

NO: R047

COUNCIL DATE: March 7, 2016

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**

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

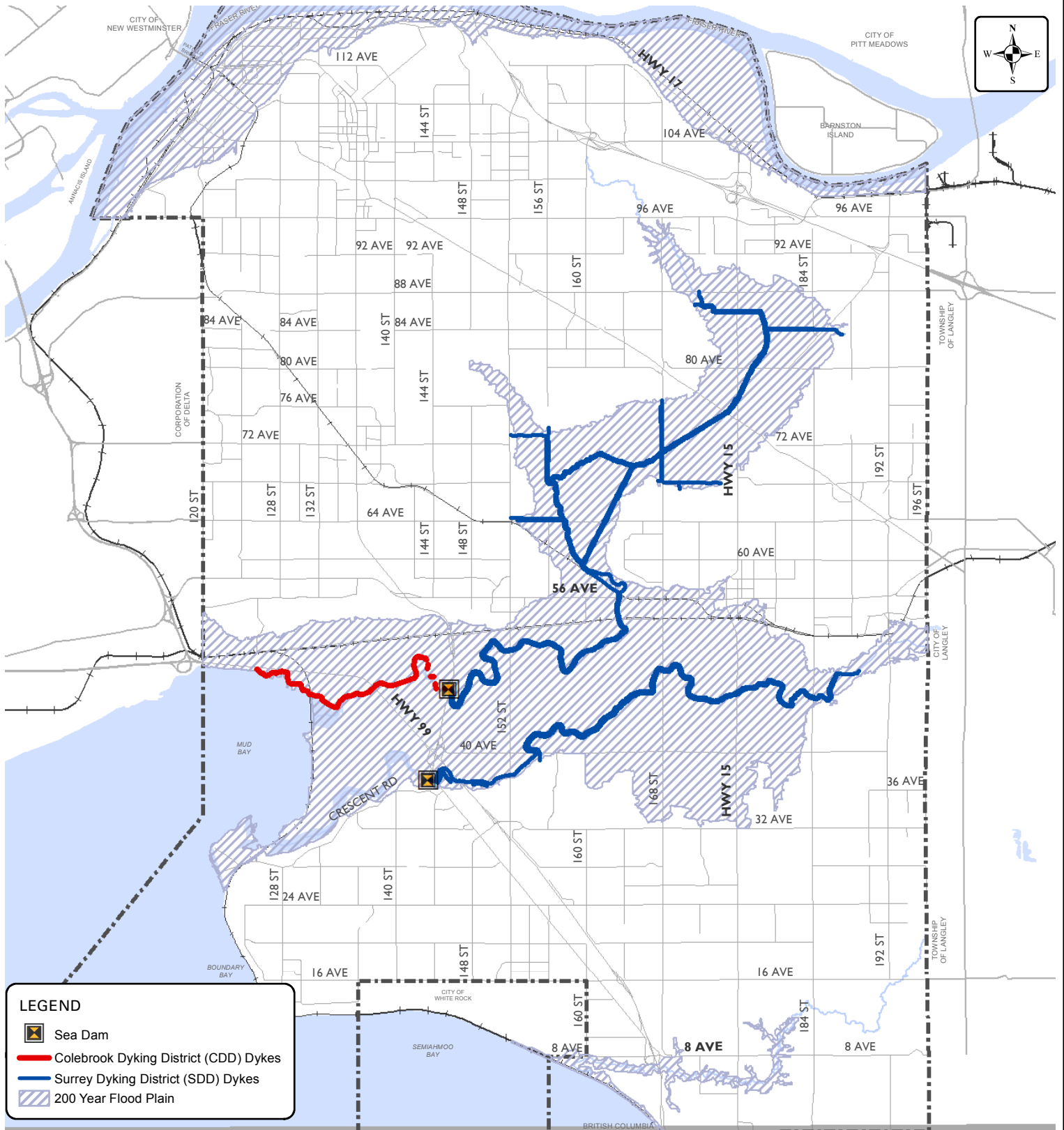
Appendix “I” - Areas of the Surrey Dyking District and Colebrook Dyking District

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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LEGEND

- Sea Dam
- Colebrook Dyking District (CDD) Dykes
- Surrey Dyking District (SDD) Dykes
- 200 Year Flood Plain

Produced by GIS Section: 03-Mar-2016, JJR

Scale: 1:112,000



Areas of the Surrey Dyking District and Colebrook Dyking District

ENGINEERING DEPARTMENT

NO: **R054**

COUNCIL DATE: **April 8, 2013**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **April 4, 2013**

FROM: **General Manager, Engineering**

FILE: **5225-17
5225-40(CDD)
5225-40(MBDD)**

SUBJECT: **Responsibility for the Colebrook Dyking District and Mud Bay Dyking District**

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 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; and
3. Authorize staff to forward a copy of this report and the related Council resolution to the Premier, the Provincial Minister of Forests, Lands and Natural Resource Operations, the Surrey Members of the Legislative Assembly and the Union of BC Municipalities.

