

CITY OF SURREY

BYLAW NO. 18442

A bylaw 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 the North Grandview Heights Neighbourhood Concept Plan and a portion of the Grandview Heights General Land Use 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.

.....

WHEREAS Council may by bylaw 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;

AND WHEREAS Council has been petitioned to construct works to serve the North Grandview Heights Neighbourhood Concept Plan and a portion of the Grandview Heights General Land Use Plan pursuant to Section 937.1(4)(c) of the *Local Government Act*;

AND WHEREAS the City Clerk has certified that the petition is sufficient;

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 Council of the City of Surrey, ENACTS AS FOLLOWS:

1. This Bylaw shall be cited for all purposes as "Development Works Agreement – North Grandview Heights Neighbourhood Concept Plan and a Portion of the Grandview Heights General Land Use Plan Bylaw, 2015, No. 18442".

2. The City Council is hereby authorized to enter into that certain development works agreement attached hereto as Schedule 1 to this Bylaw (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.
5. The Specified Charge, as defined in the Development Works Agreement, payable by the Owners shall increase each year by 5% as specified on Schedule "C" of the Development Works Agreement.

PASSED FIRST READING on the 14th day of December, 2015.

PASSED SECOND READING on the 14th day of December, 2015.

PASSED THIRD READING on the 14th day of December, 2015.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 11th day of January, 2016.



MAYOR



CLERK



CITY OF SURREY
DEVELOPMENT WORKS AGREEMENT #2
Project 8613-0071-00-2 (Drainage)

THIS AGREEMENT dated for reference the _____ day of _____, 2015.

BETWEEN:

CITY OF SURREY, at 13450 – 104th Avenue,
City of Surrey, Province of British Columbia, V3T 1V8

(the "City")

OF THE FIRST PART

AND:

QUALICO DEVELOPMENTS (VCR) INC. of #310 – 5620 152 Street,
City of Surrey, British Columbia V3S 3K2

(the "Developer")

OF THE SECOND PART

- A. **WHEREAS** the real property within the North Grandview Heights Neighbourhood Concept Plan and portions of the Grandview Heights General Land Use Plan is identified in column one entitled "Legal Description" in Schedule "A" and are 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 two entitled "Registered Owners" (as hereinafter defined);
- C. **AND WHEREAS** the Works (as hereinafter defined) has been 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** Section 937.1 of the *Local Government Act*, R.S.B.C. 1996, c. 323 and amendments thereto (the "Act") authorized Council to enter into an agreement with a Developer for the provision of the Works by the Developer; and
- H. **AND WHEREAS** Council introduced the "Development Works Agreement (Drainage)-- Orchard Grove Neighbourhood Concept Plan and portions of the Grandview Heights Neighbourhood Concept Plan , By-law, 2015, No. 18442 (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 TEN (\$10.00) DOLLARS 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 two entitled "Legal Description" in Schedule "A."

"Capital Cost" means actual costs incurred by the Developer to construct the Works which costs are shown in Section 2.2 of this Agreement;

"City" means the City of Surrey;

"Completion Date" means October 07, 2014;

"Council" means the elected Council of the City.

"Developer" means Qualico Developments (Vcr) Inc.;

"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;

"Development Works By-Law" means the bylaw specified in Recital H;

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

"Maximum Amount Owning" means the maximum amount payable by the City to the Developer pursuant to this agreement as defined in Section 2.3;

"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;

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

"Specified Charge" means a debt payable to the City in the maximum amount of Twenty One Thousand, Seven Hundred, Seventy, decimal Forty One (\$21,770.41) Canadian Dollars for each hectare of land or portion thereof to be developed as approved by the City, including, but not limited to the Development Works Bylaw.

"Subdivision and Development By-law" means Surrey Subdivision and Development By-law, 1986, No. 8830, enacted by the City under the *Act* as such By-law is amended or replaced from time to time.

"Term" means the period of time 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 Five Million, One Hundred and Two Thousand, Nine Hundred and Ninety One (\$5,102,991.00) Canadian Dollars including applicable taxes.

