



**DCC Reserve Fund Expenditure (4033, 4099 and 4133 Stolberg Street
and 9388 Cambie Road) Bylaw No. 9783**

WHEREAS the Council has established a development cost charge reserve fund for road construction in the Alexandra Area (the "DCC Reserve Fund"); and

AND WHEREAS pursuant to sections 566(2) and 566(3) of the *Local Government Act*, Council intends to expend a portion of the monies set aside in the DCC Reserve Fund to reimburse a developer who has built part of the works that form the basis of the calculations for the development cost charges paid into the DCC Reserve Fund;

NOW THEREFORE, The Council of the City of Richmond, enacts as follows:

1. Council authorizes the execution of the DCC Front-End Agreement in substantially similar form to that attached hereto as Schedule "A" by the Chief Administrative Officer and the General Manager, Engineering and Public Works.
2. Council authorizes the expenditure of up to \$1,130,169.91 (the "expenditure") from the DCC Reserve Fund on account of Stolberg Street land acquisition and road works, in accordance with the terms of the DCC Front-End Agreement attached hereto as Schedule "A".
3. Should any of the above expenditure remain unexpended after the expenditure hereby authorized has been made, any unexpended balance shall be returned to the credit of the DCC Reserve Fund.
4. This Bylaw is cited as "DCC Reserve Fund Expenditure (4033, 4099 and 4133 Stolberg Street and 9388 Cambie Road) Bylaw No. 9783".

FIRST READING

SECOND READING

THIRD READING

ADOPTED

OCT 22 2018

OCT 22 2018

OCT 22 2018

CITY OF RICHMOND
APPROVED for content by originating dept.

APPROVED for legality by Solicitor
BRB

MAYOR

CORPORATE OFFICER

Schedule "A" to Bylaw 9783

DCC Front-Ender Agreement

(see attached)

DEVELOPMENT COST CHARGE FRONT-ENDER AGREEMENT

ALEXANDRA AREA ROADS DCC PROGRAM

THIS AGREEMENT made as of June____, 2018 (the "**Commencement Date**").

BETWEEN:

CITY OF RICHMOND

6911 No. 3 Road
Richmond, B.C. V6Y 2C1

(the "**City**")

AND:

ORIS DEVELOPMENT (CAMBIE) CORP.

Incorporation No. BC0786708
12235 No. 1 Road
Richmond, B.C. V7E 1T6

("Oris")

AND:

S-232 HOLDINGS LTD.

Incorporation No. BC0861890
215-8171 Cook Road
Richmond, B.C. V6Y 3T8

("S-232")

(Oris and S-232 are together referred to as the "**Developers**")

WHEREAS:

- A. Three (3) legal parcels were consolidated to create Lot A (hereinafter defined) pursuant to a subdivision plan filed September 28, 2009 assigned number BCP42345 (the "**Subdivision Plan**");
- B. The three (3) legal parcels referred to in Recital A of this Agreement are legally described as follows as follows:
 - a) PID:004 869 745 Lot 32 Section 34 Block 5 North Range 6 West NWD Plan 25359;
 - b) PID:003 526 828 Lot 61 Section 34 Block 5 North Range 6 West NWD Plan 50506;
and
 - c) PID:003 526 220 Lot 62 Section 34 Block 5 North Range 6 West NWD Plan 50506;

- C. Three (3) legal parcels were consolidated to create Lot B (hereinafter defined) pursuant the filing of the Subdivision Plan;
- D. The three (3) legal parcels referred to in Recital C of this agreement are legally described as follows as follows:
 - a) PID:012 030 619 East Half Lot 8 Bl "A" Section 34 Block 5 North Range 6 West NWD Plan 1224;
 - b) PID:001 035 479 The East Half Lot 7 Bl "A" Section 34 Block 5 North Range 6 West NWD Plan 1224; and
 - c) PID:003 483 681 West Half Lot 8 Bl "A" Section 34 Block 5 North Range 6 West NWD Plan 1224;
- E. Pursuant to the filing of the Subdivision Plan, certain lands were dedicated as road, principally from the lots referred to in Recital B of this Agreement;
- F. Due to the filing of the Subdivision Plan, Oris became the registered and beneficial owner of lands legally described as:

PID: 028-092-082 Lot A, Section 34, Block 5 North, Range 6 West, New Westminster District, Plan BCP42345

("Lot A");
- G. Due to the filing of the Subdivision Plan, S-8070 Holdings Ltd. Incorporation Number 638403 ("S-8070") became the registered and beneficial owner of lands legally described as:

PID: 028-092-112 Lot B, Section 34, Block 5 North, Range 6 West, New Westminster District, Plan BCP42345

("Lot B");
- H. On September 22, 2009, S-232 Holdings Ltd. incorporation number BC0345150 and S-8070 amalgamated to create S-232 Holdings Ltd. under incorporation number BC0861890;
- I. On December 1, 2009, the title to Lot B in the name of S-8070 was cancelled;
- J. On December 1, 2009, the title to Lot B was raised in the name of S-232 Holdings Ltd. ("S-232");
- K. Pursuant to an unregistered Servicing Agreement dated September 25, 2009

(application SA 08-434616) between the City and the Developers (the “**Servicing Agreement**”), the Developers agreed, at the Developers’ expense, to undertake the construction of certain road works more particularly described in the Servicing Agreement (the “**Road Works**”) and to transfer ownership of the Road Works, including the dedication of road areas as highway, following completion thereof to the City at no cost to the City (the “**Road Dedication**”);

- L. The Road Works were completed in the manner set out in the Servicing Agreement to the satisfaction of the City’s General Manager of Engineering and Public Works on September 24, 2014 (the “**Completion Date**”);
- M. The City has accepted the condition of the Road Works and provided written evidence of such acceptance by issuing a Certificate of Completion to the Developers;
- N. The Road Dedication has been completed;
- O. While Oris and S-8070 were together defined as the developer in the Servicing Agreement and although S-232 is the successor in interest to S-8070, Oris solely facilitated the design, engineering and construction of the Road Works and the completion of the Road Dedication, and paid the costs thereof;
- P. Proposed road works for the Alexandra Area (as described in City of Richmond *Development Cost Charges Imposition Bylaw No. 9499*, as amended from time to time (the “**DCC Bylaw**”)) are contained within the City’s Official Community Plan, adopted under Bylaw 7100, for the West Cambie Area;
- Q. Section 1.2.2 and Schedule C of the DCC Bylaw provide for supplementary development cost charges in the Alexandra Area in addition to the development cost charges applicable city-wide in Richmond;
- R. The total lands that benefit from the Road Works and are therefore benefiting lands within the Alexandra Area as described in the DCC Bylaw, excluding parks, schools and lands owned by the City, are all the lands shown within the dotted outline on Schedule A of this Agreement (the “**Benefiting Lands**”);
- S. The City created the Alexandra Area Road DCC Program such that the owners of the Benefiting Lands shall pay development cost charges to the City when they apply for a subdivision or a building permit to a maximum of \$24,439,792.00, being the total Alexandra Area Road DCC Program value including land and construction for all the north south roads as shown on the attached Schedule A within the dotted line including related signal, turning bays and other related installations;
- T. The City created the Alexandra Area Road DCC Reserve Fund into which it shall deposit the funds received pursuant to the Alexandra Area Road DCC Program;

