

NO: R209

COUNCIL DATE: October 23, 2017

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **October 17, 2017**

FROM: **General Manager, Engineering**

FILE: **7816-0032-00**

XC: **7816-0032-01**

8216-0032-00-1

8516-0032-00-1

SUBJECT: **Development Cost Charge Front-Ending Agreement and Development Works Agreement for Sanitary Sewer Works that Support Development in the Abbey Ridge Local Area Plan – Canadian Horizons (Abbey Ridge) Development Corp.**

RECOMMENDATION

The Engineering Department recommends that Council:

1. Authorize the execution of a Development Cost Charge Front-Ending Agreement to an upset limit of \$255,580.00 (including applicable taxes) with Canadian Horizons (Abbey Ridge) Development Corp. in relation to the construction of sanitary mains for the Abbey Ridge Local Area Plan, as generally described in this report and shown in Appendix “I” to this report; and
2. Authorize the execution of a Development Works Agreement to an upset limit of \$572,870.14 (including applicable taxes) with Canadian Horizons (Abbey Ridge) Development Corp. in relation to the construction of sanitary mains for the Abbey Ridge Local Area Plan, as generally described in this report and shown in Appendix “I” to this report.

INTENT

The purpose of this report is to obtain approval for a Development Cost Charge Front-Ending Agreement (“DCCFEA”) and a Development Works Agreement (“DWA”) as means by which to reimburse Canadian Horizons (Abbey Ridge) Development Corp. (the “Front-Ending Developer”) with Sewer Development Cost Charge (“DCC”) and DWA Specified Charge from development on the benefiting properties, as illustrated in Appendix “I”, for some of the costs that the Front-Ending Developer will incur in constructing the sanitary mains to serve the Abbey Ridge Local Area Plan (“LAP”).

BACKGROUND

Engineering Department staff have been working through the development servicing design process with the Front-Ending Developer, who is proposing to construct sanitary mains in the Abbey Ridge LAP. Certain components of these works are eligible for Sewer DCC reimbursement by the City; however, the Sewer DCC reimbursement will leave a funding shortfall in relation to the cost of the works which the Front-Ending Developer is proposing be recovered from other benefiting lands through a Sanitary DWA Specified Charge.

Use of the DCCFEA and the DWA, as recommended in this report, is in keeping with City practice 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

The Front-Ending Developer is proceeding with development on a site that is within the Abbey Ridge LAP. The construction of the sanitary mains is required to allow development to proceed on that site and will also benefit other lands in the Abbey Ridge LAP.

Since these works are necessary to proceed with this development, the Developer has offered to front-end the cost of these works provided he will be reimbursed over time from DCC and DWA funds collected from subsequent development within the benefiting areas. The DCC Front-Ending and Development Works Agreements provide the cost recovery mechanism. In accordance with City practice, these agreements would remain in effect for 15 years after the completion date of the works to which they apply.

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

The Sewer DCC revenues that will be collected by the City from the benefiting lands are not sufficient to fully cover the costs for the subject works; hence, over and above the recoveries available from the DCCFEA, the DWA is required to recover the shortfall. Based on initial estimates, the DWA Specified Charge will amount to \$25,136.91 per hectare for the lands within the benefiting areas as illustrated in Appendix "I" attached to this report.

The Front-Ending Developer has undertaken the normal DWA petition process with the owners of the properties within the benefiting areas. Pursuant to Section 212 of the *Community Charter, Statutes of British Columbia 2003, Chapter 26*, the City Clerk has received and certified the petition to be sufficient. Subject to approval by Council and execution of the DWA by the Front-Ending Developer, the City Clerk will bring forward for the required readings the related DWA Bylaw, which if adopted will act to give the City authority to collect the Specified Charge from the benefiting lands when such lands are developed. A sample DWA and DWA Bylaw are attached to this report as Appendix "II".

Subject to Council approving the recommendations of this report, Legal Services will prepare the related agreements for execution by the Front-Ending Developer. Construction of the works will be based on a competitive tendering process by the Front-Ending 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 Front-Ending 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 certification of the actual costs of construction 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 financed by the Front-Ending Developer. The proposed DCCFEA and DWA, respectively, 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 at that time under each agreement. These agreements will allow the Front-Ending Developer to recover some of the costs of constructing the subject works.

SUSTAINABILITY CONSIDERATIONS

The proposed works and funding strategies to which this report refers support the objectives of the City's Sustainability Charter. In particular, these works relate to the Sustainability Charter themes of Built Environment and Neighbourhoods, Economic Prosperity and Livelihoods, and Infrastructure. Specifically, this project supports the following Desired Outcomes and Strategic Directions:

- Neighbourhoods and Urban Design DO8: The built environment enhances quality of life, happiness and well-being;
- Economy SD5: Ensure infrastructure is in place to support businesses as neighbourhoods develop;
- All Infrastructure DO2: Infrastructure systems provide safe, reliable and affordable services; and
- All Infrastructure DO3: Infrastructure systems are designed to protect human health, preserve environmental integrity, and be adaptable to climate change impacts.

