

NO: R074

COUNCIL DATE: April 12, 2021

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **April 7, 2021**

FROM: **General Manager, Engineering**

FILE: **5225-17**

XC: **5225-40 (CDD)**

SUBJECT: **Renewal of Government Shared-Cost Transfer Arrangement - Colebrook Dyking District**

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## RECOMMENDATION

The Engineering Department recommends that Council:

1. Receive this report for information; and
2. Authorize the Mayor and City Clerk to execute the Government Transfer-Shared Cost Arrangement with Her Majesty the Queen in the Right of the Province of British Columbia attached to this report as Appendix "I" as part of the transfer of the Colebrook Dyking District.

## INTENT

The purpose of this report is to seek Council's approval to enter into an arrangement with Her Majesty the Queen in the Right of the Province of British Columbia (the "Province") to renew the existing shared-cost transfer arrangement of the Colebrook Dyking District.

## BACKGROUND

At its Regular meeting on March 7, 2016, Council considered Corporate Report No. Ro47; 2016 (attached as Appendix "II") and adopted its recommendations. This report made recommendations regarding the transfer of the Colebrook Dyking District to the City of Surrey. Later that year, Government Transfer-Shared Cost Arrangement TP16LMN-002 was executed and the City received \$10.4 million. The funding was the estimated cost to implement dyke upgrades to raise the dykes to current flood protection levels (the "Project"). This agreement ended on March 31, 2020 after \$1,046,692.08 of expenditures were incurred by the City and reimbursed by the Province. Since 2020, staff have been in discussion with the Province to renew the arrangement.

## DISCUSSION

The Colebrook Dyke is a 7.2 kilometre long dyke located along the north side of the Serpentine River from Mud Bay Park to King George Boulevard.

The existing Colebrook Dyke has low points of elevation 2.6m, which is 1.3m below the current standard for flood control and experiences wave overtopping during significant coastal storm events. Earlier this year, ocean levels reached within 0.1m of overtopping. These low points are the City's greatest vulnerability to breaching during coastal storms and could result in significant flooding of surrounding neighbourhoods.

Staff have commenced design of the dyke upgrades. The design is split into three segments, which are illustrated on the map attached as Appendix "III":

1. 100 Series: 125A Street to BNSF Railway
2. 200 Series: BNSF Railway to Highway 99
3. 300 Series: Highway 99 to King George Boulevard

Design of the 100 Series is underway and expected to be completed by December 2021. Design of the 200 Series is complete and construction is underway, at an expected cost of \$4,452,000.00. Design of the 300 Series is complete, with construction anticipated for late 2021 following property acquisition.

Renewal of the Government Shared-Cost Arrangement includes the following key deliverables by the City of Surrey:

1. The transfer of the Colebrook Dyke to the City so it will have ongoing responsibility for the dyke and drainage system currently under the jurisdiction of Colebrook Dyking District;
2. Acquisition of all necessary rights-of-way over the dyke in the name of the City; and
3. Completion of dyke upgrades prior to December 31, 2025.

The original 4.5-year delivery schedule for design and construction, as set out in the original Government Transfer-Shared Cost Arrangement, was ambitious and delays were encountered related to regulatory approvals, property acquisitions and the design process. The renewal term set out in the new agreement of approximately 5.5 years is reasonable and is the maximum duration possible given existing Provincial legislation pertaining to Diking Districts. The new agreement has been drafted with the same terms as the previous agreement, for the remaining funds of \$9,353,307.92. The term of the new agreement ends on December 31, 2025. To deliver on the above commitment, the following milestones are anticipated to be met:

#### 2021 Q3: Secure Property Acquisitions and Wildlife Management Area Approvals

All required acquisitions on the 200 Series have been registered. 300 Series negotiations are underway. 100 Series is on City-owned parkland and a Memorandum of Understanding for the Mud Bay Coastal Climate Adaptation Project has been sent to the Province for review.

#### 2021 Q4: Complete Design Work

Currently, the design for the 200 and 300 Series is complete. Design of the 100 Series and the Mud Bay Coastal-Adaptation Projects are underway.

#### 2022 Q2: Construction Underway for All Projects

Due to the ground conditions in the area, the dyke construction must be done during dry weather and gradually for the ground to consolidate. This results in a minimum of two to three years of dyke construction. Currently, construction for the 200 Series is underway and is expected to complete in 2024.

In the event that consensual agreements with the necessary landowners on the 300 Series cannot be reached by end of June 2021, staff may subsequently bring forward expropriation reports related to the outstanding property requirements for Council's consideration, in order to satisfy the above deliverables.

### **Legal Services Review**

This report and draft of the Government Transfer-Shared Cost Arrangement has been reviewed by Legal Services and there are no concerns.

### **FUNDING**

Sufficient funding is available from the Province for the scope of work to bring the existing dyke to current standards. The City gratefully acknowledges the financial support of the Province.

### **SUSTAINABILITY CONSIDERATIONS**

The upgrade of the Colebrook floodplain supports the objectives of the City's Sustainability Charter 2.0. In particular, this project supports the Sustainability Charter 2.0 themes of Built Environment and Neighbourhoods, and Infrastructure. Specifically, this project supports the following Desired Outcomes ("DO"):

- Emergency Preparedness and Prevention DO8: The community's critical infrastructure and systems are designed to withstand climate change impacts and natural events and disasters, and include emergency response and reconstruction plans; and
- Natural Areas, Biodiversity and Urban Forest DO2: Surrey actively protects, enhances and restores its natural environment and habitats.

### **CONCLUSION**

With the Colebrook Dyke upgrades midway through implementation, it is recommended that the Government Transfer-Shared Cost Arrangement be renewed.

Scott Neuman, P.Eng.  
General Manager, Engineering

YY/MO/cc

Appendix "I" - Government Transfer-Share Cost Arrangement  
Appendix "II" - Corporate Report No. R047; 2016  
Appendix "III" - Boundary Bay, Mud Bay and Colebrook Dyke Site Overview



Natural Resource Ministries

<b>GOVERNMENT TRANSFER – SHARED COST ARRANGEMENT</b>
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**Agreement#:** TP21 LMN-002**Project Title:** COLEBROOK DIKE PROJECT

THIS AGREEMENT dated for reference the            day of            , 2021.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the Minister of Forests, Lands, Natural Resource Operations and Rural Development  
SOUTH COAST NATURAL RESOURCE REGION

(the "Province")

**AND**            City of Surrey

(the "Recipient")

The parties to this Agreement (the "Parties") agree as follows:

## SECTION 1 - DEFINITIONS AND INTERPRETATION

### 1.1 Where used in this Agreement

- (a) "Access Rights" has the meaning given to such term in Schedule A;
- (b) "Dike Upgrades" has the meaning given to such term in Schedule A;
- (c) "Financial Contribution" means the total aggregate value stipulated in Schedule B;
- (d) "Material" means all findings, data, reports, documents, records and material, (both printed and electronic, including but not limited to, hard disk or diskettes), whether complete or otherwise, that have been produced, received, compiled or acquired by, or provided by or on behalf of the Province to, the Recipient as a direct result of this Agreement, but does not include:
  - i. Personal Information which could reasonably be expected to reveal the identity of clients;
  - ii. Property owned by the Recipient.