- U. This Agreement concerns the area labelled as “Stolberg Street” on Schedule A attached hereto (such area is also known as “Road Segment C6”) (“**Stolberg Street**”) and is being entered into for the purpose of compensating Oris, as front-ending developer, for the cost of carrying out the Road Dedication and the Road Works in the Alexandra Area pursuant to the Servicing Agreement by paying to Oris as development cost charge credits (the “**DCC Credits**”) the Alexandra Road DCCs (as hereinafter defined in Section 9) amounts collected by the City under the Alexandra Area Road DCC Program, up to a maximum of the Total Eligible DCC Program Amount (as hereinafter defined in Recital V);
- V. The total value of the DCC Credits payable to Oris, being the allocated value of the Road Works and the Road Dedication, under the Alexandra Area Roads DCC program for Stolberg Street is \$1,677,340.38 (being land value of \$1,453,127.91 and construction value of \$224,212.47) (the “**Total Eligible DCC Program Amount**”);
- W. The City, as of the date of this Agreement, has paid \$547,170.47 (the “**Paid DCC Credit Amount**”) in DCC Credits to Oris under the City’s DCC Form 20120005 and DCC Form 6819;
- X. The maximum compensation payable to Oris under this Agreement from the City’s Alexandra Area Roads DCC Reserve Fund is \$1,130,169.91 (the “**Agreement Value**”), being the Total Eligible DCC Program Amount less the Paid DCC Credit Amount; and
- Y. Council of the City adopted Bylaw 9783, authorizing:
 - 1) the parties to enter into this Development Cost Charge Front-ender Agreement pursuant to Sections 565 and 566 of the *Local Government Act*, for the provision of the Road Works; and
 - 2) the payment to Oris of the Agreement Value from the City’s Alexandra Area Roads DCC Reserve Fund, in accordance with this Agreement.

NOW THEREFORE in consideration of the mutual promises contained in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties), the parties agree as follows:

Term

- 1. The term of this Agreement begins on the Commencement Date and terminates on the earlier of:
 - (a) September 24, 2029 (being 15 years after the Completion Date (hereinafter defined)); and
 - (b) the date the City has collected and remitted all applicable payments to Oris as described in this Agreement,

(the “Term”).

2. The Developers acknowledge and agree that this Agreement and the obligations of the City under this Agreement terminate on September 24, 2029, even if all applicable Alexandra Road DCCs have not been collected in respect of the Benefiting Lands.
3. Despite Section 1 of this Agreement, Sections 4, 22, 23, 25, 26, 27, 28 and 29 shall survive the expiration or earlier termination of this Agreement

Representations and Warranties

4. The Developers represent and warrant to the City that:
 - (a) Oris is absolutely entitled to any and all DCC Credits and the Agreement Value payable by the City pursuant to this Agreement;
 - (b) Neither Oris nor S-232 has assigned any of its right, title or interest in the DCC Credits or the Agreement Value;
 - (c) the information set out in Schedule A of this Agreement is true and correct;
 - (d) the Developers have not received, claimed, demanded or collected money or any other consideration from any owner of the Benefiting Lands for the provision of, or in expectation of the provision of, the Road Works, other than as contemplated by this Agreement; and
 - (e) the Developers have not entered into any agreement or legal obligation with any owner of the Benefiting Lands for consideration in any way related to or connected directly or indirectly with the provision of the Road Works.
5. Oris represents and warrants to the City that, as of the date of this Agreement, the actual cost incurred by Oris to construct the Road Works, excluding GST, is \$713,182.00.
6. S-232 represents and warrants to Oris and the City that:
 - (a) S-232 did not provide any land dedicated for Stolberg Road or contribute any money towards the Road Works; and
 - (b) S-232 has no right, title or interest whatsoever in the Agreement Value or the DCC Credits in respect of the Road Dedication or the completed Road Works and hereby waives any entitlement to the Agreement Value and the DCC Credits.

