
TO: GENERAL COMMITTEE

SUBJECT: DEVELOPMENT CHARGE CREDIT AGREEMENT – MAPLEVIEW DRIVE
EAST NEW SANITARY SEWER AND ROAD EXPANSION PROJECT
EN1270 (UPDATED)

WARD: ALL

**PREPARED BY AND
KEY CONTACT:** C. PACKHAM, LEGAL COUNSEL, EXT. 4511

SUBMITTED BY: I. PETERS, DIRECTOR OF LEGAL SERVICES
B. ARANIYASUNDARAN, P.ENG, DIRECTOR OF INFRASTRUCTURE

**GENERAL MANAGER
APPROVAL:** A. MILLER, GENERAL MANAGER OF INFRASTRUCTURE AND
GROWTH MANAGEMENT

**CHIEF ADMINISTRATIVE
OFFICER APPROVAL:** M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That the General Manager of Infrastructure and Growth Management be authorized to amend the previous Development Charge Credit Agreement for the entirety of Phase 1 of the Maplevue Sanitary Sewer (Project Number EN1270) dated as of the 25th day of June, 2019 (the “Previous Agreement”) in a form approved by the Director of Legal Services, the Director of Infrastructure and the Director of Finance and Treasurer.
2. That the General Manager of Infrastructure and Growth Management be authorized to complete a new Development Charge Credit Agreement wherein the Hewitt’s Creek Landowners Group and their Trustee and the City agree to the details of the landowners commitments to complete a portion of the Maplevue Sanitary Sewer being the completion of Phase 1 and the entirety of Phase 2 of Project Number EN1270 (the “Project”), in a form approved by the Director of Legal Services, the Director of Engineering, and the Director of Finance and Treasurer.
3. That the Mayor and City Clerk be authorized to execute a Funding and Development Charge Credit Agreement with the Hewitt’s Creek Landowner Group and their Trustee.

PURPOSE & BACKGROUND

4. The purpose of this Report is to:
 - a) Update Council on the current status of the Project under the Previous Agreement;
 - b) Seek Council’s approval to authorize the City to amend the Previous Agreement between the City, the Hewitt’s Creek Landowner Group and the Trustee developed with respect to Phase 1 of the Project; and
 - c) Seek Council’s approval to authorize the completion and execution of a new, Development Charge Credit Agreement with the members of the Hewitt’s Landowner Group and their Trustee (The “Agreement”).

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5. On May 21, 2014, Council approved the recommendations in Staff Report IGM003-14 entitled Growth Management Update: MOU, IIP and Approval of Secondary Plans. Approval of these recommendations advanced three key elements of the City's growth management program including the terms of a Memorandum of Understanding with landowners in the Secondary Plan Areas (MOU), the approval of an Infrastructure Implementation Plan (IIP) and the adoption of the Salem and Hewitt's Secondary Plans.
 6. On June 17, 2014, the City and the Salem and Hewitt's landowners signed the MOU. The MOU provides the framework for implementing the vision identified in the Secondary Plans and addresses a wide range of associated financial, development and infrastructure matters.
 7. The MOU references four growth financing tools that had been approved by Council in December 2013. One of the tools is permitting the landowners to complete designs and construction for certain projects identified in the IIP and benefitting the Secondary Plan Areas. In return, the landowners were to be reimbursed through development charge credits. An agreement is required to formalize this credit arrangement.
 8. The City has entered into a number of Development Charge Credit Agreements with both the Salem and Hewitt's Landowners for various projects associated with development in the Secondary Plan Areas, including the Previous Agreement for Phase 1 of the Project.
 9. Staff brought a previous request to council for authority to enter into the Previous Agreement in Staff Report LGL006-19. Council approved entering into the Previous Agreement through motion 19-G-193 on June 24, 2019.
 10. The complete project comprises of road improvements and sanitary servicing improvements between Prince William Way and the Collector 11 Boundary (Terry Fox Drive) and a sanitary sewer connection to the Hewitt Trunk Sewer from west of Royal Jubilee Drive to the Collector 11 Boundary (Terry Fox Drive). The Project is a Developer Project whereby the Landowners design and construct infrastructure through a Development Charge Credit Agreement
 11. The design and construction was divided into three phases by the Landowners to expedite critical sections of the sewer to meet servicing needs. The first phase of the project comprised of the sanitary sewer from west of Royal Jubilee Drive to the Bulut Lands East entrance.
 12. The works included in the first phase covered under the Previous Agreement were tendered in two separate contracts: the first by North Rock Group Limited and the second was commenced by ConDrain Company Limited (ConDrain). Both contracts were awarded by the Landowners Group.
 13. The second phase comprises the sanitary sewer from the Bulut Lands East entrance to the proposed Terry Fox Drive. The design for this phase is complete with construction planned in 2021.
 14. The third phase comprises the road improvements planned to be constructed in 2022 and 2023 between Prince William way and Terry Fox Drive.
 15. During the construction of the first phase unanticipated groundwater volumes were encountered by ConDrain partway through construction. The dewatering requirements to facilitate construction exceeded 400,000 Litres/day, necessitating a Permit to take water (PTTW). As such the construction was suspended in 2020 in order to secure a PTTW. Moving forward with the remaining construction under the current contract with ConDrain will result in cost escalations through change orders and potential claims for delay, loss of production and changed site conditions in relation to the remaining work.

