

CITY OF SURREY

BY-LAW NO. 16788

A by-law to enter into a development works agreement to authorize the acquisition of appliances, equipment, materials, real property, easements and rights-of-way required to construct works as identified in the development works agreement to service properties within a portion of the Grandview Heights Neighbourhood Concept Plan (NCP) Area #1; to define the benefiting real property and to establish that the cost of the works shall be borne by the owners of real property within such defined area.

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- A. WHEREAS Council may by by-law pursuant to Section 937.1 of the *Local Government Act*, R.S.B.C., c. 323, as amended (the "*Local Government Act*") enter into a development works agreement to provide, construct, alter, or expand works by the City or by the developer and the cost of constructing the works shall be recovered in part or in whole from the owners of real property in the area subject to the agreement;
- B. AND WHEREAS Council has been petitioned to construct works to serve a portion of the Grandview Heights Neighbourhood Concept Plan (NCP) Area #1 pursuant to Section 937.1(4)(c) of the *Local Government Act*.
- C. AND WHEREAS the City Clerk has certified that the petition is sufficient;
- D. AND WHEREAS it is deemed expedient to grant the prayers of the petitioners in the manner hereinafter provided and proceed with the construction of the works.

NOW THEREFORE, the City Council of the City of Surrey ("the City"), in open meeting assembled, ENACTS AS FOLLOWS:

- 1. This By-law shall be cited for all purposes as "Development Works Agreement - Grandview Heights Neighbourhood Concept Plan (NCP) Area #1 By-law, 2008, No. 16788".



**CITY OF SURREY  
DEVELOPMENT WORKS AGREEMENT**

THIS AGREEMENT dated for reference the 9 day of December, 2008.

BETWEEN:

**CITY OF SURREY**, at 14245 - 56<sup>th</sup> Avenue,  
Surrey, British Columbia, V3X 3A2

(the "City")

OF THE FIRST PART

AND:

**MORGAN HEIGHTS CONSTRUCTION CORPORATION** of  
#201, 12448 – 82 Avenue, British Columbia, V3W 3E9

(the "Developer")

OF THE SECOND PART

- A. **WHEREAS** the real property within the Grandview Heights Neighbourhood Concept Plan #1 Morgan Heights is identified in column one entitled "Legal Description" in Schedule "A" and as illustrated in "Benefiting Area Map" in Schedule "C";
- B. **AND WHEREAS** the registered owners in fee simple of the Benefiting Area (as hereinafter defined) are identified in column two entitled "Registered Owners" in Schedule "A";
- C. **AND WHEREAS** Sanitary Sewer Works (as hereinafter defined) as described in Schedule "B" have been constructed;
- D. **AND WHEREAS** the Developer has undertaken the performance of its obligations required to be made pursuant to this Agreement;
- E. **AND WHEREAS** the Sanitary Sewer Works are not currently scheduled for construction by the City however by Council accepting the Grandview Heights Neighbourhood Concept Plan #1 Morgan Heights, the Storm Drainage Works are contained within the City's 10 Year Engineering Servicing Plan (as hereinafter defined);
- F. **AND WHEREAS** the Developer has requested that the City advance the acquisition and construction of the Storm Drainage Works and has agreed to facilitate such acquisition and construction for the development of the Benefiting Area;
- G. **AND WHEREAS** Sections 933 and 935 of the *Act* authorize Council to enter into an agreement to permit an owner to provide services in lieu of the payment of all or any portion of a development cost charge;

H. **AND WHEREAS** Council adopted Development Works Agreement – Grandview Heights Neighbourhood Concept Plan #1 Morgan Heights By-law, 2008, No.16788 on July 6, 2006 authorizing the parties to enter into this Agreement pursuant to Section 937.1 of the *Act*, providing for the provision of the Works by the Developer.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the sum of TEN (\$10.00) DOLLARS of lawful money of Canada and other good and valuable consideration now paid by each of the parties hereto, to each of the other parties hereto, the receipt whereof is hereby acknowledged, the parties hereto hereby covenant, promise and agree with each other as follows:

## 1. **DEFINITIONS**

In this Agreement and in the recital above:

"*Act*" means the *Local Government Act*, R.S.B.C. 1996, c. 323, as revised, re-enacted or consolidated from time to time and any successor statute;

"Agreement" means this Agreement and all schedules attached hereto;