DCC Front-Ender Works

7. The following table sets out the items and amounts used to calculate the Agreement

Value payable by the City from the City's account designated for the Alexandra Road DCCs (the "**Alexandra Area Road DCC Reserve Fund**") to Oris for the front-end works it has performed:

Table 1 – Contributions for the Developers

Item	Item Description	Value (\$)
(a)	Total Alexandra Area Road DCC Program value relating to the area shown outlined in broken bold on Schedule A, comprising: <ul style="list-style-type: none"> - land and construction costs for all north-south roads (\$19,285,340.00), and - related signals and turning bays required for the entire area, including arterial road improvements (\$5,154,452.00) 	24,439,792.00
(b)	Stolberg Street (Road Segment C6) land and construction DCC value	1,677,340.38
(c)	Stolberg Street (Road Segment C6) value as a percentage of total Alexandra Area Road DCC Program value = (b)/(a)	6.863%
(d)	Gross Alexandra Area Road DCC's collected to December 31, 2017	9,804,235.57
(e)	Portion of DCC collected payable to Oris on December 31, 2017 = (c)x(d)	672,864.69
(f)	Total DCC Credits/Front-End Agreement Payments already provided to Oris	547,170.47
(g)	The DCC Front-End Agreement Initial Payment Value = (e)-(f).	125,694.22
(h)	The maximum outstanding value of this Front-End Agreement payable to the Oris = (b)-(f)-(g)	1,004,475.69

8. The City is not responsible for financing any of the costs of the Road Works.

Calculation and Collection of Alexandra Road DCCs

9. In consideration of the Road Dedication and completion of the Road Works by Oris, the City agrees, without incurring any cost to the City, to impose and collect from the owners of the Benefiting Lands the road development cost charges payable by them when they seek to subdivide or obtain a building permit (the "**Alexandra Road DCCs**") and deposit such amounts into the Alexandra Road DCC Reserve Fund.
10. The events upon which the City is obliged to impose and collect Alexandra Road DCCs with respect to a parcel within the Benefiting Lands are the earlier of:

- (a) the approval of a subdivision; and
- (b) the issuance of a building permit authorizing construction, alteration or extension of a new building or structure,

although, in practice, the City usually collects development cost charges at the time of building permit issuance.

11. The Developers agree that the City is to calculate all Alexandra Road DCCs, and that the City's determination of such amounts is in each case conclusive and binding on the Developers.

Payment for DCC Front-End Works

12. The City shall pay to Oris the sum of the Agreement Value, excluding GST, as follows:
 - (a) an initial payment of \$125,694.22, such amount being the DCC Front-End Agreement Payment Value specified in item (g) of Table 1 in Section 7 of this Agreement, within thirty (30) business day of full execution of this Agreement; and
 - (b) the \$1,004,475.69 balance of the Agreement Value, such amount being the value specified in item (h) of Table 1 in Section 7 of this Agreement, will be paid as and to the extent that Alexandra Road DCCs are collected during the Term from the Benefiting Lands in accordance with Sections 9, 10 and 21 of this Agreement.
13. Subject to there being sufficient reserves in the Alexandra Area Road DCC Reserve Fund, the City will, in accordance with the then applicable City policies and procedures, remit to Oris on or before June 30th of each year of the Term the amount described in Section 12(b), or such outstanding portion thereof as may be available in the Alexandra Area Road DCC Reserve Fund at such time, based on the City's audited financial statements for the previous year.
14. If there are any unpaid payments due to there being insufficient reserves in the Alexandra Area Road DCC Reserve Fund, the City will pay such payments upon being in receipt of sufficient reserves in the Alexandra Area Road DCC Reserve Fund.
15. After the Term has expired, the City shall have no further obligation to Oris to make any payment pursuant to this Agreement.
16. Oris acknowledges and agrees that no interest is payable by the City on Alexandra Road DCCs for the period between their receipt by the City and their payment to Oris to the sum of the Agreement Value.
17. The Developers acknowledge and agree that the City is not obliged to make any payments under this Agreement except to the extent that the owner of a parcel within the Benefiting Lands has actually paid Alexandra Road DCCs to the City.