16. While dewatering was anticipated for the first phase of the sewer, it was the Landowners' consultant's opinion that the dewatering volumes would be below 400,000 Litres/day and a PTTW would not be required. The contract to ConDrain was awarded on the basis that the dewatering could be kept below 400,000 Litres/day and the permitting approvals would be limited to an EASR (Environmental Sector and Activity Registry) which allows dewatering to proceed subject to an online registration and other applicable municipal and provincial requirements.
17. It is also noted that the second phase will require dewatering greater than 400,000 Litres/day. Given this the Landowners Consultant has applied for a PTTW to cover the dewatering requirements for both the remaining work in the first phase and the sewer works in the second phase.
18. As a result of the above noted challenges, the Landowners and City Staff are recommending that the contract with ConDrain be terminated and the remaining uncompleted work in the first phase and the work under the second phase be combined and tendered as a new contract. As such, the remnants of the first phase and second phases of the Project will be addressed in a new agreement that will redefine the scope of the works involved, as well as the roles and obligations of the parties.
19. A separate agreement for the third phase comprising the Road works will be required in the future. A staff report to secure Council Approval for the phase three agreement will be submitted in 2022.
20. Completion of the remaining works in the first phase and second phases associated with the Project is required to provide sanitary servicing to a number of developments in the Hewitt's Creek Secondary Plan Area.

ANALYSIS

21. The MOU sets out some of the terms and conditions by which the landowners will be reimbursed if they choose to exercise their option to deliver DC-eligible projects:
 - a) City will reimburse the landowners for the actual cost of the project through DC credits;
 - b) City will pay for the "benefit to existing" component of the project at the time of construction.
22. The total cost of project EN1270 is currently estimated at \$12,594,600. The table below summarizes the project cost details including a breakdown of costs by phases.

	Hard Costs	Soft costs	Total Costs	Construction Year
Phase 1 - Sewer	\$ 1,495,215	\$ 293,748	\$ 1,788,963	2020
Phase 2 - Sewer	\$ 4,593,234	\$ 671,549	\$ 5,264,783	2021
Phase 3 - Road	\$ 4,831,600	\$ 709,254	\$ 5,540,854	2022- 2023
Total Costs	\$ 10,920,049	\$ 1,674,551	\$ 12,594,600	2020 - 2023

23. The total budget for Project EN1270 within the 2021 Capital Plan is \$ 12,594,600. It should be noted that Phase 3 comprising the Road works is currently in the design phase and will be tendered for construction in 2022. As such the construction costs (hard costs) for Phase 3 works will be confirmed and adjusted for inflation during the development of the 2022 Capital Plan.
24. The Agreements referred to in this report are limited to construction phase services and as such the soft costs covered in these Agreements are limited to those that are incurred during construction. Soft costs during the design phase were covered in a separate generic agreement for all projects that are to be undertaken by the Landowners. The table below summarizes the

estimated amounts for the previous Agreement (Phase 1), and the new Agreement (Phase 2) in addition to the estimated value of the work completed in Phase 1 under the ConDrain Contract.

