

NO: R003

COUNCIL DATE: January 11, 2021

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **January 6, 2021**

FROM: **General Manager, Engineering**

FILE: **5600-30**

SUBJECT: **Renewal of White Rock Water Supply Agreement**

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## RECOMMENDATION

The Engineering Department recommends that Council authorize the Mayor and City Clerk to execute the Water Service and Emergency Supply Agreement with the City of White Rock.

## INTENT

The purpose of this report is to provide an overview to Council and obtain approval for renewal of an agreement (the “Agreement”) with the City of White Rock (“CoWR”), attached as Appendix “I”, to continue to supply water service to Surrey properties listed in Appendix “II”. This Agreement also includes a new component for the City of Surrey to provide emergency water supply to the CoWR. The Agreement has been executed by the CoWR.

## BACKGROUND

The City of Surrey shares its municipal border with multiple municipalities and Semiahmoo First Nation. In some locations, utility servicing to a property fronting a municipal border may be from the neighbouring municipality. In such instances, it is common for municipalities to have utility servicing agreements with each other.

The City of Surrey and CoWR have a water servicing agreement, the terms of which include both municipalities providing reciprocal water servicing. The previous water service agreement between the two municipalities expired in 2018, after a 15-year term, and requires renewal.

## DISCUSSION

There are 76 properties in Surrey that receive water from the CoWR. These properties are located adjacent to the Surrey-White Rock border on the north side of 16 Avenue and on the west side of 136 Street, as shown in the map in Appendix “III”. Provision of water services from CoWR originated in 1922, and agreements have been in place over the years to ensure the Surrey properties receive water service that is consistent with all customers of the CoWR.

67 of these properties are along 16 Avenue, between 136 Street and Martin Drive, and receive water from CoWR because there is no City of Surrey water main fronting the properties. The cost to install approximately 1,900 metres of water main along 16 Avenue to provide water service to these properties is estimated at \$2.5 million. Over time, Staff intend to have these sections of water main installed through the local area service program or land development projects when these properties develop or re-build.

The remaining nine properties are along 136 Street, between 14 Avenue and 16 Avenue. In this section, the City of Surrey has a fronting water main. Staff intend to have these services transferred to the City's main within the next five years, or as the properties develop or re-build.

Similarly, the City of Surrey provides emergency water supply to the CoWR's distribution system at six inter-municipal water supply connections between the CoWR and the City of Surrey's water systems, as shown in Appendix "II". These connections were installed specifically for emergency purposes, such as fire fighting, and not for any other domestic water use purpose as CoWR is not a member of Greater Vancouver Water District. These connections remain isolated by closed valves which can be operated manually by City of Surrey staff in the event of an emergency. In May 2016, these emergency connections were operated to provide the CoWR with additional water supply from the City of Surrey to supplement their fire fighting capacity for a fire near Johnston Road and Buena Vista Avenue.

Currently, the CoWR is funding upgrades to four of these emergency connections, to bring them in line with the City's current standards, and the remaining two existing connections will be abandoned. Staff from both cities are preparing an operating plan that will be used to facilitate the activation of the inter-municipal connections in an emergency.

The Water Service and Emergency Supply Agreement ("Agreement") developed and attached as Appendix "I" is a renewal of the water servicing agreement with the City of White Rock and includes the provision for emergency water supply connections to supplement fire fighting and/or any other emergency event. The Agreement is for a term of 20 years.

### **Legal Services Review**

Legal Services has reviewed the Agreement and has no concerns.

### **SUSTAINABILITY CONSIDERATIONS**

The Water Service and Emergency Supply Agreement with the City of White Rock supports the objectives of the City Sustainability Charter 2.0. In particular, the agreement supports the Sustainability Charter 2.0 themes of Public Safety and Infrastructure. Specifically, this Agreement supports the following Desired Outcomes ("DO"):

- Public Safety DO6: Surrey has proactive and coordinated emergency prevention measures in place, and can effectively deal with emergencies that arise; and
- Infrastructure DO2: Infrastructure systems provide safe, reliable and affordable services.

