors involved in performing that Phase of the Rehabilitation Work or remedy of the Deficiency List have been paid in full for their goods or services; and
- 2.2.3. Evidence that the Owner received competitive bids or estimates before engaging any contractor or supplier.
- 2.3. "Council" means the municipal council of the City of Edmonton.
- 2.4. "Deficiency List" means a description of the particulars given by the City to the Owner that specifies how the Rehabilitation Work or the Certification is inadequate or deficient.
- 2.5. "Designating Bylaw" means a Bylaw passed by Council under the authority of Section 26 of the Act relating to the Land and Building.
- 2.6. "Maximum Incentive" means the amount set forth within Section 6.1 of this Agreement.

- 2.7. “Owner” includes the current Owner and all future registered owners of the Land at the North Alberta Land Registration District.
- 2.8. “Rehabilitation Work” means the work set out in Section 4.1 of this Agreement to be completed by the Owner.

3. OWNER’S WAIVER OF RIGHTS:

- 3.1. The Owner and successors hereby expressly agrees to waive all rights to claim additional or alternative compensation beyond the Maximum Incentive of this Agreement for any cause, whether arising in common law, equity or by statute, because of the City’s designation of the Land and Building as a Municipal Historic Resource or the City’s issuance of the Notice of Intention to Designate.
- 3.2. The Owner waives any rights the Owner may have to dispute the sufficiency of the Notice of Intention to Designate and hereby releases the City, its agents and employees from any deficiencies of the Notice of Intention to Designate or the issuance thereof.

4. REHABILITATION WORK:

- 4.1. Upon the passage of the Designating Bylaw, the Owner shall commence the Rehabilitation Work as set out in the table below:

Phase	Description of City-Funded Work	Estimated Cost	Amount Allocated
1	Front veranda foundation: Removal of concrete walkway and rail ties; installation of new concrete pilings under deck; jack deck to plumb and level; carpentry and material	\$12,171.60	\$6,085.80
2	Roof system and general carpentry: Relocation of main plumbing vent stack, and restoration of woodwork on veranda (includes consultation, labour, and materials)	\$38,535	\$19,267.50
3	Eavestrough and downpipe replacement	\$4,095	2,047.50
4	Painting: Exterior painting of north, west, and south elevations	\$7,728.50	\$3,864.25
5	Window replacement: Replacement of windows on north, west, and south elevations	\$30,050.46	\$15,025.23
6	Door replacement: Replacement of front entrance door	\$4,105.50	\$2,052.75

TOTAL	\$96,686.06	\$48,343.03
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- 4.2. The Owner shall complete the Rehabilitation Work by December 31, 2020.
- 4.3. In undertaking the Rehabilitation Work the Owner shall follow the “General Guidelines for Rehabilitation” in the Designating Bylaw and the “*Standards and Guidelines for the Conservation of Historic Places in Canada.*”

5. PAYMENT OF REHABILITATION INCENTIVE:

- 5.1. The City and the Owner agree that the sums described in the table contained in Section 4.1. of this Agreement in the column “Amount Allocated” are estimated amounts of the Maximum Incentive allocated to each phase of the Rehabilitation Work (a “Phase”), to be paid to the Owner by the City pursuant to the provisions of Article 6 of this Agreement.
- 5.2. Upon completing a Phase or Phases, or remedying a Deficiency List, the Owner shall provide the City with a Certification.
- 5.3. Within fourteen (14) days of receiving a Certification, the City may inspect the Building and either:
 - 5.3.1. Issue a Notice of Completion, stating that:
 - 5.3.1.1. The Phase(s) of the Rehabilitation Work has been performed to the satisfaction of the City and that a satisfactory Certification has been received; or
 - 5.3.1.2. The Deficiency List has been remedied to the satisfaction of the City and that a satisfactory Certification has been received; or
 - 5.3.2. Give the Owner a Deficiency List.
- 5.4. If the City issues a Deficiency List, the Owner shall forthwith commence remediation of the deficiencies described in the Deficiency List.
- 5.5. In calculating the cost of performing the Rehabilitation Work, the Owner and the City shall only include the cost of labour and building materials specifically associated with the Rehabilitation Work. The Owner and the City shall not include other costs, including but not limited to, for example, the interruption of use of the Building or the Land or the cost of repairing damage to the Building while the Rehabilitation Work was underway.

