

NO: **R098**

COUNCIL DATE: **May 7, 2012**

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **April 30, 2012**

FROM: **City Solicitor**

FILE: **2480-01**

SUBJECT: **Renewal of the Partnering Agreement Between the City of Surrey and the Surrey City Development Corporation**

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## RECOMMENDATION

The Legal Services Division recommends that Council:

1. Approve the renewal of the Partnering Agreement between the City of Surrey (the "City") and the Surrey City Development Corporation ("SCDC") for a ten (10) year term from May 1, 2012 to April 30, 2022 and authorize the appropriate City officials to take all necessary related actions; and
2. Request that the City Clerk forward a copy of this report and the related Council resolution to SCDC.

## BACKGROUND

In 2007 Council approved a Partnering Agreement between the City and SCDC that had a term running from May 1, 2007 to April 30, 2012. A copy of that Agreement is attached to this report as Appendix "A" (the "Partnering Agreement").

## DISCUSSION

The Partnering Agreement allows the City to provide assistance to SCDC, in accordance with the Community Charter, S.B.C. 2003, c. 26 (the "Charter"). "Assistance" is defined in the Charter to mean "assistance within the meaning of section 25(1)". Section 25(1) states:

- (1) Unless expressly authorized under this or another Act, a council must not provide a grant, benefit, advantage or other form of assistance to a business, including
  - (a) any form of assistance referred to in section 24 (1) [*publication of intention to provide certain kinds of assistance*], or
  - (b) an exemption from a tax or fee.

The forms of assistance to which Section 25(1) refers includes:

- (a) disposing of land or improvements, or any interest or right in or with respect to them, for less than market value;
- (b) lending money;
- (c) guaranteeing repayment of borrowing or providing security for borrowing; and
- (d) assistance under a partnering agreement.

The renewal of the Partnering Agreement between the City and SCDC is necessary to allow for continuation of orderly business activities by SCDC all in accordance with the established relationship between the City of Surrey and SCDC. The renewal Agreement will have the same terms and conditions as the previous agreement. It is recommended that the term of the renewal Agreement be a ten (10) year term from May 1, 2012 to April 30, 2022.

## CONCLUSION

Based on the above discussion, the Legal Services Division recommends that Council:

- Approve the renewal of the Partnering Agreement between the City and SCDC for a ten (10) year term from May 1, 2012 to April 30, 2022 and authorize the appropriate City officials to take all necessary related actions; and
- Request that the City Clerk forward a copy of this report and the related Council resolution to SCDC.

CRAIG MacFARLANE  
City Solicitor

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Appendix "A" - SCDC Partnering Agreement

## APPENDIX "A"

### PARTNERING AGREEMENT

THIS AGREEMENT dated for reference the 30<sup>th</sup> day of April, 2007.  
BETWEEN:

**CITY OF SURREY**, a municipal corporation under the laws of British Columbia and having its offices at 14245 – 56 Avenue, Surrey, British Columbia V3X 3A2

("City")

AND:

**SURREY CITY DEVELOPMENT CORPORATION**, a corporation incorporated under the laws of British Columbia and having its registered office at 14245 – 56 Avenue, Surrey, British Columbia V3X 3A2

("SCDC")

WHEREAS:

- A. The City is the legal and beneficial owner of all of the shares of SCDC;
- B. The *Community Charter* authorizes the City to enter into a partnering agreement with a person pursuant to which the person agrees to undertake or provide services, including an activity, work or facility on behalf of the City;
- C. The City wishes to contract with SCDC to provide on behalf of the City real estate development services, activities and work for the benefit of the City, its residents and businesses and SCDC wishes to provide such services, activities and work on behalf of the City.

