

NO: R157

COUNCIL DATE: July 25, 2022

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **July 20, 2022**

FROM: **General Manager, Engineering**

FILE: **8218-0122-00-6**

**8518-0122-00-6**

XC: **7818-0122-02**

**7818-0305-00**

SUBJECT: **Development Cost Charge Front-Ending Agreement and Development Works Agreement for Sewer Infrastructure Works that Support Development in the Anniedale-Tynehead Neighbourhood Concept Plan**

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## RECOMMENDATION

The Engineering Department recommends that Council:

1. Authorize the execution of a Sewer Development Cost Charge Front-Ending Agreement to an upset limit of \$3,726,400.00 (including all applicable taxes), as generally described in this report; and
2. Authorize the execution of a Sewer Development Works Agreement to an upset maximum not to exceed \$7,082,210.00 (including all applicable taxes), as generally described in this report.

## INTENT

The purpose of this report is to obtain approval for the City to enter into a Development Cost Charge Front-Ending Agreement (“DCCFEA”) and a Development Works Agreement (“DWA”) with Anniedale Land Development Limited Partnership (1137365 BC Ltd.) (the “Front-Ending Developer”).

Execution of these agreements will allow construction of the City sewer infrastructure works to service developments in the Anniedale-Tynehead Neighborhood Concept Plan (“NCP”).

The Front-Ending Developer may be reimbursed in the future with NCP-specific Sewer Development Cost Charges (“DCCs”) and Sewer DWA Specified Charge from development on the benefiting lands, as illustrated in Appendix “I”.

## BACKGROUND

The Engineering Department’s 10-Year Servicing Plan (“10YSP”) establishes the City’s capital expenditure plan for the construction of engineering infrastructure to service existing neighbourhoods, and to support new growth across the City. The identified growth-related components in the 10YSP are used to determine the DCC rates for engineering infrastructure. At

the January 31, 2022 Regular Council Meeting, Council approved the 10YSP (2022-2031) and related DCC rates.

Staff have been working through the development servicing design process with the Front-Ending Developer, who is proposing to construct the sewer infrastructure works comprising of a pump station, in the vicinity of 172 St and 92 Avenue, and associated odour control facility and trunk sewer.

These works are eligible for NCP-specific DCC reimbursements by the City. However, the NCP-specific DCC reimbursements will leave a funding shortfall between the 10YSP costs and the estimated cost of the works based on detailed designs, the balance of which the Front-Ending Developer is proposing be recovered from the benefiting lands through a DWA Specified Charge.

Use of the DCCFEA and the DWA are means of financing the construction of services for the NCP that are contained in the 10YSP, and are in keeping with City policies approved by Council through Corporate Report Loo2: 2020, titled "Development Cost Charge Front-Ending Agreement and Development Works Agreement Policies".

## **DISCUSSION**

The Front-Ending Developer is proceeding with development on several sites within the Anniedale-Tynehead NCP. The construction of the sewer infrastructure works is required to allow development to proceed on those sites and will also benefit other lands in the NCP.

Since these works are necessary to proceed with development, the Front-Ending Developer has offered to front-end the cost of these works, provided that it eventually receives the NCP-specific DCCs and the DWA Specified Charge the City collects from subsequent development within the benefiting areas. The DCCFEA and the DWA provide for the payment of funds collected by the City to the Front-Ending Developer, but do not create any other financial obligations between the City and the Front-Ending Developer.

Consistent with City policies, the DCCFEA and the DWA would remain in effect for 15 years after the completion date of the works to which they apply or conclude early if the full cost recovery is achieved prior to the end of the term.

The DCCFEA, as proposed, will not affect the reasonable implementation of other components of the City's NCP-specific DCC program or the 10YSP. The infrastructure projects are currently identified and partially funded in the 10YSP based on DCCs that have been collected through existing development in the NCP. The DCCFEA will specify that any NCP-specific DCCs collected in the future from the benefiting lands will be used to reimburse the Front-Ending Developer for the capital costs, and for other eligible expenses related to the works.

The NCP-specific DCCs that may be collected by the City from the benefiting lands are not enough to fully recover the costs for the subject works. Hence, over and above the recoveries available from the DCCFEA, the DWA is required to facilitate recovery of the funding shortfall. The DWA Specified Charge will be collected from the developers/owners of the benefiting lands, applicable to each project, at the time of an application for development or connection. However, the Front-Ending Developer has agreed that, should any of the benefiting lands become parkland with or without a washroom facility connected to the works, then the City will not be required to pay the DCCs or DWA Specified Charges for those benefiting lands.

