

MEMORANDUM OF UNDERSTANDING REGARDING GARDEN CITY PROPERTY

BETWEEN

MUSQUEAM INDIAN BAND,

CITY OF RICHMOND,

CANADA LANDS COMPANY CLC LIMITED,

AND

DEPARTMENT OF FISHERIES AND OCEANS

WHEREAS:

A. The Department of Fisheries and Oceans ("DFO") has administration and control of approximately 136.5 acres of federal Crown land (the "Garden City Property"), the precise size of which will be determined by survey, in Richmond, BC.

B. The Musqueam Indian Band ("Musqueam"), the City of Richmond (the "City"), Canada Lands Company CLC Limited ("CLC") and DFO (collectively the "Parties") have reached a number of understandings regarding the future of the Garden City Property and wish to set out those understandings in this Memorandum of Understanding ("MOU").

C. In reaching the understandings, the Parties have sought to address:

- the interest of Musqueam that part of the Garden City Property be for development by Musqueam;
- the interest of the City that a sizeable part of the Garden City Property be for park use and public amenities and that some part of the Garden City Property be available for possible development of a Trade and Exhibition Centre ("TEC");
- the interest of the federal Crown that it obtain fair market value for the Garden City Property;
- the role and mandate of CLC; and
- the potential interest of the Department of Human Resources and Skills Development - Homelessness Secretariat with respect to the Garden City Property.

D. The Parties are of the view the Garden City Property will not be required for purposes of the Vancouver 2010 Olympics.

E. This MOU is being entered into outside the context of negotiations under the British Columbia Treaty Commission process.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **The Understandings Reached by the Parties**

General

1(1) The understandings reached by the Parties are set out below. The Parties are committed to working cooperatively and in good faith, and to negotiating whatever other agreements, arrangements and undertakings are required, to give effect to these understandings. Further, the Parties are committed to giving effect to the following understandings, to the extent possible:

- Transfer of the Garden City Property from the federal Crown to CLC by April 30, 2005 on the terms of this MOU;
- Settlement, execution and delivery of a JVA (as described in subsection 1(5) below) by both CLC and Musqueam by April 30, 2005;
- Execution of a Purchase Agreement between CLC and the City, which will be subject to approval by Musqueam, with respect to the transfer of the Public Lands described below to the City, by April 30, 2005;
- CLC will apply to the Agricultural Land Reserve Commission for the Garden City Property to be removed from the Agricultural Land Reserve ("ALR") by May 1, 2005;
- City staff will recommend the application for removal of the Garden City Property from the ALR with the objective of having the Garden City Property removed from the ALR by August 1, 2005;
- The City will endeavour to complete its public hearing process with respect to the rezoning of the Garden City Property, and an amendment to the Official Community Plan ("OCP"), by October 1, 2005; and
- The process of developing the Garden City Property for the uses described in this MOU is expected to take several years.

1(2) The federal Crown will, as soon as possible after entering into this MOU, arrange for whatever survey work of the Garden City Property that may be necessary to facilitate the steps described in subsections 1(4) and 1(5) of this MOU.

1(3) The Parties will, as soon as possible after entering into this MOU, apply to the Federal Court to suspend or stay the interlocutory injunction entered in *Musqueam Indian Band v. Governor in Council of Canada et al.* (T-2287-03) on January 26, 2004 such that the steps in this

MOU may occur. The suspending or staying of the interlocutory injunction, by consent, will be on whatever undertakings may be negotiated between litigation counsel with respect to the interlocutory injunction being reinstated after a certain period of time if certain understandings set out in this MOU are not fulfilled. The Parties agree that, if the interlocutory injunction is reinstated in such circumstances, any appeal of the interlocutory injunction will not be prejudiced.

1(4) The federal Crown and the City will, as soon as possible after the injunction is suspended or stayed, but in any event not later than April 15, 2005, finalize the "Richmond Land Exchange Agreement" which pertains to the boundaries of the Garden City Property and road allowances around the Garden City Property.