NOW THEREFORE in consideration of \$1.00 paid by the City to SCDC, and other good and valuable consideration, the receipt and sufficiency of which SCDC acknowledges, the parties agree as follows:

1. In this Partnering Agreement,
  - (a) "**Assistance**" has the same meaning as in the *Community Charter*, S.B.C. 2003, c. 26;
  - (b) "**Contamination**" means any explosives, radio active materials, asbestos materials, urea formaldehyde, underground and above ground tanks, pollutants, contaminants, deleterious substances, dangerous goods or substances, hazardous, corrosive or toxic substance, or waste of any kind or any other substance the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into the environment of which is prohibited, controlled, or regulated under Environmental Laws;

- (c) **"Environmental Laws"** means any and all statutes, laws, regulations, orders, bylaws, permit, and other lawful requirements of any federal, provincial, municipal or other governmental authority having over the Lands now or hereafter in force relating to the environment, health, occupation health and safety, product liability or transportation of dangerous goods, including all applicable guidelines and standards with respect to the foregoing as adopted by any of those governmental authorities from time to time and the principals of common law and equity;
  - (d) **"Lands"** means any land, or interest in land, improvements or structures which the City and SCDC hold under a Trust Agreement from time to time;
  - (e) **"Trust Agreement"** means the agreement between the City and SCDC whereby the City holds title, or will hold title, to the Lands as bare trustee for SCDC substantially in the form attached to this Agreement as Schedule "A".
2. This Partnering Agreement is effective on May 1, 2007 and shall continue in effect unless sooner terminated as provided herein, until April 30, 2012. This Partnering Agreement may be terminated on thirty (30) days notice by the City.
3. SCDC agrees to undertake or provide the following services, activities and work on behalf of the City:
- (a) invest in, develop, market, acquire, dispose or lease commercial, industrial, institutional, civic and residential Lands;
  - (b) enhance business opportunities and activities within the City of Surrey with a commitment to sustainability;
  - (c) assume full responsibility for construction and installation of all servicing for the development of the Lands, including without limitation construction and installation of:
    - (i) all roads, waterworks, sewage works and drainage works and other municipal infrastructure as directed by the City and to City standards,
    - (ii) all works for carrying and distribution of gas, electricity, telephone and other telecommunications signals, either by private or public utilities, and
    - (iii) other public amenities as directed by the City;
  - (d) undertake the stewardship of the Lands as a prudent owner would do; and
  - (e) SCDC will comply with all City directives with respect to any matter set out in this section 3.

4. To facilitate the provision of the services in section 3 and to enable SCDC to market, finance, develop and sell or lease the Lands, the City and SCDC agree that fee simple title to the Lands shall be registered in the name of the City and held in trust on behalf of SCDC in accordance with the Trust Agreement.
5. The City may, as and when it considers it appropriate to do so, and subject to all applicable statutory restrictions, provide any type of Assistance whatsoever to SCDC in connection with any activity of SCDC under this Partnering Agreement or otherwise in connection with the development, investment, acquisition, sale or lease of the Lands and the management and operation of SCDC, including, without limitation, any one or more of the following:
  - (a) disposing of land or improvements, or any interest or right in or with respect to them, for less than market value;
  - (b) guarantee of debts or other obligations assumed or incurred by SCDC;
  - (c) loans of money to SCDC;
  - (d) grants or other benefits to SCDC;
  - (e) provision or secondment of City employees or employee time to SCDC; and
  - (f) provision of office space, supplies and equipment to SCDC.
6. Nothing herein restricts the ability of the City to invest in SCDC through the acquisition of further share capital in SCDC, and for greater certainty, such share acquisition is not to be considered Assistance.
7. SCDC covenants and agrees that it will, at all times during the currency of this Partnering Agreement:
  - (a) perform promptly and safely all of its obligations under this Partnering Agreement and perform promptly and safely all of its obligations under every other agreement between SCDC and any other party in respect of the Lands the breach of which will materially adversely affect SCDC's ability to carry out the terms of this Partnering Agreement;
  - (b) be just and faithful in the performance of its obligations under this Partnering Agreement and in its dealings with the City under this Partnering Agreement and other agreements entered into between the SCDC and the City or any other person in respect of the Lands. Without limiting the generality of the foregoing, SCDC shall make full, frank and immediate disclosure to the City of all matters coming to the attention of SCDC or any of its officers, directors employees, agents, servants or consultants in relation to the services under this Partnering Agreement;
  - (c) diligently promote, market and develop the Lands;