	Construction Agreement Amount	Estimated value of completed work	Construction Year
Phase 1 - Sewer	\$ 2,000,000	\$ 1,682,000	2020
Phase 2 - Sewer	\$ 4,950,000	\$ -	2021

25. The total cost of the construction services for the first phase of the project was estimated within the Previous Agreement as \$2 Million. Given the additional costs related to dewatering and the potential delay claims, the Landowners have advised the City that final cost for the first phase could be as much as 75% over the \$2 Million established in the Previous Agreement. Terminating the Contract with ConDrain will eliminate the uncertainty around the additional costs and the potential claims. The Landowners Group concurs that this is the preferred option to complete the work.
26. The recommended option involving the termination of the Contract with ConDrain provides the following benefits:
- a) Realize efficiencies through the combination of dewatering for the remaining sewer work in the first and second phases through the use of a single PTTW and a single dewatering system and contractor.
 - b) Obtain competitive pricing for all remaining sewer work and the dewatering through a competitive tender.
 - c) Mitigate cost escalation due to the uncertainties around the cost to complete the work through the existing Contract with ConDrain, as this will need change orders to address dewatering, delay claims, loss of production claims, and impacts relating to changed site condition claims.
27. In order to complete Phase 1 of the Project, the City and the Hewitt's Creek Landowners' Group will need to mutually agree to release each other from future obligation or liability under the Previous Agreement, and to redescribe and re-scope the works associated with the Project for a new tender and a new Agreement.
28. The Landowners have notified the City of an outstanding claim from the Contractor in relation to the work already completed. The City's general view of the claim is that substantial portions of the claim are without merit and if portions of the claim were valid, then a substantial portion of these amounts would be the responsibility of the Landowners.
29. Any amendment to the Previous Agreement will be contingent upon satisfactory arrangements between the Landowners Group and the previous contractors involved in completing any works described in the Previous Agreement, as well as satisfactory arrangements between the City and the Landowners Group to ensure there are no unresolved issues remaining from the Previous Agreement.
30. The new Agreement is also expected to contain the following terms and conditions:
- a) Landowners will retain a Consulting Engineer with a project team and scope of work for construction administration and inspection services.
 - b) The design will be completed in accordance with all City requirements and design drawings will be sealed by a licensed professional engineer.

- c) Landowner's tender package shall include contracts for services consistent with those forms used by the Municipality in its own standard procurement processes (ie. OPSS General Conditions, and Supplemental General Conditions, Schedule of Prices, General Provisions and Special Provisions).
- d) All technical specifications and contract documents will be reviewed and approved by the City both prior to tender and prior to the Landowners Group awarding any contract for the Project.
- e) Landowners will obtain all necessary approvals from the applicable authorities and sign-off from the City prior to commencing procurement of contractors for the Project.
- f) Landowners will undertake an open, competitive, fair, and transparent procurement process.
- g) An employee of the Municipality's Infrastructure Department shall be permitted to monitor the procurement process.
- h) Contractor will provide insurance and bonding to the City prior to commencing work on the Project.
- i) City will have a dedicated resource paid through the DC project who will oversee and inspect construction of the Project and will have the ability to stop the work if it is not in accordance with the contract documents.
- j) Landowners will submit all proposed construction change orders to the City for review and approval prior to acceptance.
- k) As per the City's Capital Project Financial Control Policy, aggregate funding requirements that exceed the lesser of 10% of the approved Capital Budget or \$500,000 require Council approval.
- l) Consulting Engineer will certify the works and submit all required documentation for City review and acceptance.
- m) Reimbursement through DC Credits will be based on actual costs.
- n) DC Credits will be earned upon substantial completion of the Project.
- o) Credits may then be used by the Landowners at such times as DC's are otherwise payable pursuant to the City's Development Charge By-Law or the Development Charges Act.
- p) Securities will be based on a minimum of 70% of the construction cost.