6. PAYMENT:

- 6.1. The City shall not be liable to pay the Owner more than the sum of \$48,343.03 described in the table contained in Section 4.1 of this Agreement, as the total compensation payable by the City pursuant to this Agreement and the Designating Bylaw (the “Maximum Incentive”), and only upon completion of all Rehabilitation Work in accordance with the provisions of this Agreement, which sum shall be payable in yearly instalments as described below.
- 6.2. Notwithstanding anything else herein contained, the City shall not be obligated to pay any portion of the Maximum Incentive until the City is satisfied, in its sole discretion, as to the registration of the Designating Bylaw and this Agreement against the title to the Land.
- 6.3. The City will holdback up to 10% of the grant monies allocated until all the project work is completed or the General Manager of Sustainable Development is satisfied that the work completed is satisfactory for full or partial payment.

Payment in the First Year

- 6.4. On or before December 31, 2017, the City shall pay the owner the lesser of:
 - 6.4.1. A maximum payment of \$48,343.03; or
 - 6.4.2. The sums set out in the column “Amount Allocated” in the table contained in Section 4.1 of this Agreement that are attributable to the Rehabilitation Work for which the City has issued Notices of Completion in 2017.
- If by December 31, 2017, the Owner has not completed enough Rehabilitation Work (verified by Notices of Completion) to qualify for the full Maximum Incentive, the difference shall be applied to payments in 2018, 2019 or 2020.
- If by December 31, 2020, or date of the Designation Bylaw plus five years, whichever is earlier, the Owner has not completed enough Rehabilitation Work (verified by Notices of Completion) to qualify for the Maximum Incentive, the City shall not be obligated to pay the difference to the Owner in that year or in any future years. Notwithstanding the foregoing, the City may agree with the Owner in writing to carry forward some or all of the unpaid Maximum Incentive. The Owner expressly agrees, however, that payment of any or all of the Maximum Incentive is conditional upon completion of the Rehabilitation Work strictly in accordance with this Agreement.
- 6.5. The City may, in its absolute discretion, provide for partial payment of any amount up to the Maximum Incentive for any Phase(s) notwithstanding that a Notice of Completion for the Phase(s) has not yet been issued.

7. MAINTENANCE:

- 7.1. In January of the fifth (5th) year after the issuance of the Notice of Completion for the final Phase(s) of the Rehabilitation Work, and every five (5) years after that, the Owner shall allow the City's Heritage Planner or designate (the "Inspector") to conduct an inspection of all the regulated portions of the Building.
- 7.2. Within sixty (60) days of the inspection, the Inspector shall prepare a written report setting out recommendations for remedial or maintenance work on the Building, including a proposed schedule for the work and suggestions as to methods and materials to be used.
- 7.3. The Owner and the City shall meet within fourteen (14) days of the receipt of the Inspector's report and establish the remedial work that shall be carried out, the timing for the completion of such remedial work and the manner in which such remedial work shall be undertaken (the "Remedial Work Plan").
- 7.4. The Owner shall promptly carry out the Remedial Work Plan and notify the City on completion.
- 7.5. On receipt of notice that the Remedial Work Plan has been completed, the City may inspect and identify any deficiencies in writing to the Owner. The Owner shall correct the deficiencies and provide the City notice that such corrective action has been carried out, and the City may then re-inspect.
- 7.6. Notwithstanding any other provision of this Agreement, if at any time the Owner or the City become aware of any disrepair that may endanger the Building, the Owner and the City shall meet and the Owner shall prepare and submit to the City a plan for repairs to the satisfaction of the City. The Owner shall promptly carry out the required repairs and notify the City on completion within a time frame determined by the City. Nothing herein shall be deemed or construed, however, to limit the City's ability to rely on or enforce laws or bylaws relating to real property which is unsafe, dangerous or unsightly.
- 7.7. In addition to inspections permitted pursuant to the Remedial Work Plan, the City may on reasonable notice to the Owner and no more than four (4) times a year, inspect the Building at the City's own expense.
- 7.8. The Owner shall be solely responsible for ensuring that the Building and Land and any improvements thereto comply with all applicable federal, provincial and municipal laws, regulations, bylaws, codes and guidelines. The Owner acknowledges and agrees that nothing in this Agreement shall be deemed or construed as an obligation on or duty of the City to ensure compliance with this section or advise the Owner of deficiencies in the Owner's compliance with this section.

