

NO:

COUNCIL DATE:

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **July 25, 2013**

FROM: **General Manager, Engineering**

FILE: **7811-0269-00
8311-0269-00-1
8611-0269-00-1**

SUBJECT: **Development Cost Charge Front-Ending Agreement and Development Works Agreement for Works that Support Development in the North Grandview Heights Neighbourhood Concept Plan – Cressey (Grandview) Development LLP**

RECOMMENDATIONS

The Engineering Department recommends that Council:

1. Authorize the execution of a Development Cost Charge Front-Ending Agreement to an upset limit of \$722,041.00 (including applicable taxes) with Cressey (Grandview) Development LLP, the front-ending Developer, in relation to the construction of a community detention pond for the North Grandview Heights neighbourhood all as generally described in this report and in Appendix I to this report; and
2. Authorize the execution of a Development Works Agreement to an upset limit of \$2,292,559.00 (including applicable taxes) with Cressey (Grandview) Development LLP, the front-ending Developer, in relation to the construction of a community detention pond for the North Grandview Heights neighbourhood all as generally described in this report and in Appendices I and II to this report.

INTENT

The purpose of this report is to obtain approval for each of a Development Cost Charge Front-Ending Agreement (DCCFEA) and a Development Works Agreement (DWA) as means by which to reimburse the front-ending Developer for some of the costs that the Developer will incur in constructing a community detention pond within the North Grandview Heights neighbourhood using Drainage DCCs and a Drainage Specified Charge that will be collected by the City from development on land in the benefiting area, as illustrated on the map attached as Appendix I.

BACKGROUND

At its Council-in-Committee meeting on September 12, 2005, Council considered Corporate Report No. C013;2005 and by approving the recommendations of that report approved the

engineering servicing strategies for the North Grandview Heights Neighbourhood Concept Plan (NCP) Amendment.

Engineering Department staff has been working through the development servicing design process with Cressey (Grandview) Development LLP, the Developer, who is proposing to construct the community detention pond in the North Grandview Heights NCP. Certain components of these works are eligible for Drainage DCC reimbursement by the City; however, the DCC reimbursements will leave a funding shortfall in relation to the cost of the works, which the Developer is proposing be recovered from other benefiting lands through a Drainage DWA Specified Charge. A DWA requires the approval of City Council.

The use of Drainage DCCs to fund construction of the community detention pond is consistent with the provisions of the Local Government Act. The use of a DCCFEA and a DWA, respectively, as recommended in this report is in keeping with City policy regarding the use of such agreements as means of financing the construction of services that are contained in the City's 10-Year Servicing Plan.

DISCUSSION

Cressey (Grandview) Development LLP, the Developer, is proceeding with development on a site that is in the North Grandview Heights NCP. The construction of the community detention pond is required to allow development to proceed on that site and other lands in the North Grandview Heights NCP.

Cressey (Grandview) Development LLP has proposed that it would front-end the financing of the subject drainage works subject to the City executing a DCCFEA and a DWA, which would allow the City to collect funds from other benefiting lands in proportion to the benefit that is received and reimburse these funds to the Developer. In accordance with City policy, these agreements would apply for 15 years.

The benefiting area for each of the DCCFEA and the DWA is illustrated in Appendix I attached to this report.

Insufficient Drainage DCC revenues will be collected by the City from the benefiting lands to allow full cost recovery for the subject works; hence, over and above the recoveries available under a DCCFEA, a DWA is required to recover the shortfall. Based on initial estimates the DWA Specified Charge will amount to \$92,404.64 for each hectare within the benefiting area as illustrated in Appendix I.

The Developer has undertaken the normal DWA petition process related to the owners of the benefiting properties. Pursuant to Section 212 of the Community Charter, SBC 2003, Chap. 26, the City Clerk has received the petition and has determined it to be sufficient. Subject to endorsement by Council and execution of the DWA by the Developer, the City Clerk will bring forward for the required readings the related DWA By-law, which if adopted will act to give the City authority to collect the Specified Charge from the benefiting lands when the lands are developed. A sample DWA By-law is attached to this report as Appendix II.

The DCCFEA as proposed will not significantly affect the reasonable implementation of other components of the City's drainage DCC program or the 10-Year Servicing Plan.