"Benefiting Area" means the real property described in column one entitled "Legal Description" in Schedule "A";

"Capital Cost" means costs incurred by the Developer to construct the Sanitary Sewer Works are shown in Section 2.2 of this Agreement;

"City" means the City of Surrey;

"Completion Date" means August 31, 2007;

"Council" means the elected Council of the City;

"Developer" means Morgan Heights Construction Corporation;

"Development Cost Charge" means a charge imposed pursuant to the Development Cost Charge By-law;

"Development Cost Charge By-law" means Surrey Development Cost Charge By-law, 2007, No. 16494, enacted by the City under the *Act* as such By-law is amended or replaced from time to time;

"General Manager" means the General Manager, Engineering for the City;

"Owners" means each of the registered owners in fee simple of the Benefiting Area as identified in column two entitled "Registered Owner" in Schedule "A" attached hereto;

"Works" means sanitary sewer and related appurtenances as described in Schedule "B";

"Specified Charge" means a debt payable to the City in the amount of \$535.98 for each dwelling unit to be developed as approved by the City, in accordance with the by-laws of the City, including, but not limited to, the Development Cost Charge By-law and Subdivision and Development By-law;

"Subdivision and Development By-law" means Surrey Subdivision and Development By-law, 1986, No. 8830, enacted by the City under the *Act* as such By-law is amended or replaced from time to time; and

"Term" means the period of ten years commencing on August 31, 2007 and expiring on August 31, 2017.

## **2. SANITARY SEWER WORKS**

- 1. The Developer shall be solely responsible for the design, engineering and construction of the Sanitary Sewer Works and for retaining consultants and entering into any contracts required to construct the Sanitary Sewer Works, subject to the direction of the City.**
- 2. The parties acknowledge that, as of the date of this Agreement, the Capital Cost is One Million, Three Hundred and Nine Thousand, Three Hundred and Ninety-Seven (\$1,309,397.00) in Canadian Dollars including GST.**
- 3. The Developer agrees to facilitate the design, engineering and construction of the Sanitary Sewer Works through the provision of funds as set out in this Agreement.**
- 4. The Developer agrees to complete the construction of the Sanitary Sewer Works on or before August 31, 2007.**

## **3. PAYMENT FOR SANITARY SEWER WORKS**

- 1. Each of the Owners shall pay the Specified Charge to the City for each dwelling unit within each lot to be developed as approved by the Approving Officer, in accordance with the by-laws of the City, including, but not limited to, the Development Cost Charge By-law and Subdivision and Development By-law.**
- 2. The Specified Charge shall be payable to the City on or before the date when the Development Cost Charge pursuant to the Development Cost Charge By-law and the Subdivision and Development By-law are payable to the City.**
- 3. Until the Specified Charge is paid, Council, an Approving Officer, a building inspector or other municipal authority is not obligated to:**
  - (a) approve a subdivision plan, strata plan, building permit, development permit, development variance permit or zoning by-law necessary for the development of real property of the Owners within the Benefiting Area; or**

- (b) do any other thing necessary for the development of real property of the Owners in the Benefiting Area.
- 4 The City is not responsible for financing any of the costs of the Sanitary Sewer Works.
- 5 In consideration of the completion of the Sanitary Sewer Works by the Developer, to the satisfaction of the General Manager, without incurring any cost to the City, the City agrees to collect from the Owners within the Benefiting Area who have not heretofore contributed to the cost of construction thereof, the Specified Charge. The Specified Charge shall be escalated at an interest rate of 5% per annum as set out in Schedule "D," attached hereto, and shall be conclusive against the Owners of the Benefiting Area.
- 6 The City shall pay to the Developer, on a Bi-Annual basis, in the months of May and November, subject to the City confirming in writing that they intend to change the months of payment, the sums collected from the Owners of the Benefiting Area at the address of the Developer as set forth hereinbefore or at such other address as the Developer shall provide by registered mail. If the said payments are returned to the City unclaimed by the Developer and if the City is unable to locate the Developer after all reasonable efforts, then the City shall hold all monies collected until the expiry of this Agreement. After the expiry of this Agreement, all such unclaimed funds shall be retained forever by the City.
- 7 In the event of the assignment or transfer of the rights of the Developer voluntarily, or by operation of law, the City Treasurer shall pay any benefits accruing hereunder, after notice, to such successor of the Developer as the City Treasurer, in his judgment deems entitled to such benefits; and in the event of conflicting demands being made upon the City for benefits accruing under this Agreement, then the City may at its option commence an action in interpleader joining any party claiming rights under this Agreement, or other parties which the City believes to be necessary or proper, and the City shall be discharged from further liability upon paying the person or persons whom any court having jurisdiction of such interpleader action shall determine, and in such action the City shall be entitled to recover its reasonable legal fees and costs, which fees and costs shall constitute a lien upon all funds accrued or accruing pursuant to this Agreement.