INTENT

The purpose of this report is to:

- provide information about the pending dissolution of the Colebrook Dyking District and the recommendations included in the Ministry of Forests, Lands and Natural Resource Operations Cost Adaptation – Sea Dikes and Alternative Strategies Report;
- outline actions that are being taken by staff in relation to these matters; and
- make recommendations regarding the takeover by the City of the Colebrook Dyking District and the Mud Bay Dyking District.

BACKGROUND

At its Regular meeting on January 14, 2013 Council considered Corporate Report No. R003;2013, a copy of which is attached as Appendix I, 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.

Since Council's consideration of Corporate Report No. R003;2013 all of the Commissioners of the Colebrook Dyking District have resigned, and the Province is in the process of establishing how the Colebrook Dyking District is to be managed.

DISCUSSION

Concurrently with the extension to the repeal of the Act until December 31, 2015, the Ministry of Forests, Lands and Natural Resource Operations issued a report entitled "*Cost Adaptation – Sea Dikes and Alternative Strategies*". The purpose of this report was to document at a high level the estimated costs to address the impacts of sea level rise and other coastal hazards following details and recommendations of another Provincial report issued in 2011 entitled "*Climate Change Adaption Guidelines for Sea Dikes and Coastal Flood Hazard Land Use - Draft Policy Discussion Paper*".

In general, the work required to meet the adaptation guidelines is significant. For the Fraser River and Crescent Beach area the Province is suggesting significant dyke improvements while for the Mud Bay area and Colebrook area the Province is suggesting a managed retreat. In this approach, the 'retreated' properties would be decommissioned over years or decades and the land returned to a natural or low-value condition that would be flooded periodically. For purposes of the cost estimates, the cost of the "retreat" option was assumed to be equal to the purchase price of the impacted land (i.e., these lands would need to be purchased over time).

The extent of the proposed retreat lands is not defined and it is not clear as to why the Province has recommended this approach given that the report also states that the cost for this option is the same as the dyke improvement option, which is the recommended approach along the Fraser River and in the Crescent Beach area.

For the region, the Province has estimated the cost of works related to sea level rise and other coastal hazards to be \$9.5 billion. For Surrey, these costs are estimated as follows:

Area	Cost
Fraser River	\$986 million
Mud Bay and Colebrook	\$464 million
Crescent Beach	\$19 million
TOTAL	\$1,569 million

While the extent of the improvements and costs are significant, staff is of the opinion that the estimates are very conservative (i.e., high). This statement is based on the fact that the design levels recommended in the *Climate Change Adaption Guidelines for Sea Dikes and Coastal Flood Hazard Land Use - Draft Policy Discussion Paper* seek to address the combined effect at a common point in time of climate change, ground subsidence, high tides, storm surge, wind setup and wave effects. The probability of these events occurring simultaneously is estimated at a 1:10,000 year

return period. By comparison the majority of dykes in the region are designed to a 1:200 year return period. A longer return period translates into a more severe condition for which works need to be implemented, which then leads to higher costs. As a result, staff is currently encouraging the Province to develop more appropriate dyke design standards that should have the effect of reducing the amount of work that is required and therefore the overall costs.

Fraser River

Approximately \$1 billion of the improvements identified in the recent Provincial report are attributed to dykes along the Fraser River to protect Bridgeview, South Westminster, and an area of Port Kells.

Over the past 5 years the City, with funding from the Provincial and Federal Governments, has made improvements to the dyking system along the Fraser River; specifically to the dykes in Bridgeview. Additional dyke improvements in Bridgeview will be undertaken this summer. These improvements are partially funded by the Provincial and Federal Governments through the Emergency Management BC & Build Canada Flood Protection Program, and will meet current Provincial design standards; however, the improvements that are to commence this summer have been designed to provide a further opportunity to increase the level of the protection to achieve the anticipated designs levels identified in the recent Provincial Report.

A large portion of the costs identified in the Provincial reports are to meet new draft Provincial seismic design guidelines. Any increase to Provincial standards should be accompanied by a long-term sustainable Provincial funding program that provides funding to meet the new standards in recognition of the local, regional, provincial and national importance of the dyking system to protect onshore infrastructure. Further, before any investments are made to improving dykes to withstand a significant seismic event, a cost/benefit analysis for each dyking system should be completed.

