

NO: **R194**

COUNCIL DATE: **September 28, 2015**

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **September 23, 2015**

FROM: **President & CEO,
Surrey City Development Corporation
City Solicitor** FILE: **2480-20**

SUBJECT: **Transfer to the Surrey City Development Corporation of the Beneficial
Interest in City-Owned Property of Campbell Heights North,
Lot 5 - 19118 40th Avenue**

RECOMMENDATION

The Board of the Surrey City Development Corporation ("SCDC"), and the Legal Services Division recommend that Council:

1. Authorize the transfer of beneficial interest to SCDC in the City-owned property known as 19118 40th Avenue (Parcel Identifier No. 028-138-856) (the "Property") having an area of 15.83 ha (38.86 acres) and located in Campbell Heights as illustrated on the map attached as Appendix "I" to this report;
2. Authorize City staff to take all necessary actions to complete this transfer; and
3. Authorize the City Clerk to forward as information to SCDC a copy of this report and the related Council resolution.

INTENT

The purpose of this report is to obtain Council approval to transfer beneficial interest in the Property to SCDC in support of its on-going business activities.

BACKGROUND

The City acquired the Property in 2015 from the British Columbia Transportation Financing Authority. The Property is situated on the southwest corner of 192 Street and 40th Avenue, located in an agricultural/industrial region known as Campbell Heights.

DISCUSSION

To support the business activities of the SCDC, the City's transfer to SCDC of beneficial interest in the Property is recommended. The transfer will facilitate the ongoing development of the Campbell Heights North lands, as described in past SCDC Business Plans. The development of the Property is consistent with the objectives for which the City established the SCDC.

A Declaration of Trust, a sample of which is attached as Appendix "II", will be executed between the City of Surrey and SCDC for the Property.

SCDC Board Approval

Approval from the SCDC Board of Directors for SCDC's acquisition of beneficial interest in the Property was granted at the SCDC Board meeting on September 15th 2015.

City Interests Served

The beneficial interest transfer of the Property will support the achievement by SCDC of its business objectives for 2015 and beyond, ultimately serving the interests of the City in relation to both economic development and revenue.

Although beneficial interest in the Property is being recommended for transfer to SCDC, the City as sole shareholder of SCDC will be the beneficiary of any gains that result from SCDC business activities related to the development of the Property.

Transferring beneficial ownership of the Property at book value (plus applicable interest) keeps the City's finances whole. This also enables SCDC to engage in future strategic deals which will ultimately result in the addition of further valuable developments and infrastructure within Surrey, and the ability for the City to maintain the lowest tax rates within the Lower Mainland – all of which serve the City's best interests.

CONCLUSION

The Board of the Surrey City Development Corporation ("SCDC"), and the Legal Services Division recommend that Council:

- Approve the transfer of beneficial interest to SCDC in the City-owned property known as 19118 40th Avenue (Parcel Identifier No. 028-138-856) (the "Property") having an area of 15.83 ha (38.86 acres) and located in Campbell Heights as illustrated on the map attached as Appendix "I" to this report;
- Approve all necessary actions and agreements by the appropriate officials of SCDC and by City staff with respect to the completion of the transfer of beneficial interest; and

- Authorize the City Clerk to forward as information to SCDC a copy of this report and the related Council resolution.



AUBREY KELLY
President & CEO, SCDC



CRAIG MacFARLANE
City Solicitor

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Appendix "I" The Property, 19230 20th Avenue
Appendix "II" Sample Declaration of Bare Trust

APPENDIX "I"

COSMOS CHN5 - 19118 40th Avenue



The Property: 19118 40th Avenue (Parcel Identifier 028-138-856)
having an area of 15.83 ha (38.86 acres)

APPENDIX "II"

DECLARATION OF BARE TRUST AND AGENCY AGREEMENT

THIS AGREEMENT is dated for reference the ___ day of _____, 2015

BETWEEN:

CITY OF SURREY
13450 – 104th Avenue
Surrey, BC V3T 1V8

(the "**Nominee**")

AND:

SURREY CITY DEVELOPMENT CORPORATION
Inc. #BC0789162
1870 – 13450 – 102 Avenue
Surrey, BC V3T 5X3

(the "**Beneficial Owner**")

WHEREAS:

- A. The Nominee transfer to the Beneficial Owner effective the date of this Agreement the lands located at 19118 40th Avenue, Surrey, BC, legally described as follows:

PID: 028-138-856

Lot 5 Section 28 Township 7 New Westminster District Plan BCP43682

(the "**Land**")

- B. Legal title to the Land has been registered in the name of the Nominee and the Nominee will effective from the date of this Agreement hold legal title to the Land, as nominee, agent and bare trustee for the sole benefit and account of the Beneficial Owner as principal and beneficial owner, in accordance with this Agreement.

THEREFORE in consideration of the premises and \$1.00 now paid by the Beneficial Owner to the Nominee, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Appointment

The Beneficial Owner hereby appoints the Nominee as its nominee, agent and bare trustee to hold legal title to the Land for and on behalf of the Beneficial Owner in accordance with this Agreement with full power to manage and deal with the Land and execute any instrument, documents or encumbrance in respect of the Land for the sole benefit and account of the Beneficial Owner, all at the direction of the Beneficial Owner as principal and beneficial owner and strictly in accordance with this Agreement, and the Nominee accepts such appointment.