#### 4. **TERM**

- 1 The Developer agrees that if insufficient funds are paid by the Owners within the Term of this Agreement, that it is at its risk and at the expiry of the Term no further monies are payable to the Developer pursuant to this Agreement.
- 2 This Agreement shall terminate prior to the expiry of the Term in the event the Developer has been paid the Capital Cost without interest.

5. **INDEMNITY**

- .1 In consideration of Ten (\$10.00) Dollars and other good and valuable consideration paid by the City to the Developer (the receipt and sufficiency of which is hereby acknowledged), the Developer jointly and severally agrees to indemnify and save harmless the City, its employees, elected officials, contractors and agents against all actions, causes of action, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of the City and the Developer entering into this Agreement, and including without limitation the Developer agrees that if insufficient funds are paid by the Owners within the Term of this Agreement, that it is at its risk and at the expiry of the Term no further monies are payable to the Developer pursuant to this Agreement. This indemnity shall survive the expiry of the Term of this Agreement.

6. **CITY'S COSTS**

The Developer shall pay to the City, by cash or bank draft, prior to the City executing this Agreement, a fee equivalent to \$4,240.00 which includes GST. The City acknowledges the receipt of payment by Receipt No. 352749 paid to the City on April 11, 2007 for the preparation, registration and administration of this Agreement.

7. **NOTICES**

- .1 Any notice, demand, acceptance or request required to be given hereunder in writing shall be deemed to be given if either personally delivered or mailed by registered mail, postage prepaid (at any time other than during a general discontinuance of postal services due to a strike, lockout or otherwise) and addressed to the Developer as follows:

Morgan Heights Construction Corporation  
#200 - 17619 - 96 Avenue  
Surrey, B.C. V3N 4A9

of such change of address as the Developer has, by written notification, forwarded to the City, and to the City as follows:

CITY OF SURREY  
Engineering Department  
14245 - 56th Avenue  
Surrey, B.C. V3X 3A2

Attention: General Manager, Engineering

c.c. City Solicitor

or such change of address as the City has, by written notification, forwarded to the Developer.

2. Any notice shall be deemed to have been given to and received by the party to which it is addressed:

(a) if delivered, on the date of delivery; or

(b) if mailed, then on the fifth (5th) day after the mailing thereof.

8. **BINDING ON SUCCESSORS**

(a) It is hereby agreed by and between the parties hereto that this Agreement shall be enforceable by and against the parties, their successors and assigns.

(b) The Developer shall not assign or transfer its interest in this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld.

9. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any prior agreements, undertakings, declarations or representations, written or verbal, in respect thereof. It is hereby agreed between the parties hereto that this Agreement shall be enforceable by and against the parties, and their successors and assigns.

10. **LAWS OF BRITISH COLUMBIA**

This Agreement shall be interpreted under and is governed by the applicable laws of Canada and the Province of British Columbia.