## CONCLUSION

The Engineering Department recommends that Council authorize the Mayor to execute the Water Service and Emergency Supply Agreement with City of White Rock attached as Appendix "I" to this report.

Scott Neuman, P.Eng.  
General Manager, Engineering

LH/cc

Appendix "I" - Water Service and Emergency Supply Agreement  
Appendix "II" - List of Properties on White Rock Water System  
Appendix "III" - Location of Properties on White Rock Water System

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**WATER SERVICE AND EMERGENCY SUPPLY AGREEMENT**

**THIS AGREEMENT** is dated for reference this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Reference Date") and is effective as of and from the date executed by the parties (the "Effective Date")

**BETWEEN:**

**CITY OF SURREY**  
13450 104 Avenue  
Surrey, BC V3T 1V8

("Surrey")

**AND:**

**CITY OF WHITE ROCK**  
877 Keil Street  
White Rock, BC V4B 4V6

("White Rock")

**WHEREAS:**

- A. White Rock constructed, installed, operates, and maintains at Engineering Standards the Works for the purpose of providing the Water Supply;
- B. White Rock wishes to engage Surrey to supply the Emergency Supply; and
- C. The parties wish to enter this Agreement to govern the terms and conditions under which the Water Service and Emergency Supply are provided.

**NOW THEREFORE**, in consideration of the promises and the mutual covenant and agreements contained herein, the parties covenant and agree as follows:

**Definitions and Interpretation**

- 1. In this Agreement:
  - (a) "**Agreement**" means this Agreement, as amended from time to time;
  - (b) "**Connection Points**" means the infrastructure more fully described in Schedule "B", the purpose of which is to facilitate provision of the Emergency Supply;

- (c) "**Customer**" means a resident of or business located in Surrey that shall receive the Water Service and that is named in Schedule "A";
- (d) "**Emergency**" means a present or imminent event or circumstance that:
- (i) is caused by fire, explosion or the forces of nature; and
  - (ii) requires prompt coordination of action or special regulation of persons or property to protect the health, safety, or welfare of a person or to limit damage to property and the environment;
- (e) "**Emergency Supply**" means the service of potable water through the Connection Points to White Rock by Surrey in cases of Emergency;
- (f) "**Engineering Standards**" means, collectively:
- (i) the standards related to waterworks systems set out in the Master Municipal Standards, modified and supplemented as necessary by White Rock or White Rock's Director of Engineering and Municipal Operations;
  - (ii) the standards related to waterworks systems set out in White Rock's Water Services Bylaw, which may be modified as reasonably necessary by White Rock's Director of Engineering and Municipal Operations, acting reasonably;
  - (iii) other standards agreed upon in writing by the parties; and
  - (iv) standards established as a result of a dispute resolution process.
- (g) "**Force Majeure**" means an act, omission or event which is outside the control of a party or which by the exercise of reasonable due diligence, the party could not have prevented, including without limitation, sabotage, war, blockades, insurrections, riots, epidemics, lightning, earthquakes, floods, storms, fires, washouts, nuclear and radiation activity or fallout, arrests and distraints of rulers and people, civil disturbances, explosion and expropriation, and includes non-availability of materials, supply, contractors and transportation;
- (h) "**Professional Engineer**" means a person who is registered or licenced as a professional engineer under the provisions of the *Engineers and Geoscientists Act*, RSBC 1996, c 116, as amended or replaced from time to time;
- (i) "**Surrey Waterworks Regulation and Charges By-law**" means *Surrey Waterworks Regulation and Charges By-law, 2007, No. 16337*, as amended or replaced from time to time;

- (j) **“Water Service”** means the service of potable water through the Works to customers located within the boundaries of Surrey;
- (k) **“Water Services Bylaw”** means White Rock’s *Water Service Bylaw 2015, No. 2017*, as amended or replaced from time to time; and
- (l) **“Works”** means...  
The work involves upgrade to existing infrastructure for the Emergency Service Connections required.