- .3 The Maximum Amount Owing within the Development Works Agreement #2 is the maximum amount payable as calculated by multiplying the Specified Charge by the Benefiting Area. For clarity this means the Maximum Amount Owing to the Developer, pursuant to this Agreement will be by multiplying the Specified Charge of Twenty One Thousand, Seven Hundred, Seventy, decimal Forty One (\$21,770.41) Canadian Dollars including applicable taxes by the Benefiting Area of Twenty decimal Eighty Eight Hectares (20.88) which equals the Maximum Amount payable of Four Hundred, Fifty Four Thousand, Five Hundred Sixty Six, decimal Sixteen (\$454,566.16) Canadian Dollars including applicable taxes.
- .4 The Developer agrees to facilitate the design, engineering and construction of the Works through the provision of funds as set out in this Agreement.

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, 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 The City is not responsible for financing any of the costs of the Works.
- .6 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.
- .7 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.
- .8 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

- .1 The term of this Agreement shall commence on the Completion Date and shall expire on October 6, 2029 (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 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 \$5,365.50 for the preparation and administration of this Agreement. The City acknowledges the receipt of payment by Receipt No. 536937 paid to the City on July 25, 2013 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:

QUALICO DEVELOPMENTS (VCR) INC.
#310 – 5620 152 Street,
Surrey, British Columbia V3S 3K2

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" - Storm Drainage 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

QUALICO DEVELOPMENTS (VCR) INC.

by its authorized signatories



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

Project File: 7813-0071-00
 DWA File: 8613-0071-00-2

Legal Description	Registered Owners	Civic Address	Area (ha)	Tax Roll Number
LT 1 NE SC 24 T1 PL72033 PART: NE1/4 PID	[REDACTED]	2866 164 St	.969	5244000019 5244000019
S1/2 15 NE SEC 24 T1 PL 5893	[REDACTED]	2902 164 St	2.02	5244140012 5244140012
N1/2 15 NE SEC 24 T1 PL 5893	[REDACTED]	2954 164 St	2.02	5244140024 5244140024
BK 17 NE SEC 24 T1 PL 5893 5 AC	Marco Development Corp Lamar Developments Ltd Bbc Development Ltd	3142 164 St	2.02	5244160023 5244160023 5244160023
BK 18 NE SEC 24 T1 PL 5893 5AC	718009 Bc Ltd	16434 32 Ave	2.02	5244170028
BK 19 NE SEC 24 T1 PL 5893 5AC	Southtrac Holdings Ltd	16466 32 Ave	2.02	5244180022
LT 64 SE SEC24 T1 PL65076	[REDACTED]	16441 28 Ave	.4	5244565011 5244565011
LT 80 NE SC24 T1 PL 67389	[REDACTED]	16445 28 Ave	.4	5244645018
LT A BK 16 NE SEC 24 T1 PL 14114 1	Morgan Grandview Enterprises Groupco Ltd	2982 164 St	.62	524490002X
PCL A BK 14 NE SEC 24 T1 EXP 14157	[REDACTED]	2848 164 St	.4	5244900043
LT B 16 NE SEC 24 T1 PL 14114	Morgan Grandview Enterprises Groupco Ltd	2966 164 St	3.42	5244910024
LT 78 SE SC24 T1 PL67389	[REDACTED]	16446 28 Ave	.45	5249635015
LT 79 SE SC24 T1 PL67389	1006162 Bc Ltd	16442 28 Ave	.4	5249640011

