

NO: **R146**

COUNCIL DATE: **July 25, 2011**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **July 20, 2011**

FROM: **City Solicitor**

FILE: **0112-03**

SUBJECT: **Preferred Shares for Surrey City Development Corporation ("SCDC")**

RECOMMENDATION

The Legal Services Division recommends that Council:

1. receive this report as information; and
2. approve the creation by SCDC of an unlimited number of Class A Preferred shares, the attributes of which shall be substantially in accordance with Appendix "A".

BACKGROUND

SCDC was incorporated in 2007. The City is the sole shareholder of the common shares of SCDC.

At its Regular meeting of April 4, 2011, Council adopted the recommendations of Corporate Report #R057, which authorized the transfer of the beneficial interest in a number of properties from the City to SCDC for the purpose of SCDC developing these properties in accordance with its mandate and business plan.

DISCUSSION

To legally complete the transfer of the beneficial interest in land from the City to the SCDC there needs to be evidence of adequate consideration for the land being provided by SCDC to the City. In reviewing this circumstance, Legal Services has determined that the creation of Class A Preferred shares by SCDC, which would then be transferred to the City as and when lands are transferred by the City to the SCDC, will satisfy this legal need for adequate consideration.

For such Class A Preferred shares to be created, Council must approve a Shareholder's Resolution to this effect. This Shareholder's Resolution serves to establish that the City, as SCDC's sole shareholder, consents to SCDC's creation of an additional class of shares.

CONCLUSION

The Legal Services Division recommends that Council approve the creation by SCDC of an unlimited number of Class A Preferred shares for the purposes documented in this report.

CRAIG MacFARLANE
City Solicitor

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Appendix "A" – Attributes of Class A Preferred shares

Appendix "A"

PART 17 – SPECIAL RIGHTS AND RESTRICTIONS ATTACHED TO THE CLASS A PREFERRED SHARES

The special rights and restrictions attached to the Class A Preferred shares are as follows:

17.1 Redemption Price

The redemption price of the Class A Preferred shares shall be determined by the directors of the Company on the date of first issuance of such shares (in this Part called the Redemption Price). The Redemption Price of the Class A Preferred shares is subject to adjustment pursuant to Part 17.6(b).

17.2 Dividends

Subject to the provision of these Articles, dividends may be declared, at the discretion of the Directors, at any time upon the Class A Preferred shares to the exclusion of all or any other class or classes of shares. Dividends may be declared and paid, at the discretion of the Directors, upon all or any other classes of shares to the exclusion of the Class A Preferred shares.

17.3 Liquidation, Dissolution or Winding Up

In the event of the liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary, or in the event of the redemption, purchase or acquisition of any shares, the reduction of capital or any other return of capital, the holders of the Class A Preferred shares shall be entitled to receive before any distribution of any part of the assets of the Company to the holders of any other shares, an amount equal to the Redemption Price thereof, and any dividends declared thereon and unpaid and no more.

17.4 Redemption by Company

- (a) The Company may, upon giving notice, as hereinafter provided, unless waived, redeem the whole or any part of the Class A Preferred shares on payment for each share to be redeemed of the Redemption Price together with all dividends declared thereon and unpaid. If some of the then outstanding Class A Preferred shares are at any time to be redeemed, the shares so to be redeemed shall be redeemed pro rata, disregarding fractions, and the Directors may make such adjustments as may be necessary to avoid the redemption of fractions of shares. Unless waived, not less than 10 days' notice in writing of such redemption shall be given by mailing such notice to the registered holders of the shares so to be redeemed, specifying the number of shares to be redeemed, the Redemption Price per share, the amount of any unpaid dividends per share, and the date and place or

places of redemption. If notice of any such redemption is given by the Company in the manner aforesaid, and an amount sufficient to redeem the shares is deposited with any trust company or chartered bank in Canada as specified in the notice, or is paid to the holders of the shares so to be redeemed on or before the date fixed for redemption, then dividends on the Class A Preferred shares to be redeemed shall not be declared after the date so fixed for redemption and thereafter such shares shall be deemed to have been redeemed and the holders thereof shall have no rights against the Company in respect thereof except, upon the surrender of certificates for such shares, to receive or retain payment therefore out of the monies so deposited or paid. After an amount sufficient to redeem any shares has been deposited with any trust company or chartered bank in Canada, as aforesaid, notice shall be given to the holders of any Class A Preferred shares called for redemption who have failed to present the certificates representing such shares within 2 months of the dates specified for redemption that the money has been so deposited and will be paid without interest to the holders of the said Class A Preferred shares upon presentation of the certificates representing such shares called for redemption at the said trust company or chartered bank.