- (e) "Project" means the project described in Schedule A;
- (f) "Refund" means any refund or remission of federal or provincial tax or duty available with respect to any items that the Province has paid for or agreed to pay for under this Agreement;
- (g) "Services" means carrying out the Project as described in Schedule A;
- (h) "Term" means the duration of the Agreement stipulated in Schedule A;
- (i) "Third Party" means any person or entity or its officers, employees, or agents, other than a party to this Agreement that is involved in the delivery of the Services; and
- (j) "Transfer" has the meaning given to such term in Schedule A.

## 1.2 In this Agreement:

- (a) "includes" and "including" are not intended to be limiting;
- (b) unless the context otherwise requires, references to sections by number are to sections of this Agreement;
- (c) the Recipient and the Province are referred to as "the parties" and each of them as a "party";
- (d) "attached" means attached to this Agreement when used in relation to a schedule;
- (e) unless otherwise specified, a reference to a statute by name means the statute of British Columbia by that name, as amended or replaced from time to time;
- (f) this Agreement is government by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia;
- (g) the headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (h) "person" includes an individual, partnership, corporation or legal entity of any nature;
- (i) unless the context otherwise requires, words expressed in the singular include the plural and vice versa;
- (j) if any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to an extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law;
- (k) the schedules to this Agreement (including any appendices or other documents attached to, or incorporated by reference into, those schedules) are part of this Agreement;

- (l) this Agreement does not operate as a permit, license, approval or other statutory authority which the Recipient may be required to obtain from the Province or any of its agencies in order to provide the Services; and
- (m) nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province, or its agencies or officials, of any statutory, prerogative, executive or legislative power or duty.

## **SECTION 2 - APPOINTMENT**

The Recipient must carry out and complete the Project described in Schedule A and may use the Province's funding only for the purpose specified in Schedule A.

## **SECTION 3 - PAYMENT OF FINANCIAL CONTRIBUTION**

Subject to the provisions of this Agreement, the Province must pay the Recipient the amount, in the manner, and at the times set out in Schedule B.

The Province has no obligation to make the Financial Contribution unless the Recipient has complied with the criteria set out in Schedule A.

The Province's obligation to make the Financial Contribution is subject to:

- (a) sufficient monies being available in an appropriation, as defined in the *Financial Administration Act* ("FAA"), to enable the Province, in any fiscal year when any payment of money by the Province to the Recipient falls due pursuant to this Agreement, to make that payment;
- (b) Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in subparagraph (a) of this paragraph.
- (c) The Recipient preparing and obtaining written approval of a work plan for carrying out the Services in accordance with the terms of this Agreement during the Term from the Manager of Water, South Coast Natural Resource Region, Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

The Recipient must:

- (a) apply for any Refund or remission of federal or provincial tax or duty available with respect to any items that the Province has paid for or agreed to pay for under this Agreement, and
- (b) on receipt of the Refund, comply with the requirements concerning the use, application or remittance of the Refund set out in Schedule B.

The previous paragraph continues in force indefinitely, even after this Agreement expires or is terminated.

The Recipient is responsible for any Provincial Sales Tax (PST) and Goods and Services Tax (GST) and any other charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.

The Recipient must declare any amounts owing to the government under legislation or an agreement. Amounts due to the Recipient under this Agreement may be set-off against amounts owing to the government.

## **SECTION 4 - REPRESENTATIONS AND WARRANTIES**

The Recipient represents and warrants to the Province, with the intent that the Province rely on it in entering into this Agreement, that

- (a) all information, statements, documents and reports furnished or submitted by the Recipient to the Province in connection with this Agreement are true and correct;
- (b) the Recipient has no knowledge of any fact that materially adversely affects, or so far as it can foresee, might materially adversely affect, the Recipient's properties, assets, condition (financial or otherwise), business or operations or its ability to fulfill its obligations under this Agreement; and
- (c) the Recipient is not in breach of, or in default under, any law of Canada or of the Province of British Columbia applicable to or binding on it.

All statements contained in any certificate, application, proposal or other document delivered by or on behalf of the Recipient to the Province under this Agreement or in connection with any of the transactions contemplated by it are deemed to be representations and warranties by the Recipient under this Agreement.

All representations, warranties, covenants and agreements made in this Agreement and all certificates, applications or other documents delivered by or on behalf of the Recipient are material, have been relied on by the Province, and continue in effect during the continuation of this Agreement.

## **SECTION 5 - INDEPENDENT RELATIONSHIP**

No partnership, joint venture, agency or other legal entity is created by this Agreement or by any actions of the Parties pursuant to this Agreement.

The Recipient will be an independent and neither the Recipient nor its servants, agents or employees will be the servants, employees, or agents of the Province.

The Recipient must not commit or purport to commit the Province to the payment of money to anyone.

## **SECTION 6 - RECIPIENT'S OBLIGATIONS**

The Recipient must:

- (a) carry out the Services in accordance with the terms of this Agreement during the Term stated in Schedule A;
- (b) comply with the payment requirements set out in Schedule B, including all requirements concerning the use, application and expenditure of the payments provided under this Agreement;
- (c) comply with all applicable laws;
- (d) hire and retain only qualified staff;
- (e) unless agreed otherwise, supply, at its own cost, all labour, materials and approvals necessary to carry out the Services;
- (f) unless agreed otherwise, retain ownership to all assets acquired or intangible property created in the process of carrying out this Agreement;
- (g) co-operate with the Province in making public announcements regarding the Services and the details of this Agreement that the Province requests; and
- (h) acknowledge the financial contribution made by the Province to the Recipient for the Services in any Materials, by printing on each of the Materials the following statement:

*"We gratefully acknowledge the financial support of the Province of British Columbia"*

## **SECTION 7 - RECORDS**

The Recipient must:

- (a) establish and maintain accounting and administrative records in form and content satisfactory of the Province, to be used as the basis for the calculation of amounts owing;
- (b) establish and maintain books of account, invoices, receipts and vouchers for all expenses incurred in form and content satisfactory to the Province; and
- (c) permit the Province, for contract monitoring and audit purposes, at all reasonable times, on reasonable notice, to enter any premises used by the Recipient to deliver the Services or keep any documents or records pertaining to the Services, in order for the Province to inspect, audit, examine, review and copy any findings, data, specifications, drawings, working papers, reports, surveys, spread sheets, evaluations, documents, databases and material, (both printed and electronic, including, but not limited to, hard disk or diskettes), whether complete or not, that are produced, received or otherwise acquired by the Recipient as a result of this Agreement.