The City of Surrey  
Schedule "A"  
Legal Description and Registered Owner

Project File: 7805-0126-00  
DWA File: 8505-0126-00-1

Legal Description	Registered Owners	Civic Address	Area (ha)	Tax Roll Number
IT11 HALF SEC 23 11 P1 73300		2667 160 St	14	\$2300000000
IT11 NE 21 S 8 SEC 23 11 P1 8592		2713 160 St	13	\$2300000000
IT11 S 1 21 S 7 SEC 23 11 P1 10600		2638 Croydon Dr	20	\$2300000000
IT11 W 1 21 S 1 SEC 23 11 P1 11734		15891 24 Ave	41	\$2300000000
IT11 SEC 23 11 P11 MP14118		2685 160 St	34	\$2300000000 \$2300000000 \$2300000000
IT11 SEC 23 11 1 SD 8 P1 64052		2627 160 St	13	\$2300000000
IT12 HALF SEC 23 11 P1 77146		15909 26 Ave	13	\$2300000000
IT12 NE 21 S 8 SEC 23 11 P1 8592 2		2741 160 St	14	\$2300000000
IT12 SEC 23 11 P11 MP14118		15912 27 Ave	22	\$2300000000 \$2300000000 \$2300000000
IT12 S 1 21 S 7 SEC 23 11 P1 10600 P		2660 Croydon Dr	25	\$2300000000
IT12 P1 W 1 21 S 1 SEC 23 11 P1 11734		15879 24 Ave	30	\$2300000000
IT13 S 1 21 S 7 SEC 23 11 P1 10600 (		2678 156 St	51	\$2300000000
S1573 N1 21 S 8 SEC 23 11 RFT 22119		2765 160 St	13	\$2300000000
IT13 HALF SEC 23 11 P1 77146		15883 26 Ave	15	\$2300000000

11. **SCHEDULES**

The Schedules attached hereto, which form part of this Agreement, are as follows:

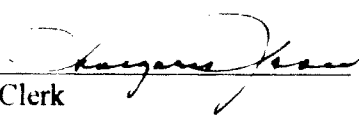
- 1 Schedule "A" - Legal Description and Registered Owners
- 2 Schedule "B" - Description of Storm Drainage Works
- 3 Schedule "C" - Benefiting Area Map
- 4 Schedule "D" - Annual Interest Rate Increases for Specified Charge

**IN WITNESS WHEREOF** this Agreement has been executed as of the day and year first above written.

**CITY OF SURREY**

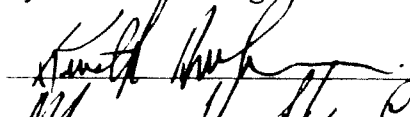
by its authorized signatories

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Clerk

**MORGAN HEIGHTS CONSTRUCTION CORPORATION**

by its authorized signatories

  
\_\_\_\_\_  
per Morgan Heights Corp.

The City of Surrey  
 Schedule "A"  
 Legal Description and Registered Owner

Project File: 7805-0126-00  
 DVA File: 8505-0126-00-1

Legal Description	Registered Owners	Civic Address	Area (ha)	Tax Roll Number
E126 SEC 23 T11 S18 P166278		15870 28 Ave	13	\$230071004
E1A SEC 23 T1 P170351		2630 160 St	14	\$230000000
E1B SEC 23 T1 P170351		15933 26 Ave	15	\$230010012
E1B SEC 23 T1 P186404		2600 158 St	5	\$230010007
E1B SEC 23 T1 P187266		15843 Croydon Dr	51	\$230010000
N12N12E1S1SEC 2 T1P15AC GS		2500 160 St	243	\$230071083
E12E12E1S2 SEC 23 T1 (PTNN HWY)		15770 Croydon Dr		\$230071005
W12N12E1S7 SEC 23 T1 (FX RW PL		15650 28 Ave	89	\$230071004
E12N12E1S7 SEC 23 T1 RAC (FX 39		15714 28 Ave	149	\$230071008
N12E1S8 SEC 23 T1 X 8502 & 66278		15012 28 Ave	106	\$230071000
E11 SEC 24 T1 P1687351 SD:6		16216 28 Ave	52	\$240000000
E11 SEC 24 T1 P177370		2421 164 St	13	\$240000004
E11N12E1S6 SEC 24 T1 P11525		2703 164 St	56	\$240000003
E11 SEC 24 T1 P11MP3424		2689 164 St	8	\$240000007



