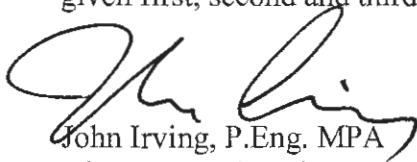




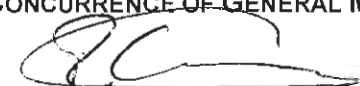
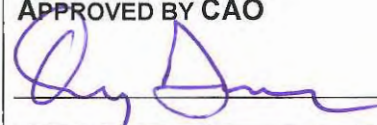
**To:** Public Works and Transportation Committee      **Date:** January 10, 2017  
**From:** John Irving, P.Eng. MPA      **File:** 03-1000-08-030/Vol 01  
           Director, Engineering  
**Re:** DCC Reserve Fund Expenditure (4000 May Drive) Bylaw No. 9643

**Staff Recommendation**

That DCC Reserve Fund Expenditure (4000 May Drive) Bylaw No. 9643 be introduced and given first, second and third readings.

  
 John Irving, P.Eng. MPA  
 Director, Engineering  
 (604-276-4140)

Att. 1

REPORT CONCURRENCE		
<b>ROUTED TO:</b>	<b>CONCURRENCE</b>	<b>CONCURRENCE OF GENERAL MANAGER</b>
Finance Department	<input checked="" type="checkbox"/>	
Law	<input checked="" type="checkbox"/>	
Development Applications	<input checked="" type="checkbox"/>	
<b>REVIEWED BY STAFF REPORT / AGENDA REVIEW SUBCOMMITTEE</b>	<b>INITIALS:</b> DW	<b>APPROVED BY CAO</b> 

## Staff Report

### Origin

In addition to Development Cost Charges (DCCs) applicable city-wide, local area DCCs are collected for the Alexandra neighbourhood within the West Cambie Area, as per Development Cost Charges Imposition Bylaw No. 8024.

Per West Cambie Area Plan, forming part of the Official Community Plan Bylaw No. 7100, developers are responsible for the construction of local roads along their frontages. Where specified roads are included in the Local Area DCC Program, developers are eligible for DCC rebates via front-ender agreements for the cost of land and construction of the specified roads.

The developer for 4000 May Drive has completed the construction and dedication of their road frontages, which are included in the Alexandra Neighbourhood Roads DCC Program, and has requested a front-ender agreement to recover a portion of their costs.

This report outlines the proposed DCC Reserve Fund Expenditure (4000 May Drive) Bylaw No. 9643, which includes the authorization to execute a DCC front-ender agreement with the developer for 4000 May Drive and to release DCC Reserve Funds in respect of their land and construction costs.

This report supports Council's 2014-2018 Term Goal #6 Quality Infrastructure Networks:

*Continue diligence towards the development of infrastructure networks that are safe, sustainable, and address the challenges associated with aging systems, population growth, and environmental impact.*

*6.2. Infrastructure is reflective of and keeping pace with community need.*

### Analysis

Pursuant to section 566(2) of the Local Government Act, money in development cost charge reserve funds, such as the Alexandra Neighbourhood Roads DCC Program, may be used to pay the capital costs of providing and constructing sewage, water, drainage and highway (road) facilities, and to pay a person who incurred such capital costs if the project was completed under an agreement between that person and the City.

Aga Khan Foundation, with the assistance of Larco Investments Ltd. (collectively, "the developer"), has completed frontage road construction as per their servicing agreement with the City and transferred ownership of the dedicated road areas to the City. The fronting roads are included in the Alexandra Neighbourhood Roads DCC Program, as identified by sections C7 and L1 in the proposed agreement (Attachment 1, Schedule A).