Pursuant to Section 570 of the *Local Government Act, RSBC 2015, c 1*, a DWA may only be required where a sufficient petition for the DWA has been presented to Council. The Front-Ending Developer has undertaken the DWA petition process with the owners of the lands within the benefiting area. Pursuant to Section 212 of the *Community Charter, SBC 2003, c 26*, the City Clerk has received and certified the petition to be sufficient. The petition included the information required by Section 570(5) of the *Local Government Act*. The petition criteria were deemed sufficient with 52.68% benefitting lands and 56.87% assessed lands indicate their support. Subject to Council approving the recommendations of this report, Legal Services will prepare the related agreements for execution by the Front-Ending Developer, and the City Clerk will bring forward the related DWA Bylaw for the required readings. If adopted, this will give the City authority to collect the DWA Specified Charge from the benefiting lands, when such lands are developed. A sample DWA Bylaw is attached to this report as Appendix "II".

The Front-Ending Developer will post securities for the construction of the subject works through the normal Servicing Agreement process.

Once construction quotations have been received, the amount within the Sewer DWA will be finalized to reflect the authorized quotation plus 10% contingency and 12% engineering fees, per City Policy; with the total not to exceed a maximum of \$7,082,210.00 (including all applicable taxes). The final amount to be collected from the benefiting lands will be finalized upon completion of construction of the works and on certification of the actual costs of construction to a maximum upset limit included in the recommendations of this report.

## **FUNDING**

The cost of construction of the works will be financed by the Front-Ending Developer. The DCCFEA and the DWA each have a term of 15 years after the completion date of the works, regardless of the amount of the recoveries that the Front-Ending Developer has achieved under each agreement at that time.

## **SUSTAINABILITY CONSIDERATIONS**

The proposed sewer infrastructure works support the objectives of the City's Sustainability Charter 2.0. In particular, the works relate to the Sustainability Charter 2.0 theme of Infrastructure. Specifically, the proposed works support the following Desired Outcomes ("DOs") and Strategic Direction ("SD"):

- All Infrastructure DO1: City facilities and infrastructure systems are well managed, adaptable and long lasting, and are effectively integrated into regional systems;
- All Infrastructure DO2: Infrastructure systems provide safe, reliable and affordable services; and
- All Infrastructure SD1: Proactively manage community assets to maintain them over the long-term in a state of good repair.

## CONCLUSION

The Engineering Department recommends that Council authorize the execution of the DCCFEA and the DWA as recommended in this report.

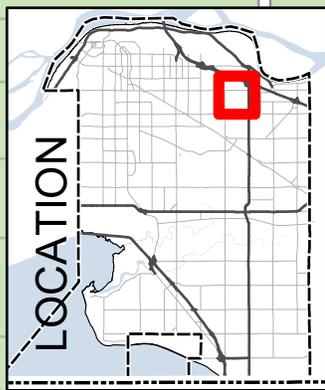
Scott Neuman, P.Eng.  
General Manager, Engineering

SSL/bn

Appendix "I" - Benefiting Area Map for Proposed Sewer DCCFEA 8218-0122-00-6 and DWA 8518-0122-00-6

Appendix "II" - Sample DWA Bylaw

[https://surreybc.sharepoint.com/sites/eng.administration/gm administration/corporate reports/2022/final/july 25/dcc sanitary infrastructure works.docx](https://surreybc.sharepoint.com/sites/eng.administration/gm%20administration/corporate%20reports/2022/final/july%2025/dcc%20sanitary%20infrastructure%20works.docx)



Trunk Sewer and  
Forcemain Works  
Under Construction

Benefiting Lands

Proposed Trunk Main

Proposed Pump Station and  
Odour Control Facility

Excluded Lands

**LEGEND**

- Proposed Pump Station and Odour Control Facility
- Proposed Trunk Main
- Sewer Works Under Construction
- Benefiting Lands
- Excluded Lands
- Parks

Produced by GIS Section: 13-Jul-2022, P205803

Scale: 1:12,000 0 100 M



**Benefiting Area Map for  
Proposed Sewer Works  
DCCFEA 8218-0122-00-6 and  
DWA 8518-0122-00-6**

**ENGINEERING  
DEPARTMENT**

The data provided is compiled from various sources and IS NOT warranted as to its accuracy or sufficiency by the City of Surrey.  
This information is provided for information and convenience purposes only.  
Lot sizes, Legal descriptions and encumbrances must be confirmed at the Land Title Office.

CITY OF SURREY

BYLAW NO. 20675

A bylaw to enter into a development works agreement which authorizes construction of works which will service the benefiting real property within a portion of the **Anniedale-Tynehead Neighbourhood Concept Plan** and establishes that the cost of the works shall be borne by the owners of real property within such defined area.

.....

