

CITY OF SURREY

BY-LAW NO. 16826

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 portions of the Grandview Heights Neighbourhood Concept Plan #1 and Highway No. 99 Corridor Local Area 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.

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- A. WHEREAS Council may by by-law pursuant to Section 937.1 of the *Local Government Act*, R.S.B.C. 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 to serve portions of the Grandview Heights Neighbourhood Concept Plan #1 and Highway No. 99 Corridor Local Area 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;
- D. AND WHEREAS it is deemed expedient to grant the prayers of the petitioners in the manner hereinafter provided and proceed with the construction of the works.

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

- 1. This By-law shall be cited for all purposes as "Development Works Agreement – Grandview Heights Neighbourhood Concept Plan #1 and Highway No. 99 Corridor Local Area Plan By-law, 2008, No. 16826”.

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 "D" of the Development Works Agreement.

PASSED THREE READINGS on the 15th day of December, 2008.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 19th day of January, 2009.

\_\_\_\_\_MAYOR

\_\_\_\_\_CLERK

**CITY OF SURREY  
DEVELOPMENT WORKS AGREEMENT**

Project: 8606-0137-00-1

THIS AGREEMENT dated for reference the \_\_\_\_\_ day of January, 2009.

BETWEEN:

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

(the "City")

OF THE FIRST PART

AND:

**MORGAN CROSSING PROPERTIES LTD.**  
3<sup>rd</sup> Floor, 100 Park Royal, West Vancouver, B.C. V7T 1A2

(the "Developer")

OF THE SECOND PART

**WHEREAS** the real property within the Grandview Heights Neighbourhood Concept Plan #1 and the Highway No. 99 Corridor Local Area Plan is identified in column one entitled "Legal Description" in Schedule "A", and as illustrated in "Benefiting Area Map" in Schedule "C";

**AND WHEREAS** the registered owners in fee simple of the Benefiting Area (as hereinafter defined) are identified in column two entitled "Registered Owner" in Schedule "A";

**AND WHEREAS** the Works (as hereinafter defined) as described in Schedule "B" have been constructed;

**AND WHEREAS** the Developer has undertaken the performance of its obligations required to be made pursuant to this Agreement;

**AND WHEREAS** the Works are not currently scheduled for construction by the City however by Council accepting the Grandview Heights Neighbourhood Concept Plan #1, the Works are contained within the City's 10 Year Engineering Servicing Plan;

**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;

**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

**AND WHEREAS** Council adopted Development Works Agreement – Grandview Heights Neighbourhood Concept Plan #1 and Highway No. 99 Corridor Local Area Plan, By-law 2008, No. 16826 (the Development Works Bylaw), 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:

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

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

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

"Capital Cost" means the maximum sum of four million nine thousand six hundred forty-two dollars seventy-eight cents, \$4,009,642.78 Dollars in lawful currency of Canada including GST (where applicable) which represents a portion of the costs to construct the Works and acquire the Pond Lands;

"City" means the City of Surrey;

"Completion Date" means December 1, 2008.

"Council" means the elected Council of the City;

"DCC Frontending Agreement" means Development Cost Charge Frontending Agreement 8306-0137-00-1;

"Developer" means Morgan Crossing Properties Ltd.;

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

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

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

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

"Pond Lands" means Parcel Identifier 027-323-552, Lot 1, Section 23, Township 1, New Westminster District Plan BCP33672;

"Specified Charge" means a debt payable to the City in the maximum amount of one hundred ninety-five thousand six hundred eleven dollars forty-one cents, \$195,611.41 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; and

"Term" means the period of time this Agreement is in effect as specified in Section 4(a).

"Works" means a community detention pond and related appurtenances as described in Schedule "B";

## 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 the Capital Cost will be recoverable under this Agreement and that a further portion of the costs to construct the Community Detention Pond Works and acquire the Pond Lands will be recoverable under the DCC Frontending Agreement. The parties agree that the Capital Cost is allocated as to eight hundred forty-one thousand seven hundred dollars ninety-nine cents, \$841,070.99 to the construction costs and engineering fees (including GST), and three million one hundred sixty-eight thousand five hundred seventy-one dollars seventy-nine cents, \$3,168,571.79 to the land acquisition costs (not including GST). Each amount remitted to the Developer hereunder shall be considered a

proportional payment of the foregoing costs. The City confirms that it is registered under the *Excise Tax Act* and will self assess GST on the land acquisition costs when required under the *Excise Tax Act*.

