



REPORT

Report Date: July 6, 2021
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Meeting Date: July 21, 2021
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TO: Standing Committee on City Finance and Services
FROM: Director of Legal Services
SUBJECT: Front-ender Agreements

RECOMMENDATION

THAT Council authorize the Director of Legal Services to execute a Utilities Development Cost Levy Front-ender Agreement (the "Agreement") with Pennyfarthing Properties Ash St. North Ltd. to an upset limit of \$811,200 (including all applicable taxes), as generally described in this report; and

FURTHER THAT Council authorize the funds to be paid out of the Utilities Development Cost Levy reserve fund over a period of 10 years in accordance with the Agreement.

REPORT SUMMARY

This report briefly explains so-called "front-ender" agreements and seeks to have Council approve, by resolution, the City's first front-ender agreement and the funding related to the front-ender agreement.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

Front-ender agreements are authorized by section 523D of the Vancouver Charter, which governs development cost levies (DCLs). Other local governments in BC are authorized to enter into front-ender agreements as part of their Development Cost Charge (DCC) programs, which is the Local Government Act's equivalent of DCLs. Front-ender agreements are primarily used by local governments to finance the installation of utilities, such as sanitary, water and drainage infrastructure. The City has only recently started to fund these utilities through DCLs. The City raises money for these projects, in part, through the Utilities Development Cost Levy By-law,

which has been in effect since September 30, 2018. This report seeks approval of the City's first front-ender agreement, which will be funded by money raised by the Utilities DCL By-law.

Most projects financed with funds raised by the Utilities DCL By-law are built by the City, according to the City's schedule. However, if a developer needs a project constructed ahead of the City's schedule, the developer may propose financing and building the required project directly. The term "front-ender" has developed because the developer "front-ends" the project by financing and building it. In order for a developer to be eligible for a front-ender agreement, the developer must pay DCLs, and the proposed project must be part of the DCL capital project list. In these circumstances, the City may enter into a "front-ender" agreement with the developer authorizing the City to direct some or all of the expected DCL funds collected throughout the City to the developer. As other developers who benefit from the front-ended project pay DCLs, the funds are passed onto the "front-end" developer. These agreements help developers recoup some of the costs of delivering utilities projects ahead of the City's schedule. The City determines the suitability of a front-ender agreement on a case-by-case basis.

The City's published guidance says that priority will be given to applicants in the Cambie Corridor. A copy of the policy is attached as Appendix "A".

Under section 523D of the VC, the City is required to keep different DCL funds in different reserve funds. Council is also required to authorize the expenditure of funds from a reserve fund, including payments under a front-ender agreement. A standard condition in the City's front-ender agreement says:

"Authorizing Resolution: The Council of the City has passed a resolution, pursuant to Section 523D (17.01) of the *Vancouver Charter*, to authorize the City to enter into this Agreement and to make the payments to the Developer of the amounts described in this Agreement from the reserve fund for the Utilities DCL as contemplated by this Agreement. This condition is for the benefit of both parties and may not be waived; ..."

Section 523D (17.01) of the Vancouver Charter reads:

"(17.01) Payments out of a development costs levy reserve fund shall be authorized by a resolution of Council, and one resolution may authorize a series of payments in respect of any capital project."

In order to authorize the proposed front-ender agreement, Council must adopt a resolution. The proposed resolution is set out as Recommendation A.

The proposed Utilities Development Cost Levy Front-Ender Agreement (the "Agreement") with Pennyfarthing Properties Ash St. North Ltd. relates to a project at 4989-5049 Ash St. An application to rezone the property was approved by Council on May 28, 2020. The utilities upgrade involves separate storm and sewer pipes.

The maximum commitment that the City has made in the proposed agreement to finance the utilities project is \$811,200 over 10 years. As part of the Agreement, the City will pass on 0.3 % of the money raised by the Utilities Development Cost Levy By-law, once a year, for a period of 10 years. If no money is raised by the Utilities DCL By-law, no money is passed on.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager recommends approval of the foregoing.

REPORT***Strategic Analysis***

Front-ender agreements are a common practice in BC. Staff consider them to be a lawful, equitable and beneficial tool to expedite the installation of utilities and infrastructure.

Implications/Related Issues/Risk***Financial***

The Front-ender Agreement will require the City to allocate 0.3% of Utilities DCL revenue for a period of up to 10 years and up to a maximum of \$811,200 from the Utilities DCL reserve upon delivery of the agreed upon sewer upgrades to the City. This represents the DCL eligible growth share of the estimated \$1,040,000 cost of the sewer upgrades, which were set out in the Utilities DCL project list.