- 7.9. **If the Owner fails to perform any obligation under this Article 7 or made pursuant to this Article 7, the City may give notice of the breach to the Owner and without any further notice in the case of a breach pursuant to Section 7.6 of the Agreement, or at the expiration of twenty-one (21) days after service of the notice in the case of any other breach, the City may without further notice, take all steps as the City may in its absolute and uncontrolled discretion deem necessary to remedy the Owner's breach.** Any monies expended by the City in remedying the said breach, together with a surcharge of fifteen percent (15%), shall be paid by the Owner to the City, and until such payment shall, together with interest thereon at the rate of one percent (1%) per annum above the prime rate, be a debt owing by the Owner to the City. This amount shall be recoverable by the City from the Owner within thirty (30) days of the Owner receiving a written demand and summary of costs from the City, failing which such amount payable shall be a charge on the Land and the City is at liberty to register such charge on title to the Land. The rights of the City under this clause shall be in addition to and not substitution of any other rights of the City against the Owner whether by way of damages for breach of covenant or otherwise.
- 7.10. The failure of the City at any time to require performance by the Owner of any of the Owner's covenants shall in no way affect the City's right to enforce such covenant, nor shall the waiver by the City of the performance of any covenant be taken or be held to be a waiver of the performance of that covenant or any other covenant hereunder at any later time.
- 7.11. The Owner hereby releases the City, its agents and employees from any liability whatsoever that the City may have to the Owner arising out of or related to the City's performance of such obligations, save for any such liability as may be due to the City's negligence. The Owner hereby agrees to cooperate with the City and allows the City such necessary access to the Building and the Land as is requisite for the City to fulfil the requirements of this section.
- 7.12. Pursuant to and in accordance with Section 29 of the Act this Agreement shall be registered on title to the Land and the conditions and covenants herein shall run with the Land and shall bind the Owner and subsequent owners and successors in title to the Owner.

8. REZONING:

- 8.1. Within one year of the execution of this Agreement, the Owner shall apply to the City to have the Land re-zoned to (DC1) Direct Development Control Provision. Nothing in this Agreement fetters Council's discretion to approve or reject the Owner's re-zoning application.

- 8.2. Notwithstanding any other provision of this Agreement, the City may, in its sole and absolute discretion, hold back the Incentive grant until the Planning and Development Department has received a valid application to rezone the Land to (DC1) Direct Development Control Provision.

9. INSTALLATION OF PLAQUES:

- 9.1 The Owner shall permit the placement of two (2) plaques in a visible location on or in proximity to the Building upon, or anytime after, the passing of the Designating Bylaw. One plaque shall be created and installed by the City at the City's sole expense to a design and specification solely within the City's discretion identifying the Building and the Land as a Municipal Historic Resource. A second plaque shall be created and installed by the Edmonton Historical Board as an interpretative plaque, to a design and specification solely within the Board's discretion. The location of the City's and the Board's plaques shall be mutually agreed to by the Owner and the City, both parties acting reasonably. For greater clarity, the City or the Board shall have no obligation to create and install such plaques, and the decision to do so shall be solely within each of the City's and the Board's discretion. The Owner shall not permit or cause the damage, destruction, removal, disturbance or obscuring of such plaques.