18. The Developers acknowledge and agree that once the City has collected the full Alexandra Area Road DCC Program value (\$24,439,792.00), the City may elect in its sole discretion (subject however to compliance with any City bylaw requirements) to discontinue collecting Alexandra Area Roads DCCs.
19. The Developers acknowledge and agree that it is possible that the City may not ever fully reimburse Oris for all its costs in providing the Road Dedication and in providing the Road Works. Accordingly, the Developers acknowledge and agree that they will not make a claim against the City or City Personnel for any lack of full reimbursement for all the Developers' costs in providing the Road Dedication and the Road Works.
20. Oris shall provide the City from time to time with a current address(es) to which amounts payable under this Agreement may be sent by ordinary mail, if such address is different from the addresses first set-out above. If Oris fails to provide such address to the City and any amount sent to the address set out in this Agreement or the most recently provided address is returned to the City, the City will hold such money for Oris until such time as Oris provides the City with a current address (at which time the City will then pay such funds to Oris) or until expiry of the Term. After expiry of the Term, the City may retain such returned amounts for its own use and is thereafter discharged from any obligation to remit same to Oris.
21. Subject to the right of assignment set out in Section 24, the Developers direct that the amounts payable to the Developers pursuant to this Agreement from the City's Alexandra Area Roads DCC Reserve Fund be paid as follows:
 - a) To Oris: 6.863% of whatever amounts the City collects each year of the Term in connection with the Alexandra Road DCCs (such amounts collected determined in the City's sole discretion) to a total maximum value of \$1,004,475.69; and
 - b) To S-232: 0% of whatever amounts the City collects each year of the Term in connection with the Alexandra Road DCCs (such amounts collected determined in the City's sole discretion), being \$0.00.

Release and Indemnity

22. The Developers hereby jointly and severally release, waive and agree not to commence legal proceedings against the City, or its elected officials, officers, employees, agents, or contractors ("**City Personnel**"), from and in respect of any duty, obligation or liability of any of them in way connected with any error, omission or act relating to this Agreement, including without limitation, failure to pass any resolution, adopt any bylaw, enter into any agreement, or impose, calculate or collect any Alexandra Road DCCs .
23. The Developers hereby jointly and severally release, waive and agree to indemnify and save the City harmless from and against all costs, expenses, damages, claims, demands,

actions, suits and liability by whomever brought or made and however arising whether directly or indirectly, from any misrepresentation by the Developers or breach of this Agreement by the Developers.

Assignment

24. Neither Developer shall assign or transfer its rights under this Agreement without the City's prior written consent. Notwithstanding the foregoing, either Developer may assign or transfer some or all of its rights under this Agreement to the other Developer upon written notice to the City.
25. In the event of the assignment or transfer of the rights of Oris voluntarily, or by operation of law, the City may pay any benefits accruing under this agreement, after notice, to the assignee where specific assignment is made and consented to, if applicable, or in all other cases, to the successor of Oris as the City, in its sole discretion, deems entitled to such benefits. In the event of conflicting demands being made on the City for benefits accruing under this agreement, 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 on paying the person or persons whom the court having jurisdiction over 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 and the City shall have a right of set-off in respect of such fees and costs.
26. In the event of the assignment or transfer of the rights of S-232 voluntarily, or by operation of law, the City may pay any benefits accruing under this agreement, after notice, to the assignee where specific assignment is made and consented to, or in all other cases, to the successor of S-232 as the City, in its sole discretion, deems entitled to such benefits. In the event of conflicting demands being made on the City for benefits accruing under this agreement, 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 on paying the person or persons whom the court having jurisdiction over 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 and the City shall have a right of set-off in respect of such fees and costs.
27. Oris and S-232 acknowledge and agree that the City is released from any liability under this Agreement by paying amounts payable to Oris and/or S-232 to the assignee(s), transferee(s) or successor(s) considered by the City, in its sole discretion, to be entitled to receive those payments or by paying the amounts payable to Oris and/or S-232 under

this Agreement to the person whom the Supreme Court of British Columbia orders in any interpleader proceedings is entitled to receive those amounts, or as otherwise ordered by the Supreme Court of British Columbia.

