

WATER SUPPLY AGREEMENT – WESTERLY LANDS

THIS AGREEMENT dated for reference the 26 day of February, 2021

BETWEEN:

SEMIAHMOO FIRST NATION
16049 Beach Road
Surrey, British Columbia, V3Z 9R6

(the “Semiahmoo First Nation”)

AND:

CITY OF WHITE ROCK
15322 Buena Vista Avenue
White Rock, British Columbia, V4B 1Y6

(the “City”)

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the premises and of the mutual promises and covenants set out in this Agreement the parties covenant and agree each with the other as follows:

PART 1 – DEFINITIONS AND INTERPRETATION

1.1 In this agreement:

- (a) “Agreement” means this Agreement include all Schedules hereto, as amended by the parties in writing from time to time;
- (b) “*Community Charter*” means the *Community Charter*, SBC 2003, c 26, as amended or re-enacted from time to time during the Term of this Agreement;
- (c) “Connection” means the set of works at the boundary of the Reserve connecting the Services to the Extensions, and includes fixtures and equipment, such as a back-flow prevention device or similar device, that are consistent with the City’s *Water Service Bylaw*;
- (d) “Director of Financial Services” means the City’s Director of Financial Services appointed by the Council of the City or any designate or representative appointed by the City or the Director of Financial Services;
- (e) “Director of Engineering and Municipal Operations” means the City’s Director of Engineering and Municipal Operations appointed by the Council of the City or any designate or representative appointed by the City or the Director of Engineering and Municipal Operations;

- (f) “Dispute Resolution Process” means the processes outlined in Part 15 of this Agreement;
- (g) “Engineering Standards” means:
 - (i.) the standards relating to water systems set out in the City’s *Water Service Bylaw*, modified as necessary by the Director of Engineering and Municipal Operations and approved by City Council, acting reasonably, to apply to the supply of water on the Reserve;
 - (ii.) any variances or equivalencies to the City’s *Water Service Bylaw*, approved by the Director of Engineering and Municipal Operations and City Council on a case-by-case basis, such variances and equivalencies not to be unreasonably refused;
 - (iii.) MMCD;
 - (iv.) other standards agreed upon in writing by the parties; or
 - (v.) standards established in accordance with this Agreement as a result of the dispute resolution process under Part 15;
- (h) “Environmental Standards” means those standards necessary and desirable to comply with all enactments and requirements of governmental authorities with respect to the natural environment and to protect the water, air, earth, flora and fauna in and on the City, the Reserve and adjacent Lands and waters;
- (i) “Extension” means the Semiahmoo First Nation’s system of water mains and pipes, pumps and ancillary works and facilities on the Reserve owned and operated by the Semiahmoo First Nation to provide potable water to residents and users on the Reserve;
- (j) “Force Majeure” means an act of God, act of Canada’s enemies, sabotage, war, blockades, insurrections, riots, epidemics, lightning, earthquakes, floods, storms, fires, washouts, nuclear and radiation activity or fallout, arrests and restraints of rulers and people, civil disturbances, explosion, expropriation, or any act, omission or event whether of the kind enumerated in this definition or otherwise not within the control of a party, which by the exercise of reasonable due diligence, the party could not have prevented;
- (k) “Land” means “land” and “improvements” as defined in the *Assessment Act*, RSBC 1996, c 20;
- (l) “Lessee” means a person who enters into a Lease with the Semiahmoo First Nation in respect of any part of the Reserve;
- (m) “*Local Government Act*” means the *Local Government Act*, RSBC 2015, c 1;

- (n) “Meter” means one of the five water service meters located on the Reserve boundary, to measure the volume of the water to the Reserve, and includes any backflow device;
- (o) “MMCD” means the Master Municipal Construction Documents regarding Master Municipal Specifications and Reference Specifications (white pages) and Drawings (green pages), not including the MMCD General Conditions, Procurement or Contract Management (pink pages);
- (p) “Reference Date” means the Reference Date of this Agreement set out at the top of page 1 of this Agreement;
- (q) “Reserve” means the Semiahmoo First Nation Reserve;
- (r) “Services” means the City’s system of water mains and pipes, pumps and ancillary works and facilities owned and operated by the City to provide potable water to inhabitants and users throughout the City;
- (s) “Water Supply Agreement Monitoring Committee” means the Committee established by Part 16 of this Agreement;
- (t) “Term” means the term or terms set out in Part 13 of this Agreement;
- (u) “Unit” means every building, structure or improvement within the Reserve connected to or that otherwise uses the water supplied under this Agreement; which Unit is constructed, installed, erected or created as of the reference date of this Agreement as identified in Schedule A;
- (v) “User Fees” means the water service user fees applicable to the Units billed under Schedule “A” of the City’s *Water Service Bylaw*, as amended or replaced from time to time, with such volumes to be determined by readings of the Meters;
- (w) “*Water Service Bylaw*” means the City’s *Water Service Bylaw 2005, No 2117*, as amended from time to time; and
- (x) “Year” means calendar year.