The allocated values for these fronting roads under the Alexandra Neighbourhood Roads DCC Program are as follows:

- Road segment C7 (May Drive from Cambie Road to McKim Way)
  - Land \$1,627,503.26
  - Construction \$251,117.97
- Road segment L1 (May Drive from McKim Way to Odlin Road)
  - Land \$1,424,065.35
  - Construction \$175,940.70

Pursuant to section 566(3) of the Local Government Act, the authority to make payments from the Alexandra Neighbourhood Roads DCC Program reserve fund must be authorized by bylaw. As such, staff recommend that DCC Reserve Fund Expenditure (4000 May Drive) Bylaw No. 9643, which authorizes the execution of the DCC front-end agreement by the Chief Administrative Officer and the General Manager, Engineering and Public Works, on the terms detailed below, and authorizes the release of DCC reserve funds as set out below and in further detail in the proposed agreement (Attachment 1), be introduced and given first, second and third readings.

The following are the key terms and conditions of the proposed DCC front-end agreement with Aga Khan Foundation and Larco Investments Ltd.:

- The developer contributed 43.1% of the land and 50% of the construction value for road segment C7.
- The developer contributed 57.6% of the land and 20% of the construction value for road segment L1.
- DCC rebates pertaining to land dedication are payable to Aga Khan Foundation, the property owner.
- DCC rebates pertaining to construction are payable to Larco Investments Ltd., which provided funding for the road construction.
- The maximum compensation payable to the developer is \$1,682,463 (\$1,521,716 to Aga Khan and \$160,747 to Larco Investments Ltd.)
- The agreement is in effect until the earlier of:
  - i. 15 years from the completion date of road construction – January 21, 2031; or
  - ii. the City has collected and remitted all applicable payments to Aga Khan and Larco, as described in the agreement, whichever comes earlier.
- Initial payment to the developer is based on DCC amounts collected to date for the neighbourhood.
- Subsequent payments will occur annually based on updated DCC amounts collected.

**Financial Impact**

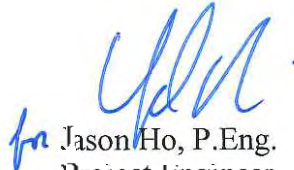
Upon execution of the agreement, initial payment to the developer will be \$509,849, based on DCC amounts collected to date for the neighbourhood. Subsequent payments will occur annually based on updated DCC amounts collected. The maximum compensation payable to the developer is \$1,682,463, and payments will be made from the West Cambie Roads DCC balance.

**Conclusion**

The developer for 4000 May Drive has completed the construction and dedication of their road frontages, which are included in the Alexandra Neighbourhood Roads DCC Program, and has requested a front-ender agreement to recover a portion of their costs. Staff recommend that DCC Reserve Fund Expenditure (4000 May Drive) Bylaw No. 9643 be introduced and given first, second and third readings, to authorize the execution of the DCC front-ender agreement by the Chief Administrative Officer and the General Manager, Engineering and Public Works and the release of DCC reserve funds as set out in the attached DCC front-ender agreement.



Lloyd Bie, P.Eng.  
Manager, Engineering Planning  
(4075)



for Jason Ho, P.Eng.  
Project Engineer  
(1281)

LB:jh

Att. 1: DCC Reserve Fund Expenditure (4000 May Drive) Bylaw No. 9643



# City of Richmond

## Bylaw 9643

### DCC Reserve Fund Expenditure (4000 May Drive) Bylaw No. 9643

**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 \$1,682,463 (the "expenditure") from the DCC Reserve Fund on account of May Drive 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 (4000 May Drive) Bylaw No. 9643".

FIRST READING

SECOND READING

THIRD READING

ADOPTED

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CITY OF RICHMOND
APPROVED for content by originating dept.
<i>UB</i>
APPROVED for legality by Solicitor
<i>JH</i>

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CORPORATE OFFICER

**DEVELOPMENT COST CHARGE FRONT-ENDER AGREEMENT**

**ALEXANDRA AREA ROADS DCC PROGRAM**

THIS AGREEMENT made as of \_\_\_\_\_, 2016 (the "Commencement Date").