In the report "*Cost Adaptation – Sea Dikes and Alternative Strategies*", the Province's Geotechnical Engineering consultant has noted that the Province's prescriptive seismic design process is extremely conservative and that other design considerations should be evaluated with a view to substantially reducing the costs associated with meeting the proposed seismic standards.

In an effort to develop more practical seismic design standards, staff is approaching other affected local governments and the Fraser Basin Council with a view to consulting with the Province and their geotechnical engineers regarding such standards.

Colebrook Dying District and Mud Bay Dyking District

Given that the Provincial report estimates that improvements to the dykes within the Mud Bay Dyking District and Colebrook Dyking District will cost approximately \$464 million to implement and given that the dykes in these areas also protect infrastructure that has regional, provincial and national importance, staff holds the view that the City should not assume the responsibility for either of these Dyking Districts until such time as a long-term sustainable funding program has been established by the Province to properly address the necessary upgrades to the dykes in these areas.

CONCLUSION

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

- Authorize 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; and
- Authorize staff to forward a copy of this report and the related Council resolution to the Premier, the Provincial Minister of Forests, Lands and Natural Resource Operations, the Surrey Members of the Legislative Assembly and the Union of BC Municipalities.



Vincent Lalonde, P.Eng.
General Manager, Engineering

VL/JA/CAB/brb

Appendix I - Corporate Report No. R003;2013

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NO: **R003**

COUNCIL DATE: **January 14, 2013**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **January 7, 2013**

FROM: **General Manager, Engineering**

FILE: **5225-40 (SDD)
5225-40(CDD)**

SUBJECT: **Responsibility for Dyking Districts in the City of Surrey**

RECOMMENDATION

The Engineering Department recommends that Council:

1. Receive this report as information;
2. Authorize staff to 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; and
3. Authorize staff to inform appropriate Provincial officials and representatives of the Colebrook Dyking District that the City is not able to assume responsibility for the Colebrook Dyking District at this time.

INTENT

The purpose of this report is to provide information about the pending dissolution of the Colebrook Dyking District and the Surrey Dyking District and to outline actions that are being taken by staff in relation to these matters.

BACKGROUND

At its Regular meeting on January 23, 2012 Council considered Corporate Report No. R010;2012 (copy attached as Appendix A) 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") on December 31, 2010. The report also documented that the repealing of this legislation would result in the dissolution of six dyking districts across the Province, two of which (Colebrook Dyking District and Surrey Dyking District) are within the City of Surrey. None of the City of Surrey or the Colebrook Dyking District or the Surrey Dyking District was consulted in advance of the legislation being enacted. Subsequently, at the request of local governments, the Province decided to defer the repeal of the Act by two years to December 31, 2012.

The dissolution of the Colebrook Dyking District and the Surrey Dyking District will result in the assets of each of these Dyking Districts and the continued operation and maintenance responsibilities of the Districts being transferred to the City of Surrey.

The Mud Bay Dyking District, which is also located in the City of Surrey, is not affected by the repealing legislation as this District was incorporated as an Improvement District under different legislation.

As was documented in Corporate Report No. R010; 2012 staff committed to:

1. establishing a new City staff position of "Dyke Superintendent" which will be responsible for overseeing the operation and maintenance of the dykes;
2. establishing a stakeholder committee made up of representatives of the owners of the properties located within the respective Dyking Districts that will provide advice and input to the Dyke Superintendent regarding opportunities and concerns with respect to the dykes; and
3. reviewing opportunities in relation to the drainage parcel tax to ensure that there is a sufficient stream of funding to support the ongoing operation and maintenance of the dykes.

During 2012 staff has:

1. Worked with representatives of each of the Colebrook Dyking District and the Surrey Dyking District in preparation for the transfer of their responsibilities to the City beginning on January 1, 2013;
2. Requested assistance and clarification from the Province on a number of transitional issues;
3. Established and filled the position of Dyke Superintendent;
4. Advertised and are in the process of forming a Lowlands Dyking Stakeholder Committee. The Committee will be made up of land owner representatives from each of five areas within the lowlands. A copy of the terms of reference for the Lowlands Dyking Stakeholder Committee is attached as Appendix B; and
5. Completed a detailed assessment of all dykes within each of the Colebrook Dyking District and the Surrey Dyking District.

The Province in a letter dated December 5, 2012 advised that the above-referenced repeal of the Act has been deferred for another three years. The Act is now scheduled to be repealed on December 31, 2015. This decision by the Province was based on their need for more time to resolve a number of outstanding issues and negotiate transfer agreements related to other dyking districts in the Province.