1.2 In this Agreement:

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

- (d) a reference to an approval, authorization, consent, waiver or notice means written approval, authorization, consent, waiver or notice; and
- (e) the provisions of the *Interpretation Act*, RSBC 1996, c 238 shall be deemed to apply to this Agreement as though it were an enactment of the City.

1.3 Schedule “A” – “Existing Water Accounts as of Reference Date” and Schedule B – “Water Volumes – 2017” are attached and form part of this Agreement.

PART 2 – SUPPLY OF AND PAYMENT FOR WATER

PROVISION OF WATER

2.1 The City will provide the potable water from the City Services to the Reserve commencing on the Reference Date of this Agreement.

QUALITY AND QUANTITY OF WATER

2.2 Subject to this Agreement, the quality of the water to be provided by the City under this Agreement will be substantially the same as the quality of water provided by the City to the similar water users within the City. Subject to this Agreement, the City is not obliged to provide water at a greater quality than that which is provided within the City, and in any event the maximum annual supply of water to the Reserve is limited to the largest quantity available in the records for 15622 Marine Drive (1,073 cubic feet) plus the quantity provided during the period January 1, 2017 through December 31, 2017 to the other Units described in Schedule A. For convenience, the volumes for this period are set out in Schedule B. The City makes no representation or warranty that the level or degree of water provided under this Agreement will be maintained or continued to any standard, other than as stated expressly herein. Semiahmoo First Nation acknowledges and agrees that there may be from time to time interruptions or reductions in the Services and therefore in the supply of water to the Reserve, and that the City will not be held liable for any losses, costs, damages, claims or expenses arising from or connected with a temporary interruption or reduction in the level of a Service provided under this Agreement. If in the future the Semiahmoo First Nation seeks additional quantities of water under this Agreement, then the Semiahmoo First Nation may request the City to amend this Agreement to provide additional quantities of water. [For certainty, this section is without prejudice to the respective positions of the parties regarding the ownership or beneficial ownership of land the title of which is registered in the Land Title Office in the name of the Burlington Northern Santa Fe Railway].

PAYMENT

- 2.3 It is a fundamental term of this Agreement that the Semiahmoo First Nation make all payments for water as required by this Agreement.
- 2.4 The Semiahmoo First Nation must pay to the City:

- (a) the User Fees, which will be determined by measuring use of the water on each of the five Meters, which will be payable quarterly, on or before the due dates set out on the City's quarterly invoices in each Year during the Term of this Agreement;
- (b) other costs and expenses incurred by the City with respect to the maintenance, repair or replacement of the Meters, which are payable by the Semiahmoo First Nation under this Agreement, which costs and expenses must be paid within 30 days of written demand from the City;
- (c) any other fees or charges imposed under the *Water Services Bylaw*, which costs and expenses must be paid within 30 days of written demand from the City; and
- (d) penalties in respect of arrears of payments owing under this Agreement payable at the rates and according to the terms as set out in the *Water Service Bylaw*, as amended or re-enacted from time to time;

provided that the frequency and timing for any of the aforementioned payments may be changed by the City as it decides necessary in its sole discretion and for greater certainty, the City may require all amounts payable under this Agreement to be paid on the same terms and at the same times as if payable for similar services provided within the City of White Rock.

- 2.5 If the Semiahmoo First Nation is more than 6 months late in making any payment owing to the City under section 2.4 then the City may at its election give the Semiahmoo First Nation one year's notice of default, setting out the amounts and interest owing and if within the one year after delivery of the notice the Semiahmoo First Nation does not make full payment, then, without prejudice to any other remedy available to it at law or in equity, the City may on further written notice to the Semiahmoo First Nation terminate this Agreement. Provided that the running of the notice shall be suspended, and this Agreement may not be terminated, if notice has been given under Part 15 until such time as the Dispute Resolution Process has concluded.
- 2.6 If the Semiahmoo First Nation and the City cannot agree on an amount to be paid to the City under this Agreement, the matter may be resolved under Part 15 on the basis of this Agreement.
- 2.7 The City must make available at the request of the Semiahmoo First Nation the calculation and factors that substantiate the fees.