BETWEEN:

**CITY OF RICHMOND**  
6911 No. 3 Road  
Richmond, B.C. V6Y 2C1

(the "City")

AND:

**AGA KHAN FOUNDATION (CANADA)**  
Incorporation No. XS-0016100  
199 Sussex Dr.  
Ottawa, Ontario K1N 1K6

(the "Developer")

AND:

**LARCO INVESTMENTS LTD.**  
Incorporation No. BC0436664  
Third Floor, 100 Park Royal  
West Vancouver B.C. V7T 1A2

("Larco")

WHEREAS:

- A. Five (5) legal parcels were consolidated to create Lot A (hereinafter defined) pursuant to a subdivision plan filed September 26, 2013 assigned number EPP32741 (the "Subdivision Plan");
- B. The five (5) legal parcels referred to in Recital A of this Agreement are legally described as follows:
  - a) West half of Lot 10 Block A Section 34 Block 5 North Range 6 West NWD Plan 1224;
  - b) East half of Lot 10 Block A Section 34 Block 5 North Range 6 West NWD Plan 1224;

- c) West half of Lot 19 Block A Section 34 Block 5 North Range 6 West NWD Plan 1224;
  - d) East half of Lot 19 Block A Section 34 Block 5 North Range 6 West NWD Plan 1224; and
  - e) East half of Lot 20 Block A Section 34 Block 5 North Range 6 West NWD Plan 1224;
- C. Pursuant to the filing of the Subdivision Plan, certain lands were dedicated as road;
- D. Due to the filing of the Subdivision Plan, the Developer became the registered and beneficial owner of lands legally described as:
- PID: 029-176-263 Lot A, Section 34, Block 5 North, Range 6 West, New Westminster District, Plan EPP32741
- (“**Lot A**”)
- E. Pursuant to a Servicing Agreement dated August 22, 2013 (application SA 10-530663), between the City and the Developer (the “**Servicing Agreement**”), the Developer, has with the assistance of Larco, at the Developer’s and Larco’s expense, undertaken the construction of certain road works more particularly described in the Servicing Agreement (the “**Road Works**”) and have since transferred ownership of the Road Works, including the dedication of road areas as highway to the City at no cost to the City;
- F. While the Developer alone was defined as the Developer in the Servicing Agreement, only Larco paid the cost of the construction of the Road Works, and only the Developer contributed land through the road dedication
- G. Proposed road works for the Alexandra Area (as described in City of Richmond *Development Cost Charges Imposition Bylaw No. 8024*, 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;
- H. Section 1.1.1 and Schedule F 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;
- I. The total lands that benefit from the Road Works and are therefore benefiting lands within the Alexandra DCC area, 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**”);

- J. The City created the Alexandra Area Road DCC Program which 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;
- K. 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;
- L. This Agreement concerns that area labelled "May Drive" on Schedule A attached hereto between Cambie Road and McKim Way (also known as "Road Segment C7") ("**May Drive C7**") and between McKim Way and Odlin Road (also known as "Road Segment L1") ("**May Drive L1**", together with May Drive C7, "**May Drive**").
- M. The allocated value of land acquisition and the Road Works under the Alexandra Area Roads DCC program for May Drive C7 is \$1,878,621.23 (being land value of \$1,627,503.26 and construction value of \$251,117.97) and for May Drive L1 is \$1,600,006.05 (being land value of \$1,424,065.35 and construction value of \$175,940.70);
- N. The City, as of the date of this Agreement, has provided \$0 development cost charge credits to the Developer and to Larco;
- O. The Developer contributed 43.1% of the land value for May Drive C7 by way of Subdivision Plan EPP32741 and 57.6% of the land value for May Drive L1 by way of Subdivision Plan EPP32741;
- P. Larco constructed permanent works associated with half of the ultimate road configuration, amounting to 50% of the road construction value for May Drive C7, and constructed permanent works associated with the east sidewalk, placement of road base material for approximately 35% of the total road width, and temporary road pavement for approximately half of the ultimate road configuration, amounting to 20% of the road construction value for May Drive L1;
- Q. The maximum compensation payable to the Developer and Larco under this Agreement is \$1,682,463.00 (the "**Agreement Value**"), being \$827,013.00 with respect to May Drive C7 and \$855,450.00 with respect to May Drive L1, which Agreement Value is to be divided between the Developer and Larco as follows:
- 1) \$1,521,716.00 to the Developer (the "**Developer's Agreement Value**"); and
  - 2) \$160,747.00 to Larco (the "**Larco's Agreement Value**"); and