- (d) perform its obligations itself or through such reputable and competent agents or independent contractors as it may engage from time to time;
  - (e) perform its obligations under this Partnering Agreement and exercise all of its rights in respect of the Lands in a lawful and orderly manner in full compliance with all applicable federal, provincial, municipal and other laws, bylaws (including bylaws of the City of Surrey), regulations and statutes;
  - (f) perform its obligations under this Partnering Agreement and exercise all of its rights in respect of the Lands so that no act or thing whatsoever may be done, permitted or omitted to be done upon the Lands which may be or may become a nuisance, damage, or unlawful disturbance to the City, or to the owners or occupiers of any neighbouring properties;
  - (g) not do or suffer or permit to be done any act, activity or thing which may render void or voidable, or which may conflict with the requirements of any policy or policies of insurance in respect of the Lands of which SCDC is aware;
  - (h) not release, compromise, assign or transfer any claim, right or benefit of the City;
  - (i) not dispose of any interest in the Lands or enter into any agreement for the disposition of any interest in the Lands except on terms and conditions that do not prejudice the City in meeting its obligations or increase the City's liability exposure under an agreement of purchase and sale for lands or under any mortgages or other security granted in respect of the Lands.
8. SCDC will at all times during the currency of this Agreement comply with and abide by all Environmental Laws. Without limiting the generality of the foregoing, SCDC will comply with the following provisions:
- (a) SCDC will not permit the storage, treatment or disposal of hazardous substances on the Lands or in any improvement on the Lands;
  - (b) SCDC will assume any and all duties, obligations or liabilities of the City, as registered owner of the Lands in trust for SCDC, under any relevant law in respect of any Contamination placed, deposited or coming into existence on, or migrating on to the Lands after the acquisition of Lands by SCDC, including but not limited to any costs, expenses or liabilities for any remedial action for any such contamination;
  - (c) SCDC must provide the City with immediate notice of any condition on the Lands or any improvement on the Lands of which it becomes aware that may result in any fines, penalties, orders, proceedings, investigations, litigation or enforcement proceedings, made or threatened by any third parties or governmental agencies; and

- (d) SCDC must provide the City with immediate notice in writing, upon SCDC becoming aware of any Contamination of or on the Lands or of or on any improvement on the Lands.
9. The City will not be liable or responsible in any way for any loss or injury that may be sustained by SCDC or any loss or injury sustained by any employee, agent or independent contractor of SCDC or any other person who may be upon the Lands, or for any loss of or damage or injury to property belonging to or in the possession of SCDC or any employee, agent or independent contractor of SCDC or any other person.
10. SCDC will indemnify and save harmless the City, its elected and appointed officials, officers, employees, servants, agents and those for whom they are in law responsible, from and against any and all liabilities, damages losses, costs, expenses, (including lawyer's fees and litigation expenses) actions, causes of actions, claims, suits and judgments which the City may incur or suffer or be put to by reason of or in connection with or arising from:
- (a) any breach of any obligation set forth in this Partnering Agreement to be observed or performed by SCDC;
  - (b) any act, omission, or negligence of SCDC, its members, officers, directors, employees, agents, contractors, subcontractors, subtenants, licensees, invitees or others for whom it is responsible;
  - (c) any damage to property occasioned by SCDC's use and occupation of the lands or any injury to person or persons, including death, resulting at any time from SCDC's use and occupation of the Lands; or
  - (d) any and all liability for loss, injury or damage caused by any of the perils against which SCDC shall have insured or pursuant to the terms of this Partnering Agreement is obligated to insure the Lands, or any part or parts thereof.