- (c) The Developer has facilitated the design, engineering and construction of the Works through the provision of funds as set out in this Agreement.

### 3. PAYMENT FOR WORKS

- (a) The City is not obligated to pay any monies pursuant to this Agreement until the Form A Transfer of the Pond Lands has been filed for registration in the Lower Mainland Land Title Office, and the City has received a post index search showing, that in the ordinary course of Land Title Office procedure, the City will become the registered owner of the Pond Lands, free and clear of all financial encumbrances.
- (b) 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.
- (c) 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 cannot be developed due to agricultural land designation, topographic reasons or environmental sensitivity.
- (d) 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.
- (e) 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.
- (f) The City is not responsible for financing any of the costs of the Works.
- (g) 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 "D," attached hereto, and shall be conclusive against the Owners of the Benefiting Area.

- (h) The City shall pay to the Developer, on a Bi-Annual basis, in the months of May and November, subject to the City confirming in writing that they intend to change the months of payment, the sums collected from the Owners of the Benefiting Area at the address of the Developer as set forth hereinbefore or at such other address as the Developer shall provide by registered mail. If the said payments are returned to the City unclaimed by the Developer and if the City is unable to locate the Developer after all reasonable efforts, then the City shall hold all monies collected until the expiry of this Agreement. After the expiry of this Agreement, all such unclaimed funds shall be retained forever by the City.
- (i) 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 term of this Agreement shall commence on the Completion Date and shall expire no later than December 1, 2018 (the "Term").
- (b) 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.
- (c) This Agreement shall terminate prior to the expiry of the Term in the event the Developer has been paid the Capital Cost without interest.

5. **INDEMNITY**

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

6. **CITY'S COSTS**

The Developer shall pay to the City, by cash or bank draft, prior to the City executing this Agreement, a fee equivalent to \$4,240.00 which includes GST. The City acknowledges the receipt of payment by Receipt No.352543 paid to the City on April 4, 2007, for the preparation, registration 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:

Morgan Crossing Properties Ltd.  
3<sup>rd</sup> Floor, 100 Park Royal  
West Vancouver, B.C. V7T 1A2

Attention: Mr. Mansoor Lalji and Mr. Amin Lalji

or 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. **BINDING ON SUCCESSORS**

- (a) It is hereby agreed by and between the parties hereto that this Agreement shall be enforceable by and against the parties, their successors and assigns.
- (b) The Developer shall not assign or transfer its interest in this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld.

9. **ENTIRE AGREEMENT**

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

10. **LAWS OF BRITISH COLUMBIA**

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

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" - Works
- c) Schedule "C" - Benefiting Area Map
- d) Schedule "D" - Annual Interest Rate Increases for Specified Charge