- (b) The Company may acquire the whole or any part of the Class A Preferred shares pursuant to tenders received by the Company upon request for tenders addressed to all holders of Class A Preferred shares, at the lowest price at which, in the opinion of the Directors, such shares are obtainable, but not exceeding the Redemption Price thereof, together with all dividends declared thereon and unpaid. From and after the date of the acquisition of any Class A Preferred shares, such shares shall be regarded as having been redeemed. If in response to any invitation for tenders, two or more shareholders submit tenders at the same price, and if such tenders are accepted by the Company in whole or in part, then, unless the Company shall accept all such tenders in whole, the Company shall accept such tenders in proportion as nearly as may be to the number of shares offered in each such tender.
- (c) Any provision relating to the redemption or purchase of Class A Preferred shares may be waived or varied in such a manner and to such extent as may be agreed between the Company and all the holders of the Class A Preferred shares.

17.5 Voting Rights

The holders of the Class A Preferred shares will be entitled to receive notice of and to attend and vote at all meetings of the shareholders of the Company and are entitled to one vote for each Class A Preferred share held.

17.6 Redemption Price Adjustment

- (a) The Redemption Price of the Class A Preferred shares is to be based upon the following intentions:
- (i) the number of Class A Preferred shares that will be issued at any time is such that the aggregate Redemption Price of such Class A Preferred shares so issued would be equal to the best estimate by the Directors and by the allottees of the net value of the particular asset, cash, or services, less the value of any non-share consideration given by the Company for the asset cash or services; and
 - (ii) the holders of Class A Preferred shares intend that the number of such Class A Preferred shares received from the Company for any particular asset, cash, or services will be such that the value of the particular asset, cash, or services received by the Company for such shares from such holder will be equal to the Redemption Price multiplied by the number of Class A Preferred shares so issued.
- (b) If the Minister of National Revenue, the Minister of Finance for the Province of British Columbia, their authorized representatives, or any similar authority proposes to issue or issues any assessment or reassessment, or if a court of competent jurisdiction makes a final determination that would impose or imposes any liability for tax on the holders of the Class A Preferred shares or any other class of shares or on any other person on the basis of a determination or assumption made in respect of the value of the consideration received by the Company for the issue of such Class A Preferred shares which results in greater or lesser value than that used for the purpose of a particular allotment of Class A Preferred shares, or if the Company and all holders of Class A Preferred shares so agree, then such value and the Redemption Price of the Class A Preferred shares over which a difference has arisen shall be reviewed and deemed to be adjusted as follows:
- (i) if the authority in issuing or proposing to issue such an assessment or reassessment also makes a determination of the value of the consideration received by the Company for the allotment and issuance of Class A Preferred shares, or a recommendation as to the required increase or decrease in the Redemption Price of any Class A Preferred shares that have been allotted and issued, which is necessary so as to ensure that the aggregate Redemption Price of such shares represents the value of the consideration received by the Company for such shares, and the holders of the Class A Preferred shares and such other persons, if any, against whom such assessment is made or proposed, either before or after objection of appeal or by an agreement with such authority, accept the determination or recommendation, or of the Company and all holders of Class A Preferred

shares so agree, then the value so determined shall be deemed to be the value and the recommended increase or decrease in the Redemption Price shall be deemed to be the increase or decrease required as hereafter provided;

- (ii) if the court of competent jurisdiction in making such final determination also makes a determination of the value of the consideration received by the Company for the allotment and issuance of Class A Preferred shares, or a recommendation as to the required increase or decrease in the Redemption Price of any Class A Preferred shares that have been allotted and issued, which is necessary so as to ensure that the aggregate Redemption Price of such shares represents the value of the consideration received by the Company for such shares, then the value so determined shall be deemed to be the value and the determined increase or decrease in the Redemption Price shall be deemed to be the increase or decrease required as hereinafter provided;
- (iii) in any other case, the parties shall appoint a firm of professional accountants or a chartered business valuator in the Province of British Columbia to make or obtain a second determination of such value over which a difference has arisen and to make a recommendation as to the required increase or decrease, if any, in the Redemption Price of such Class A Preferred shares and the value of such consideration and the required increase or decrease in the Redemption Price aforesaid shall be deemed to be the amount agreed upon by the persons referred to in clause (i) of this paragraph 17.6(b) after first receiving and considering such second determination and recommendation, or if they cannot agree, the matter of such value or such increase or decrease will be referred to a single arbitrator appointed under the *Commercial Arbitration Act*, R.S.B.C. 1996, Chapter 55, whose determination of such matters shall be final.

Thereafter the Redemption Price of such Class A Preferred shares that were outstanding immediately after the allotment over which the issue arose shall be adjusted in accordance with such recommended or determined increase or decrease retroactively as of the date of the allotment and applicable to the first and every subsequent redemption of any such shares, provided that if at the time of such adjustment in the Redemption Price any such shares have been redeemed then the Company shall forthwith pay any increase in the Redemption Price for such shares already redeemed to the person who held such shares at the time of redemption or, failing him, his personal representatives or estate on account of the adjustment in the Redemption Price and such person or his representative shall forthwith repay to the Company the amount of any decrease in the Redemption Price so adjusted.