2. In this Agreement:

- (a) the headings and captions are for convenience only and do not form part of this Agreement and will not be used to interpret, define, or limit the scope or intent of this Agreement or any of its provisions;
- (b) a reference to a statute includes every regulation made under the statute, all amendments to the statute or to the regulation in force from time to time, and any statute or regulation that supplements or supersedes the statute or the regulation;
- (c) a word importing the masculine gender includes the feminine or neuter, a word importing the singular includes the plural, and in each case, vice versa; and
- (d) a reference to an approval, authorization, consent, waiver, or notice means written approval, authorization, consent, waiver, or notice.

3. The following schedules are attached and form part of this Agreement:

- (a) Schedule “A” – Customers
- (b) Schedule “B” – Connections Points

**Water Service**

- 4. Commencing on the Effective Date, White Rock shall provide the Water Service to the Customers.
- 5. The Water Service shall be provided in accordance with the Water Services Bylaw, in an expeditious and professional manner, and in accordance with the stipulations of any permits issued by Surrey for the purpose of the Water Service.
- 6. The Customers shall be charged the same rates as charged to equivalent customers under the Water Services Bylaw.

7. White Rock shall read the Customers' water meters and bill them directly without involving Surrey in any way.
8. White Rock shall not provide water to any new customers within Surrey nor allow new customers to connect to the Works without first obtaining Surrey's written consent, such consent may not be unreasonably withheld.
9. Without limiting section 46 of this Agreement, Surrey shall not unreasonably withhold any rights of way, easements, permits, or other authorizations required by White Rock to maintain, inspect, alter, or repair the Works required to provide the Water Service.
10. White Rock, upon being served notice by Surrey in accordance with section 19, shall not be entitled to any reimbursement or compensation, including without limitation, loss of revenue, the service connection, the water meter, the curb stop, or the meter chamber of the service. Notwithstanding the foregoing, White Rock shall be entitled to the standard disconnection fee specified in the Water Service Bylaw and Surrey shall return the meter to White Rock when the new connection is completed.
11. Surrey's firefighters may, during a fire or other Emergency, use water from the fire hydrants owned by White Rock as part of the Water Service and shall not be required to pay the fire protection levy, the hydrant rental charges, or for the water used during the Emergency.

The current practice whereby Surrey annually forwards payment to White Rock for delinquent water bill payments shall continue.

**Quality and Quantity of the Water Service**

12. The quality and quantity of the water provided as the Water Service shall be the same as the quality and quantity of the water provided by White Rock within its boundaries.
13. White Rock is not obliged to provide the Water Service at a greater level or degree than the level or degree to which the same service is provided elsewhere within White Rock, provided that the Water Service will not be of a lesser level or degree than that provided within White Rock.
14. White Rock makes no representation or warranty that the level or degree of the Water Service will be maintained or continued to any particular standard, other than as stated expressly herein.
15. Surrey acknowledges and agrees that there may be from time to time interruptions or reductions in the level of the Water Service, and White Rock will not be held liable for any losses, costs, damages, claims, or expenses arising from or connected with a temporary interruption or reduction in the level of the Water Service, except those

occurring as a result of the negligence or wilful misconduct of Surrey or its elected officials, officers, employees, agents, or contractors.

16. White Rock will not be deemed to be in default of its obligations in section 16 if the interruption or reduction in the level of the Water Service results from:

(a) a default of Surrey under this Agreement; or

(b) any event originating outside of White Rock, except and to the extent resulting from the negligence or wilful misconduct of White Rock or a default of White Rock under this Agreement.

### **Discontinuance of Water Service**

17. White Rock shall only discontinue providing the Water Service to a Customer in accordance the Water Services Bylaw or section 19 of this Agreement.

18. White Rock, on 120 days' written notice by Surrey indicating the Customers identified in the notice are being transferred to the water distribution system of Surrey, shall cease supplying water to each of the Customers identified in the notice.

### **Ownership, Maintenance, Inspection, and Repair of the Works**

19. White Rock owns and shall continue to own beyond the termination of this Agreement the approximately 3,260 m (10,700 ft) of 200 mm (8 inch) diameter case iron main and appurtenances and service connections thereto located on 8<sup>th</sup> Avenue, 16<sup>th</sup> Avenue, and 136<sup>th</sup> Street within the boundaries of Surrey, which constitutes the Water Service and the service the Customers.