DISCUSSION

Surrey Dyking District

At a meeting between Surrey staff and the Commissioners of the Surrey Dyking District it was agreed that it would be in the best interests of the Dyking District's ratepayers that the City assume the responsibilities of the Surrey Dyking District as soon as possible. Staff and the Commissioners have determined that the operation of the Dyking District will be difficult to maintain if the current employees of the District leave during the three year period. It will be

difficult to hire term employees to properly effectively fill the vacated roles. The rights-of-way within which the dykes of the Serpentine and Nicomekl Rivers are located are in favour of the City of Surrey and the Dyking District and, as such, the City has the right to maintain these dykes. These rights-of-way were obtained as part of the implementation of the Serpentine/Nicomekl River Strategic Plan for Lowland Flood Control.

Based on the above rationale, staff holds the view that it would be reasonable for the City to continue to work with the Surrey Dyking District and the Province toward the City assuming the responsibilities of the Surrey Dyking District during 2013.

Colebrook Dyking District

The Commissioner of the Colebrook Dyking District also holds the view that it would be in the best interests of the District's ratepayers for the City to assume the responsibilities for the Colebrook Dyking District as soon as possible. The Colebrook Dyking District has no staff. The Commissioner coordinates all of the operation and maintenance responsibilities of the District through contracted services. The Commissioner of the Colebrook Dyking District has resigned his position with the District effective December 31, 2012. However, unlike the Surrey Dyking District, the City does not control the rights-of-way along the majority of the dykes under the administration of the Colebrook Dyking District.

As the City does not have control over the Colebrook Dyking District dyke rights-of-way, it is not in a position to ensure maintenance of the dyking system. On this basis, staff holds the view that the City should not assume the responsibilities of the Colebrook Dyking District at this time. In the absence of the City taking over the District, the Province will assume the role of overseeing the Colebrook Dyking District in a similar manner to the role the Province plays in overseeing the Barnston Island Dyking District.

Funding

There is sufficient funding from the current parcel drainage tax and the financial reserves of Surrey Dyking District to fund the operation and maintenance of the Surrey Dyking District dykes in 2013. During 2013 staff will develop a sustainable funding model for the on-going operation and maintenance of these dykes and will incorporate appropriate recommendations for Council's consideration in the 2014 Five Year financial plan.

CONCLUSION

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

- Authorize staff to 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; and
- Authorize staff to inform appropriate Provincial officials and representatives of the Colebrook Dyking District that the City is not able to assume responsibility for the Colebrook Dyking District at this time.



Vincent Lalonde, P.Eng.
General Manager, Engineering

VL/JA/brb

Appendix A - Corporate Report No. R010;2012

Appendix B - Lowlands Dyking Stakeholder Committee Terms of Reference

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NO: **R010**

COUNCIL DATE: **January 23, 2012**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **January 19, 2012**

FROM: **General Manager, Engineering**

FILE: **5225-40 (SDD)
5225-40(CDD)**

SUBJECT: **Management of Dyking Districts in the City of Surrey with the
Repeal of the Drainage, Ditch and Dike Act**

RECOMMENDATION

The Engineering Department recommends that Council:

1. Receive this report as information; and
2. Authorize staff to establish a Lowlands Dyking Stakeholder Committee to provide advice to the Dyke Superintendent in relation to the operation and maintenance of the dykes that are located within the Colebrook Dyking District and the Surrey Dyking District.

INTENT

The purpose of this report is to advise Council of the pending dissolution of the Colebrook Dyking District and Surrey Dyking District and the actions that are being taken by staff in relation to this matter.

BACKGROUND

At its Regular meeting on January 19, 2009 Council considered Corporate Report No. R003;2009, a copy of which is attached as Appendix I, which noted that the Province had enacted legislation that would act to repeal the Drainage, Ditch and Dike Act [RSBC 1996] Chapter 102 (the "Act") on December 31, 2010. The report noted that the repealing of this legislation would result in the dissolution of six dyking districts across the Province, two of which (Colebrook Dyking District and Surrey Dyking District) are within the City of Surrey. Neither the City of Surrey or the Colebrook Dyking District or the Surrey Dyking District was consulted before the repealing legislation was enacted. Subsequently, at the request of local government, the Province extended the repeal of the Act by two-years to December 31, 2012.

The dissolution of the Colebrook Dyking District and the Surrey Dyking District will result in the assets of these Dyking Districts including their operation and maintenance responsibilities being transferred to the City of Surrey.

The Mud Bay Dyking District, which is also located in the City of Surrey, is not affected by the repealing legislation as this District was incorporated as an Improvement District under different legislation.