General Provisions

28. Oris represents and warrants to the City that:

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement;
- (b) all necessary corporate actions and proceedings have been taken to authorize entry into and performance of this Agreement;
- (c) this Agreement shall be fully and completely binding upon such party in accordance with the terms hereof;
- (d) neither the execution and delivery, nor the performance of or covenants in, this Agreement breaches any other agreement or obligation or causes default of any other agreement or obligation on the part of such party; and
- (e) the foregoing representations and warranties shall have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of such party or any other matter whatsoever.

29. S-232 represents and warrants to the City that:

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement;
- (b) all necessary corporate actions and proceedings have been taken to authorize entry into and performance of this Agreement;
- (c) this Agreement shall be fully and completely binding upon such party in accordance with the terms hereof;
- (d) neither the execution and delivery, nor the performance of or covenants in, this Agreement breaches any other agreement or obligation or causes default of any other agreement or obligation on the part of such party; and
- (e) the foregoing representations and warranties shall have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of such party or any other matter whatsoever.

30. Any notice to be given under this Agreement shall be in writing and may be delivered personally or sent by prepaid registered mail. The addresses of the parties for the purpose of notice shall be the addresses set-out in this Agreement. Any party may at any time give notice in writing to another of any change of address.
31. No partnership, joint venture or agency involving the City or Oris or S-232 is created by or under this Agreement and neither Oris nor S-232 will have the authority to commit and will not purport to commit the City to the payment of any money to any person.
32. The parties each agree that this Agreement creates only contractual rights and obligations among them and each party by this section agrees that no tort or other duty, obligation or liability is created by or under this Agreement (including any duty of care or fiduciary duty).
33. This Agreement is the entire agreement among the parties, apart from the Servicing Agreement between the Developers and the City, and supersedes and terminates all previous agreements, promises, representations and warranties respecting the subject matter of this Agreement. The City has made no representations, warranties, guarantees, promises, covenants or agreements to or with the Developer or S-232 other than those in this Agreement and the Servicing Agreement. For certainty, Oris and S-232 each acknowledge and agree that the City has not made or given any representations or warranties to Oris and/or S-232 respecting the subject matter of this Agreement.
34. No amendment to this Agreement is valid unless in writing and executed by the parties.
35. Wherever the singular or masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties so require.
36. If any Section, or lesser portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the invalidity of such Section or portion shall not affect the validity of the remainder.
37. Time is of the essence of this Agreement.
38. This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors and permitted assigns.
39. Nothing contained or implied in this Agreement shall fetter in any way the discretion of the City or the Council of the City. Further, nothing contained or implied in this Agreement shall derogate from the obligation of Oris or S-232 under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligation in the exercise of its functions pursuant to the *Community*

Charter or the Local Government Act, as amended or replaced from time to time, or act to fetter or otherwise affect the City's discretion, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised as if this Agreement had not been executed and delivered by the parties.

40. The laws of British Columbia are to govern its interpretation and enforcement and each of the City and the Developer accepts the jurisdiction of the courts of British Columbia. If a party to this Agreement consists of more than one person, firm, or corporation, the covenants and obligations of such party under this Agreement shall be joint and several.
41. This Agreement may be signed by the parties hereto in counterparts and by facsimile or pdf email transmission, each such counterpart, facsimile or pdf email transmission copy shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

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IN WITNESS WHEREOF the parties have set their hands and seals on the day and year first above written.

CITY OF RICHMOND

by its authorized signatory:

George Duncan
Chief Administrative Officer

Robert Gonzalez
General Manager, Engineering & Public Works

ORIS DEVELOPMENT (CAMBIE) CORP.

by its authorized signatory:

Print Name:
Print Title:

S-232 HOLDINGS LTD.

by its authorized signatory:

Print Name:
Print Title:

SCHEDULE "A"

Schedule A