Subject to Council approving the recommendations of this report, Legal Services will prepare the related agreements for execution by the Developer. Construction of the works will be based on a competitive tendering process by the Developer with the results of such process reviewed by City staff to confirm that the process reflects the City of Surrey purchasing policy and the prices represent reasonable value.

The Developer will post securities for the construction of the subject works through the normal Servicing Agreement process. The amounts to be collected from the benefiting lands under each of the DCCFEA and DWA, respectively, will be finalized upon completion of construction of the works and on certified actual costs to a maximum of the upset limits included in the Recommendations section of this report.

FUNDING

The cost of construction of the works will be front-ended by the Developer. The proposed DCCFEA and DWA, respectively, each have a term of 15 years, and will allow the Developer to recover some of the costs of constructing the works. Each of these Agreements will expire 15 years after the Completion Date of the works, regardless of the amount of the recoveries that the Developer has achieved at that time under each agreement.

SUSTAINABILITY CONSIDERATIONS

The proposed works and funding strategies to which this report refers support the Economic and Environmental Pillars of the City's Sustainability Charter; more particularly, the following action items:

- EC3: Sustainable Infrastructure Maintenance and Replacement – by minimizing initial capital and long term maintenance costs of infrastructure; and
- EN9: Sustainable Land Use Planning and Development Practices – by allowing for planned and orderly development in the City.

CONCLUSION

Based on the above discussion, it is recommended that Council:

- Authorize the execution of a Development Cost Charge Front-Ending Agreement to an upset limit of \$722,041.00 (including applicable taxes) with Cressey (Grandview) Development LLP, the front-ending Developer, in relation to the construction of a community detention pond for the North Grandview Heights neighbourhood all as generally described in this report and in Appendix I to this report; and
- Authorize the execution of a Development Works Agreement to an upset limit of \$2,292,559.00 (including applicable taxes) with Cressey (Grandview) Development LLP, the front-ending Developer, in relation to the construction of a community detention pond for the North Grandview Heights neighbourhood all as generally described in this report and in Appendices I and II to this report.

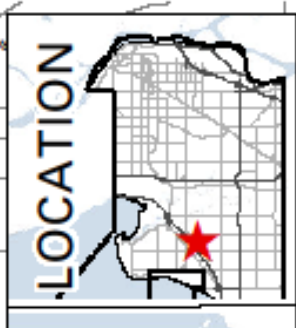
Vincent Lalonde, P.Eng.
General Manager, Engineering

SSL/brb

Appendix I - Benefiting Area Map for the Proposed Drainage DCC Front-Ending Agreement and Development Works Agreement

Appendix II - Sample of a Drainage Development Works Agreement By-law

APPENDIX I



BENEFITING AREA

PROPOSED DETENTION POND

FRONT-ENDING DEVELOPER'S LANDS

CONTRIBUTING LANDS

SCHOOL

LEGEND

- Benefiting Area
- Contributing Lands
- Proposed Detention Pond
- Front - Ending Developer's Lands
- School

Produced by GIS Section: 10-Jul-2013, aw8



**BENEFITING AREA MAP
DCC FRONT-ENDING AGREEMENT,
DEVELOPMENT WORKS AGREEMENT,
COMMUNITY DETENTION POND B, NORTH GRANDVIEW NCP**

**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.

Source:
G:\MAPPING\GIS\Map\Corporate\file\LandDev\AW-BenefitingLands_DetentionPond-A.mxd

CITY OF SURREY

BY-LAW NO. _____

A by-law to enter into a Drainage 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 Drainage Development Works Agreement to service properties within a portion of the North Grandview Heights 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 North Grandview Heights 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 "Drainage Development Works Agreement – North Grandview Heights Neighbourhood Concept Plan By-law, _____, No. _____".

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 in the Development Works Agreement.

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**

Agreement 8611-0269-00-1 (Drainage)

THIS AGREEMENT dated for reference the _____ day of _____, _____.