Legal

A front-ender agreement is authorized by section 523D of the Vancouver Charter, and a resolution of Council is needed to allocate money from a DCL reserve fund.

CONCLUSION

Staff recommend approval of the proposed resolution to enter into a front-ender agreement and allocate the funds required from the Utilities DCL reserve fund.

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Utilities DCL Front-Ender Agreements – Guide for applicants

BACKGROUND INFORMATION

The City collects charges for growth-related sanitary, water, and drainage infrastructure through the Utilities Development Cost Levy (DCL) By-law. The City of Vancouver’s DCL for utilities came into effect on September 30th, 2018. Most Utilities DCL projects will be built by the City according to the City’s schedule. But if a developer needs a DCL project ahead of the City’s schedule in order to develop, that developer may wish to finance and build the required DCL project directly. On a limited basis, the City will consider entering into a DCL “Front-Ender Agreement” (FEA) with these developers. This handout provides answers to frequently asked questions about Utilities DCL FEAs.

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WHO SHOULD READ THIS FAQ?

If the City has indicated that your development requires off-site infrastructure upgrades, then you should read this FAQ to determine if a Utilities DCL FEA might be relevant for your development. FEAs cannot be used for local serving utility upgrades where there is little to no benefit beyond the proposed development.

WHAT IS A UTILITIES DCL FRONT-ENDER AGREEMENT?

A DCL front-ender agreement is an agreement between the City and a developer who finances and typically builds a DCL project. Under a DCL front-ender agreement, the City would agree to collect and forward future DCLs to the front-ending developer. FEAs are a way of helping developers recoup some of the costs of delivering Utilities DCL projects in advance of the City’s schedule.

WHO IS ELIGIBLE FOR A UTILITIES DCL FEA?

If you are a developer who finances and typically builds a project that is included in the current Utilities DCL project list, you are eligible to be considered for a FEA. The City will determine the suitability of an FEA on a case-by-case basis. Priority will be given to applicants in the Cambie Corridor.

HOW DO I KNOW IF MY DEVELOPMENT IS TRIGGERING A UTILITIES DCL PROJECT?

The General Manager of Engineering Services manages an up-to-date list of Utilities DCL Projects. The project list can be found here: <https://vancouver.ca/home-property-development/utilities-dcl.aspx>.

To find out if your project triggers a Utilities DCL project, contact: Utilities.Servicing@vancouver.ca.

HOW DO I GET AN FEA?

During the rezoning application process, the City will inform you whether your development qualifies for a FEA.

WHAT ARE THE TYPICAL TERMS OF A UTILITIES DCL FEA?

Utilities DCL FEAs have specific terms, offered by the City, that will include:

- Term of 10 years (i.e., the City will agree to remit future DCLs for a period of up to ten years)
- The total remittance will be the lower of i) project cost contemplated in the DCL program and ii) actual project cost
- The City will not begin remitting DCL revenues until 2021
- The annual remittance will be a percentage of DCL revenues collected - the percentage will be calculated as: $(\text{cost of front-ended DCL project}) / (\text{total remaining DCL program costs})$ up to a maximum allowable annual remittance as determined by the City. Remittances will be made annually, and commencing in the year following DCL project completion. Remittance will not include any non-growth costs of a DCL project. Total remittance for FEAs will be limited to a maximum of \$10 Million for the first 8 years of the Utilities DCL Program.
- The benefitting area is defined as the City-wide Utilities DCL boundary
- The developer's financing costs will not be included in the FEA
- The City will not guarantee a refund of all project costs; remittances will be dependent on future DCL revenues (i.e., the front-ending developer assumes the risk of not recouping all project costs)

WILL DCL CREDITS BE PROVIDED?

No. Even if a developer finances a Utilities DCL project, the developer will be responsible for paying full Utilities DCLs.

Note: Other municipalities are mandated by Provincial legislation to provide Development Cost Charge (DCC credits). The City is not governed by the same legislation.

IS THERE A FEE FOR FEAs?

Yes. The fee will be part of the Services Agreement to cover the City's costs of administering an FEA.

FOR MORE INFORMATION

Please visit: <https://vancouver.ca/home-property-development/utilities-dcl.aspx> or contact:

Utilities.Servicing@vancouver.ca.