Under Corporate Report No. R003; 2009 staff committed to:

1. work with Provincial officials toward a further extension to the Act beyond December 31, 2012;
2. study potential operating partnerships or cooperatives with each Dyking District with a view to determining the most appropriate approach to provide dyking services after the Dyking Districts are dissolved; and
3. establish how operation and maintenance responsibilities related to each District can continue in the shorter term if any District finds that it is not able to fulfill its obligations.

DISCUSSION

Staff has worked with the City of Coquitlam and Metro Vancouver, both of which are also impacted by the repealing of the Act, to obtain a further extension to the Act beyond December 31, 2012.

In addition, at 2011 Convention of the Union of British Columbia Municipalities (UBCM) the delegates endorsed Resolution No. B12 – "Dyking Districts", which stated:

WHEREAS the Province desires to transfer responsibility of operating and maintaining diking district assets to local government;

AND WHEREAS the cost of operating and maintaining diking district asset, and the associated liabilities of operating and maintaining the assets are undefined;

THEREFORE BE IT RESOLVED that UBCM request that the Province of BC undertake a full cost, operating and condition assessment of diking district assets to determine the most appropriate and cost effective delivery of flood protection to property owners;

AND BE IT FURTHER RESOLVED that if local government-provided flood protection is deemed to be in the best interests of property owners, the Province of BC be asked to provide adequate funding for the operation, maintenance and rehabilitation of the diking district assets.

The Province has yet to respond to the UBCM Resolution and has not agreed to extend the date on which the repealing legislation takes effect, being December 31, 2012.

As an alternative, staff has discussed with Provincial staff the option of converting each of the Colebrook and Surrey Dyking Districts, respectively, to an Improvement District similar to the Mud Bay Dyking District. The Province has advised that they would not approve the formation of any new Improvement Districts as they are not practical in established communities such as Surrey. Upon further analysis, staff agrees with the Province's conclusion on the practicality of this approach.

Staff has had discussions with the members of the Surrey Dyking District with a view to developing a potential operating partnership or cooperative as a means to provide dyking services after the Dyking District is dissolved. Neither the Colebrook Dyking District nor the Surrey Dyking District has taken any steps to establish either District as an independent entity or to establish a partnership with the City for the purpose of maintaining their respective dykes. Engineering staff are making the necessary arrangements to assume the operation of the dykes in both of these Districts. The following sections summarize the actions that are being taken.

Operation and Maintenance of the Dykes

As a means to ensure the proper operation and maintenance of the dykes, including dyke inspections during/after significant runoff events, a new position of "Dyke Superintendent" is being established in the 2012 budget process. This position will be responsible for determining and overseeing the operation and maintenance of the dykes by the City and by the ex-Dyking District staff or others.

Public Consultation

The Colebrook Dyking District and the Surrey Dyking District operated with the benefiting property owners acting as commissioners. Each Dyking District elected three property owners as commissioners, who meet regularly to establish operation and maintenance priorities within available funding. Each Dyking District also hosts an annual general meeting where they present their yearly work program to the owners of the properties located within the Dyking District.

To provide for regular consultation with representatives of the owners of the properties located within the respective Dyking Districts after the Districts are dissolved, staff is recommending that a Lowlands Dyking Stakeholder Committee be established. This Committee will provide advice and input to the new Dyke Superintendent regarding opportunities and concerns with respect to the dykes. It is proposed that this Committee be comprised of three to five owners of properties across a variety of agricultural interests and locations from within the areas covered by the Dyking Districts. Engineering staff will also host an annual Public Information Meeting at which information regarding the dyke and drainage work undertaken over the prior year within the benefiting areas would be communicated along with information regarding the work plan for the coming year.

Funding Operation and Maintenance of the Dykes

The Dyking Districts currently receive funding for their operations from two sources; these being:

- a dyking tax against the benefiting properties in each District (which tax delivers approximately half of the respective District's operating budget); and
- the City, by way of an operating agreement with each District, covering the remaining half of each Dyking District's operating budget.

With the repeal of the Act, the Dyking Districts will lose their ability to charge a tax. Therefore, to fund the operation and maintenance of the dykes, staff is reviewing opportunities to adjust the drainage parcel tax to address this funding requirement. A further report complete with recommendations regarding this matter will be forwarded to Council later in 2012.

CONCLUSION

Based on the above discussion, it is recommended that Council authorize staff to establish a Lowlands Dyking Stakeholder Committee to provide advice to the Dyke Superintendent in relation to the operation and maintenance of the dykes that are located within the Colebrook Dyking District and the Surrey Dyking District. A further report complete with recommendations regarding funding for dyke maintenance and operations will be forwarded to Council later in 2012.