EFFECT OF NEW LAWS AND TREATY

- 2.8 If any laws or regulations of Canada and British Columbia having the force of law are promulgated, amended or repealed, or the Semiahmoo First Nation enters into a legally binding treaty with Canada and British Columbia, the effect of which is that substantial portions of the Agreement are no longer effective or incapable of being performed in the opinion of the Semiahmoo First Nation or the City, acting reasonably, in that event the process set forth in section 2.9 will be undertaken immediately upon either the Semiahmoo

First Nation or the City becoming aware of the laws or regulations of Canada or British Columbia.

- 2.9 The Semiahmoo First Nation and the City agree to use their reasonable best efforts to negotiate such amendments to this Agreement as are necessary to mitigate the effects of the laws, regulations referred to in section 2.8. To this end, the parties will meet commencing within two months of either the Semiahmoo First Nation or the City becoming aware of such laws or regulations coming into force and such meetings will continue on a regular basis. Should negotiations fail to result in an agreement being reached within one year of the date of the first meeting, either the Semiahmoo First Nation or the City shall have the option of giving the other one year's notice of termination of this Agreement.

PART 3 - SERVICES AND CONNECTIONS

- 3.1 The City will provide the water to the Reserve, as required by section 2.1, except as otherwise agreed by the parties.

- 3.2 Despite section 3.1, nothing in this Agreement obligates the City to provide water to any building, structure or use on the Reserve that is not a Unit as of the reference date of this Agreement.

- 3.3 Subject to section 2.4, the Semiahmoo First Nation will at its own cost construct, or pay to the City costs incurred by the City, to:

- (a) extend the City's Services to the boundary line of the Reserve for the purposes contemplated by this Agreement;
- (b) repair or replace any of the Meters at the Reserve boundary; and
- (c) install, repair and maintain back flow devices connected to the Meters;

to the extent the Director of Engineering and Municipal Operations considers, acting reasonably, that these devices are not in place or are defective.

- 3.4 The Semiahmoo First Nation is responsible for the service lines beyond the Meters and will carry out maintenance and repairs when needed to prevent leakage. The City will continue to maintain any valve chamber, Meter and backflow device at the expense of the Semiahmoo First Nation. Any valve chamber, Meter and backflow device are and at all times shall remain the property of the City, and the City may, but is not obligated to, inspect, repair, or replace any valve chamber, Meter and backflow device at the cost of the Semiahmoo First Nation, as the City considers necessary to ensure the proper delivery, calibration and operation of the water system and satisfaction of the terms of this Agreement.

- 3.5 Without limitation:

- (a) the Semiahmoo First Nation owns the works comprising the Extensions located on the Reserve outside of the City boundaries, and without limitation includes its own water meters, if any, installed within the Reserve; and

(b) the Semiahmoo First Nation must not connect or allow a person to connect to the Services except as expressly permitted under this Agreement.

3.6 Semiahmoo First Nation agrees to indemnify and hold harmless the City from and against any claims or actions against the City by the Province of British Columbia if a court of competent jurisdiction determines that Semiahmoo First Nation has or is acting in breach of the *Water Sustainability Act* or other provincial or federal enactment in relation to the Semiahmoo First Nation connection to the City system or the Extensions.

PART 4 – FOLLOWING CITY ORDERS, POLICIES, AND BYLAWS

4.1 The Semiahmoo First Nation must require that every person on the Reserve who uses the water supplied under this Agreement acts in accordance with orders, policies or bylaws made by the City with respect to the water, including orders, policies or bylaws respecting water use restrictions made by the Director of Engineering and Municipal Operations or the City Council which would apply if the Development or water use were on Land subject to the jurisdiction of the City.

4.2 If the Director of Engineering and Municipal Operations, City Fire Chief or City Council amends orders or bylaws referred to in section 4.1, the Semiahmoo First Nation must make reasonable efforts to consider amending its bylaws to be consistent with the orders or bylaws referred to in section 4.1. The City may enforce this section 4.2 by referring the matter to the monitoring process under Part 16 or dispute resolution under Part 15.