The Province does not have control, for the purpose of the *Freedom of Information and Protection of Privacy Act*, of the records held by the Recipient.

## **SECTION 8 - REPORTS/STATEMENTS AND ACCOUNTING**

At the sole option of the Province, any portion of the funds provided to the Recipient under this Agreement and not expended at the end of the Term shall be:

- (a) must be returned by the Recipient to the Minister of Finance;
- (b) may be retained by the Recipient as supplemental funding provided for under an amendment to this Agreement; or
- (c) may be deducted by the Province from any future funding requests submitted by the Recipient and approved by the Province.

## **SECTION 9 - CONFLICT OF INTEREST**

The Recipient must not, during the Term, perform a service for or provide advice to any person if the performance of that service or the provision of the advice may, in the reasonable opinion of the Province, give rise to a conflict of interest between the obligations of the Recipient to the Province under this Agreement and the obligations of the Recipient to the other person.

## **SECTION 10 - CONFIDENTIALITY**

The Recipient must treat as confidential all information and material supplied to or obtained by the Recipient, or any Third Party, as a result of this Agreement. The Recipient must not, without the prior written consent of the Province, permit its disclosure, except as required by applicable law or to the extent that the disclosure is necessary to enable the Recipient to fulfill its obligations under this Agreement.

## **SECTION 11 - DEFAULT**

Any of the following events will constitute an Event of Default:

- (a) the Recipient fails to comply with any provision of this Agreement;
- (b) any representation or warranty made by the Recipient in accepting this Agreement is untrue or incorrect;
- (c) any information, statement, certificate, report or other document furnished or submitted by or on behalf of the Recipient pursuant to or as a result of this Agreement is untrue or incorrect;
- (d) the Recipient ceases, in the opinion of the Province, to operate;
- (e) a change occurs with respect to any one or more, of the properties, assets, condition (financial or otherwise), business or operations of the Recipient which, in the opinion of the Province, materially adversely affects the ability of the Recipient to fulfill its obligations under this Agreement;
- (f) an order is made or a resolution is passed or a petition is filed for the liquidation or winding up of the Recipient;

- (g) the Recipient becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (h) a bankruptcy petition is filed or presented against, or a proposal under *the Bankruptcy and Insolvency Act (Canada)* is made by, the Recipient;
- (i) a receiver or receiver-manager of any property of the Recipient is appointed;
- (j) the Recipient permits any sum which is not disputed to be due by it to remain unpaid after legal proceedings have been commenced to enforce payment.

## **SECTION 12 - TERMINATION**

Upon the occurrence of any Event of Default and at any time after that the Province may, despite any other provision of this Agreement, at its option, elect to do any one or more of the following:

- (a) terminate this Agreement, in which case the payment of the amount required under the last paragraph of Section 12 of this Agreement discharges the Province of all liability to the Recipient under this Agreement;
- (b) require the Event of Default be remedied within a time period specified by the Province;
- (c) suspend any installment of the Financial Contribution or any amount that is due to the Recipient while the Event of Default continues;
- (d) waive the Event of Default;
- (e) pursue any other remedy available at law or in equity.

The Province may also terminate this Agreement on 30 days written notice, without cause.

The payment of the amount required under the last paragraph of Section 12 of this Agreement discharges the Province of all liability to the Recipient under this Agreement.

If this Agreement is terminated before 100% completion of the Project, the Province must pay to the Recipient that portion of the Financial Contribution which is equal to the portion of the Project completed to the satisfaction of the Province prior to termination.

## **SECTION 13 - DISPUTE RESOLUTION**

The Parties agree to first refer any matter in dispute under this Agreement to senior officers of the Parties. If the matter cannot be resolved, they must submit it to a mediator as agreed upon by both Parties. The Parties must bear equally the expenditures directly related to the mediation process.

## **SECTION 14 - INSURANCE AND INDEMNITY**

### **Insurance**

Without limiting its obligations or liabilities under this Agreement, and at its own expense, the Recipient must obtain and maintain insurance which it is required to have by law and insurance which a prudent businessperson conducting similar operations would obtain and maintain to cover the risks it has assumed or may encounter as a result of entering into this Agreement or providing the Services during the Term.

If applicable, the Recipient must ensure the Province is added as an additional insured on insurance policies of the Recipient and Third Parties.

Within 20 business days of obtaining each relevant policy of insurance, and from time to time if requested by the Province, the Recipient must provide to the Province evidence of the insurance in the form of a completed Province of British Columbia Certificate of Insurance.

The Recipient must require and ensure that each Third Party maintains insurances comparable to those required above.

### **Indemnity**

The Recipient must indemnify and save harmless the Province and the Colebrook Dyking District, and their respective employees and agents, from and against any and all losses, claims, damages, actions, causes of action, cost and expenses that the Province and/or the Colebrook Dyking District may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, if the same or any of them are based on, arise out of or occur, directly or indirectly, by reason of any negligent act or omission of the Recipient, or of any agent, contractor, subcontractor, employee, officer, director or Third Party pursuant to this Agreement, excepting always liability arising out of the independent negligent acts of the Province or the Colebrook Dyking District.

## **SECTION 15 - ASSIGNMENT AND SUB-CONTRACTING**

The Recipient must not, without the prior written consent of the Province:

- (a) assign, either directly or indirectly, this Agreement or any right of the Recipient under this Agreement; or
- (b) sub-contract any obligation of the Recipient under this Agreement.

No sub-contract entered into by the Recipient relieves the Recipient from any of its obligations under this Agreement or impose upon the Province any obligation or liability arising from it.

This Agreement binds the Province and its assigns and the Recipient, the Recipient's successors and permitted assigns.

## **SECTION 16 - REPAYMENT OR REDUCTIONS**

An amount paid by the Province to the Recipient or which is treated as such pursuant to the terms of this Agreement, and to which the Recipient is not entitled according to the terms of this Agreement is repayable to the Province and until repaid constitutes a debt due to the Province.

If:

(a) the Transfer occurs during the Term; but the Recipient must, within 30 days of the end of the Term, repay to the Province the Financial Contribution (excluding any part of the Financial Contribution that the Province concludes that the Recipient provided to a Third Party in good faith and for reasons reasonably related to the Project), unless the Province provides written consent to other arrangements.