- A. WHEREAS Council may by bylaw pursuant to Section 570 of the *Local Government Act*, R.S.B.C. 2015, c.1, as amended, (the "*Local Government Act*") enter into a development works agreement to provide, construct, alter, or expand works by the City of Surrey (the "City") or by the developer and the cost of constructing the works shall be recovered in whole or in part 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 **Anniedale-Tynehead Neighbourhood Concept Plan** pursuant to Section 570(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 request of the petitioners in the manner hereinafter provided and proceed with the construction of the works.

NOW THEREFORE, the Council of the City of Surrey, ENACTS AS FOLLOWS:

- 1. This Bylaw shall be cited for all purposes as "Development Works Agreement [**8518-0122-00-6**] Bylaw, **2022**, No. **20675**."
- 2. The Council hereby authorizes the General Manger, Engineering to enter into a development works agreement **8518-0122-00-6** (the "Development Works Agreement").
- 3. The Specified Charge, as defined in the Development Works Agreement, payable by the Owners shall not exceed the maximum value specified in the petition as being **Eighty-**

eight thousand three hundred fifty dollars and ninety-two cents (\$88,350.92) for each hectare of land of lawful money of Canada.

PASSED FIRST READING on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

PASSED SECOND READING on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

PASSED THIRD READING on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ MAYOR

\_\_\_\_\_ CLERK

CITY OF SURREY

DEVELOPMENT WORKS AGREEMENT

Project 8518-0122-00-6  
(Sewer)

**THIS AGREEMENT** dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BETWEEN:**

**CITY OF SURREY**  
13450 – 104 Avenue  
Surrey, BC, V3T 1V8

(the “City”)

**OF THE FIRST PART**

**AND:**

Anniedale Land Development Limited Partnership (1137365 BC Ltd.)  
#201, 15272 Croydon Drive  
Surrey, BC, V3Z 0Z5

(the “Developer”)

**OF THE SECOND PART**

**WHEREAS:**

- A. The real property within the Anniedale-Tynehead Neighbourhood Concept Plan is identified in column one entitled “Legal Description” in Schedule “A” and as illustrated in the “Benefiting Area Map” in Schedule “C”.
- B. The registered owners in fee simple of the Benefiting Area are identified in column two entitled “Registered Owner” in Schedule “A”.
- C. The Works are contained within the City's 10-Year Servicing Plan and the Owners have petitioned that the City advance the acquisition and construction of the Works.
- D. The Developer agrees to construct the Works with no contribution from the City.
- E. Council adopted Development Works Agreement [8518-0122-00-6] Bylaw, 2022, No. 20675 on \_\_\_\_\_, authorizing the parties to enter into this Agreement pursuant to Section 570 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 Dollars (\$10.00) and other good and valuable consideration paid by each of the parties to each other (the receipt and sufficiency of which each party hereby acknowledges) the parties hereby covenant and agree with each other as follows:

## **1 DEFINITIONS**

The parties hereto agree that in this Agreement, including the recitals above, the following definitions will apply:

“Act” means Section 570 of the *Local Government Act*, R.S.B.C. 2015, c. 1, as amended;

“Agreement” means this Agreement and all Schedules attached hereto;

“as amended” means as may be amended or replaced from time to time;

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

“Cost” means the actual costs incurred by the Developer to construct the Works and the Cost is estimated to be the sum of **Ten million eight hundred eight thousand six hundred ten** Canadian Dollars (**\$10,808,610.00**), including applicable taxes, which costs will be amended by the final cost determined by the City in accordance with Section 2 of this Agreement;

“City” means the City of Surrey;

“Completion Date” means the date the works were placed on maintenance in accordance with Section 2.3 of this Agreement;

“Council” means the Council of the City;

“Developer” means the person, corporation, partnership or party identified as such on the first page of this Agreement and includes its personal or other legal representatives;

“Development Cost Charge” means a charge imposed pursuant to the Development Cost Charge Bylaw;

“Development Cost Charge Bylaw” means Surrey Development Cost Charge Bylaw, 2016, No. 18664, as amended;

“Development Works Agreement Bylaw” means the bylaw specified in recital E.;

“General Manager Engineering” means the officer appointed by Council pursuant to Surrey Officers and Indemnification Bylaw, 2006, No. 15912, as amended, and includes an employee or an officer provided with the written authority to act on their behalf;

“Maximum Amount Owing” means the maximum amount that could be payable by the City to the Developer pursuant to this Agreement as **Seven million eighty-two thousand**

two hundred ten Canadian Dollars (\$7,082,210.00) including interest as specified in the petition;

“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;

“Specified Charge” means a debt payable to the City in the maximum amount of \$88,350.92, which may be revised in accordance with Section 2.4 herein, including interest at 5% compounded per annum for each hectare of land to be developed as approved by the City, in accordance with the bylaws of the City, including, but not limited to, the Development Cost Charge Bylaw and Subdivision and Development Bylaw;

“Subdivision and Development Bylaw” means Surrey Subdivision and Development Bylaw, 1986, No. 8830, as amended;

“Term” means the period of time this Agreement is in effect and shall start on the date this Agreement is executed by all parties and shall expire fifteen years after the Completion Date; and

“Works” means Sewer works and related appurtenances substantially as described in Schedule “B”.