2. Nominee's Agreements

The Nominee acknowledges and agrees that:

- (a) the Nominee has acquired and will hold the legal title to the Land as nominee, agent and bare trustee for the sole benefit and account of the Beneficial Owner as principal and beneficial owner and the Nominee will have no equitable or beneficial interest in the Land, and the equitable and beneficial interest in the Land will be vested solely and exclusively in the Beneficial Owner;
- (b) the Nominee will hold legal title to the Land as nominee, agent and bare trustee for the sole benefit and account of the Beneficial Owner as principal and beneficial owner subject to and in accordance with this Agreement and subject to the terms and conditions of any transfer, deed, lease, sublease, mortgage, debenture, security agreement, easement, right-of-way, licence, restrictive covenant or other instrument, documents or encumbrance pertaining to the Land;
- (c) any benefit, interest, profit or advantage arising out of or accruing from the Land is and will continue to be a benefit, interest, profit or advantage of the Beneficial Owner and if received by the Nominee will be received and held by the Nominee for the sole use, benefit and advantage of the Beneficial Owner and the Nominee will account to the Beneficial Owner for any money or other consideration paid to or to the order of the Nominee in connection with the Land as directed in writing by the Beneficial Owner;
- (d) the Nominee will, upon the direction of the Beneficial Owner, deal with the Land and do all acts and things in respect of the Land at the expense of and as directed by the Beneficial Owner from time to time and will assign, transfer, convey, lease, mortgage, pledge, charge, or otherwise deal with the Land or any portion of the Land at any time and from time to time in such manner as the Beneficial Owner may determine, to the extent permitted under all relevant laws. Without limiting the generality of the foregoing, the Nominee will transfer legal title to the Land to or as directed by the Beneficial Owner forthwith upon the written demand of the Beneficial Owner;
- (e) the Nominee will, upon and in accordance with the direction of the Beneficial Owner, act as the agent of the Beneficial Owner, as undisclosed principal, in respect of any matter relating to the Land or the performance or observance of any contract or agreement relating to the Land;
- (f) acting under this Agreement at the direction of the Beneficial Owner, the Nominee will have the full right and power to execute and deliver, under seal and otherwise, any transfer, deed, statement of adjustments, plan, lease, sublease, easement, right-of-way, licence, restrictive covenant, building scheme, release or other instrument or document pertaining to the Land without delivering proof to any person (including, without limitation, any other party to any such instrument or document of the Registrar of any land title office) of its authority to do so and any person may act in reliance on any such instrument or documents and for all purposes any such instrument or documents will be binding on the Beneficial Owner;
- (g) acting under this Agreement at the direction of the Beneficial Owner, the Nominee will have the full right and power to borrow money from time to time and to covenant to repay money borrowed by the Beneficial Owner either alone or with others from time to time and to secure repayment of any and all indebtedness and liabilities with respect to any amounts

so borrowed by the grant of any charge or encumbrance (both fixed and floating) on, or security interest in, the Land or any part thereof, by way of debenture, mortgage, assignment of rents, assignment of sale proceeds, security agreement or other instrument or document without delivering proof to any person (including, without limitation, any other party to any such instrument or document of the Registrar of any land title office) of its authority to do so and any person may act in reliance on any such instrument or document and for all purposes any such instrument or document will be binding on the Beneficial Owner;

- (h) the Nominee will not deal with the Land in any way or execute any instrument, document or encumbrance in respect of the Land without the prior consent or direction of the Beneficial Owner; and
- (i) the Nominee will notify the Beneficial Owner forthwith upon receipt by the Nominee of notice of any matter or thing in respect of the Land or any portion of the Land, including, without limitation, in respect of any tax, lien, charge or encumbrance in respect of the Land.

3. Reimbursement of Expenses

Any payments of disbursements made by the Nominee in respect of the Land in accordance with this Agreement will be made as the agent of and for the account of the Beneficial Owner, as principal, and the Beneficial Owner will reimburse the Nominee for any amount reasonably and properly expended by the Nominee in connection with the Land with the consent or direction of the Beneficial Owner, but the Nominee will not receive any fee or remuneration from the Beneficial Owner for acting under this Agreement.

4. Indemnity by the Beneficial Owner

The Beneficial Owner agrees to indemnify and save harmless the Nominee and its representatives and their respective successors and assigns against any and all liabilities, demands, losses, costs, actions, proceedings, claims or expenses of whatsoever nature or kind including without limitation, any income, capital gains, land transfer, property transfer or other taxes arising out of or resulting from the Nominee's holding of title to or dealing with the Land as directed by the Beneficial Owner from time to time, except to the extent that the same results from a dishonest, fraudulent or negligent act or omission of the Nominee or its employees or agents.

5. Notices

Any notice given pursuant to or in connection with this Agreement will be in writing and delivered personally to the party for whom it is intended to be addressed at the address of such party last known to the other party.

6. Further Assurances

The Nominee will perform all such other acts and things and execute all such other documents as are necessary or desirable in the reasonable opinion of the Beneficial Owner to evidence or carry out the terms or intent of this Agreement.

7. Gender and Number

Words importing the masculine gender include the feminine and neuter genders and words in the singular include the plural, and vice versa.

8. Governing Law

This Agreement and all matters arising under it will be governed by and construed in accordance with the laws of British Columbia, which will be deemed to be the proper law of this Agreement.

9. No Waiver

No failure or delay on the part of either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as may be limited in this Agreement, either party may, in its sole discretion, exercise any and all rights, powers, remedies and recourses available to it under this Agreement or any other remedy available to it and such rights, powers, remedies and recourses may be exercised concurrently or individually without the necessity of making any election.

10. Amendment

This Agreement may be altered or amended only by an agreement in writing signed by the parties.

11. Enurement

This Agreement enures to the benefit of and is binding upon the respective successors, legal representatives and assigns of the parties.

IN WITNESS WHEREOF the parties have entered into this Agreement as of _____, 2015.

CITY OF SURREY
by its authorized signatories

Linda Hepner, Mayor

Date

Jane Sullivan, City Clerk

Date

SURREY CITY DEVELOPMENT CORPORATION
by its authorized signatories

Aubrey Kelly, President & CEO

Date