Vincent Lalonde, P.Eng.
General Manager, Engineering

VL/JA/brb

Appendix I - Corporate Report No. R003; 2009

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Corporate Report

NO: R003

COUNCIL DATE: Jan. 19/09

REGULAR COUNCIL

TO: Mayor & Council
DATE: January 19, 2009

FROM: General Manager, Engineering
FILE: 5225-40 (SDD)
XC: 5225-40 (CDD)
5225-40 (MBDD)

SUBJECT: Dyking Districts in the City of Surrey – Repeal of the Drainage, Ditch and Dike Act

RECOMMENDATION

The Engineering Department recommends that Council receive this report as information.

INTENT

The intent of this report is to advise Council of the pending dissolution of the Colebrook Dyking District and Surrey Dyking District and the actions that are being taken by staff in relation to this matter.

BACKGROUND

In 2002, the Province enacted legislation that would act to repeal the Drainage, Ditch and Dike Act [RSBC 1996] Chapter 102 (the "Act") on December 31, 2010. The repealing of this legislation will result in the dissolution of six dyking districts, two of which (Colebrook Dyking District and Surrey Dyking District) are located within the City of Surrey. The City of Surrey, Colebrook Dyking District and Surrey Dyking District were not consulted before the Province enacted the repealing legislation.

The dissolution of the Colebrook Dyking District and the Surrey Dyking District will result in their assets, and their operation and maintenance responsibilities, being transferred to the City of Surrey.

The Mud Bay Dyking District is not affected by the repealing legislation as they are incorporated as an Improvement District, which falls under different legislation.

DISCUSSION

The Surrey Dyking District and Colebrook Dyking District have provided a valuable service to the owners of lands located in the floodplains. The continued operation of the Dyking Districts is in the best interests of those that they serve.

As noted above, the Act was to be repealed on December 31, 2010; however, in response to a request from the City of Surrey for an extension, the Province extended the date of the repeal to December 31, 2012 (as shown in Appendix I). The City requested this extension, as the City wants to work with the Dyking Districts to explore potential operating partnerships or cooperatives.

Staff will be meeting with each District to establish how the City can assume the assets and the operation and maintenance responsibilities of each District once the Act is repealed or if the Dyking Districts are unable to fulfill their obligations. This latter statement relates to an observation by the Surrey Dyking District, which has three full-time and two part-time employees, that they may not be able to retain their staff and fulfill their operation and maintenance responsibilities due to the uncertainty created by the pending dissolution of the District.

The Surrey Dyking District and Colebrook Dyking District have also inquired about converting to Improvement Districts, similar to the Mud Bay Dyking District. The Province has indicated that they do not support the creation of new Improvement Districts and that they are seeking to transfer existing Improvement Districts to local government responsibility. As such, staff will also be meeting with the Mud Bay Dyking District to discuss their future operations.


Next Steps:

Over the next few weeks, staff will:

1. work with Provincial officials toward a further extension to the Act beyond December 31, 2012;
2. study potential operating partnerships or cooperatives with each Dyking District with a view to determining the most appropriate approach to provide dyking services after the Dyking Districts are dissolved; and
3. establish how operation and maintenance responsibilities related to each District can continue in the shorter term if any District finds that it is not able to fulfill its obligations.

CONCLUSION

Staff will provide a further report to Council complete with recommendations as additional information becomes available.



Vincent Lalonde, P.Eng.
General Manager
Engineering

VL/JA/brb

Appendix I - Excerpt from Drainage, Ditch and Dike Act and Correspondence – Extension of Sunset Clause

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If the works of a development district are located in more than one regional district, the regional districts may assume the assets, rights, claims, obligations and liabilities in accordance with the apportionment set out in the order dissolving the development district, and that portion of the development district in each regional district is a service area of that regional district.

- (3) A board may provide that some or all of the assets of the development district be credited to the service area and that some or all of the liabilities be charged to the service area.
- (4) Without limiting section 176 [*corporate powers*] of the *Local Government Act*, a board may enter into an agreement with the Provincial government for the joint undertaking of additional works of a similar nature and for their maintenance.
- (5) A board may, by bylaw adopted without the assent or approval of the electors but otherwise in accordance with the *Local Government Act*, borrow sums required under any agreement with the Provincial government.
- (6) The entire cost or the parts of the cost of an existing work or a work to be constructed under the terms of an agreement under this section, and of its maintenance and operation, as may be determined by the board, must be borne by the owners of real property in the service area.

2003-72-15.

Sunset provision

(AM)
Dec
08/08

173.

This Act is repealed on December 31, 2012 or on a later date prescribed by regulation of the Lieutenant Governor in Council.

2003-72-15; B.C. Reg. 373/2008.