4.3 The Semiahmoo First Nation must enforce its bylaws in relation to the matters referred to in sections 4.1 and 4.2.

PART 5 - ENVIRONMENTAL PROTECTION

5.1 The Semiahmoo First Nation and the City will consult on the desirability of harmonize their respective bylaws so that all users of the Extensions on the Reserve comply with the same requirements, restrictions and orders with respect to water use as do users within the City.

5.2 The City and Semiahmoo First Nation will cooperate in an effort to resolve any issues relating to harmonization of the parties' bylaws, including through use of the mechanisms and process outlined in Part 15 and Part 16.

PART 6 - INSPECTION AND REPAIR

INSPECTION AND REPAIR

6.1 Despite any other provision of this Part 6, the Semiahmoo First Nation at its own cost shall be solely responsible for the repair, maintenance, replacement, and alteration or modification, in a timely manner, of the Meters and back flow devices to the Engineering Standards.

6.2 The Semiahmoo First Nation must comply with all directions of the Director of Engineering and Municipal Operations concerning the Meters, including repairing, altering, maintaining

or interrupting Services to the Development as directed by the Director of Engineering and Municipal Operations, to Engineering Standards, in a timely manner. The Semiahmoo First Nation shall use their best reasonable efforts to implement these requests.

- 6.3 The City shall not be liable for any costs, damages, loss or claims, or any consequential loss, arising from or due to failure of the Semiahmoo First Nation to fulfill its obligations under this Part 6, and the City has no responsibility or liability for the repair, maintenance, replacement, alteration or modification of the Meters.
- 6.4 The City may at any time enter on the Reserve without impediment or charge for the purpose of inspecting or reading a Meter.

OWNERSHIP OF METERS

- 6.5 The Semiahmoo First Nation shall pay the City's reasonable costs of the City procuring and installing to the satisfaction of the Director of Engineering and Municipal Operations any Meters and backflow replacement devices for all Units connected to or otherwise using the Services.
- 6.6 The Meters are, and at all times shall remain, the property of the City, and the City may, but is not obligated to, inspect, maintain, repair or replace the Meters and backflow devices at the cost of the Semiahmoo First Nation, as the City considers necessary to ensure the proper delivery, calibration and operation of the water and satisfaction of the terms of this Agreement. Without limitation, the City will deliver to the Semiahmoo First Nation annual invoices for annual backflow device inspections conducted by the City.

GENERAL

- 6.7 Except in an emergency, or in respect of line flushing required for routine maintenance, the Semiahmoo First Nation must not install or operate any fire hydrant on or off the Reserve without first notifying the Director of Engineering and Municipal Operations or the City's Fire Chief.
- 6.8 In an emergency, the Semiahmoo First Nation will immediately, without a prior request by the Director of Engineering and Municipal Operations or the City, repair or interrupt the use of the Extensions, Connections and Meters, or take other reasonable steps to limit any immediate danger to people or property with respect to the water supplied under this Agreement. In the event the Semiahmoo First Nation fails to do so, the Director of Engineering and Municipal Operations has the right, but not the obligation, to enter on the Reserve, to take such steps as the Director of Engineering and Municipal Operations deems appropriate, and the Semiahmoo First Nation must pay all reasonable costs incurred by the City as a result, including its administrative, supervisory, engineering, legal and design costs which the City will evidence in writing.
- 6.9 The Semiahmoo First Nation shall provide in every agreement it makes with a Lessee or other occupier of the Reserve that every obligation of the Semiahmoo First Nation under Part 3 and Part 6 are also an obligation of the Lessee or occupier to the City.

- 6.10 The Semiahmoo First Nation shall assume full responsibility for all federal, and applicable provincial, water quality regulations and reporting requirements in respect of water on the Reserve beyond the Connection.
- 6.11 All Semiahmoo First Nation obligations under this Agreement to inspect, repair, maintain, replace or otherwise deal with the Extensions or Connections shall be at the sole cost of the Semiahmoo First Nation.

PART 7 - REPRESENTATIONS, WARRANTIES AND COVENANTS

- 7.1 The Semiahmoo First Nation and the City represent and warrant to each other and covenant with each other that:
- (a) they have the legal capacity and power to enter into this Agreement and comply with and perform every term and condition of this Agreement;
 - (b) all necessary corporate proceedings have been taken to authorize each party to enter into this Agreement and to execute and deliver this Agreement; and
 - (c) this Agreement has been properly executed and delivered.