10. CANADIAN REGISTER OF HISTORIC PLACES:

- 10.1. The Owner consents to having the property listed on the Canadian Register of Historic Places which will at minimum entail having the address, historic descriptions, statements of significance and photographs available for public viewing, in print or electronic format.

11. INSURANCE:

- 11.1. The Owner will maintain all risks broad form property insurance on the Building and Land.
- 11.2. The limits of such policy will insure the structure to full replacement value.
- 11.3. In the event of a loss every effort should be made to replace, repair or restore the Building to conserve the characteristics of the Building which give it its historical significance. Parts of the Building designated as being historic shall be restored, as closely as possible, to the details and characteristics of the original Building so designated as being historic.
- 11.4. Any exceptions to this insurance provision must be approved by the designated Heritage Planner for the City of Edmonton.

12. DISPUTE RESOLUTION:

12.1. If a dispute arises between the City and the Owner as to the proper interpretation or effect of any of the terms or conditions of this Agreement, such dispute shall be resolved in accordance with the following procedure:

12.1.1. The party requesting that the matter in dispute be resolved in accordance with the provisions of this Dispute Resolution Article (the “Disputing Party”) shall notify the other party (the “Defending Party”) in writing of the details of the nature and extent of the dispute (the “Arbitration Notice”);

12.1.2. Within seven (7) days of the receipt of the Arbitration Notice, the Defending Party shall by written notice advise the Disputing Party that it disputes all matters referred to in the Arbitration Notice except those for which the Defending Party admits responsibility and proposes to take remedial action;

12.1.3. The terms of reference for arbitration shall be those areas of dispute referred to in the Arbitration Notice with respect to which the Defending Party has not admitted or proposes to take remedial action;

12.1.4. The Defending Party and the Disputing Party shall within ten (10) days after the date of receipt by the Disputing Party of the Defending Party’s notice, appoint an arbitrator who shall be acceptable to both parties (the “Arbitrator”). In the event that the parties shall fail to appoint the Arbitrator, then either party may, on written notice to the other, apply to the President of the Alberta Arbitration and Mediation Society to name the Arbitrator;

12.1.5. Not later than twenty (20) days after the appointment of the Arbitrator, the Arbitrator shall make his written decision, and shall give it to the parties immediately;

12.1.6. Unless the Arbitrator orders otherwise, the City and the Owner shall equally bear the costs of the arbitration;

12.1.7. The decision of the Arbitrator is final and binding on the parties and there shall be no appeal of the decision to the courts; and

12.1.8. Except as modified by this Agreement, the provisions of the Arbitration Act R.S.A. 2000 c. A-43, as amended, shall apply.

13. NOTICE:

13.1. Any notice given pursuant to the terms of this Agreement shall be sufficiently given:

13.1.1. In case of notice to the City, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

Deputy City Manager, Sustainable Development
c/o City Hall
#1 Sir Winston Churchill Square
Edmonton AB T5J 0R2

and also to:

Financial and Corporate Services, Law Branch
c/o, City Hall
#1 Sir Winston Churchill Square NW
Edmonton AB T5J 0R2

13.1.2. In case of notice to the Owner, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

Sarah MacDonald
and
Judith MacDonald
and
Douglas MacDonald
all of
11425 – 95A Street NW
Edmonton AB T5G 1P4

13.2. Notice given as aforesaid, if posted, other than during an actual or threatened postal disruption, shall conclusively be deemed to have been given on the fifth (5th) business day following the date on which the notice is mailed. Any notice personally delivered or sent by telecopier or other form of facsimile transmission shall be deemed to have been given on the date of actual delivery.

13.3. Either party may, at any time, give notice in writing to the other of any change of address of the party giving such notice and, from and after giving of such notice, the address therein specified shall be deemed to be the address of the party for the giving of notice hereunder.