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

**CITY OF SURREY**  
by its authorized signatories

\_\_\_\_\_  
Mayor

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

**MORGAN CROSSING PROPERTIES LTD.**  
by its authorized signatories

\_\_\_\_\_  
\_\_\_\_\_

December 11, 2008

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

Project File: 7806-0137-00  
DVA File: 8606-0137-00-1

Legal Description	Registered Owners	Civic Address	Area (ha)	Tax Roll Number
LT 1 S 1/2 L 7 SEC 23 T1 PL 10600 (		2638 Croyden Dr	.654	\$230000260 \$230000260
LT 1 BR 2 S 1/2 L 6 SEC 23 T1 PL 20974		2689 156 St	.055	\$230000521
LT 1 S 1/4 S 1/4 S 7 SEC 23 T1 PL 63184		2618 Croyden Dr	.421	\$230000545
LT 2 S 1/2 L 7 SEC 23 T1 PL 10600 P		2660 Croyden Dr	.502	\$230010265
LT 2 BR 2 S 1/2 L 6 SEC 23 T 1 PL 2097		2679 156 St	.028	\$230010484
LT 3 S 1/2 L 7 SEC 23 T1 PL 10600 (		2678 156 St	.85	\$230020222
LT 15 SE SEC 23 T1 PL 37507		15745 Croyden Dr	.792	\$230140033
LT 17 SE SEC 23 T1 PL 38815	nd	2594 Croyden Dr	.446	\$230160068
LT 23 L 6 SEC 23 T1 PL 20916		15584 28 Ave	.172	\$230220028 \$230220028
PT LT 24 L 6 NE HWY SEC 23 T1 PL 20016 (		2743 156 St	.28	\$230230046
PCL A BR 24 L 6 SEC 23 T1 EXP 17400		2767 156 St	.209	\$230900283
LT A SC 23 T1 PL 86404		2612 Croyden Dr	.29	\$230900568 \$230900568
LT B HALF SC 23 T1 PL 74351 PART: SH 14 P		15705 Croyden Dr	.792	\$230910203
W 1/2 N 1/2 L 7 SEC 23 T1 (EX RW PL		15650 28 Ave	2.713	\$230971204 \$230971204 \$230971204

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December 11, 2008

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

Project File: 7806-0137-00  
DWVA File: 8606-0137-00-1

Legal Description	Registered Owners	Civic Address	Area (ha)	Tax Roll Number
LT 56 SW SEC 23 T1 P1 27560		2715 156 St	.379	5230971204 5230971204
LT 5 S1/2 N1/2 NW SEC 23 T1 P1 9266		3009 156 St	1.523	5231040025
LT 6 S1/2 N1/2 NW SEC 23 T1 P1 9266		3033 156 St	1.455	5231060043 5230350043
S1807 S1/2 NW SEC 23 T1 P1 7582 E		2827 156 St	.528	5230660024
LT 13 NW SEC 23 T1 P1 35390		2909 156 St	1.198	5231120021
LT 14 NW SEC 23 T1 P1 35390		2939 156 St	1.208	5231130026
LT 15 NW SEC 23 T1 P1 35390		2959 156 St	1.2	5231140020
LT 16 NW SEC 23 T1 P1 35390		2981 156 St	1.058	5231150025
LT A 7 S1/2 NW SEC 23 T1 P1 17859		2871 156 St	.724	523390004X
LT B 8 1/2 NW SEC 23 T1 P1 17859		2833 156 St	.645	5233910068
LT 14 SE SEC 23 T1 P1 37507		15707 Crovdon Dr	.792	
		15759 Crovdon Dr	.792	
		15779 Crovdon Dr	.792	