R. Council of the City adopted a bylaw on \_\_\_\_\_, 2017, authorizing:

- 1) the parties to enter into this Development Cost Charge Front-ender Agreement pursuant to sections 933(8) and 935 of the *Local Government Act*, for the provision of the Road Works; and
- 2) the payment to the Developer and Larco of the amounts described in this Agreement 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) January 20, 2031 (being 15 years after the Completion Date (hereinafter defined)); and
  - (b) the date the City has collected and remitted all applicable payments to the Developer as described in this Agreement,
 (the "Term").
2. The Developer acknowledges and agrees that this Agreement and the obligations of the City under this Agreement terminate on January 20, 2031, even if all applicable Development Cost Charges have not been collected in respect of the Benefiting Lands.
3. Despite section 1 of this Agreement, sections 4, 28, 29, 31, 33, and 34 shall survive the expiration or earlier termination of this Agreement

**Representations and Warranties**

4. The Developer represents and warrants to the City that:
  - (a) the Road Works have been completed in the manner set-out in the Servicing Agreement;
  - (b) the Road Works were completed on January 21, 2016 and the City accepted the condition of the Road Works in writing by issuing a Certificate of Completion (the "Completion Date");

- (c) the Developer is absolutely entitled to any and all Alexandra Road DCCs (defined in section 10 below) payable pursuant to this Agreement;
- (d) the Developer has not assigned any of its right, title or interest in the Alexandra Road DCCs (hereinafter defined), except to Larco with respect to the construction of the Road Works;
- (e) the information set out in Schedule A of this Agreement is true and correct;
- (f) as of the date of this Agreement, the actual cost incurred by the Developer to construct the Road Works, excluding GST, is \$0;
- (g) the allocated value of land acquisition under the Alexandra Area Roads DCC program for May Drive is \$3,051,568.61 (being the land value of \$1,627,503.26 for May Drive C7 and \$1,424,065.35 for May Drive L1);
- (h) the maximum compensation payable to the Developer under this Agreement from the City's Alexandra Area Roads DCC Reserve Fund is the Developer's Agreement Values (defined above), being \$1,521,716 less \$0 being development cost charge credits already provided to the Developer;
- (i) the Developer has 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
- (j) the Developer has 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. Larco represents and warrants to the City that:

- (a) the Road Works have been completed in the manner set-out in the Servicing Agreement;
- (b) the Road Works were completed on the Completion Date;
- (c) the Developer has assigned its right, title or interest in the Alexandra Road DCCs with respect to the construction of the Road Works to Larco;
- (d) the information set out in Schedule A of this Agreement is true and correct;
- (e) as of the date of this Agreement, the actual cost incurred by Larco to construct the Road Works, excluding GST, is \$1,037,400;

- (f) the allocated value of the Road Works under the Alexandra Area Roads DCC program for May Drive is \$427,058.67 (being the construction costs of \$251,117.97 for May Drive C7 and \$175,940.70 for May Drive L1);
- (g) the maximum compensation payable to Larco under this Agreement from the City's Alexandra Area Roads DCC Reserve Fund is Larco's Agreement Value (defined above), being \$160,747 less \$0 being development cost charge credits already provided to Larco;
- (h) Larco has 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
- (i) Larco has 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.