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

Project File: 7813-0071-00
DWA File: 8613-0071-00-2

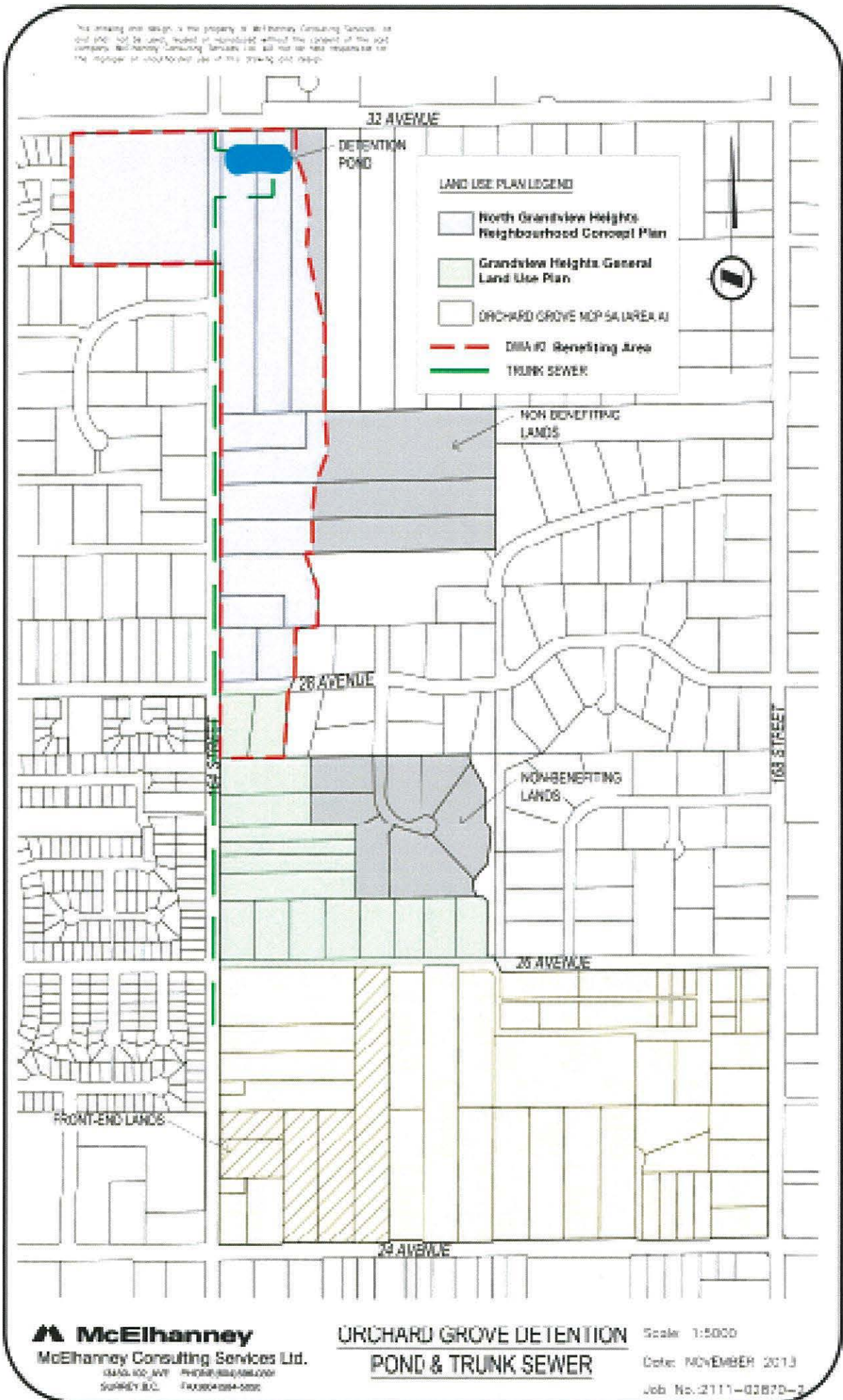
Legal Description	Registered Owners	Civic Address	Area (ha)	Tax Roll Number
E1/2 N1/2 LS 14 SEC 24 T1 (EX E 33')	[REDACTED]	16340 32 Ave	3.72	524997188X

SCHEDULE "B"

DESCRIPTION OF STORM DRAINAGE WORKS

Means and includes anything and everything required for the design, engineering and construction of Storm Sewer on 164 Street from 2552 – 164 Street to the Community Detention Pond located on the east portion of 3142-164Street, 16434-32 Avenue and 16466- 32 Avenue.

Schedule C Development Works Agreement #2



McElhanney
McElhanney Consulting Services Ltd.
13440 100 Ave. Phone: (904) 988-0001
Surrey, B.C. Fax: (604) 988-0000