20. White Rock owns and shall continue to own the Works beyond the termination of this Agreement.

21. White Rock shall maintain, inspect, alter, and repair or replace the Works as necessary.

### **Emergency Supply**

22. Commencing on the Effective Date, Surrey shall provide the Emergency Supply to White Rock.

23. The quality and quantity of the water provided as the Emergency Supply shall be the same as the quality and quantity of the water provided elsewhere by Surrey.

24. Surrey makes no representation or warranty that the level or degree of the Emergency Supply will be maintained or continued to any particular standard, other than as stated expressly herein.
25. White Rock acknowledges and agrees that there may be from time to time interruptions or reductions in the level of the Emergency Supply, and Surrey will not be held liable for any losses, costs, damages, claims, or expenses arising from or connected with a temporary interruption or reduction in the level of the Emergency Supply, except those occurring as a result of the negligence or wilful misconduct of Surrey or its elected officials, officers, employees, agents, or contractors.

### **Connection Points**

26. White Rock shall use the Connection Points only for the purpose of the Emergency Supply.
27. Both parties agree that:
  - (a) White Rock shall retain, at White Rock's sole cost, a Professional Engineer approved by both Surrey and White Rock to design all work necessary at each Connection Point;
  - (b) White Rock shall arrange for Surrey's approval of the designs provided for under subsection (a) prior to commencing any work;
  - (c) White Rock shall construct under the supervision of the Professional Engineer provided for under subsection (a) and at its sole cost all work outlined in orange in Schedule "B" at each Connection Point;
  - (d) White Rock shall operate and maintain at its sole cost the parts of the Connection Points constructed under subsection (c);
  - (e) Surrey shall construct under the supervision of the Professional Engineer provided for under subsection (a) and at White Rock's sole cost, the estimated cost of which to be approved by White Rock prior to the work commencing, all work outlined in dark blue in Schedule "B" at each Connection Point;
  - (f) White Rock shall pay Surrey within 30 days of being invoiced for the work provided for under subsection (e);
  - (g) Surrey shall operate and maintain at its sole cost the parts of the Connection Points constructed under subsection (e);

- (h) White Rock shall provide as-constructed drawings under the seal of the Professional Engineer provided for under subsection (a) within 90 days of the work provided for under subsections (c) and (e);
- (i) Surrey shall charge White Rock for the cost of providing the Emergency Supply as follows:
  - (i) Volume of Water Used: The amount charged will be equal to 125% times the rates set by Surrey Waterworks Regulation and Charges By-law applied to the volume of water used as an Emergency Supply, which shall be calculated based on the increase in volume registered by flow meters which record water use in South Surrey, within the time period when one or more of the Connection Points are activated, as determined by the General Manager, Engineering, City of Surrey; plus
  - (ii) Staff Time: The amount charged will be equal to the amount of Surrey staff time spent on providing the Emergency Supply, including time spent on opening the Connection Points, and monitoring and assisting with the Emergency Supply, all charged at the hourly rates of those staff; plus
  - (iii) Other Costs: The amount charged will be equal to the actual costs of equipment, goods or services incurred by Surrey in the course of providing the Emergency Supply; plus
  - (iv) Fees: The amount charged will be equal to the administrative fees of invoicing for services as set by Surrey Fee Setting By-law.
- (j) White Rock shall pay Surrey within 30 days of being invoiced for the work provided for under subsection (i);
- (k) White Rock shall own the parts of the Connection Points constructed under subsection (c), including beyond termination of this Agreement, and Surrey shall own the parts of the Connection Points constructed under subsection (e), including beyond termination of this Agreement;
- (l) White Rock shall abandon at its sole cost the water mains identified in Schedule "C", and such work shall include all of the works further outlined in Schedule "C" and shall be carried out under the supervision of the Professional Engineer provided for under subsection (a).