If the Transfer does not occur during the Term, the Recipient must:

(a) repay to the Province, or to any person Indicated by the Province in its sole discretion, the Financial Contribution (excluding any part of the Financial Contribution that the Province concludes that the Recipient provided to a Third Party in good faith and for reasons reasonably related to the Project); and

(b) transfer and surrender any and all interest, right and title of the Recipient in any Access Rights and any physical works or other infrastructure or assets created, improved or obtained by the Recipient using the Financial Contribution to the Colebrook Dyking District or to any other person indicated by the Province in its sole discretion, within 30 days of the end of the Term, unless the Province provides written consent to other arrangements.

## **SECTION 17 - OTHER FUNDING**

If the Recipient receives funding for or in respect of the Services from any person, firm, corporation or other government or governmental body, then the Recipient must immediately provide the Province with full details.

## **SECTION 18 - NOTICES**

Where in this Agreement any notice or other communication is required to be given by any of the Parties, it must be given in writing. It will be effectively given:

- (a) by delivery, to the address of the Party set out below, on the date of delivery;
- (b) by pre-paid registered mail, to the address of the Party set out below, on the fifth business day after mailing;
- (c) by facsimile, to the facsimile number of the Party mentioned in this Agreement, on the date the facsimile is sent; or
- (d) by e-mail, to the e-mail address of the Party mentioned in this Agreement, on the date the e-mail is sent.

The contact details of the Parties are

**Province:**

CherKing-Scobie  
Manager, Flood and Streams  
Water Authorizations, South Coast Region  
Ministry of Forests, Lands, Natural Resource Operations and Rural Development  
200 - 10428 153 Street,  
Surrey, BC, V3R 1E1

Phone 778-572-2170  
Fax: 604-856-4419  
Email: [Cher.KingScobie@gov.bc.ca](mailto:Cher.KingScobie@gov.bc.ca)

**Recipient:**

Yonatan Yohannes  
Manager, Utilities  
City of Surrey  
13450 -104 Avenue,  
Surrey, BC, V3T 1V8

Phone 604-598-7910  
Fax: 604-591-8693  
Email: [Yonatan.Yohannes@surrey.ca](mailto:Yonatan.Yohannes@surrey.ca)

The address, phone number, facsimile number, or email set out above may be changed by notice in the manner set out in this provision.

## **SECTION 19 - NON-WAIVER**

No term or condition of this Agreement and no breach by the Recipient of any term or condition is waived unless the waiver is in writing signed by the Province and the Recipient.

The written waiver by the Province of any breach by the Recipient of any provision of this Agreement is not a waiver of any other provision of any subsequent breach of the same or any other provision of this Agreement.

## **SECTION 20 - ENTIRE AGREEMENT**

This Agreement including the Schedules constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement.

## **SECTION 21 - MISCELLANEOUS**

Changes to this Agreement are only effective if made in writing and by both parties.

All of the provisions of this Agreement in favour of the Province and all of the rights and remedies of the Province, either at law or in equity, will survive any expiration or sooner termination of this Agreement.

This Agreement is solely for the benefit of the Parties and their successors and permitted assigns and, except as for the indemnification of the Colebrook Dyking District provided under Section 14 and as otherwise expressly contemplated herein, nothing herein is intended to or shall confer upon or give to any other person any legal or equitable right, benefit or remedy of any nature of kind whatsoever under or by reason of this Agreement.

## **SECTION 22 -ACCEPTANCE**

This Recipient indicates its agreement by dating and executing both copies of this Agreement in the space and manner indicated below and returning them to the contact shown above, free of any conditions. In signing or executing below, the Recipient is committing to a binding agreement.

**IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.**

**CITY OF SURREY by its authorized signatory**

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Signature

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Date

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Printed Name & Title

HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF BRITISH COLUMBIA, as  
represented by the MINISTER OF FORESTS,  
LANDS, NATURAL RESOURCE OPERATIONS  
AND RURAL DEVELOPMENT or her authorized  
signatory

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Signature

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Date

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Printed Name & Title

## SCHEDULE A - SERVICES

### The Project

#### TERM

Notwithstanding the date of execution of this Agreement, the Term of this Agreement starts on April 1, 2020 and ends on December 31, 2025.

If the Project is not completed by the end date of the Agreement, the Province may at its sole discretion extend the end date by way of modification of the Agreement. The length of time of any extension will be determined by the Province in its sole discretion.

#### PROJECT

As the Province and the Recipient have discussed, the parties are working together to arrange for the Province to dissolve the Colebrook Dyking District and transfer all of the assets, rights, claims, obligations and liabilities of the Colebrook Dyking District to the City of Surrey (the "**Transfer**") pursuant to the *Drainage, Ditch and Dike Act*, subject to the Lieutenant Governor in Council and the minister responsible for the administration of the *Local Government Act* exercising their respective unfettered discretions in that regard.

However, in order to provide circumstances under which the Recipient will be willing to receive the Transfer, the Province is providing the Financial Contribution to the Recipient, and the Recipient will, during the Term, use the Financial Contribution to:

- (a) acquire all necessary statutory rights of way, easements and/or other forms of rights of access, use, occupation and maintenance (the "**Access Rights**") in order to:
  - i. increase the elevation of the dike to a height of 3.9m as per the Serpentine, Nicomekl & Campbell Rivers - Climate Change Floodplain Review Final Report (page 44), attached as Appendix A (the "**Dike Upgrades**"); and
  - ii. operate and maintain the dike effectively in the future; and
- (b) complete the Dike Upgrades (together, the Project").

#### PURPOSE & EXPECTED RESULTS

The Province anticipates the Financial Contribution will provide the Recipient with circumstances under which the Recipient will accept the Transfer and ongoing responsibility for the dike and drainage system currently under the jurisdiction of

Colebrook Dyking District, which circumstances include carrying out and completing the Project during the Term.

The Dike Upgrades are illustrated as the Colebrook Dyking District (CDD) dikes in the map attached as Appendix B.

## **DELIVERABLES**

The Recipient will use the Financial Contribution only for the purpose of completing the Services including the deliverables and reporting requirements stated in this Schedule A.

The Recipient must have a work plan accepted by the Province for acquiring all Access Rights. The terms and conditions of these Access Rights must be comparable with common terms and conditions currently used in other Statutory Rights of Way held by the Recipient for drainage and diking purposes.

