

CITY OF SURREY

BY-LAW NO. 16666

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 East Clayton Neighbourhood Concept Plan; 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.

.....

- A. WHEREAS Council may by by-law pursuant to Section 937.1 of the *Local Government Act*, R.S.B.C. 1996, 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 (as defined in the agreement) to serve a portion of the East Clayton Neighbourhood Concept Plan 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; and
- 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 – East Clayton Neighbourhood Concept Plan By-law, 2008, No. 16666".
- 2. The City Council is hereby authorized to enter into that certain development Works agreement attached as Schedule "1" to this By-law (the "Development Works Agreement").

3. The Mayor and the City Clerk are authorized on behalf of the Council to sign and seal the Development Works Agreement.
4. Schedule "1" forms a part of this By-law.
5. The Specified Charge, as defined in the Development Works Agreement, payable by the Owners shall increase each year by 5% as specified on Schedule "C" of the Development Works Agreement.

PASSED THREE READINGS on the 14th day of July, 2008.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 28th day of July, 2008.

\_\_\_\_\_MAYOR

\_\_\_\_\_CLERK



- E. **AND WHEREAS** the Works is not currently scheduled for construction by the City;
- F. **AND WHEREAS** the Developer has requested that the City advance the acquisition and construction of the Works and has agreed to facilitate such acquisition and construction for the development of the Benefiting Area;
- G. **AND WHEREAS** Section 937.1 of the *Local Government Act*, R.S.B.C. 1996, c. 323 and amendments thereto (the "*Act*") authorizes Council to enter into an agreement with a Developer for the provision of the Works by the Developer; and
- H. **AND WHEREAS** Council introduced Development Works Agreement – East Clayton Neighbourhood Concept Plan, By-law No 16666 on May 28, 2007, 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 ONE (\$1.00) DOLLAR 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:

"*Local Government 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 two entitled "Legal Description" in Schedule "A".

"Capital Cost" means the actual costs incurred by the Developer to construct the Works.

"City" means the City of Surrey, 14245 - 56 Avenue, Surrey, British Columbia V3X 3A2.

"Completion Date" means May 20, 2008.

"Council" means the elected Council of the City.

"Developer" means Progressive Construction Ltd., R.A.B. Ventures #3 Ltd., and T.R. Projects Ltd. c/o McQuarrie Hunter located at 10430-144 Street, Surrey, British Columbia, V3T 4V5.

"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 one entitled "Registered Owner" in Schedule "A" attached hereto.

"Works" means a storm drainage pond and related appurtenances as described in Schedule "B."

"Specified Charge" means a debt payable to the City in the maximum amount of \$76,804.57 for each hectare of land or portion thereof 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.

"Term" means the period of time commencing on May 20, 2008 the completion day including ten (10) years less one day.

## 2. **WORKS**

- (a) The Developer shall be solely responsible for the design, engineering and construction of the Works and for retaining consultants and entering into any contracts required to construct the Works, subject to the direction of the City.
- (b) The parties acknowledge that, as of the date of this Agreement, the Capital Cost is Two Million Four Hundred Twenty Thousand Nine Hundred Eighty Five (\$2,420,985.00) Dollars in lawful currency of Canada.
- (c) The Developer agrees to facilitate the design, engineering and construction of the Works through the provision of funds as set out in this Agreement.
- (d) The Developer agrees that the construction of the Works is complete.

## 3. **PAYMENT FOR WORKS**

- (a) Each of the Owners shall pay the Specified Charge to the City for each hectare of land or portion thereof 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.
- (b) For greater certainty, all of the areas within an existing property will be included in the Specified Charge calculation unless it can be demonstrated, to the satisfaction of the

General Manager, that an area of the property is not able to be developed due to agricultural land designation, topographic reasons or environmental sensitivity.