#### **DCC Front-End Works**

6. The Developer is solely responsible for the design, engineering and construction of the Road Works and for retaining consultants and entering into any contracts required to construct the Road Works, including with Larco, subject to the direction of the City.
7. The following tables set out items and amounts paid for with the collected Alexandra Road DCCs (hereinafter defined) and the payments to the Developer and Larco:

Table 1 – Contributions for the Developer

<b>Item</b>	<b>Item Description</b>	<b>Value (\$)</b>
(a)	Total Alexandra Area Road DCC Program value relating to the area outlined in Schedule A, comprising:	24,439,792
	- 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)	
(b)	Gross Alexandra Area Road DCC's collected, as of Dec 31, 2015	7,406,170
<b>ROAD SEGMENT C7 (May Drive between Cambie Road and McKim Way)</b>		
(c-1)	Road Segment C7 – Land acquisition value	1,627,503
(d-1)	% of land acquisition contribution from Developer to Road Segment C7	43.10%

(e-1)	% of Developer contribution to total DCC program = [(c-1)(d-1)/a]	2.87%
(f-1)	Agreement Value (max compensation to Developer for Road Segment C7 = (e-1)*a	<b>701,454</b>
(g-1)	Portion of DCC collected payable to Developer on Dec 31, 2015 = (e-1)*b	212,567
(h-1)	Total DCC credits/Front-End Agreement Payments already provided to Developer	0
(i-1)	The DCC Front-End Agreement Payment Value = (g-1)-(h-1). (If this value is negative no payment will be made at this time)	<b>212,567</b>
(j-1)	As of the Commencement Date, the outstanding value of this Front-End Agreement payable to the Developer for Road Segment C7 = (f-1)-(h-1)-(i-1)	<b>488,887</b>
<b>ROAD SEGMENT L1 (May Drive between McKim Way and Odlin Road)</b>		
(c-2)	Road Segment L1 – Land acquisition value	1,424,065
(d-2)	% of land acquisition contribution from Developer to Road Segment L1	57.60%
(e-2)	% of Developer contribution to total DCC program = [(c-2)(d-2)/a]	3.36%
(f-2)	Agreement Value (max compensation to Developer for Road Segment L1 = (e-2)*a	<b>820,262</b>
(g-2)	Portion of DCC collected payable to Developer on Dec 31, 2015 = (e-2)*b	248,570
(h-2)	Total DCC credits/Front-End Agreement Payments already provided to Developer	0
(i-2)	The DCC Front-End Agreement Payment Value = (g-2)-(h-2). (If this value is negative no payment will be made at this time)	<b>248,570</b>
(j-2)	As of the Commencement Date, the outstanding value of this Front-End Agreement payable to the Developer for Road Segment L1 = (f-2)-(h-2)-(i-2)	<b>571,692</b>
<b>Total Payments</b>		
(k)	The Total DCC Front-End Agreement Payment Value for payment to the Developer = (i-1)+(i-2)	<b>461,137</b>
(l)	As of the Commencement Date, the outstanding value of this Front-End Agreement payable to the Developer = (j-1)+(j-2)	<b>1,060,579</b>

Table 2 – Contributions for Larco

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:	24,439,792
	- 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)	
(b)	Gross Alexandra Area Road DCC's collected to Dec 31, 2015	7,406,170
<b>ROAD SEGMENT C7 (May Drive between Cambie Road and McKim Way)</b>		
(c-1)	Road Segment C7 – Roadwork construction value	251,118
(d-1)	% of permanent roadworks construction contribution from Larco to Road Segment C7	50.00%
(e-1)	% of Larco contribution to total DCC program = [(c-1)(d-1)/a]	0.51%
(f-1)	Agreement Value – max compensation to Larco for Road Segment C7 = (e-1)*a	<b>125,559</b>
(g-1)	Portion of DCC collected payable to Larco on Dec 31, 2015 = (e-1)*b	38,049
(h-1)	Total DCC credits/Front-End Agreement Payments already provided to Larco	0
(i-1)	The DCC Front-End Agreement Payment Value = (g-1)-(h-1). If this value is negative no payment will be made	<b>38,049</b>
(j-1)	As of the Commencement Date, the outstanding value of this Front-End Agreement payable to Larco for Road Segment C7 = (f-1)-(h-1)-(i-1)	<b>87,510</b>
<b>ROAD SEGMENT L1 (May Drive between McKim Way and Odlin Road)</b>		
(c-2)	Road Segment L1 – Roadwork construction value	175,941
(d-2)	% of permanent roadworks construction contribution from Larco to Road Segment L1	20.00%
(e-2)	% of Larco contribution to total DCC program = [(d-2)(e-2)/a]	0.14%
(f-2)	Agreement Value – max compensation to Developer for Road Segment L1 = (e-2)*a	<b>35,188</b>
(g-2)	Portion of DCC collected payable to Larco on Dec 31, 2015 = (e-2)*b	10,663
(h-2)	Total DCC credits/Front-End Agreement Payments already provided to Larco	0