PART 8 - GENERAL RIGHT OF THE CITY TO ACT

- 8.1 If the Semiahmoo First Nation fails to make any payment under this Agreement when due, or if the Semiahmoo First Nation fails to fulfill any obligation under this Agreement, then, subject to the terms and conditions of this Agreement, the City may take such actions as it deems necessary.
- 8.2 The rights, powers and remedies of the City provided under section 8.1 are cumulative and the exercise of enforcement of any right or remedy under this Agreement does not preclude the exercise or enforcement by the City of any other right or remedy under this Agreement or which the City is otherwise entitled by law to enforce.

PART 9 - INTERRUPTION OF SERVICES

- 9.1 Without prejudice to any other right or remedy the City may have, the City may, at its sole discretion, and without terminating this Agreement, interrupt the provision of water to the Reserve or to a Unit or Units within the Development if:
- (a) within a reasonable time period specified by the Director of Engineering and Municipal Operations the Semiahmoo First Nation fails to comply with the request of the Director of Engineering and Municipal Operations which has been given under this Agreement, or if full compliance is not possible for reasons beyond the Semiahmoo First Nation's control, the Semiahmoo First Nation cannot meet its obligation in relation to the request of the Director of Engineering and Municipal Operations with a plan and schedule of compliance and to proceed diligently with the plan in accordance with the schedule;

- (b) the Semiahmoo First Nation fails to pay any of the costs, fees or other amount payable under this Agreement, within 60 days of written notice to the Semiahmoo First Nation;
 - (c) the Semiahmoo First Nation connects or permits the continued connection of an Extension so as to provide water on the Reserve in a manner that contravenes this Agreement, and fails to remove the connection within 60 days of written notice to discontinue the connection or use;
 - (d) the Semiahmoo First Nation fails in any significant way to comply with its obligations as set out in this Agreement within 60 days of written notice of the failure;
 - (e) the Semiahmoo First Nation fails to comply with the water use restrictions or other regulations or requirements under Part 4, but only if the City has provided at least 7 days' written notice and the Semiahmoo First Nation has failed to comply; or
 - (f) the Director of Engineering and Municipal Operations, acting reasonably, decides that interruption is necessary for public health or safety reasons and, except in the case of an emergency, provides at least 10 days' written notice to the Semiahmoo First Nation.
- 9.2 The City may, in accordance with this Agreement, direct the Semiahmoo First Nation in writing to interrupt the supply of water by way of interruption to one or more Units. If the Semiahmoo First Nation does not so interrupt the provision of the water within a reasonable time, the City may interrupt the provision of water to the Reserve and for that purpose the Director of Engineering and Municipal Operations may enter on the Reserve and make the requested interruptions to the Units, as the case may be, and the Semiahmoo First Nation shall pay all reasonably related costs incurred by the City.
- 9.3 Before directing the interruption of services, the City must provide the following written notice to the Semiahmoo First Nation:
- (a) in the case of an emergency, no written notice in advance if a phone call is made to the Semiahmoo First Nation Administrator or his or her designate;
 - (b) in the case of a violation of water use restrictions or other regulations relating to section 4.1 or failure to implement and enforce a bylaw under section 4.2, at least 2 days;
 - (c) in the case of a health or public safety issue that is not an emergency, at least 10 days; and
 - (d) for all other matters, at least 60 days.

In any instance where the City or the Director of Engineering and Municipal Operations has requested or caused an interruption of water supply, the City or the Director of Engineering and Municipal Operations will restore or permit the restoration of the water supply immediately after the situation that led to the interruption has been resolved.

PART 10 - FORCE MAJEURE

10.1 No party will be liable for its failure to perform any of its obligations under this Agreement due to Force Majeure or non-availability of materials or transportation.

PART 11 – INDEMNITIES

11.1 The Semiahmoo First Nation releases, indemnifies and saves harmless the City and its elected officials, officers, employees, contractors, assigns and agents from and against all claims, demands, actions, suits, loss, damage, costs (including legal costs), fines, penalties, charges and expenses (in this section collectively "Claims") which the City or the Semiahmoo First Nation may incur, suffer or be put to arising out of or in connection with this Agreement or the provision of water under this Agreement, including:

- (a) those arising out of or in connection with any loss or damage to persons (including bodily injury and death) or property as a result of or in connection with, directly or indirectly, this Agreement;
- (b) economic losses sustained because of interruption of the provision of water, inadvertently or advertently, or in accordance with this Agreement;
- (c) those arising from a breach by the Semiahmoo First Nation of any of its agreements, representations, warranties or covenants set forth in this Agreement; and
- (d) a claim brought by a resident of the Reserve or member of the Semiahmoo First Nation respecting the water;

provided, however, that this obligation to indemnify the City and the Semiahmoo First Nation shall not apply to Claims to the extent, if any, to which they may arise from the wrongful or negligent act or failure to act of the City or directly from any breach of this Agreement by the City.