This Project began under a prior agreement (TP16LMN-002) with a start date of March 21, 2016, and the Financial Contribution of \$10,400,000 had been provided under the terms of that agreement. By entering into this Agreement, the parties agree that the remaining \$9,353,307.92 of unspent funds from TP16LMN-002 will be used by the Recipient towards eligible costs incurred under this Agreement. By continuing to accept the Financial Contribution, the Recipient agrees to:

(a) support:

- i.* the repeal of the *Drainage, Ditch and Dike Act*;
- ii.* the dissolution of the Colebrook Dyking District; and
- iii.* the Transfer and the Recipient receiving ongoing responsibility for the dike and drainage system currently under the jurisdiction of Colebrook Dyking District;

(b) acquire all necessary Access Rights during the Term;

(c) complete Dike Upgrades during the Term and in accordance with all applicable provincial policies, guidelines and legislation for low consequences dikes. These guidelines currently include the Dike Design and Construction Guide Best Management Practices for British Columbia as originally published in July 2003.

## **REPORTING REQUIREMENTS:**

Financial Reporting:

*Interim Reporting*

The Recipient must provide an accounting for the use of any or all of the Financial Contribution upon and in accordance with any written request by the Province.

*Final Reporting*

The Recipient must, no later than 30 days after the end of the Term, provide a final

financial report including:

- (a) a Project income and expenditure summary which identifies all sources and use of the total Financial Contribution received by the Recipient during the Term;
- (b) a statement detailing the use of the Financial Contribution provided to the Recipient during the Term, including an explanation of any financial variances.

*Cerlification / Attestation*

All financial reports submitted by the Recipient must be certified by a senior officer of the Recipient's organization (such as a Chief Executive Officer or Chief Financial Officer) attesting to the correctness and completeness of the financial information provided.

Project Reporting:

*Ongoing Communication*

The Recipient must make all reasonable efforts to respond to ad-hoc requests by the Province for information on Project progress. The Recipient must also advise the Province immediately of any substantial events that could impact the Project timeline.

*Final Reporting*

The Recipient must, no later than 30 days after the end of the Term, provide a Project performance report with Project highlights, description of outcomes with respect to results set out in Schedule A, quantitative and qualitative description of the accomplishments / success of the Project; challenges faced and solutions found, information on results (negative or positive) that were not anticipated, and lessons learned.

## SCHEDULE B - FINANCIAL CONTRIBUTION

The Parties entered into a Shared Cost Arrangement (Agreement number TP16LMN-02) dated March 21, 2016 (the "**Prior Agreement**"). Pursuant to the Prior Agreement, a financial contribution of \$10,400,000 was provided by the Province to the Recipient. At the expiration of the Prior Agreement on March 31, 2020, \$9,353,307.92 of that amount remained unspent.

Pursuant to the Prior Agreement, any portion of the funds provided to the Recipient and not expended at the end of the Term were to be returned by the Recipient. In consideration of the rights and obligations of each of the parties as contemplated in this Agreement, the Province has elected not to insist upon the strict performance of the terms of the Prior Agreement with respect to the Recipient's obligation to return any portion of the funds provided not expended at the end of the Term. Rather, the parties agree to treat the \$9,353,307.92 as a Financial Contribution provided under this Agreement, and which may be used or must be repaid or otherwise dealt with in accordance with the terms of this Agreement.

Notwithstanding any other term of this Agreement, the Province has no obligation to provide the Recipient any amount in addition to the \$9,353,307.92 which the Recipient currently holds as a result of the Prior Agreement.

### PAYMENTS

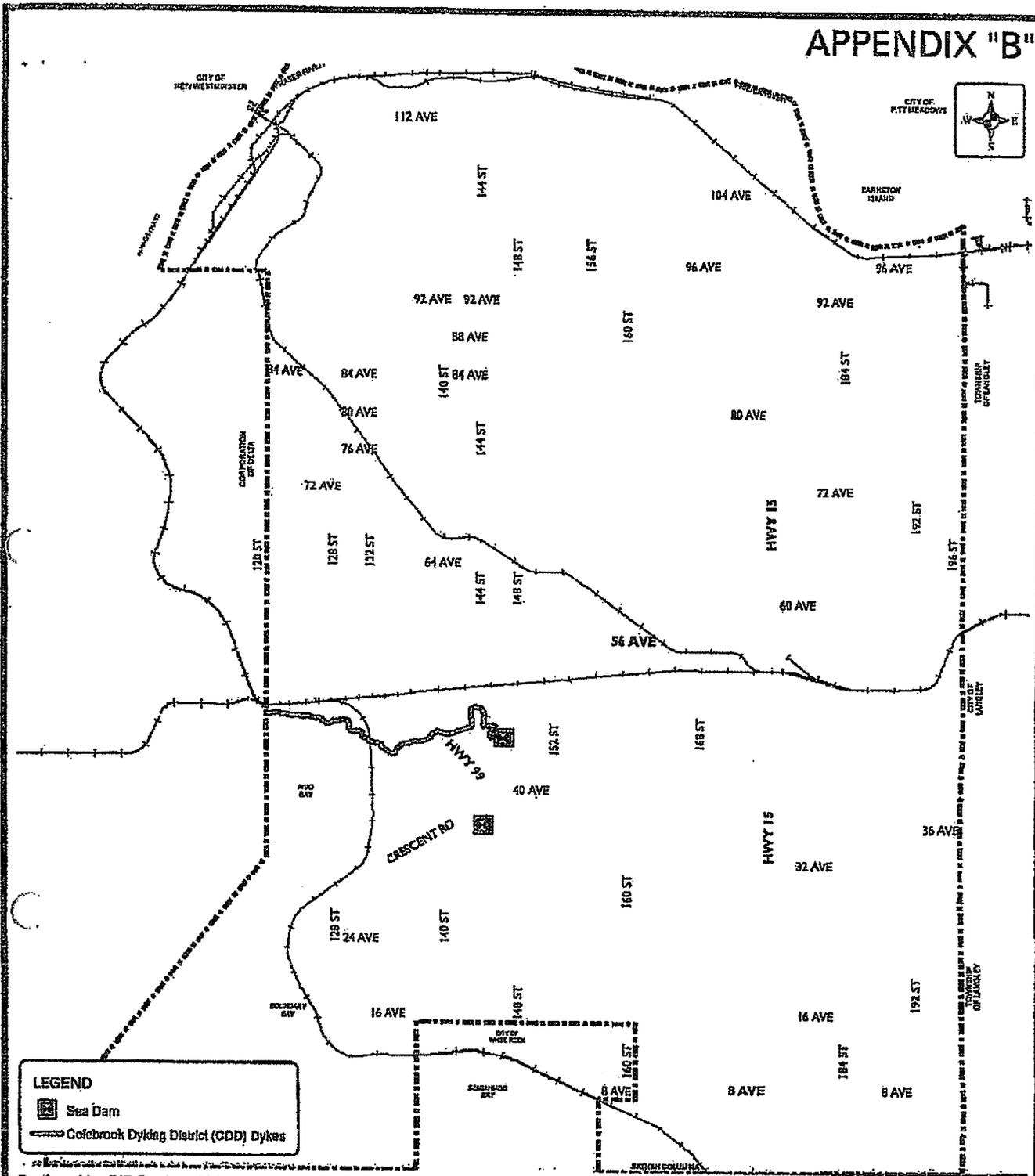
<b>Unexpended amount from Shared Cost Arrangement (Agreement number TP16LMN-002)</b>	\$9,353,307.92
<b>Total Additional Payable</b>	\$0