Lowlands Dyking Stakeholder Committee Terms of Reference

PURPOSE

The purpose of the Lowlands Dyking Stakeholder Committee (the "Committee") is to allow for regular communication between the owners of dyke-protected land in the lowlands and the City regarding the operation and maintenance of the lowland dykes.

GENERAL RESPONSIBILITIES

The Committee will:

- (a) receive from and disseminate information to landowners about the dyking system and provide advice to the City about the operation and maintenance of the lowland dykes; and
- (b) promote awareness with the general public and landowners about the dyking infrastructure and general considerations about living in a floodplain.

MEMBERSHIP

The Committee will consist of 5 members appointed by the General Manager, Engineering. The Committee's membership will be representative of five separate geographic lowland areas within Surrey and will to the extent possible represent different agricultural interests in the lowlands.

A staff representative of the Engineering Department will act as the chair and preside over meetings of the Committee.

MEETINGS

The Committee shall meet a minimum of twice a year.

Committee meetings will be at the call of the chair.

The meetings will be open and will be held at City Hall.

The Committee is advisory in nature and, as such, there is no need to establish "quorum".

A record (notes of the outcome) of each meeting of the Committee will be compiled by City staff and will be posted on the City's website as soon as practical after each meeting.



APPENDIX "III"

Reference: 219024

DEC 29 2015

Her Worship Mayor Linda Hepner
City of Surrey
13450 – 104th Avenue
Surrey, British Columbia
V3T 1V8

Dear Mayor Hepner:

I am writing to provide you with an update on the transfer of the Colebrook and Surrey dikes to the City of Surrey.

The Colebrook and Surrey dikes are two of five remaining dikes in British Columbia that were constituted under the outdated *Drainage, Ditch and Dike Act*. In 2003, this statute was repealed because the funding model was widely acknowledged to be impractical to meet modern needs for effective management of the diking systems. The repeal date has been extended several times and currently expires on December 31, 2020.

In 2013, following the unexpected resignations of the Dike Commissioners for the Colebrook and Surrey Diking Districts, City Council advised the Province of British Columbia that it would be willing to assume the Colebrook Diking District once the costs to undertake the necessary upgrades to the dike were addressed. As the Surrey Dike had been upgraded over the years, the city indicated in correspondence that it was prepared to accept the transfer, subject to resolving certain administrative matters.

We appreciate the city's patience over the last two years, as we have worked to find a solution to addressing the Colebrook Dike's deficiencies prior to transfer. We would like to acknowledge the city's senior engineering staff for their assistance in helping to define the costs which recently were estimated to be \$10.4 million, including land acquisition and upgrades.

I am pleased to advise you that the province has approved funding of \$1.166 million for land acquisition costs related to the Colebrook Dike, to be transferred to the city in fiscal year 2015/16. In addition, the Ministry of Forests, Lands and Natural Resource Operations has received a financial mandate of up to \$9.234 million to facilitate the upgrade and transfer of the Colebrook Dike to the city. This ministry has been asked to work with the Ministry of Transportation and Infrastructure (MoTI) and the City of Surrey to secure a federal contribution to the upgrade work.

Page 1 of 2

Her Worship Mayor Linda Hepner

Ministry staff have advised me that they have been working closely with city engineering staff to address the administrative matters related to the transfer of the Surrey Dike to the city. I understand that progress is being made and that the parties should be in a position to carry out the transfer in 2016.

While the current lack of governance of the two diking districts is not ideal, I understand that ministry and city engineering staff have been working closely to ensure that critical public safety issues are addressed in a timely manner. For example, this summer, when longitudinal cracks appeared in the Colebrook Dike, the ministry provided funding for engineering consulting services and repairs, and the city provided project management services. In respect to any emergency situations, which may arise due to high-water flood events, the ministry will continue to respond in accordance with its responsibilities under the British Columbia Flood Response Plan administered by Emergency Management BC. In this regard, this ministry will provide technical and response resources to the Provincial Regional Emergency Operations Centre (PREOC). Through PREOC, ministry staff will work with the city in the event of an emergency or if called on for assistance by the city.

I believe the province's funding commitment to the Colebrook Dike will enable a smooth and efficient transfer of this critical asset to the City of Surrey, which is much better positioned to ensure its ongoing management. We look forward to continuing to work with you on the transfers of both the Colebrook and Surrey dikes.

If you have any questions, please contact Heather MacKnight, Regional Executive Director of the South Coast Natural Resource Region, by phone at 604 586-2892 or by email at Heather.MacKnight@gov.bc.ca.