11.2 The indemnities in section 11.1:

- (a) are subject to Part 10 (Force Majeure); and
- (b) survive the expiration or termination of this Agreement.

PART 12 - EFFECTIVE DATE

12.1 This Agreement takes effect as of the Reference Date.

PART 13 - TERM AND TERMINATION

13.1 Subject to section 13.3, the Term of this Agreement is for the period commencing on the Reference Date and terminating December 31, 2025.

13.2 The Semiahmoo First Nation may renew this Agreement for three (3) additional terms of five years each by delivering written notice to the City of renewal at least six months prior to the end of the Term or each renewal term, as applicable, subject to Schedule A being

consistent with the rates set out in the City's water services rates bylaw at the time of the renewal.

13.3 Without limiting section 13.2, the parties may terminate or extend this Agreement by mutual agreement.

13.4 The City may terminate this Agreement by providing at least one year's written notice to the Semiahmoo First Nation if:

- (a) there has been a breach of this Agreement that has not been resolved through the dispute resolution process set out in Part 15;
- (b) there has been an interruption of the water under Part 9 as a result of an act or omission of the Semiahmoo First Nation and the Semiahmoo First Nation has failed to comply with an obligation further to a request of the Director of Engineering and Municipal Operations relating to the interruption within 60 days of the order; or in cases where full compliance is not possible for reasons beyond the Semiahmoo First Nation's control, the Semiahmoo First Nation has failed to provide the Director of Engineering and Municipal Operations with a plan and schedule of compliance and to proceed diligently with the plan and the schedule;
- (c) the City's planning, engineering or infrastructure concerns relating to the provision of the water under section 6.2 of this Agreement or otherwise have not been resolved through the dispute resolution process set out in Part 15; or
- (d) if the Semiahmoo First Nation is more than 6 months late in making any payment owing to the City under section 2.2.

13.5 Subject to the terms set out in Sections s.13.1 through s.13.3, no party will terminate the Agreement during any attempt to resolve issues through the dispute resolution process set out in Part 15.

PART 14 - RECONCILIATION OF ACCOUNTS

14.1 If, for any reason, this Agreement is terminated or comes to an end, there shall be a reconciliation and final adjustment of payments arising from one party to the other, calculated up to the date of termination, and the obligation to make any adjusting payment will survive the termination of this Agreement.

PART 15 - DISPUTE RESOLUTION

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

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

- (b) the parties will promptly, diligently and in good faith take all reasonable measures to negotiate an acceptable resolution to the disagreement or dispute;
- (c) if the parties are unable to negotiate a resolution under paragraph (b) within 30 days, any party may refer the matter to:
 - (i.) the Agreement Monitoring Committee for administrative resolution;
 - (ii.) settlement by a peer panel composed of three persons selected from a list agreeable to both parties as of the Reference Date of this Agreement, and revised from time to time under Part 16 of this Agreement, the panel must give written reasons for its decision if this is requested by the proposing City or Semiahmoo First Nation before the panel retires to make its decision; and
 - (iii.) conciliation, using the services of a conciliator agreeable to both parties.

15.2 If the parties are unable to negotiate a resolution within 60 days of the date the written notice was sent advising of the dispute, the parties may request the assistance of a skilled mediator agreed to by the parties within 30 days written notice of a request to appoint a mediator by any party, failing which the mediator will be appointed by the B.C. International Commercial Arbitration Centre (BCICAC), and unless the parties agree otherwise, this mediation will follow BCICAC rules and will terminate 60 days after the appointment of the mediator.

15.3 If the parties are unable to resolve the dispute under section 15.2 the parties agree to refer the matter to a single arbitrator under the Commercial Arbitration Act or any successor legislation and to accept the arbitration ruling as final and binding. If the parties are unable to agree on a single arbitrator within 60 days following the end of mediation, the BCICAC will appoint an arbitrator. The arbitration will follow the rules of the *Commercial Arbitration Act* unless the parties agree otherwise.