28. Without limiting section 46 of this Agreement, Surrey shall not unreasonably withhold any rights of way, easements, permits, or other authorizations required by White Rock to maintain, inspect, alter, or repair existing Connections Points or establish new Connection Points.

## **Force Majeure**

29. No party will be liable for its failure to perform any of its obligations under this Agreement due to Force Majeure, provided that on becoming aware of an event of Force Majeure., such party notifies the other party and upon termination of such event, such party uses all commercially-reasonable efforts to perform its obligations hereunder.

## **Term and Termination of the Agreement**

30. Surrey's obligation to provide the Emergency Supply commences on the Effective Date and remains in force for 20 years.
31. White Rock's obligation to provide the Water Service commences on the Effective Date and shall terminate on the earlier of:
  - (a) until such time as the Customers have been transferred over to the water distribution system of Surrey; or
  - (b) July 31, 2039.
32. The parties may terminate this Agreement prior to its expiry, but by mutual agreement in writing.
33. Despite any provisions to the contrary, neither party will terminate this Agreement without first trying in good faith to resolve the issues arising out of this Agreement through the dispute resolution process set out in this Agreement.

## **Indemnities**

34. Surrey releases, indemnifies, and saves harmless White Rock and its elected officials, employees, contractors, assigns, and agents from and against all claims, demands, actions, suits, loss, damage, costs (including legal costs), fines, penalties, charges, and expenses that White Rock incurs or suffers, or that arise out of or in connection with the Water Service, except that occurring as a result of the negligence or wilful misconduct of the Customers and White Rock or its elected officials, officers, employees, agents, or contractors.
35. White Rock releases, indemnifies, and saves harmless Surrey and its elected officials, employees, contractors, assigns, and agents from and against all claims, demands, actions, suits, loss, damage, costs (including legal costs), fines, penalties, charges, and expenses that Surrey incurs or suffers, or that arise out of or in connection with the Emergency Supply, except that occurring as a result of the negligence or wilful misconduct of Surrey or its elected officials, officers, employees, agents, or contractors.

36. The indemnities in sections 35 and 36 shall survive the expiration or termination of this Agreement.

## **Notices**

37. Any notice that may be or is required under this Agreement shall be in writing and delivered, emailed, or sent by facsimile transmission, addressed to:

(a) To Surrey:

City of Surrey  
13450 104 Avenue  
Surrey, BC V3T 1V8  
Attn: General Manager, Engineering

(b) To White Rock:

City of White Rock  
877 Keil Street  
White Rock, BC V4B 4V6  
Attn: Director, Engineering and Municipal Operations

or such other address as either party may in writing specify to the other.

## **Dispute Resolution**

38. If the parties to this Agreement are unable to agree on the interpretation or application of any provision in the Agreement, or are unable to resolve any other issue relating to this Agreement, the parties agree to the following process in the order it is set out:

(a) the party initiating the process will send written notice to the other party; and

(b) the parties will promptly, diligently, and in good faith take all reasonable measures to negotiate an acceptable resolution to the disagreement or dispute.

39. If the parties are unable to negotiate a resolution within 60 days of the date the written notice was sent advising of the dispute, the parties may request the assistance of a skilled mediator agreed to by the parties within 30 days written notice of a request to

appoint a mediator by any party, failing which the mediator will be appointed by the BC International Commercial Arbitration Centre ("BCICAC"), and unless the parties agree otherwise, this mediation will follow BCICAC rules and will terminate 60 days after the appointment of the mediator.

40. If the parties are unable to resolve the dispute under section 40, the parties agree to refer the matter to a single arbitrator under the *Arbitration Act* or any successor legislation and to accept the arbitration ruling as final and binding. If the parties are unable to agree on a single arbitrator within 60 days following the end of mediation, the BCICAC will appoint an arbitrator. The arbitrator will be required to make a decision within 60 days of completing the arbitration process.
41. Unless otherwise agreed by the parties or ordered by an arbitrator, each party will pay an equal share of the costs for the dispute resolution process.
42. Despite any other provision of this Agreement, no party will interrupt or terminate this Agreement during any attempt to resolve issues through the dispute resolution process set out in this part.