14. GENERAL PROVISIONS:

- 14.1. The parties to this Agreement shall execute and deliver to the other all such further assurances and documents which may reasonably be deemed necessary by the solicitors for either of them to give full force and effect to the Agreement. The Agreement is not intended and shall not be deemed nor construed to nullify, replace, circumvent, extend or modify any existing statutes, bylaws or permit conditions, which govern development or construction within the City.
- 14.2. If any portion of this Agreement is found to be unenforceable, the remaining portions of this Agreement shall be given full force and effect.
- 14.3. The Designating Bylaw shall be registered on title to the Land by the City. Notwithstanding any other provisions of this Agreement, the Owner shall forthwith upon execution of this Agreement use reasonable efforts to have the Designating Bylaw placed as a registration prior to any security interest on the title to the Land.
- 14.4. No amendments to this Agreement are valid unless they are in writing and signed by both parties to this Agreement.
- 14.5. Time is of the essence in this Agreement.
- 14.6. Everything herein contained shall inure to the benefit of and be binding upon the parties hereto, their administrators, successors and assigns respectively.

IN WITNESS WHEREOF the parties have signed this Agreement on the day and year first above written.

A P P R O V E D

As to Form:
Financial and Corporate Services
Law Branch

The City of Edmonton
as represented by the Deputy City
Manager, Sustainable Development

Per: _____
Kismet Fung

Per: _____
R. Gary Klassen

As to Content:
Chief Planner
City Planning Branch

Per: _____
Peter Ohm

The Owners

Witness _____

Per: _____
Sarah MacDonald

Per: _____
Judith MacDonald

Per: _____
Douglas MacDonald

SCHEDULE "D"

**THIS REHABILITATION INCENTIVE AND MAINTENANCE AGREEMENT
AMENDING AGREEMENT**

made this _____ day of _____, 2019

BETWEEN:

THE CITY OF EDMONTON

(the “City”)

- and -

SARAH MacDONALD, JUDITH MacDONALD and DOUGLAS MacDONALD

(the “Owner”)

WHEREAS:

- A. The Owner is the registered owner of land municipally described as 11425 – 95A Street NW, Edmonton, Alberta and legally described as:

Plan RN43 (XLIII)

Block 23

Lot 8

(the “Land”) and the building known as the Barto Residence, located thereon (the “Building”).

- B. On June 13, 2017, City of Edmonton Municipal Council passed Bylaw 18011, being a bylaw to designate the Barto Residence as a Municipal Historic Resource in accordance with the *Historic Resources Act*, R.S.A. 2000, c H-9.
- C. A condition or covenant relating to the preservation or restoration of any land or building, entered into by the owner of the land and the council of a municipality, may be registered with the Registrar of Land Titles, and may be enforced whether the condition or covenant is positive or negative in nature notwithstanding that the grantee may not have an interest in any land that would be accommodated or benefited by the condition or covenant.
- D. The City and the Owner entered into an Rehabilitation Incentive and Maintenance Agreement dated June 15, 2017 (the “Agreement”) under which the Owner agreed to rehabilitate and maintain the Land and Building in accordance with the covenants and conditions in the Agreement.
- E. The parties wish to amend the Agreement to expand and amend the scope of the rehabilitation work relating to the Building, adjust the amount of financial assistance provided by the City to the Owner for such rehabilitation work and extend the date upon which the Owner shall complete such rehabilitation work.
- F. The Owner has agreed with the City to rehabilitate and maintain the Land and Building in accordance with the covenants and conditions of the Agreement and this Amending Agreement.