ENVIRONMENTAL CLIMATE CHANGE IMPACT MATTERS

- 31. Construction dewatering will be subject to provincial regulations and City By-Laws. This includes a discharge permit from the City for the dewatering effluent. The dewatering and associated operations will be undertaken to minimize impacts to private wells and the natural environment. Treatment for the dewatering effluent may be required depending on the quality of the groundwater.
- 32. Construction Operations will be subject to environmental and sediment controls as stipulated in the contract documents and technical specifications.

ALTERNATIVES

33. The following alternative is available for consideration by General Committee:

Alternative #1 General Committee could choose not to authorize staff to amend and complete a release from the Previous Agreement and choose not to authorize the execution of a new, revised Development Charge Credit Agreement with the Hewitt's Creek Landowner's Group for the Project.

This alternative is not recommended as the Agreement implements provisions in the MOU whereby the landowners agreed to up front the costs associated with Developer Build projects identified in the IIP. This is an important step in implementing the vision that Council approved for the Secondary Plan Areas and will ensure that infrastructure required for both new development and the new SCDSB Secondary School on Prince William Way is in place. It also enables the City and the Landowners Group to re-evaluate some of the issues that have arisen during Phase 1 of the Project and address those issues in a new contract to mitigate cost risks. The City and the Landowners would also be left in a position of trying to implement the Previous Agreement in light of the challenges faced under that framework. The costs for Phase 1 will be significantly higher due to potential delay claims and the lack of competitive pricing for the dewatering and associated works.

Alternative #2 General Committee could choose to authorize staff to amend and complete a release from the Previous Agreement and choose not to authorize the execution of a new, revised Development Charge Credit Agreement with the Hewitt's Creek Landowner's Group for the Project.

This alternative is not recommended as this would result in there being no ability to have an agreement in place with the Landowners for the delivery of the remaining phases of the Project. Additionally, the sewer is required to service growth along Maplevue Drive and as the Landowners have completed the design for the sewer, it would be prudent to complete the project through an Agreement with the Landowners.

FINANCIAL

34. As agreed in the MOU, in exchange for front ending or paying the costs of the Project, developers will receive credits against development charges payable. The Development charge credit agreement will outline the process and timing of when the credits will be considered earned.
35. The 2021 Capital Plan has an approved amount of \$12,594,600 for this project. The table below summarizes allocation between the phases and the estimated expenditures by the Landowners to-date of \$2,302,498.

	Previous Budget Allocation	Revised Budget Allocation	Expenditures To-date
Phase 1 - Sewer	\$ 2,106,963	\$ 1,788,963	\$ 1,788,963
Phase 2 - Sewer	\$ 4,946,783	\$ 5,264,783	\$ 314,783
Phase 3 - Road	\$ 5,540,854	\$ 5,540,854	\$ 198,752
Total Costs	\$ 12,594,600	\$ 12,594,600	\$ 2,302,498

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36. The recommended option will not require a budget increase at this time. City Staff will review the cost estimates for the Phase 3 works prior to completion of the 2022 Capital Budget to account for any changes in market pricing and inflation and the revised construction estimate at 100% design.
 37. The recommended option will result in competitive pricing for the remaining works in Phase 1 including the dewatering and will enable efficiencies through the utilization of an integrated dewatering system for the two phases.
 38. The funding for project is \$1,198,392 from Tax Capital Reserves and \$11,396,208 from Developer Front Ending.

LINKAGE TO 2018-2022 COUNCIL STRATEGIC PLAN

39. The recommendation included in this Staff Report support the following goals identified in the 2018-2022 City Council Strategic Plan:
 - ☒ Building Strong Neighbourhoods – An important cornerstone of the City's growth management program is the implementation of the land use and servicing plans for the Secondary Plan Areas. The MOU provides a framework for this process. The proposed Development Charge Credit Agreement with the Hewitt's Landowners Group is necessary in order to advance the infrastructure planning and design projects identified in the approved Infrastructure Implementation Plan and required to service the new growth areas.