(i-2)	The DCC Front-End Agreement Payment Value = (g-2)-(h-2). If this value is negative no payment will be made	<b>10,663</b>
(j-2)	As of the Commencement Date, the outstanding value of this Front-End Agreement payable to Larco for Road Segment L1 = (f-2)-(h-2)-(i-2)	<b>24,525</b>
<b>Total Payments</b>		
(k)	The Total DCC Front-End Agreement Payment Value for payment to Larco = (i-1)-(i-2)	<b>48,712</b>
(l)	As of the Commencement Date, the outstanding value of this Front-End Agreement payable to Larco = (j-1)+(j-2)	<b>112,035</b>

8. The Developer and Larco have facilitated the design, engineering and construction of the Road Works through the provision of funds as set out in this Agreement.
9. The City is not responsible for financing any of the costs of the Road Works.

#### **Calculation and Collection of Alexandra Road DCCs**

10. In consideration of the land dedication by the Developer and the completion of the Road Works by Larco to the satisfaction of the City's General Manager of Engineering and Public Works, without incurring any cost to the City, the City agrees 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").
11. 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.
12. The Developer and Larco 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 Developer and Larco.

**Payment for DCC Front-End Works**

13. The City shall pay to the Developer the sum of the Developer's Agreement Value, excluding GST, as follows:
  - (a) \$509,849.00 initial payment in accordance with item (k) in the Table 1 in Section 7 of this Agreement; and
  - (b) subsequent payments will be calculated based on a review of items (b) through (h) and (l) inclusive of the Table 1 in section 7 of this Agreement and to the extent of the Alexandra Road DCCs collected during the Term from the Benefiting Lands in accordance with sections 10 and 11 of this Agreement.
14. The City shall pay to Larco the sum of Larco's Agreement Value, excluding GST, as follows:
  - (a) \$48,712.00 initial payment in accordance with item (k) in the Table 2 in Section 7 of this Agreement; and
  - (b) subsequent payments will be calculated based on a review of items (b) through (h) and (l) inclusive of the Table 2 in section 7 of this Agreement and to the extent of the Alexandra Road DCCs collected during the Term from the Benefiting Lands in accordance with sections 10 and 11 of this Agreement.
15. Subject to there being sufficient reserves in the City's account designated for this purpose, the City will remit the amounts described in section 13(b) to the Developer and the amounts described in section 14(b) to Larco following the City's financial audit or on or before June 30<sup>th</sup> of each year of the Term, in accordance with City policies and procedures from time to time.
16. If there are any unpaid payments due to there being insufficient reserves in the City's account designated for this purpose, the City will pay such payments upon being in receipt of sufficient reserves in the City's account designated for this purpose.
17. After the Term has expired, the City shall have no further obligation to the Developer or to Larco to make any payment pursuant to this Agreement.
18. The Developer and Larco acknowledge and agree 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 the Developer to the sum of the Developer's Agreement Value and to Larco to the sum of Larco's Agreement Value.
19. The Developer and Larco 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.