Should the City be made a party to any litigation commenced by or against SCDC, then SCDC will protect, indemnify and hold the City harmless and will promptly pay all costs, expenses and legal fees (on a solicitor and own client basis) incurred or paid by the City in connection with such litigation upon demand. SCDC will also promptly pay upon demand all costs, expenses and legal fees (on a solicitor and own client basis) that may be incurred or paid by the City in enforcing the terms, covenants and conditions in this Partnering Agreement.

11. SCDC's obligations under Section 10 will survive any expiration or termination of this Partnering Agreement.
12. SCDC will insure all improvements on the Lands and the contents of them, including any services, based upon full insurable values, with "all risks" coverage on a replacement cost basis, flood and earthquake endorsements, and a maximum deductible in such amount as is agreed upon in writing by SCDC and the City from time to time.

13. Without limiting SCDC's obligations and liabilities under this Partnering Agreement, SCDC will obtain, at its own expense, and keep in force a policy of comprehensive/commercial general liability insurance providing coverage against claims for personal injury, death, or property damage or loss upon, in, or about the Lands, and arising out of or connected with the activities of SCDC and those for whom it is in law responsible and the activities of subtenants on the Lands, or the use and occupancy of the Lands or any part thereof by SCDC or by those for whom it is in law responsible or by any approved subtenants, containing the following terms and conditions:
  - (a) providing for the minimum combined single limit of not less than \$10,000,000 or such other amount as the City may reasonably require for each occurrence or accident;
  - (b) providing coverage for damage because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of injury to or destruction of property caused by any occurrence or accident arising out of any activities in connection with the Lands or its operation; and
  - (c) the policy will name the City as an additional named insured with a cross liability clause and, if required, extend to cover the employees of the insureds. The policy will contain a clause providing that the inclusion of more than one insured will not in any way affect the rights of any insured as respects to any claim, demand, suit or judgment made against any other insured.
  
14. All insurance required by this Partnering Agreement will be placed with reputable insurers upon terms and in amounts, as to deductibles and otherwise, satisfactory to the City acting reasonably from time to time. The cost of premiums and deductibles for each and every such policy will be paid by SCDC. SCDC will obtain from the insurers under such policies, undertakings to notify the City in writing at least thirty (30) days prior to any cancellation or amendment thereof. SCDC will provide the City with copies of all policies, or certificates of such insurance policies in lieu thereof as described herein and each renewal and replacement thereof and each endorsement thereto. SCDC will deliver to the City notice of the continuation of such policies not less than ten (10) days prior to their respective expiry dates.



15. The City and SCDC disclaim any intention to create a partnership or joint ventureship or to constitute either of them the agent of the other and nothing contained in this Agreement shall be construed to constitute the City or SCDC a partner, joint venturer, agent or legal representative of or with the other. Neither the City nor SCDC shall have, or represent that it has the authority or power to act for or to undertake or create any obligations or responsibilities, express or implied, on behalf of, or in the name of the other.

As evidence of their agreement to be bound by the terms of this Partnering Agreement, the parties have executed this Partnering Agreement as follows:

Date: October 17, 2007

**CITY OF SURREY** )  
 by its authorized signatories: )  
 \_\_\_\_\_ )  
 Dianne L. Watts )  
 Mayor )  
 \_\_\_\_\_ )  
 Margaret Jones )  
 City Clerk )

Date: October 19, 2007

**SURREY CITY DEVELOPMENT** )  
**CORPORATION** )  
 by its authorized signatories: )  
 \_\_\_\_\_ )  
 Gordon Smith )  
 Director )  
 \_\_\_\_\_ )  
 Murray Dinwoodie )  
 Director )

**SCHEDULE "A"**

**DECLARATION OF TRUST**

THIS INDENTURE dated the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

BETWEEN:

**CITY OF SURREY**, a municipal corporation under the laws of British Columbia and having its offices at 14245 - 56 Avenue, Surrey, British Columbia V3X 3A2