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 \$255,580.00 (including applicable taxes) with Canadian Horizons (Abbey Ridge) Development Corp. in relation to the construction of sanitary mains for the Abbey Ridge Local Area Plan, as generally described in this report and shown in Appendix "I" to this report; and
- Authorize the execution of a Development Works Agreement to an upset limit of \$572,870.14 (including applicable taxes) with Canadian Horizons (Abbey Ridge) Development Corp. in relation to the construction of sanitary mains for the Abbey Ridge Local Area Plan, as generally described in this report and shown in Appendix "I" to this report.

Fraser Smith, P.Eng., MBA
General Manager, Engineering

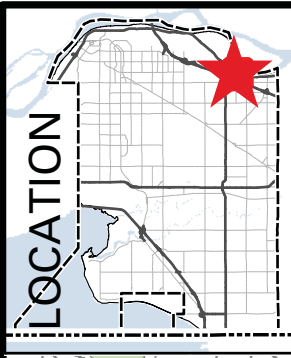
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Appendix "I" - Benefiting Area Map for the Proposed Sewer DCC Front-Ending Agreement and the Proposed Sanitary Development Works Agreement

Appendix "II" - Sample Sanitary Development Works Agreement Bylaw



LOCATION



Proposed Sewer Works

Benefiting Area

Benefiting Lands

Front-Ending Developer's Lands

LEGEND

- Benefiting Lands
- Front-Ending Developer's Lands
- Benefiting Area
- Proposed Sewer
- Parks

Produced by GIS Section: 21-Sep-2017, P123723

Scale: 1:8,000 0 80 M



Benefiting Area Map for Proposed DCC Front-Ending Agreement and Proposed Development Works Agreement

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\Maps\CorporateReps\LandDev\AP_7816-0032-01-03_BenefitingAreaMap.mxd

CITY OF SURREY

BYLAW NO. _____

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 Abbey Ridge Local Area 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 Abbey Ridge Local Area 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, in open meeting assembled, ENACTS AS FOLLOWS:

1. This By-law shall be cited for all purposes as "Development Works Agreement – Sanitary Sewer – Abbey Ridge Local Area Plan, By-law, 2017, No. _____".
2. The Council hereby authorizes the General Manager Engineering to enter into a development works agreement 8516-0032-00-1 (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 _____ (\$_____) for each hectare of land plus 5% interest compounded annually, 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

SAMPLE

CITY OF SURREY

DEVELOPMENT WORKS AGREEMENT

Project 8516-0032-00-1 (Sanitary Sewer)

THIS AGREEMENT dated for reference the _____ day of _____, 20__.

BETWEEN:

CITY OF SURREY,
13450 – 104 Avenue,
Surrey, B.C., V3T 1V8

(the “City”)

OF THE FIRST PART

AND:

CANADIAN HORIZONS (ABBEY RIDGE) DEVELOPMENT CORP.
Suite 710, 1055 West Georgia Street,
Vancouver, B.C., V6E 3R5

(the “Developer”)

OF THE SECOND PART

WHEREAS:

- A. The real property within the Abbey Ridge Local Area 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 – Sanitary Sewer – Abbey Ridge Local Area Plan, By-law, 2017, No. _____ 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”;

“Capital Cost” means the actual costs incurred by the Developer to construct the Works and the Capital Cost is estimated to be the sum of _____ (\$_____), including applicable taxes, which costs will be amended by the final capital 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 By-law;

“Development Cost Charge By-law” means Surrey Development Cost Charge By-law, 2016, No. 18664, as amended;

“Development Works By-law” means the by-law specified in recital E.;

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

“Maximum Amount Owed” means the maximum amount that could be payable by the City to the Developer pursuant to this Agreement as _____ (\$_____) plus 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 \$_____, which may be revised in accordance with Section 2.4 herein, plus interest at 5% compounded per annum 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, 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 sanitary 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 Capital 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 Capital 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 Capital Cost. Once the City has accepted the final Capital Cost the City will issue a letter confirming the value of the final cost and that number will be the final Capital 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 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.
- .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 By-law up to the Maximum Amount Owning within the Benefiting Area.
- .6 The City agrees to reimburse the Developer up to the Maximum Amount Owning 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 Owed 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 \$6,200.25 for the preparation and administration of this Agreement. 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:

CANADIAN HORIZONS (ABBEY RIDGE) DEVELOPMENT CORP.
Suite 710, 1055 West Georgia Street,
Vancouver, B.C., V6E 3R5

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, B.C., 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 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 signatory

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

by its authorized signatory(ies):

(print name)

(signature)

SIGNED and WITNESSED in the
presence of:

(print name of witness)

(signature of witness)

ADDRESS: _____

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SCHEDULE "A"

LEGAL DESCRIPTION AND REGISTERED OWNERS

SAMPLE

SCHEDULE "B"

DESCRIPTION OF SANITARY SEWER WORKS

SAMPLE

SCHEDULE "C"

BENEFITING AREA MAP

SAMPLE