2008-12-11

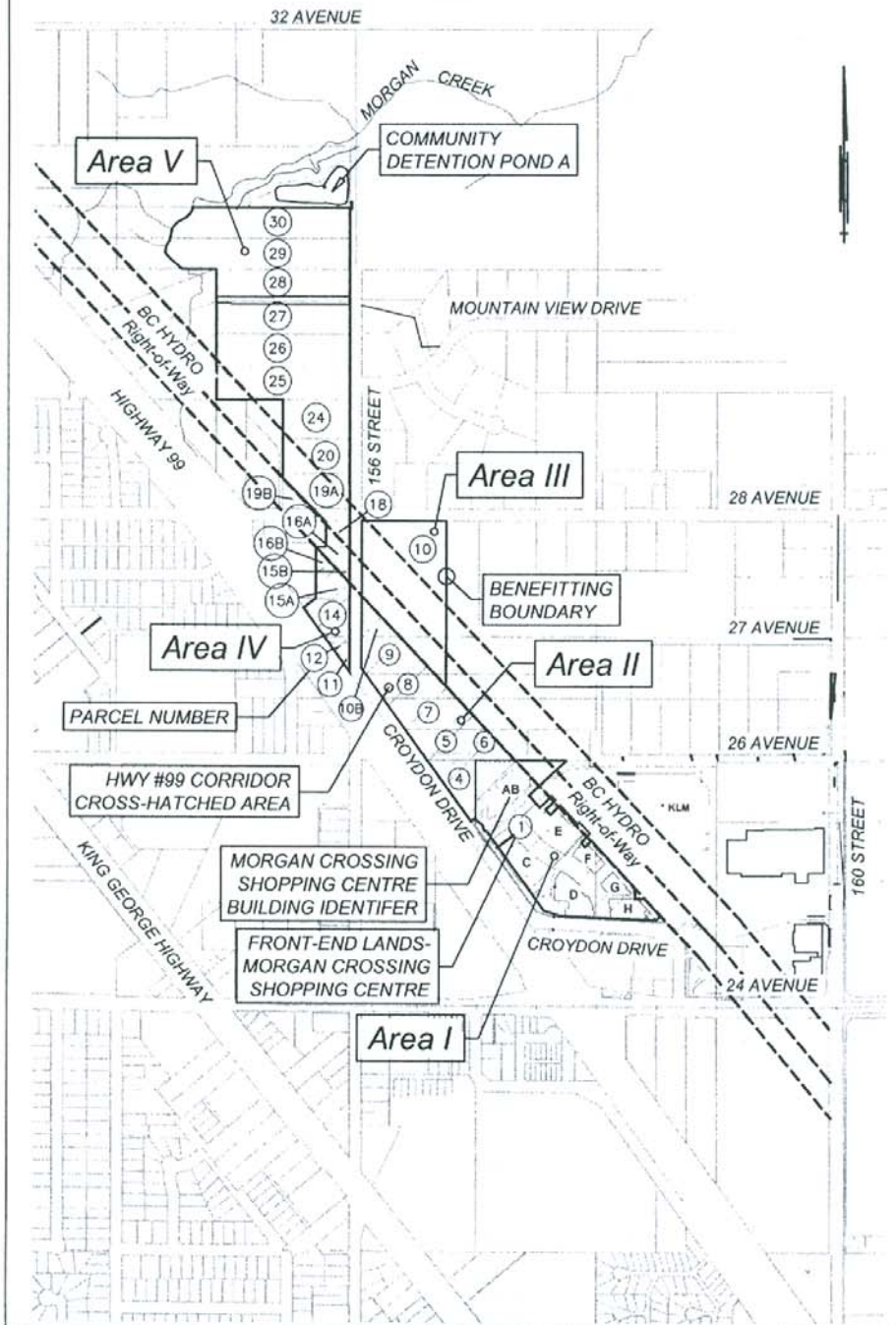
City of Surrey Planning Department

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**SCHEDULE 'B'**  
**Development Works Agreement (DWA) 8606-0137-00**  
**Description of Work**  
**COMMUNITY DETENTION POND 'A'**

- 1.0 Excavate approximately 5000 cubic metres to create a below existing-grade community detention. Dispose of removed material off-site.
- 2.0 Install approximately 75 lineal metres of 1050mm diameter storm sewer.
- 3.0 Install three (3) pre-cast concrete headwall structures.
- 4.0 Install one (1) pre-cast concrete storm water control structure.
- 5.0 Install approximately 480 cubic metres of 300mm nominal diameter rip-rap along existing watercourse channel to Morgan Creek.
- 6.0 Construct approximately 400 square metres of asphalt surface maintenance access.
- 7.0 Construct approximately 360 square metres of gravel surface maintenance access.
- 8.0 Install approximately 400 lineal metres of log rail fencing around the perimeter of the pond.
- 9.0 Install approximately 6700 square metres of zero maintenance plant material within the pond inundation area.

**SCHEDULE 'C'  
BENEFITING AREA MAP**



Title:	BENEFITING AREA MAP	City of Surrey	
	Scale:	1:10,000	Project Name: Morgan Crossing Shopping Centre
	Drawing Date:	November 2008	Front-End Developer Name: Morgan Crossing Properties Ltd.
		20	Land Development File No.: 7806-0137-00

**SCHEDULE "D"**

<b>Payment Year</b>	<b>Payment</b>
2009	\$205,391.98
2010	\$215,661.58
2011	\$226,444.66
2012	\$237,766.89
2013	\$249,655.24
2014	\$262,138.00
2015	\$275,244.90
2016	\$289,007.14
2017	\$303,457.50
2018	\$318,630.37

After Year 2018, there will be no charge.