BETWEEN:

CITY OF SURREY, at 14245 - 56th Avenue,
City of Surrey, British Columbia, V3X 3A2

(the "City")

OF THE FIRST PART

AND:

CRESSEY (GRANDVIEW) DEVELOPMENT LLP
of #800, 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2

(the "Developer")

OF THE SECOND PART

- A. **WHEREAS** the real property within the North Grandview Heights Neighbourhood Concept Plan is identified in column two 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 are identified in column one entitled "Registered Property Owners" (as hereinafter defined);
- C. **AND WHEREAS** the Works as (hereinafter defined) have be constructed;
- D. **AND WHEREAS** the Developer shall undertake the performance of its obligations required to be made pursuant to this Agreement;
- E. **AND WHEREAS** the Works are contained within the City's 10-Year Engineering Servicing Plan;
- 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 (as hereinafter defined);
- G. **AND WHEREAS** Sections 937.1 and 937.2 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; and
- H. **AND WHEREAS** Drainage Development Works Agreement – North Grandview Heights Neighbourhood Concept Plan By-law, _____, No. _____ 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 will be introduced to Council.

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, 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." attached hereto;

"Capital Cost" means costs incurred by the Developer to construct the Works as determined in Section 2.2 of this Agreement;

"City" means the City of Surrey;

"Completion Date" means _____;

"Council" means the elected Council of the City;

"Developer" means Cressey (Grandview) Development LLP;

"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, _____, No. _____, enacted by the City under the *Act* as such By-law is amended or replaced from time to time;

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

"Maximum Amount" means the amount as specified in 3.6 provided the City collects the Specified Charge from the Owners, pursuant to this Agreement;

"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 sanitary sewer works and related appurtenances as described in Schedule "B" attached hereto;

"Specified Charge" means a debt payable to the City in the maximum amount of _____ (\$ _____) Canadian Dollars for each hectare of land

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 time this Agreement is in effect as specified in Section 4.1.

2. **WORKS**

- .1 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.
- .2 The parties acknowledge that, as of the date of this Agreement, the Capital Cost is _____ (\$_____) Canadian Dollars including applicable taxes.
- .3 The Developer agrees to facilitate the design, engineering and construction of the Works through the provision of funds as set out in this Agreement.
- .4 The Developer agrees to complete the construction of the Works on or before _____.

3. **PAYMENT FOR WORKS**

- .1 Each of the Owners shall pay the Specified Charge to the City on or before the date when the Development Cost Charges pursuant to the Development Cost Charge By-law are payable.
- .2 For greater certainty, all the land will be included in the Specified Charge calculation unless the General Manager, Engineering agrees in writing that a portion the land is not able to be developed due to agricultural land designation, topographic reasons or environmental sensitivity.
- .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, or other municipal authority is not obligated to:
 - (a) approve a subdivision plan, a phase 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.

- .5 The City is not responsible for financing any of the costs of the Works.
- .6 The Maximum Amount payable is calculated by multiplying the Specified Charge by (the Benefiting Area less the Developer's area). For clarity this means the amount payable to the Developer, pursuant to this Agreement will be by multiplying the Specified Charge of _____ (\$_____) Canadian Dollars including applicable taxes by (the Benefiting Area of _____ Hectares (____ ha) less the Developer's area of _____ Hectares (____ ha)) which equals _____ (\$_____) Canadian Dollars including applicable taxes.
- .7 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 and shall be conclusive against the Owners of the Benefiting Area.
- .8 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 for 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.
- .9 In the event of the assignment or transfer of the rights of the Developer voluntarily, or by operation of law, the City shall pay any benefits accruing hereunder, after notice, to such successor of the Developer as the City, 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 term of this Agreement shall commence on the Completion Date and shall expire on _____, _____ (the "Term").

- .2 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.
- .3 This Agreement shall terminate prior to the expiry of the Term in the event the Developer has been paid the Maximum Amount payable and interest 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 \$_____ which includes GST. The City acknowledges the receipt of payment by Receipt No. _____ paid to the City on _____, _____ 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:

Cressey (Grandview) Development LLP
#800, 925 West Georgia Street
Vancouver, B.C. V6C 3L2

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. **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" Legal Description and Registered Owners
- (b) Schedule "B" Description of Sanitary 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 signatories

Mayor

City Clerk

CRESSEY (GRANDVIEW) DEVELOPMENT LLP

as per their duly appointed
signatory(s):

SAMPLE

SCHEDULE "A"

LEGAL DESCRIPTION AND REGISTERED OWNERS

SAMPLE

SCHEDULE "B"

DESCRIPTION OF DRAINAGE WORKS

SAMPLE

SCHEDULE "C"

BENEFITING AREA MAP