1(5) The federal Crown and CLC will, as soon as possible after this MOU is signed, enter into a Purchase Agreement with respect to the transfer of the Garden City Property to CLC for \$9.54 million dollars. Upon completion such transfer, CLC will pay the federal Crown \$5 million of the \$9.54 million dollars and will provide the federal Crown with a promissory note in the amount of \$4.54 million dollars. Prior to transfer of the Garden City Property by the federal Crown to CLC:

- a) CLC and Musqueam will enter into a Joint Venture Agreement ("JVA") under which, *inter alia*, CLC will agree that it will hold an undivided and unregistered 50% beneficial interest in the Garden City Property in trust for Musqueam, on the terms set out in this MOU and the parties thereto will agree upon the methodology of creation and implementation of a comprehensive plan for the development, servicing, sale and distribution of profits (and funding and sharing of related costs) relating to the Garden City Property. For greater certainty, DFO agrees that it will not transfer the Garden City Property to CLC until Musqueam has approved and signed the JVA which includes the said declaration of trust by CLC; and
- b) CLC and the City will execute a Purchase Agreement, which will be subject to approval by Musqueam, with respect to the transfer of the Public Lands described below to the City.

1(6) The Parties agree that purchase price set out in subsection 1(5) reflects the fair market value of the Garden City Property.

1(7) The cost to deliver services to the Development Lands, described below, to permit subdivisions to occur will be borne by CLC and Musqueam as Joint Venturers under the JVA and recovered from revenues generated from the development and sale of the Development Lands. Musqueam and CLC shall deliver, as requested by the City, services to the boundaries of the Public Lands and the Development Lands. Boundary road dedications between the Public Lands and the Development Lands will be effected and paid for in accordance with the "DCC Program" (See Attachment 1). The provision of internal roads and services will be undertaken, and paid for, by the respective owners of any parcels serviced.

1(8) Once the Garden City Property is transferred from the federal Crown to CLC, it will be held in fee simple and subject to the City's zoning regulations, OCP guidelines, development and building bylaws and regulations and the understandings of the Parties as set out in this MOU and the JVA including the trust in favour of Musqueam described in subsection 1(5).

1(9) All land development applications, which include but are not limited to zoning, subdivision and development permits will be submitted to the City after the approval of the OCP amendment and will be processed using the existing approval processes and will be subject to individual determinations by City Council on the appropriateness of each of the proposed developments. With respect to the Garden City Property, the Parties are committed to expediting those processes, and the steps that need to be taken in those processes, to the extent possible.

Public Lands

1(10) CLC will transfer 50% of the Garden City Property to the City for \$4.77 million (plus 50% of the acquisition costs paid by CLC), to be paid to CLC upon completion of subdivision, for use as parks and public amenities, such as a TEC (the "Public Lands"). The Public Lands will be scattered throughout the entire Garden City Property.

1(11) An amount of the Public Lands equal to 15% of the entire Garden City Property may be used by the City for a TEC (the "TEC Lands"). In the event that approval to proceed with a TEC cannot be obtained within a reasonable time as determined by the City, the TEC Lands will be developed jointly by the City, Musqueam and CLC and 50% of the net benefits from development of the TEC Lands will go to the City, 25% of the net benefits from the development of the TEC Lands will go to Musqueam, and 25% of the net benefits from the development of the TEC Lands will go to CLC, and the fair market value of the TEC Lands will be deemed to be \$1.431 million dollars.

1(12) Should Musqueam and the City wish to develop a joint cultural centre or other facility on the Public Lands, an agreement outlining how this will be accomplished will be negotiated between Musqueam and the City.

1(13) A restrictive covenant in favour of Canada, CLC and Musqueam and binding on the City and any future owners will be registered against the Public Lands, with the exception of the TEC Lands, to preserve the Public Lands as for purposes of parks and public amenities.

1(14) The Musqueam/CLC Joint Venture will be entitled to a right of first offer, exercisable in the event that the City seeks to sell any of the Public Lands other than the TEC Lands.

Development Lands

1(15) Under the JVA, 50% of the Garden City Property that is not Public Lands (the "Development Lands") may, at the option of Musqueam, exercisable only after adoption of the OCP amendment and the rezoning bylaw contemplated in subsection 1(22), be divided between

land to be solely owned (legally and beneficially) and developed by Musqueam (the “Musqueam Lands”) and land to be owned and developed under the Musqueam/CLC Joint Venture Agreement (the “Joint Venture Lands”) in which Musqueam will have a beneficial interest. Upon receipt of notice from Musqueam of the exercise of its option, and following a subdivision of the Development Lands as contemplated in the JVA and approved by the City, CLC will transfer title to the Musqueam Lands to Musqueam.

1(16) Upon transfer of any of the Musqueam Lands as contemplated in subsection 1(15), Musqueam will pay to CLC \$2.385 million dollars (plus 25% of the acquisition costs paid by CLC), for the undivided beneficial interests in the Garden City Property that Musqueam receives pursuant to the JVA. Musqueam and CLC will share, on a pro rata basis, and as such costs are incurred, all costs of developing the Development Lands in accordance with Attachment 1. Musqueam will pay its share of the costs of developing the Development Lands from its share of revenues generated from the development of the Development Lands.