## APPENDIX A

Table 5.24. Comparison of existing dike elevations to computed DCE's

#	LOCATION	Existing Crest Elev. (m)	Provincial Guidelines		Joint Probability	
			OCE (m)	Oiff. (m)	DCE (m)	Diff. (m)
Existing Conditions 2010						
1a	Colebrook - Serpentine	2.84	4.40	1.56	3.84	1.00
1b	Crescent Beach East	2.88	4.27	1.39	3.75	0.87
1c	Mud Bay - Serpentine	3.00	4.41	1.41	3.85	0.85
1d	Mud Bay - Nicomekl	2.98	4.03	1.05	3.51	0.53
2	Colebrook (Hwy99)	3.15	4.43	1.28	3.87	0.72
3	Crescent Beach North	2.90	4.47	1.57	3.95	1.05
4	Crescent Beach South	3.30	4.68	1.38	4.16	0.86
5	BNSF Railway	3.20	4.67	1.47	4.11	0.91
6	8th Ave@ Campbell	2.30	<b>NA</b>	-	<b>NA</b>	-
Future Conditions 2100						
1a	Colebrook - Serpentine	2.84	5.69	2.85	5.8	2.29
1b	Crescent Beach East	2.88	5.42	2.54	4.90	2.02
1c	Mud Bay - Serpentine	3.00	5.78	2.78	5.22	2.22
1d	Mud Bay - Nicomekl	2.98	5.26	2.28	4.74	1.76
2	Colebrook (Hwy99)	3.15	7.32	4.17	6.76	3.61
3	Crescent Beach North	2.90	6.15	3.25	5.63	2.73
4	Crescent Beach South	3.30	6.32	3.02	5.80	2.50
5	BNSF Railway	3.20	6.43	3.23	5.87	2.67
6	8th Ave@ Campbell	2.30	5.17	2.87	4.85	2.55

# APPENDIX "B"



**LEGEND**

-  Sea Dam
-  Colebrook Dyking District (CDD) Dykes

Produced by GIS Section: 14-Mar-2016, JJR

Scale: 1:112,000 0 1,000 M



## Areas of the Colebrook Dyking District

**ENGINEERING DEPARTMENT**

The data provided is compiled from various sources and IS NOT warranted as to its accuracy or efficiency by the City of Surrey. This information is provided for information and convenience purposes only. Lot sizes, legal descriptions and encumbrances must be confirmed at the Land Title Office.

# CORPORATE REPORT

NO: **R047**

COUNCIL DATE: **March 7, 2016**

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **March 2, 2016**

FROM: **General Manager, Engineering**

FILE: **5225-17**

XC: **5225-40 (CDD)**

**5225-40 (SDD)**

**5225-40 (MBDD)**

SUBJECT: **Responsibility for the Colebrook Dyking District and Surrey Dyking District**

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## RECOMMENDATIONS

The Engineering Department recommends that Council:

1. Receive this report as information;
2. Authorize staff to inform the appropriate Provincial officials that the City is willing to assume responsibility of the Surrey Dyking District on the basis that the Province acknowledges and agrees that any future dyke upgrades required will comply with the *Dike Design and Construction Guide Best Management Practices for British Columbia* as originally published in July 2003, and that the Province is not requiring that the dykes within the Colebrook Dyking District be designed and/or constructed to the their *Seismic Design Guidelines for Dikes*;
3. Authorize staff to inform the appropriate Provincial officials that the City is willing to assuming responsibility of the Colebrook Dyking District given the financial support committed to by the Province on the basis that the Province acknowledges and agrees that any future dyke upgrades required will comply with the *Dike Design and Construction Guide Best Management Practices for British Columbia* as originally published in July 2003, and that the Province is not requiring that the dykes within the Colebrook Dyking District be designed and/or constructed to the their *Seismic Design Guidelines for Dikes*; and
4. Authorize the Mayor to sign on behalf of the City of Surrey a Government Transfer-Shared Cost Arrangement with the Province as part of the transfer of the Colebrook Dyking District based on the draft agreement that is attached to this report as Appendix "IV".

## INTENT

The purpose of this report is to make recommendations regarding the transfer of the Colebrook Dyking District and the Surrey Dyking District to the City.

## **BACKGROUND**

At its Regular meeting on January 14, 2013, Council considered Corporate Report No. R003;2013 and adopted its recommendations. That report documented that the Province had enacted legislation that would repeal the *Drainage, Ditch and Dike Act [RSBC 1996] Chapter 102* (the "Act"), and that as a result staff would continue to work with the Surrey Dyking District and the Province with a view to the City of Surrey assuming responsibility for the Surrey Dyking District in 2013.

The report also documented that the repealing of the subject Act would result in the dissolution of the Colebrook Dyking District effective December 31, 2015. Unlike the Surrey Dyking District, whose dyking system is an integral part of the City's drainage conveyance system, the dyking system under the responsibility of the Colebrook Dyking District provides flood control related to coastal flooding. In addition, unlike the Surrey Dyking District for which the City has rights-of-way covering the dyking system, the City does not have control over the Colebrook Dyking District dyke rights-of-way, and therefore the City is not in a position to ensure maintenance of the dyking system. On this basis, Council also resolved that the City not assume responsibility of the Colebrook Dyking District at this time.

The areas of the Surrey Dyking District and Colebrook Dyking District are illustrated in the map attached as Appendix "I".

At its Regular meeting on April 8, 2014, Council considered Corporate Report No. R054;2013, a copy of which is attached as Appendix "II", and adopted its recommendations which included authorizing staff to inform the appropriate Provincial officials that the City is not willing to assume responsibility for either of the Colebrook Dyking District and the Mud Bay Dyking District until such time as a long term and sustainable funding program has been established by the Province to address the costs of necessary upgrades to the dykes in these Districts related to sea level rise and other coastal hazards.

## **DISCUSSION**

Since Council's consideration of Corporate Report No. R003;2013, the Dyking District essentially dissolved with the commissioners resigning and all remaining assets of the Surrey Dyking District, including cash, equipment and land, have been transferred to the City and staff have assumed the management of the dykes within the jurisdiction of the Surrey Dyking District in anticipation of the dyking district being formally transferred to the City. Costs to operate and maintain the dykes within the jurisdiction of the Surrey Dyking District have been incorporated into the Drainage Utility and are recovered as part of the Drainage Parcel Tax.