(the "Trustee")

AND:

**SURREY CITY DEVELOPMENT CORPORATION**, a corporation incorporated under the laws of British Columbia and having its registered office at 14245 - 56 Avenue, Surrey, British Columbia V3X 3A2

(the "Beneficiary")

WHEREAS:

- A. The Trustee has assumed the obligations of purchaser under an agreement (the "Agreement of Purchase and Sale") with \_\_\_\_\_ dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ to acquire fee simple title to lands situated in the City of Surrey, in the Province of British Columbia described as the "Property" in the Agreement of Purchase and Sale (collectively, the "Lands").
- B. The Trustee has agreed to hold all right and interest in and to the Lands in trust as bare trustee and agent for the Beneficiary on the terms and conditions contained herein and in accordance with the terms of a partnering agreement made between the Beneficiary and the Trustee dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the "Partnering Agreement").

NOW THEREFORE in consideration of \$1.00 now paid by the Beneficiary to the Trustee and in consideration of the premises and of the covenants herein contained it is mutually covenanted, agreed and acknowledged between the parties hereto as follows:

1. As of and from completion of the transfer of the Lands from \_\_\_\_\_ to the Trustee, the Trustee does and shall stand seized of the Lands and any and all improvements, tangible personal property and other assets relating to the Lands as bare trustee for the sole use, benefits and advantage of the Beneficiary.
2. The Trustee as agent for and on behalf of the Beneficiary shall have the full power and authority to assign, develop, subdivide, manage, transfer, lease, mortgage, charge or otherwise deal with, to the extent permitted under the laws of the Province of British Columbia or Canada, the Lands, or any portion thereof at any time in such manner as the Beneficiary may from time to time direct in writing. In furtherance of such authority, the Trustee shall have the right and power, whether or not under seal, to execute and deliver assignments, modifications, transfers, leases, mortgages, charges and other deeds or documents without delivering proof to any person (including any party to such assignment, modification, transfer, release, sublease, mortgage, charge or other deed or document and including governmental officials such as the Registrar of the appropriate Land Title Office) of its authority to do so. The parties acknowledge and understand that the aforementioned power and authority is subject always to all statutory conditions and prerequisites that may be applicable to the exercise of such power and authority by the Trustee, including all applicable conditions and prerequisites contained in or flowing from the *Community Charter*.

3. Any person dealing with the Trustee shall not be required to determine or enquire into the authority or power of the Trustee and is entitled to fully and completely rely upon the authority and power of the Trustee to legally bind the Beneficiary with respect to the powers herein set forth.
4. The Trustee shall accept such amendments to its powers as the Beneficiary may determine from time to time.
5. In any claim, demand or action against the Trustee for any losses, damages or costs arising out of or in connection with the Lands or the exercise or the failure to exercise any right, power or authority conferred on the Trustee by this Agreement, the amount of any recovery, settlement, compromise, judgment or agreement on such claim, demand or action shall be strictly limited to the value of the assets held by the Trustee. The Trustee shall not be required to pay monies or transfer any other assets of the Trustee in satisfaction of any such claim, demand or action and shall have no claim against the Beneficiaries other than against its beneficial interest in the assets described herein.
6. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

Date: \_\_\_\_\_, 200\_\_

**CITY OF SURREY** )  
 by its authorized signatories: )  
 )  
 \_\_\_\_\_ )  
 Dianne Watts )  
 Mayor )  
 )  
 \_\_\_\_\_ )  
 Margaret Jones )  
 City Clerk )

Date: \_\_\_\_\_, 200\_\_

**SURREY CITY DEVELOPMENT** )  
**CORPORATION** by its authorized )  
 signatories: )  
 )  
 \_\_\_\_\_ )  
 Dianne Watts )  
 Director )  
 )  
 \_\_\_\_\_ )  
 Murray Dinwoodie )  
 Director )