1(17) Musqueam will decide what if any proportion of the Development Lands, up to 50%, will be Musqueam Lands. The relative interest of Musqueam and CLC in the Joint Venture Lands will be determined by Musqueam’s decision as to the proportion of the Development Lands that will be Musqueam Lands, so that Musqueam and CLC each maintain 50% interest in the Development Lands (e.g. if Musqueam decides that $\frac{1}{4}$ of the Development Lands will be Musqueam Lands, Musqueam will have a 33.3% interest in the Joint Venture Lands and CLC will have a 66.6% interest in the Joint Venture Lands).

1(18) Without fettering the discretion of City Council, senior staff of the City will recommend a density of an average FAR of 2.0 to 2.5 for rezoning of the Development Lands.

1(19) The City will have a right of first offer in the event that Musqueam and CLC decide not to implement its plans of land development, but instead to sell any of the Joint Venture Lands prior to servicing, or Musqueam decides not to implement its plans of land development, but instead to sell any of the Musqueam Lands prior to servicing.

1(20) A neighbourhood park dedication of no more than 5% of the Development Lands will be required in keeping with the City's normal development application process.

Agricultural Land Reserve and Official Community Plan

1(21) Although the Garden City Property, once it ceases to be federal Crown land, will be within the ALR and as such any proposed development on the lands will be subject to approval by other agencies, the City acknowledges that development of some type may be appropriate on a portion of the Garden City Property but that the form and substance of such development is still being contemplated. The City will develop and process an OCP amendment for all of the Garden City Property using the existing approval processes for a determination by City Council on whether development will be permitted and in what form.

Contingencies

1(22) In the event that the City does not:

- a) recommend that the Joint Venture Lands be removed from the ALR;
- b) approve a rezoning for the Joint Venture Lands that is consistent with this MOU;
- c) approve FAR that is greater than 2.0 on the Development Lands; or
- d) approve an OCP amendment that will apply to the Joint Venture Lands that is consistent with the understandings set out in this MOU;

Musqueam, CLC and the City will meet to discuss the renegotiation of any understandings, arrangements or agreements between them with respect to the Garden City Property in order to give effect to the spirit of this MOU, to the extent possible, in the changed circumstances. If Musqueam and CLC are not satisfied with the outcome of the negotiations, Musqueam and CLC will have the option of terminating this MOU and, as appropriate, the JVA. However, before any of the understandings in this MOU may be terminated, the Parties will utilize the dispute resolution process described below. If any understandings in this MOU are terminated, all costs incurred to that stage of the process will be equitably shared by the Parties where applicable, and in accordance with Attachment 1, and the Parties will cooperate in making whatever arrangements are necessary to restore each Party to the position that it was in prior to entering into this MOU.

1(23) In the event that the City does not:

- a) recommend that the Musqueam Lands be removed from the ALR;
- b) approve a rezoning for the Musqueam Lands that is consistent with this MOU;
- c) approve FAR that is greater than 2.0 on the Musqueam Lands; or
- d) approve an OCP amendment that will apply to the Musqueam Lands that is consistent with the understandings set out in this MOU;

Musqueam and the City will meet to discuss the renegotiation of any understandings, arrangements or agreements between them with respect to the Garden City Property in order to give effect to the spirit of this MOU, to the extent possible, in the changed circumstances. If Musqueam is not satisfied with the outcome of the negotiations, Musqueam will have the option of terminating this MOU. However, before any of the understandings in this MOU may be terminated, the Parties will utilize the dispute resolution process described below. If any understandings in this MOU are terminated, all costs incurred to that stage of the process will be equitably shared by the Parties where applicable, and in accordance with Attachment 1, and the Parties will cooperate in making whatever arrangements are necessary to restore each Party to the position that it was in prior to entering into this MOU.

1(24) In the event that litigation is commenced by another Aboriginal group respecting Aboriginal rights claims to the Garden City Property, Musqueam will cooperate with, and support, any of the other Parties who are defendants in such litigation and should such litigation result in any delays in fulfilling any of the understandings in the MOU, the Parties agree that this

MOU will be amended to reflect those delays. Each Party will bear its own costs in any such litigation.