- (c) 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.
- (d) Until the Specified Charge is paid, Council, an Approving Officer, a building inspector or other municipal authority is not obligated to:
  - (i) 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
  - (ii) do any other thing necessary for the development of real property of the Owners in the Benefiting Area.
- (e) The City is not responsible for financing any of the costs of the Works.
- (f) In consideration of the completion of the 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 "C," attached hereto, and shall be conclusive against the Owners of the Benefiting Area.
- (g) The City shall pay to McQuarrie Hunter in trust for 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 McQuarrie Hunter in trust for 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.
- (h) 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**

- (a) The Developer agrees that if insufficient funds are paid by the Owners of the Benefiting Area 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.
- (b) This Agreement shall terminate prior to the expiry of the Term in the event the Developer has been paid the Capital Cost and interest as specified herein.

5. **INDEMNITY**

The Developer jointly and severally agrees to indemnify 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 by reason of the following:

- (a) a breach by the Developer of its obligations under this Agreement; or
- (b) any dispute arising with respect to the cost of services, the application of credits or payments required to be made pursuant to 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. 353539, paid to the City on April 20, 2007 for the preparation and administration of this Agreement.

7. **NOTICES**

- (a) 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:

McQuarrie Hunter  
10430 - 144 Street  
Surrey, B.C. V3T 4V5

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.

- (b) Any notice shall be deemed to have been given to and received by the party to which it is addressed:
  - (i) if delivered, on the date of delivery; or
  - (ii) if mailed, then on the fifth (5th) day after the mailing thereof.

## **8. ASSIGNMENT**

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 by and between the parties hereto that this Agreement shall be enforceable by and against the parties, their successors and assigns. The parties agree that all of the covenants and agreements of the Developer are joint and several.

## **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.



11. SCHEDULES

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

- (a) Schedule "A" - Lands Within Benefitting Area Affected by Development Works Agreement
- (b) Schedule "B" - Works
- (c) Schedule "C" - Annual Interest Rate Increases for Specified Charge

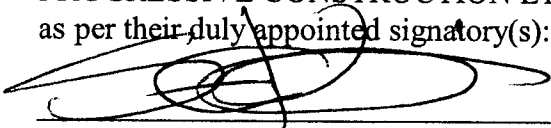
IN WITNESS WHEREOF this Agreement has been executed as of the day and year first above written.

The Corporate Seal of CITY OF SURREY )  
was hereunto affixed in the presence of its )  
duly authorized officers: )

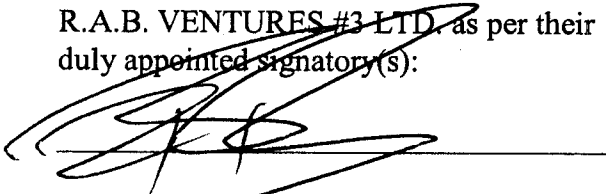
\_\_\_\_\_)  
General Manager, Engineering )

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

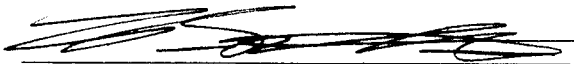
PROGRESSIVE CONSTRUCTION LTD. )  
as per their duly appointed signatory(s): )

  
\_\_\_\_\_)  
\_\_\_\_\_)

R.A.B. VENTURES #3 LTD. as per their )  
duly appointed signatory(s): )

  
\_\_\_\_\_)  
\_\_\_\_\_)

T.R. PROJECTS LTD. as per their )  
duly appointed signatory(s): )

  
\_\_\_\_\_)  
\_\_\_\_\_)

July 08, 2008

The City of Surrey  
Schedule "A"