20. The Developer and Larco acknowledge and agree that once the City has fully paid out the total 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.
21. The Developer and Larco acknowledge and agree that it is possible that the City may not ever fully reimburse the Developer and/or Larco for all their costs in providing the land dedicated for Road and in providing the Road Works. Accordingly, the Developer and Larco 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 Developer's costs and Larco's costs in providing the land dedicated for Road and the Road Works.
22. The Developer acknowledges and agrees that the City does not owe the Developer any monies for the cost of the Road Works.
23. The Developer warrants and represents to the City that the Developer did not contribute any monies towards the Road Works.
24. Larco acknowledges and agrees that the City does not owe Larco any monies pursuant to the land dedicated for Road.
25. Larco warrants and represents to the City that Larco did not provide any land dedicated for May Drive.
26. The Developer and Larco shall each 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 the Developer and/or Larco fails to provide such address to the City and amounts sent to the address set out in this Agreement or the most recently provided address are returned to the City, the City may retain such amounts for its own use and is thereafter discharged from any obligation to remit the remaining Alexandra Road DCCs.
27. The Developer and Larco direct that the amounts payable to the Developer and Larco pursuant to this Agreement from the City's Alexandra Area Roads DCC Reserve Fund be paid as follows:
  - a) To the Developer re May Drive C7: 2.87% of whatever amounts the City collects each year of the Term in connection with the Alexandra Area DCC Charges (such amounts collected determined in the City's sole discretion), with the total maximum value to be paid under this agreement being \$701,454;
  - b) To the Developer re May Drive L1: 3.36% of whatever amounts the City collects each year of the Term in connection with the Alexandra Area DCC Charges (such amounts



collected determined in the City's sole discretion), with the total maximum value to be paid under this agreement being \$820,262;

- c) To Larco re May Drive C7: 0.51% of whatever amounts the City collects each year of the Term in connection with the Alexandra Area DCC Charges (such amounts collected determined in the City's sole discretion), with the total maximum value to be paid under this agreement being \$125,559; and
- d) To Larco re May Drive L1: 0.14% of whatever amounts the City collects each year of the Term in connection with the Alexandra Area DCC Charges (such amounts collected determined in the City's sole discretion), with the total maximum value to be paid under this agreement being \$35,188.

### **Release and Indemnity**

- 28. The Developer and Larco 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 .
- 29. The Developer and Larco 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 Developer and/or Larco or breach of this Agreement by the Developer and/or Larco.

### **Assignment**

- 30. Neither the Developer nor Larco shall assign or transfer its rights under this Agreement without the City's prior written consent.
- 31. In the event of the assignment or transfer of the rights of the Developer voluntarily, or by operation of law, the City may pay any benefits accruing under this agreement, after notice, to the successor of the Developer 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.

32. In the event of the assignment or transfer of the rights of Larco voluntarily, or by operation of law, the City may pay any benefits accruing under this agreement, after notice, to the successor of Larco 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.
33. The Developer and Larco acknowledge and agree that the City is released from any liability under this Agreement by paying amounts payable to the Developer and/or Larco 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 the Developer and/or Larco 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**

34. The Developer 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.

35. Larco 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.
36. 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.
37. No partnership, joint venture or agency involving the City or the Developer or Larco is created by or under this Agreement and neither the Developer nor Larco will have the authority to commit and will not purport to commit the City to the payment of any money to any person.
38. 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).
39. This Agreement is the entire agreement among the parties, apart from the Servicing Agreement between the Developer 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 Larco other than those in this Agreement and the Servicing Agreement. For certainty, the Developer

and Larco each acknowledge and agree that the City has not made or given any representations or warranties to the Developer and/or Larco respecting the subject matter of this Agreement.

40. No amendment to this Agreement is valid unless in writing and executed by the parties.
41. 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.
42. 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.
43. Time is of the essence of this Agreement.
44. This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors and permitted assigns.
45. 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 the Developer or Larco 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.
46. 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.
47. 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:

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George Duncan  
Chief Administrative Officer

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Robert Gonzalez  
General Manager, Engineering & Public Works

**AGA KHAN FOUNDATION (CANADA)**

by its authorized signatory:

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Print Name:  
Print Title:

**LARCO INVESTMENTS LTD.**

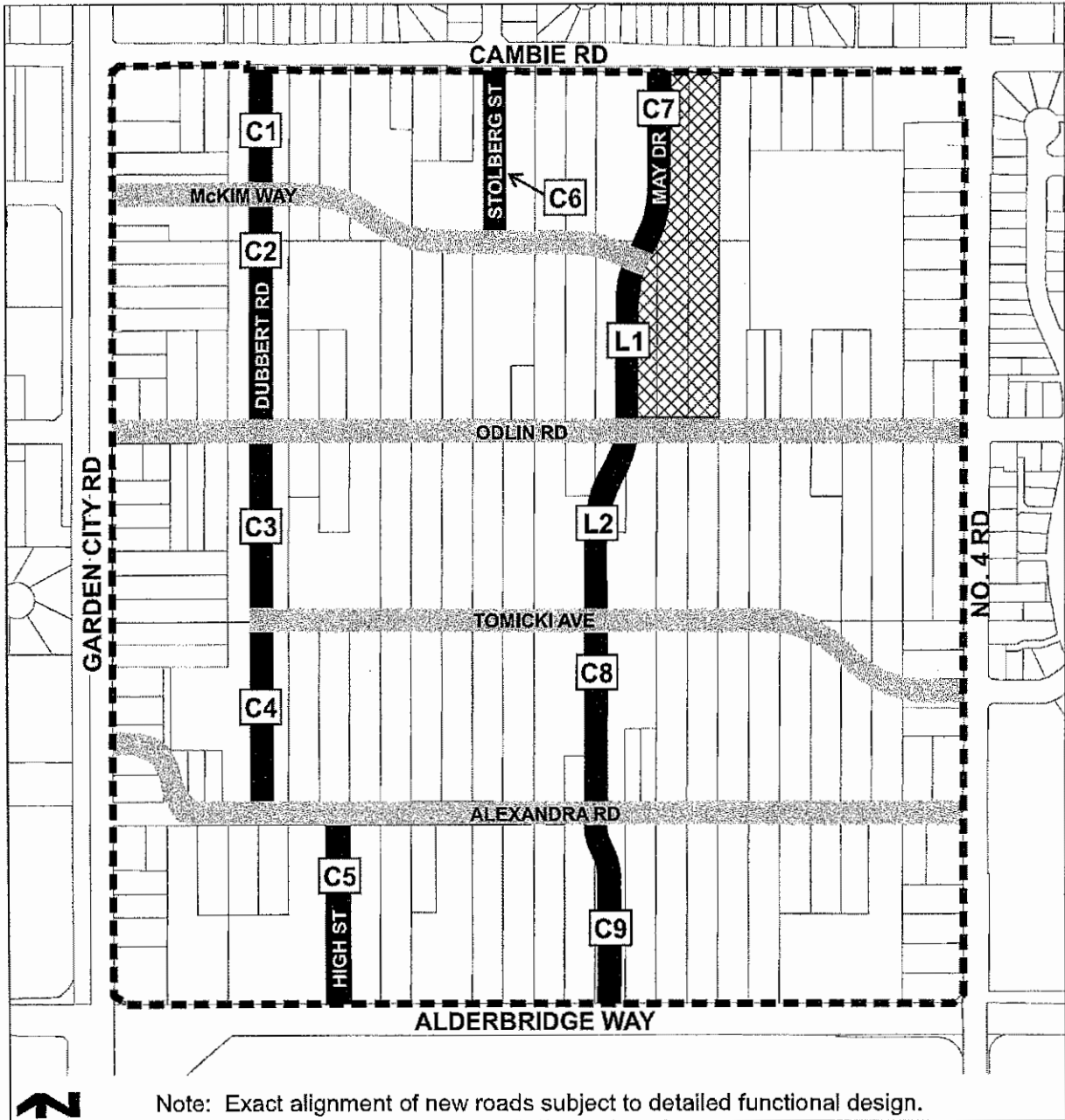
by its authorized signatory:

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Print Name:  
Print Title:

SCHEDULE "A"

Schedule A



Note: Exact alignment of new roads subject to detailed functional design.

Legend



Benefitting Lands  
excludes parks, schools &  
lands owned by the City



Lands Developed by the Developer