The Litigation

1(25) The Parties agree to seek, by consent, any adjournments or variances of existing Orders in the two judicial review applications with respect to the Garden City Property in Federal Court (T-1832-02 and T-2287-03), and the appeal from the decision granting the interlocutory injunction (FCA No. A – 5404) (the “Litigation”) that may be necessary to allow time to give effect and to permit the achievement of the understandings in this MOU.

1(26) Musqueam agrees that, when:

- a) the JVA (including the trust described in subsection 1(5)) is executed and delivered by both CLC and Musqueam; and
- b) the Garden City Property is transferred by the federal Crown to CLC, and is held in trust by CLC for Musqueam as described in subsection 1(5);

Musqueam will take all necessary steps to discontinue the Litigation.

2. Dispute Resolution

2(1) If a dispute arises between any of the Parties with respect to the interpretation of this MOU, or in giving effect to the understandings that have been reached, the Parties will, as soon as practicable, meet to attempt to resolve the dispute. If the Parties are unable to resolve the dispute themselves, they may seek the assistance of Bob Plecas to mediate in which case the costs of the mediation will be shared equally by the Parties participating in the mediation.

3. General Provisions

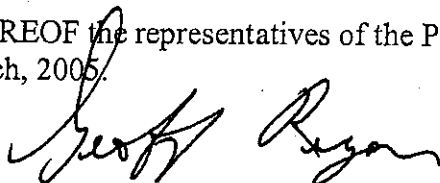
3(1) This MOU is without prejudice to the positions of the Parties with respect to any rights of the Parties. This MOU is without prejudice to any Aboriginal rights or Aboriginal title of Musqueam but the Parties agree that, once the JVA (including the trust described in subsection 1(5)) is entered into and the Garden City Property is transferred by the federal Crown to CLC, and held in trust by CLC for Musqueam as described in subsection 1(5), the Parties will have fulfilled any obligations that they may have to accommodate Musqueam’s interests respecting the Garden City Property.

3(2) This MOU may be amended by written agreement of all of the Parties.

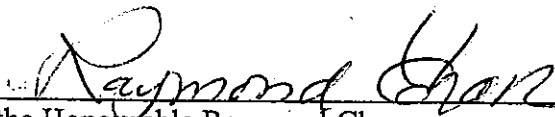
4. Approval of the Memorandum of Understanding

4(1) The representatives of the Parties who sign this MOU agree to recommend it for approval by their respective Parties. By April 27, 2005, or some later date as may be agreed by the Parties, each Party will advise all other Parties hereto in writing that it has approved of this MOU.

IN WITNESS WHEREOF the representatives of the Parties are signing this MOU on or about the 18th day of March, 2005.



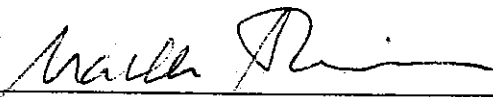
Signed by the Honourable Geoff Regan, Minister of Fisheries and Oceans
on behalf of the Department of Fisheries and Oceans



Signed by the Honourable Raymond Chan,
Minister of State (Multiculturalism) and MP for Richmond



Signed by Chief Ernest Campbell on behalf of the Musqueam First Nation



Signed by Mayor Malcolm Brodie on behalf of the City of Richmond



Signed by Doug Kester on behalf of Canada Lands Company CLC Limited

Attachment 1

Costs

Participants

Note: Property taxes until transfer of title are the responsibility of DFO.

	Richmond	Musqueam	Canada Lands
Property taxes until subdivision prorated to reflect proposed ownership	X	X	X
Property taxes after subdivision until total disposition	X	To be prorated according to proposed share of ownership	
Consulting fees			
- ALR (list) – prorated on the basis of lands being removed from the ALR	X	X	X
- rezoning (list) – prorated on the basis of proposed ownership to be paid from development revenue	N/A	X	X
Servicing Costs			
- offsite		X	X
- onsite	see "roads"	X	X
DCCs – based on prevailing DCC Program		X	X
Park dedication included in Richmond land quantum	yes		
School dedication (no offset)		X	X
Environmental studies and possible clean up – prorated according to allocation	X	X	X
Land preparation costs (peat removal, soils compaction, fill preload)	To be paid by owners of individual parcels		

Financing cost of development costs and land purchase price		Developer to pay
Developer fees		Developer to pay
Carrying costs of \$5m upfront purchase price	Each party pays their proportionate share until sale	
Roads "dedication" – in accordance with the DCC Program. Internal roads on those falling outside the DCC Program will be the responsibility of each of the parties relative to ownership parcels		
HRDC requirements		X
		X