Lands Within Benefitting Area Affected by Development Works Agreement

Project File: 7807-0056-00  
DWA File: 8607-0056-00-1

Legal Description	Registered Owners	Civic Address	Area (ha)	Tax Roll Number
LT 34 SW SEC 15 T8	PL39407 Douglas L Coulson Maureen K Coulson	6733 196 St	.109716	8152330024 8152330024
LT 45 SC SW15 T8 PL63826	Leslie J Dobray Susan J Dobray	6765 196 St	.405012	8152440024 8152440024
LT 46 SC SW15 T8 PL63826	MSL Trading Corporation (Manjit Singulit)	6783 196 St	1.059397	8152450029
S1/2 LT 5 NW SEC 15 T8 PL 1809	Surrey City Of	19407 68 Ave	.751749	8153040029
E 1/2 BK A NW SEC 15 T8 SK2430EX PCL B R	689225 Bc Ltd 689226 Bc Ltd 689227 Bc Ltd 689228 Bc Ltd	19556 72 Ave	2.027558	815390002X 815390002X 815390002X 815390002X
W 1/2 PCL A E 15 CHNS NW SEC 15 T8	689225 Bc Ltd 689226 Bc Ltd 689227 Bc Ltd 689228 Bc Ltd	19518 72 Ave	3.627186	8153900043 8153900043 8153900043 8153900043
PCL B PCL A NW SEC 15 T8 REF 9622 5	692992 Bc Ltd 689128 Bc Ltd 689132 Bc Ltd	19592 72 Ave	2.020528	8153910024 8153910024 8153910024
E 15 CHNS NW SEC 15 T8(EX REF 24	Progressive Construction Ltd R A B Ventures #3 Ltd T R Projects Ltd Bprt Holdings Ltd	19519 68 Ave	12.938829	8153971025 8153971025 8153971025 8153971025
LT 2 E1/2 SW SEC 22 T8 PL 2600(EX W1/2)	Solterra Construction Corp	19487 72 Ave	.93354	8222010001
LT 3 E1/2 SW SEC 22 T8 PL 2600(EX E1/2)	Solterra Construction Corp	19515 72 Ave	.965441	8222020018
E 1/2 LT 3 E 1/2 SW SEC 2 T8 PL 2600	647159 Bc Ltd	19545 72 Ave	.965421	8222020031
LT 6 E1/2 SW SEC 22 T8 PL 2600	678924 Bc Ltd	7353 196 St	1.786558	8222050023

July 08, 2008

The City of Surrey  
Schedule "A"

Lands Within Benefitting Area Affected by Development Works Agreement

Project File: 7807-0056-00  
DWA File: 8607-0056-00-1

Legal Description	Registered Owners	Civic Address	Area (ha)	Tax Roll Number
LT 15 E 1/2 SW SEC 22 T8 PL 2600	Gurpreet S Dhillon Swaranjit K Dhillon Gurtej S Dhillon Navdeep K Dhillon	7354 194 St	.035103	8222140024 8222140024 8222140024 8222140024
LT 28 SW SEC 22 T8 PL 54310	Jagbir S Malhi	19565 72 Ave	.408288	8222270023
LT 29 SW SEC 22 T8 PL 54310	0785716 Bc Ltd	19591 72 Ave	.408032	8222280028
LT 30 SW SEC 22 T8 PL 54310	Sukhdev S Hyare	7259 196 St	.546024	8222290022
LT 31 SW SEC 22 T8 PL 54310	Gurmit S Hayre	7289 196 St	.546064	8222300027
LT 34 SC SW22 T8 PL59708	678924 Bc Ltd	7341 196 St	.456521	8222330020
LT 35 SC SW22 T8 PL59708	Charles N Frey Rosemarie K. Frey	7311 196 St	.456564	8222340025 8222340025
LT 36 SC SW22 T8 PL59708	678924 Bc Ltd	7334 194 St	.941279	822235002X
LT 38 SC 15 T8 PLBCP23583	Surrey City Of	6702 195 St	0	8152370046
LT 128 SC 15 T8 PLBCP31093	Surrey City Of	19501 68 Ave	.132558	8153777014

**SCHEDULE "B"**  
**Works**

Land acquisition, construction, and landscaping of the detention pond and all ancillary costs associated therewith, means and includes anything and everything required to be done for the fulfillment and completion of this agreement, located north of 68 Avenue and west of 195A Street, substantially in accordance with the drawings prepared by McElhanney Consulting Services Ltd. and accepted by the City of Surrey on June 18, 2007.