## **2 WORKS**

- .1 The Developer is 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.
- .2 The parties acknowledge that, as of the date of this Agreement, the Cost are estimated.
- .3 The Developer agrees that once the City has placed the Works on maintenance the City will issue a letter confirming the maintenance start date and that date will be deemed to be the Completion Date for the purposes of this Agreement.
- .4 The Developer covenants and agrees to provide the City with an invoice detailing the Cost and any other items required by the City, on the Developer’s letterhead, substantiated by the Professional Engineer who designed the Works, in order for the City to certify the final Cost. Once the City has accepted the final Cost the City will issue a letter confirming the value of the final cost and that number will be the final Cost for the purposes of this Agreement.

## **3 PAYMENT FOR WORKS**

- .1 The City is not responsible for financing any of the costs of the Works.

- .2 For greater certainty, all the land will be included in the Specified Charge calculation unless the General Manager, Engineering in their sole discretion agrees in writing that a portion of the land is not able to be developed.
- .3 The Specified Charge shall be pro-rated for any portion of land not equal to one (1.0) hectare.
- .4 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 bylaw 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.
- .5 In consideration of the completion of the Works by the Developer, to the satisfaction of the General Manager, Engineering, without incurring any cost to the City, the City agrees to collect from the Owners within the Benefiting Area the Specified Charge for each subdivision or building permit on or before the date when the Development Cost Charges are payable, pursuant to the Development Cost Charge Bylaw up to the Maximum Amount Owing within the Benefiting Area.
- .6 The City agrees to reimburse the Developer up to the Maximum Amount Owing the Specified Charge collected pursuant to this Agreement as follows:
  - (a) to the extent the Specified Charge has been collected from any Owners at the then prevailing Specified Charge rate;
  - (b) the City shall only be obligated to pay to the extent the City actually receives the Specified Charge from the Owners; and
  - (c) the City shall remit the amounts actually received twice each calendar year to the Developer and the City shall have no further obligation to the Developer to make any payment pursuant to this Agreement.
- .7 Subject to Section 3.6 the City shall pay the Developer 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, the City shall retain all such unclaimed funds forever.

- .8 In the event of the assignment or transfer of the rights of the Developer voluntarily, or by operation of law, the General Manager, Finance shall pay any benefits accruing hereunder, after notice, to such successor of the Developer as the General Manager, Finance in their 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 to the Term of this Agreement.
- .2 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.
- .3 This Agreement shall terminate prior to the expiry of the Term in the event the Developer has been paid the Maximum Amount Owing and interest (if any) as specified herein.

#### **5 INDEMNITY**

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 \$7,024.50 for the preparation and administration of this Agreement. The City acknowledges the receipt of payment by Receipt No. 71866626 paid to the City on December 23, 2021 for the preparation 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:

Anniedale Land Development Limited Partnership (1137365 BC Ltd.)  
#201, 15272 Croydon Drive  
Surrey, BC, V3Z 0Z5

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  
13450 – 104 Avenue  
Surrey, BC, V3T 1V8

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:
- (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 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.

**11 SCHEDULES**

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

- (a) Schedule "A" - Owners and Benefiting Area
- (b) Schedule "B" - Description of Sewer Works
- (c) Schedule "C" - Benefiting Area Map

**12 CONFLICT**

In the event of any conflict or inconsistency between Schedules "A" and "C", Schedule "A" shall supersede Schedule "C".

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

**CITY OF SURREY**

by its authorized signatory

\_\_\_\_\_  
General Manager, Engineering  
by his Authorized Designate, Sam Lau, P.Eng.  
Manager, Land Development

**Anniedale Land Development Limited Partnership (1137365 BC Ltd.)**

by its authorized signatory(ies):

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(signature)

SCHEDULE "A"

OWNERS AND BENEFITING AREA

## SCHEDULE "B"

### DESCRIPTION OF SEWER WORKS

Design, engineer, construct and inspect the Pump Station, Odour Control Facility, and Trunk Main complete with all required appurtenances.

SCHEDULE "C"

BENEFITING AREA MAP