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Owner, the City and the Owner covenant and agree each with the other as follows:

- 1. All terms defined in the Agreement shall have the same meaning in this Amending Agreement, except where otherwise expressly indicated.
- 2. Section 4.1 is deleted and replaced with the following:
 - 4.1 Upon the passage of the Designating Bylaw, the Owner shall commence the Rehabilitation Work as set out in the table below:

Phase	Description of City-Funded Work	Estimated Cost	Amount Allocated
1	Front veranda foundation: Removal of concrete walkway and rail ties; installation of new concrete pilings under deck; jacking of deck to plumb and level; and miscellaneous carpentry	\$12,171.60	\$6,085.80
2	Roof repair and general carpentry: Relocation of main plumbing vent stack, and woodwork restoration on veranda (includes consultation, labour, and materials)	\$38,535	\$19,267.50
3	Eavestrough and downpipe replacement	\$4,095	\$2,047.50
4	Painting and exterior cladding repair: Exterior painting and cladding repairs of north, west, and south elevations	\$31,185	\$15,592.50
5	Window replacement: Replacement of windows on north, west, and south elevations	\$30,050.46	\$15,025.23
6	Door replacement: replacement of front entrance door	\$4,105.50	\$2,052.75
	TOTAL	\$120,142.56	\$60,071.28

3. Section 4.2 amended by deleting “December 31, 2020” and substituting “December 31, 2022”.
4. Section 6.1 is amended by deleting “\$48,343.03” and substituting “\$60,071.28”.
5. Section 6.4 is deleted and replaced with the following:

6.4 On or before December 31, 2017, the City shall pay the Owner the lesser of:

6.4.1 A maximum payment of \$60,071.28; or

6.4.2 The sums set out in the column "Amount Allocated" in the table contained in Section 4.1 of this Agreement that are attributable to the Rehabilitation work for which the City has issued Notices of Completion in 2017.

If by December 31, 2017, the Owner has not completed enough Rehabilitation Work (verified by Notices of Completion) to qualify for the full Maximum Incentive, the difference shall be applied to payments in 2018, 2019, 2020, 2021 or 2022.

If by December 31, 2022 or date of the Designation Bylaw plus seven years, whichever is earlier, the Owner has not completed enough Rehabilitation Work (verified by Notices of Completion) to qualify for the Maximum Incentive, the City shall not be obligated to pay the difference to the Owner in that year or in any future years. Notwithstanding the foregoing, the City may agree with the Owner in writing to carry forward some or all of the unpaid Maximum Incentive. The Owner expressly agrees, however, that payment of any or all of the Maximum Incentive is conditional upon completion of the Rehabilitation Work strictly in accordance with this Agreement.

6. All other terms and conditions of the Agreement remain in full force and effect and are only amended as expressly stated in this Amending Agreement.
7. This Amending Agreement constitutes the entire agreement between the parties in connection with the subject matter hereof.

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

APPROVED

As to Form:
Corporate Services, Law Branch

per: _____

Jessy Inkpen

THE CITY OF EDMONTON

as represented by the Deputy City Manager,
Urban Form and Corporate Strategic Development

per: _____

As to Content:
Chief Planner
City Planning Branch

per: _____

Peter Ohm

per: _____

Sarah MacDonald

per: _____

Judith MacDonald

per: _____

Douglas MacDonald

AFFIDAVIT OF EXECUTION

CANADA
PROVINCE OF ALBERTA
TO WIT

) I, _____
) of the City of Edmonton,
) in the Province of Alberta
) MAKE OATH AND SAY:

- 1. I was personally present and did see **Sarah MacDonald, Judith MacDonald and Douglas MacDonald** who, on the basis of the identification provided to me, I believe to be the persons named in the within (or annexed) instrument, duly sign the instrument;
- 2. The instrument was signed at the City of Edmonton, in the Province of Alberta, and I am the subscribing witness thereto; and
- 3. I believe the persons whose signatures I witnessed are at least eighteen (18) years of age.

SWORN BEFORE ME at the City of
Edmonton in the Province of Alberta
this ___ day of _____, 20__

)
)
)
) _____
) SIGNATURE OF WITNESS

A Commissioner for Oaths
in and for the Province of Alberta
Commission expires _____

(S.3, Bylaw 18805, June 4, 2019)