Sincerely,



Steve Thomson
Minister

pc: Vincent Lalonde, City Manager, City of Surrey
Heather MacKnight, Regional Executive Director, South Coast Natural
Resource Region



Natural Resource Sector

GOVERNMENT TRANSFER – SHARED COST ARRANGEMENT

Agreement #:

Project Title: COLEBROOK DIKE PROJECT

THIS AGREEMENT dated for reference the day of , 20 .

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the Minister of MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS

(the "Province")

AND

The City of Surrey

(the "Recipient")

The parties to this Agreement 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 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 governed 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 any 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; and
- (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 Regional Executive Director South Coast Natural Resource Region, Ministry of Forests, Lands and Natural Resource Operations.

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 Province under legislation or an agreement. Amounts due to the Recipient under this Agreement may be set-off against amounts owing to the Province.

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 is independent and neither the Recipient nor its servants, agents or employees are 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 the 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

- (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 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

Within 10 business days of the execution of this Agreement, the Recipient must provide to the Province, a letter declaring that The City of Surrey is self-insured with respect to liabilities for which The City of Surrey may be held responsible as a result of entering into this Agreement or providing the Services during the Term. The Recipient must require and ensure that each Third Party maintains insurances they are 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 providing the Services during the Term.

If at any time during the Term, the Province concludes in its sole discretion, that the Recipient's self-insurance arrangements have been modified or discontinued in such a way as to provide unsatisfactory risk mitigation and protection to the Province, the Recipient must, as soon as reasonably practical after the Province provides notice to the Recipient of such a conclusion:

- (a) at Recipient's own expense, 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; and
- (b) within 10 business days of obtaining each relevant policy of insurance, and from time to time if requested by the Province, provide to the Province evidence of the insurance in the form of a completed Province of British Columbia Certificate of Insurance; and
- (c) if requested by the Province at any time, the Recipient must provide to the Province certified true copies of the relevant insurance policies.

Indemnity

The Recipient must indemnify and save harmless the Province and the Colebrook Diking 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 Diking 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 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 Diking 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 imposes on the Province any obligation or liability arising from it.

This Agreement binds the Province and its assigns and the Recipient and 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 for any reason, the Project is not completed to the satisfaction of the Province during the Term, the Recipient must repay to the Province the Financial Contribution (or any part which has been paid to the Recipient) under this Agreement, within 30 days of receipt by the Recipient of a written request for repayment from the Province.

If:

- (a) the Transfer occurs during the Term; but
- (b) the Recipient does not complete the Project during the Term,

the Recipient must, within 30 days of the end of the Term, repay to the Province any part of the Financial Contribution that the Recipient has not provided to a Third Party, 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, any part of the Financial Contribution that the Recipient has not provided to a Third Party; 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 or obtained by the Recipient using the Financial Contribution to the Colebrook Diking 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

If 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 is effectively given

- (a) by delivery to the address of the party set out below, on the date of delivery; or,
- (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:

**Remko Rosenboom, Water Manager
Ministry of Forest, Lands and Natural Resource Operations
200 – 10428 153rd Street
Surrey, BC V3R 1E1**

Phone: 604-586-2803

Fax: 604 586-4434

email: remko.rosenboom@gov.bc.ca

Recipient:

Contact Name, Address, Email, Phone & Fax #

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.

A 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 or 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, 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 Diking 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 or kind whatsoever under or by reason of this Agreement.

SECTION 22 – ACCEPTANCE

The 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 OF WHICH the parties have duly executed this Agreement as of the
_____ day of _____, 20__.

SIGNED AND DELIVERED on behalf of the Recipient

Signature of Recipient's Signing Authority **Date** _____

Printed Name & Title of Recipient's Signing Authority

SIGNED AND DELIVERED on behalf of the Province,

Signature of Province's Signing Authority **Date** _____

Printed Name & Title of Province's Signing Authority

SCHEDULE A – SERVICES

THE PROJECT

TERM

Notwithstanding the date of execution of this Agreement, the Term of this Agreement is March 21, 2016 to March 31, 2020.

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 Diking District and transfer all of the assets, rights, claims, obligations and liabilities of the Colebrook Diking 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, 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 Diking District, which circumstances include carrying out and completing the Project during the Term.

Surrey: Include description to location of dike or include map

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.

Before the Financial Contribution is provided, the Recipient must provide the Province with a work plan 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.

By accepting 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 Diking District; and
 - (iii) the Transfer and the Recipient receiving ongoing responsibility for the dike and drainage system currently under the jurisdiction of Colebrook Diking 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 including the Provincial Dike Safety Standards.

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.

Certification / 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

PAYMENTS

1. The Province agrees to provide to the Recipient a maximum amount of \$10,400,000 during the Term.
2. The Province will make a payment of up to \$10,400,000 upon receipt and acceptance of the work plan for acquiring all required Access Rights.

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