The City of Surrey  
 Schedule "A"  
 Legal Description and Registered Owner

Project File: 7805-0126-00  
 DWVA File: 8505-0126-00-1

Legal Description	Registered Owners	Civic Address	Area (ha)	Tax Roll Number
TT 8 SC 24 11 PI 687351 SD 6		2759 164 St	5	5240070013
TT 16 BK 1 S3 SC 24 11 PI 63062		16349 24 Ave	11	5240150001
TT 17 BK 1 S3 SC 24 11 PI 63062		2432 163 St	11	5240160001
TT 18 BK 1 S3 SC 24 11 PI 63062		2462 163 St	15	5240170001
TT 19 BK 1 S3 SC 24 11 PI 63062		2482 163 St	15	5240180001
TT 20 BK 1 S3 SC 24 11 PI 63062		2423 163 St	12	5240190001
TT 21 BK 1 S3 SC 24 11 PI 63062		2443 163 St	12	5240200001
TT 22 BK 1 S3 SC 24 11 PI 63062		2463 163 St	13	5240210001
TT 23 BK 1 S3 SC 24 11 PI 63062		2483 163 St	13	5240220001
TT 28 BK 1 S3 SC 24 11 PI 61276		2597 164 St	8	5240270001
TT 31 BK 1 S5 SC 24 11 PI 63803		16155 24 Ave	128	5240300001
TT A N1 2 N1 21 S 5 SC 24 11 PI 15156		2786 160 St	5	5240060001
TT A SC 24 11 PI 7434		2537 164 St	8.8	5240090001
TT B N1 2 N1 21 S 5 SC 24 11 PI 15156		2766 160 St	31.0	5240070001

The City of Surrey  
Schedule "A"

Legal Description and Registered Owner

Project File: 7805-0126-00  
DWA File: 8505-0126-00-1

Legal Description	Registered Owners	Civic Address	Area (ha)	Tax Roll Number
LT 2 SC' 24 T1 P1 687351 SD: 6		16238 28 Ave	5	\$240010015
LT 2 SC' 24 T1 P1 77379		2447 164 St	13	\$240010040
LT 2 SC' 24 T1 P1 MP3424		2669 164 St	51.9	\$240010018
LT 2 N1 21 S 6 SEC' 24 T1 P1 11525		2721 164 St	4	\$240010025
LT 2 BK 1 S3 SC' 24 T1 P1 60424		2511 164 St	8.8	\$240010000
LT 3 SC' 24 T1 P1 687351 SD: 6		16264 28 Ave	4	\$240020015
LT 3 SC' 24 T1 P1 77379		2465 164 St	13	\$240020045
LT 3 N1 21 S 6 SEC' 24 T1 P1 11525		2735 164 St	3	\$240020000
LT 4 SC' 24 T1 P1 687351 SD: 6		16288 28 Ave	4	\$240030014
LT 4 SC' 24 T1 P1 77379		2503 164 St	13	\$240030035
LT 4 N1 21 S 6 SEC' 24 T1 P1 11525		2745 164 St	4	\$240030038
LT 5 SC' 24 T1 P1 687351 SD: 6		16312 28 Ave	4	\$240040019
LT 6 SC' 24 T1 P1 687351 SD: 6		2789 164 St	4	\$240050013
LT 7 SC' 24 T1 P1 687351 SD: 6		2775 164 St	5	\$240060018

The City of Surrey  
 Schedule "A"  
 Legal Description and Registered Owner

Project File: 7805-0126-00  
 DWA File: 8505-0126-00-1

Legal Description	Registered Owners	Civic Address	Area (ha)	Tax Roll Number
ITR SC'24 11 P1 BGP 74347		2565 164 St	53	\$240071005
SC'24 11 11 2 W1 21 S 3 (EX PL 61062)		2515 163 St	33	\$240071008
W1 2 W1 21 S 3 SEC'24 11		16223 24 Ave	161.8	\$24007106X
NSCHINS W1 21 S 4 SEC'24 11 5AC		2556 160 St	81.8	\$240071005
SI 2 SI 21 S 5 SEC'24 11 0.5AC		2714 160 St	50.8	\$240071006
SI 2 SI 21 S 6 SEC'24 11 10AC		2629 164 St	71.8	\$24007100X
IT 1 SC'24 11 P1 BGP 5078		2656 160 St		\$240000004
IT 1 SC'24 11 P1 BGP 17831		2515 161A St	86.8	\$240000005
IT R SC'24 11 P1 BGP 22200		2500 160 St	70.4	\$240070000
IT 4 SC'24 11 P1 BGP 28670		2745 164 St	20.5	\$2400300051
IT 5 SC'24 11 P1 BGP 28670		2735 164 St	10	\$240040011
IT 6 SC'24 11 P1 BGP 28670		2721 164 St	13.7	\$240050004