Since Council's consideration of Corporate Report No. R003;2013, all of the Commissioners of the Colebrook Dyking District have also resigned and the dykes within the Colebrook Dyking District have largely gone unmanaged.

### **Surrey Dyking District**

Although the City has assumed the operation of the dykes within the jurisdiction of the Surrey Dyking District, the Province has yet to complete the formal transfer. The formal transfer will include assigning any debts owed to the dyking district and liabilities owed by the dyking district to the City, currently estimated at \$29,500 and \$750 respectively. The formal transfer will also include transferring all rights-of-way to the City.

Should Council see the merits in formally accepting the transfer of the Surrey Dyking District, the Province will need to complete several administrative transactions, including an Order in Council to transfer the dyking district to the City. As required by the Act, the City will receive the dyking district as a Local Area Service. Given that the Drainage Utility is operated on a City wide basis, once the transfer is complete, it is recommended that the newly established Local Area Service be dissolved as a further administrative step once all debts and liabilities have been resolved.

### **Colebrook Dyking District**

In an effort to assist the City in accepting the transfer of the Colebrook Dyking District, the Province, as outlined in the letter attached as Appendix "III", has approved funding of \$1.166 million for land acquisition and a financial commitment to \$9.234 million for improvements to the dykes to bring them up to an acceptable standard for a total of \$10.4 million. Since receipt of this letter, Provincial staff have advised that the total funding of \$10.4 million can now be provided at this time.

The total funding of \$10.4 million offered by the Province is based on estimates by staff in order to acquire rights-of-way over the dykes in the name of the City and to complete improvements to raise the dykes to current flood protection levels. The total funding does not address the costs of necessary upgrades to the dykes related to sea level rise and other coastal hazards. There is no Provincial or Federal funding program currently in place to help fund the upgrades of the dykes to address sea level rise and other coastal hazards.

While the total funding of \$10.4 million offered by the Province does not include the costs of necessary upgrades to the dykes related to sea level rise and other coastal hazards, staff see the merits in assuming the dykes within the Colebrook Dyking District at this time in order to complete deferred maintenance and minor raising of the dykes in order to best protect the residences of those within the Colebrook Dyking District, to protect other municipal infrastructure in the area such as Colebrook Road and King George Boulevard, and to protect other critical Provincial infrastructure including Highway 99.

Similar to the transfer of the Surrey Dyking District, the formal transfer of the Colebrook Dyking District will include assigning debts owed to the dyking district to the City, currently estimated at \$2,500. The Colebrook Dyking District has no liabilities. The formal transfer will also include transferring all rights-of-way to the City.

Should Council see the merits in formally accepting the transfer of the Colebrook Dyking District, similar to the steps required to transfer the Surrey Dyking District to the City, the Province will need to complete several administrative transactions, including an Order in Council to transfer the dyking district to the City. As required by the Act, the City will receive the dyking district as a Local Area Service. Given that the Drainage Utility is operated on a City wide basis, once the transfer is complete, it is recommended that the newly established Local Area Service be dissolved once the liabilities have been resolved.

In support of the administrative transactions to transfer Colebrook Dyking District, the Province is also seeking to execute a Government Transfer – Shared Cost Arrangement. This agreement is the mechanism that the Province will provide their funding. To facilitate the transfer and meet budgeting timelines, the Province is seeking to execute the Government Transfer – Shared Cost Arrangement by March 31, 2016. A draft agreement is attached as Appendix "IV".

Should Council see the merits in formally accepting the transfer of the Colebrook Dyking District, staff will continue work with Provincial staff to finalize the Government Transfer – Shared Cost Arrangement in preparation for execution by the Mayor.

Should Council not see the merits in formally accepting the transfer of the Colebrook Dyking District, staff will continue to work with Provincial staff to ensure that the Province takes appropriate action to adequately maintain and inspect the dykes, and staff will request that the Province initiate the dyke improvements themselves.

### **Dyke Design Guidelines**

The dykes within the Colebrook Dyking District and Surrey Dyking District generally conform to the Province's *Dike Design and Construction Guide Best Management Practices for British Columbia* as originally published in July 2003.

In 2014, the Province issued their *Seismic Design Guidelines for Dikes*. These guidelines provide design consideration to address the seismic stability and integrity of the dykes in southwestern British Columbia and Vancouver Island with the intent to provide flood protection for densely populated urban communities and regional infrastructure. These guidelines acknowledge that achieving the dyke performance criteria specified may be difficult and costly in some instances considering that a majority of the dykes have originally been built to rudimentary standards and for rural area protection.

Given that the dykes within the Surrey Dyking District and the Colebrook Dyking District service a largely agricultural area and that it will be likely difficult and costly to achieve the performance criteria specified in the *Seismic Design Guidelines for Dikes*, it is recommended that as a condition of assuming responsibility of the Surrey Dyking District and the Colebrook Dyking District be done on the basis that the Province acknowledges and agrees that any future dyke upgrades in these areas will comply with the *Dike Design and Construction Guide Best Management Practices for British Columbia* as originally published in July 2003, and that the Province is not requiring that the dykes within the Colebrook Dyking District be designed and/or constructed to the their *Seismic Design Guidelines for Dikes*.

### **Mud Bay Dyking District**

The Province has not advised of any plans to transfer the Mud Bay Dyking District to the City as the Mud Bay Dyking District is not impacted by the pending repeal of the *Drainage, Ditch and Dike Act* as they are incorporated under different legislation. Provincial staff advised both the Surrey Dyking District and the Colebrook Dyking District prior to their dissolution that they would not support them incorporating under the same legislation as the Mud Bay Dyking District.

Staff have not initiated any plans to seek to have the Mud Bay Dyking District transferred to the City as the Mud Bay Dyking District continues to effectively operate and maintain the dykes within their jurisdiction.

## Next Steps

Should Council see the merits in formally accepting the transfer of the Colebrook Dyking District, staff will continue work with Provincial staff to finalize the Government Transfer-Shared Cost Arrangement in preparation for execution by the Mayor.

Once executed, staff will initiate the acquisition of rights-of-way and designs for improvements to the dykes. Improvements to the dykes would likely start in 2017.

Upon completion of the formal transfer of the dyking districts to the City, staff will prepare future Corporate Reports for Council's consideration to dissolve the newly created Local Service Areas.

Staff will continue their pursuit of additional funding programs to support the necessary upgrades to these dykes and all other dykes in the City to address sea level rise and other coastal hazards.