#### **General**

43. This Agreement enures to the benefit of and is binding on the parties and their respective successors and permitted assigns.
44. Except as specifically provided, nothing in this Agreement affects the rights and powers of White Rock or Surrey in the exercise of their functions, rights, power, or authority under any enactments, which may be fully or effectively exercised as if this Agreement had not been made.
45. Each party shall execute such further and other documents and instruments and will do such further and other things as they are authorized to do and as may be necessary to implement and carry out the intent of this Agreement.
46. This Agreement contains the entire agreement between the parties and supersedes all prior written and oral communication with respect to the Services.
47. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
48. Neither this Agreement nor any part of it may be assigned by either party without the consent of the other party.

49. No amendment or variation of the terms, conditions, warranties, covenants, agreements, or undertakings set out in this Agreement will be of any force or effect unless the same is reduced to writing and duly executed by both parties.

50. No consent or waiver, express or implied, by either party of any breach or default by the other party under this Agreement will be valid unless it is in writing and stated to be a consent or waiver pursuant to this section.

51. Time is of the essence in the performance of each obligation under this Agreement.

52. Each provision of this Agreement is intended to be severable. Accordingly:

(a) the unenforceability or invalidity of any particular provision under any applicable law will not affect the validity of any other provision, except that if, on the reasonable construction of this Agreement as a whole, the other provision is expressly stated, or is by reasonable implication intended by the parties, to be dependent on the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable;

(b) if any provision of this Agreement is invalid or unenforceable, the balance of this Agreement will be construed and enforced as if all invalid and unenforceable provisions and all provisions so deemed to be invalid and unenforceable were not contained in this Agreement; and

(c) if, as a result of a termination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid, and of any application of this section 53, the basic intentions of the parties, as evidenced by this Agreement, are entirely frustrated, the parties will use all reasonable efforts to amend, supplement, or otherwise vary this Agreement in order that it more closely conforms with their mutual intentions in entering into this Agreement.

**IN WITNESS WHEREOF** the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF SURREY,**

by its authorized signatories:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

**CITY OF WHITE ROCK,**  
by its authorized signatories:



Name: GUILLERMO FERNANDEZ, CAO.



Name:

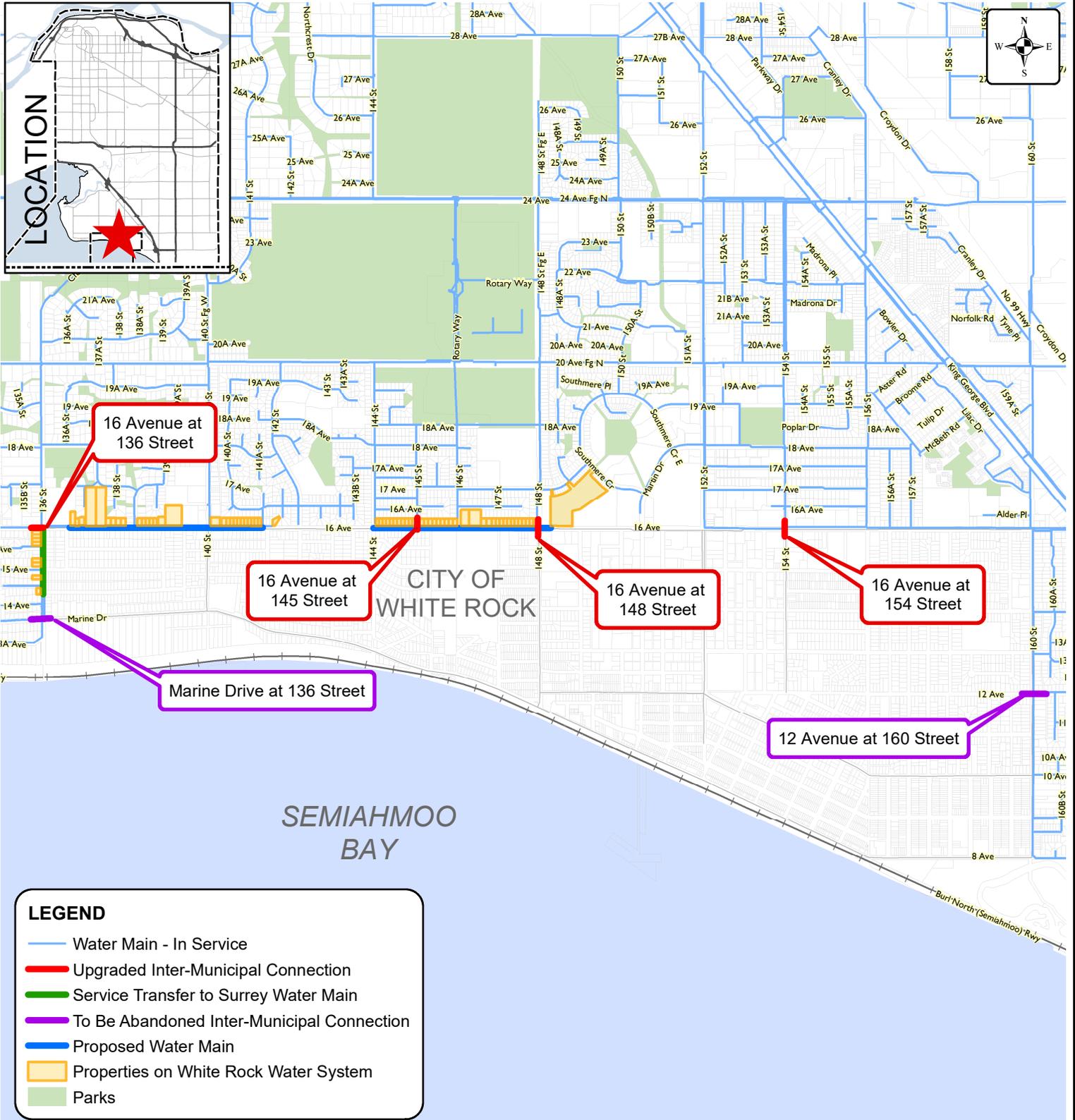
**Darryl Walker**  
**Mayor**

## APPENDIX "II"

### List of Properties on White Rock Water System

House	Street
1435	136 St
1471	136 St
1509	136 St
1519	136 St
1559	136 St
1571	136 St
1579	136 St
1589	136 St
1615	141B St
13671	16 Ave
13681	16 Ave
13697	16 Ave
13709	16 Ave
13743	16 Ave
13759	16 Ave
13765	16 Ave
13777	16 Ave
13789	16 Ave
13841	16 Ave
13849	16 Ave
13857	16 Ave
13867	16 Ave
13871	16 Ave
13887	16 Ave
13911	16 Ave
14007	16 Ave
14037	16 Ave
14039	16 Ave
14049	16 Ave
14057	16 Ave
14063	16 Ave
14071	16 Ave
14079	16 Ave
14087	16 Ave
14093	16 Ave
14115	16 Ave
14123	16 Ave
14131	16 Ave

House	Street
14407	16 Ave
14417	16 Ave
14427	16 Ave
14437	16 Ave
14447	16 Ave
14455	16 Ave
14465	16 Ave
14471	16 Ave
14479	16 Ave
14487	16 Ave
1606	145 St
1621	145 St
14523	16 Ave
14529	16 Ave
14539	16 Ave
14545	16 Ave
14557	16 Ave
14567	16 Ave
14585	16 Ave
1613	146 St
14615	16 Ave
14633	16 Ave
14675	16 Ave
14683	16 Ave
14685	16 Ave
14691	16 Ave
14701	16 Ave
14707	16 Ave
14719	16 Ave
14725	16 Ave
14735	16 Ave
14745	16 Ave
14757	16 Ave
14767	16 Ave
14779	16 Ave
14789	16 Ave
14799	16 Ave
14861	16 Ave



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## Proposed Servicing Plan for Surrey Properties Currently on White Rock Water System

ENGINEERING DEPARTMENT