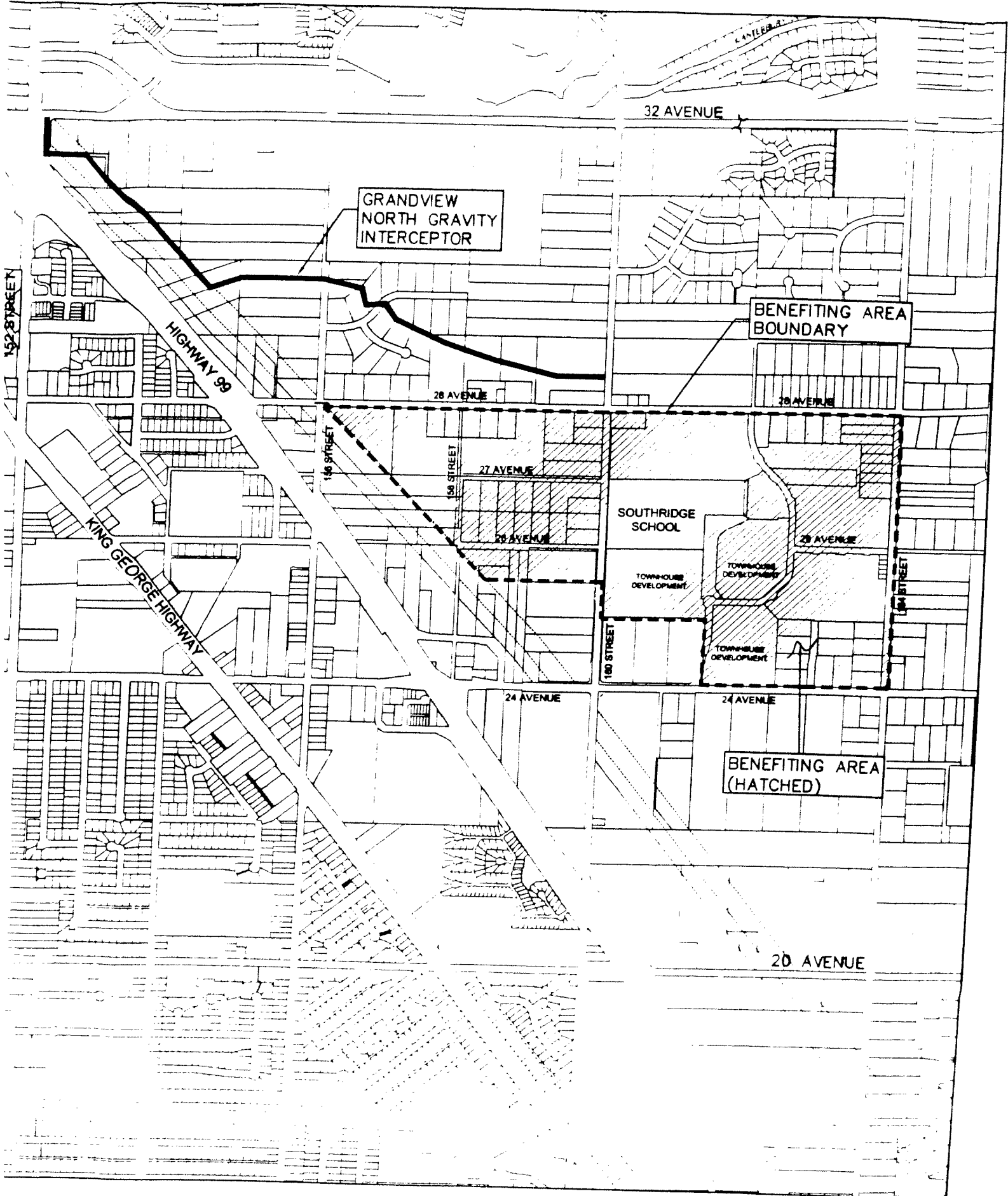
**SCHEDULE "B"**  
**Sanitary Sewer Works**

Means and includes anything and everything required for the design, engineering and construction of a sanitary sewer trunk main from the intersection of Highway 99 and 32 Avenue south and east to 160 Street just north of 28 Avenue also known as the North Grandview Gravity Interceptor.



# SCHEDULE 'C' - BENEFITING AREA

DEVELOPMENT WORKS AGREEMENT  
GRANDVIEW NORTH SANITARY GRAVITY INTERCEPTOR



**SCHEDULE "D"**

<b>Payment Year</b>	<b>Payment</b>
2008	\$562.78
2009	\$590.92
2010	\$620.46
2011	\$651.49
2012	\$684.06
2013	\$718.26
2014	\$754.18
2015	\$791.89
2016	\$831.48
2017	\$873.05

After Year 2017, there will be no charge.