Should Council not see the merits in formally accepting the transfer of the Colebrook Dyking District, staff will continue to work with Provincial staff to ensure that the Province takes appropriate action to adequately maintain and inspect the dykes and staff will request that the Province initiate the dyke improvements themselves.

## Legal Services Review

Legal Services have reviewed this report and the draft Government Transfer -Shared Cost Arrangement and have no concerns.

## CONCLUSION

Based on the above discussion, it is recommended that Council:

- Receive this report as information;
- Authorize staff to inform the appropriate Provincial officials that the City is willing to assume responsibility of the Surrey Dyking District on the basis that the Province acknowledges and agrees that any future dyke upgrades required will comply with the *Dike Design and Construction Guide Best Management Practices for British Columbia* as originally published in July 2003, and that the Province is not requiring that the dykes within the Colebrook Dyking District be designed and/or constructed to the their *Seismic Design Guidelines for Dikes*;
- Authorize staff to inform the appropriate Provincial officials that the City is willing to assuming responsibility of the Colebrook Dyking District given the financial support committed to by the Province on the basis that the Province acknowledges and agrees that any future dyke upgrades required will comply with the *Dike Design and Construction Guide Best Management Practices for British Columbia* as originally published in July 2003, and that the Province is not requiring that the dykes within the Colebrook Dyking District be designed and/or constructed to the their *Seismic Design Guidelines for Dikes*; and

- Authorize the Mayor to sign on behalf of the City of Surrey a Government Transfer-Shared Cost Arrangement with the Province as part of the transfer of the Colebrook Dyking District based on the draft agreement that is attached to this report as Appendix "IV".



Fraser Smith, P.Eng., MBA  
General Manager, Engineering

JA/clr

Appendix "I" - Areas of the Surrey Dyking District and Colebrook Dyking District

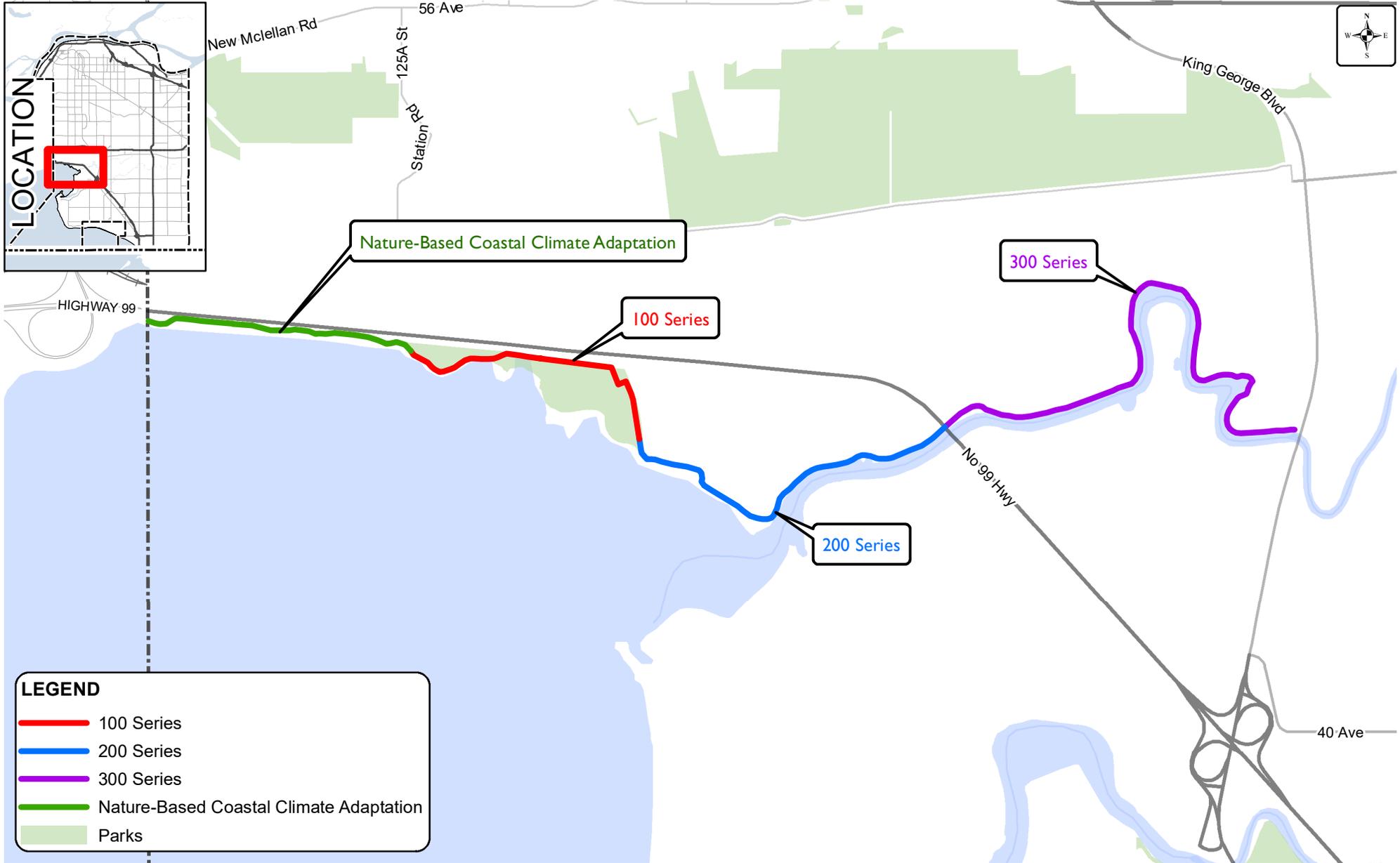
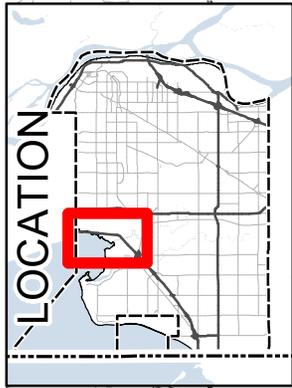
Appendix "II" - Corporate Report No. R054;2013

Appendix "III" - Letter from Minister Steve Thomson dated December 29, 2015

Appendix "IV" - Draft Government Transfer – Shared Cost Arrangement

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**Note: Appendices available upon request**



**LEGEND**

- 100 Series
- 200 Series
- 300 Series
- Nature-Based Coastal Climate Adaptation
- Parks

Produced by GIS Section: 06-Apr-2021, P205934

Scale: 1:24,049 0 225 M



# Boundary Bay, Mud Bay and Colebrook Dyke Site Overview

## ENGINEERING DEPARTMENT