15.4 Unless otherwise agreed by the parties or ordered by an arbitrator, each party will pay an equal share of the costs for the dispute resolution process.

15.5 Despite any other provision of this Agreement, no party will interrupt or terminate this Agreement during any attempt to resolve issues through the dispute resolution process set out in this part.

PART 16 - REVIEW AND THE AGREEMENT MONITORING COMMITTEE

16.1 At least annually or as often the parties may otherwise agree, the parties shall meet to review the terms and conditions of this Agreement, to recommend amendments to this Agreement, and to negotiate and agree on improved ways of implementing this Agreement.

16.2 The meeting referred to in section 16.1 will be a government to government meeting between the Councils of the parties. The Councils may delegate the implementation of the decisions made by the governments.

16.3 There is established a Water Supply Agreement Monitoring Committee to:

- (a) review changes in service needs, capacity or delivery;
- (b) facilitate interpretation and implementation of this Agreement to mitigate potential service disruptions;
- (c) recommend amendments to the Agreement; and
- (d) initiate review of the Agreement at least one year prior to the expiration of every five-year period during the Term of this Agreement.

The Agreement Monitoring Committee will comprise the City Chief Administrative Officer and Semiahmoo First Nation Administrator, or their designates, the Director of Engineering and Municipal Operations and the Semiahmoo First Nation Director of Public Works or their designates and the City's Chief Financial Officer.

PART 17 – SECURITY

17.1 Security for payment is not required under this agreement.

PART 18 – GENERAL

- 18.1 This Agreement enures to the benefit of and is binding on the parties and their respective successors and permitted assigns.
- 18.2 Except as specifically provided, nothing in this Agreement affects the rights and powers of either the City or the Semiahmoo First Nation in the exercise of their functions, rights, power or authority under any enactments, which may be fully and effectively exercised as if this Agreement had not been made.
- 18.3 Except as specifically provided, this Agreement shall not be construed so as to prejudice or in any way affect the Semiahmoo First Nation's interest in and over the Reserve or provide, in any manner, the City with any jurisdiction it otherwise does not have over the Reserve.
- 18.4 Each party executes, or cause to be executed, such further and other documents and instruments, and do, or cause to be done, such further and other things as they are authorized to do and as may be necessary to implement and carry out the intent of this Agreement.
- 18.5 This Agreement contains the entire agreement between the parties and supersedes all prior written and oral communication with respect to the water supply that is the subject of this Agreement.
- 18.6 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia, or, to the extent that matters of paramount federal jurisdiction are involved, the laws of Canada.
- 18.7 Neither this Agreement nor any part of it may be assigned by any party without the consent of both the Semiahmoo First Nation and the City.

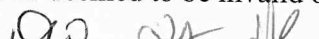
18.8 No amendment or variation of the terms, conditions, warranties, covenants, agreements or undertakings set out in this Agreement will be of any force or effect unless the same is reduced to writing, and duly executed by all of the parties.

18.9 No consent or waiver, express or implied, by any Part of any breach or default by another under this Agreement will:

- (a) be valid unless it is in writing and stated to be a consent or waiver pursuant to this section;
- (b) be relied on as a consent to or waiver of any other breach or default of the same or any other nature;
- (c) constitute a general waiver under this Agreement; or
- (d) eliminate or modify the need for a specific consent or waiver under this section in any other or subsequent instance.

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

18.11 Each provision of this Agreement is intended to be severable, and accordingly:

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

- (c) if, as a result of a termination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid, and of any application of this section 18.11, the basic intentions of the parties, as evidenced by this Agreement, are entirely frustrated, the parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement in order that it more closely conforms with their mutual intentions in entering into this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above mentioned.

The Corporate Seal of the City of White Rock)
 was hereunto affix in the presence of:)
)
Darryl Walker) C/S
 Mayor Darryl Walker)
 Mayor)
)
Tracey Arthur)
 Corporate Officer Tracey Arthur, Director)
 Corporate Administration)
)

Signed, Sealed and Delivered by the)
 Semiahmoo First Nation in the presence of:)
)
Joanne Charles)
 Name) Chief Harley Chappell
)
16006 Beach Rd Surrey BC)
BAND ADMINISTRATOR)
 Occupation)

SCHEDULE A
WATER ACCOUNTS AS OF REFERENCE DATE

Metered Water Account	Account Type	Location
1001659	COMMERCIAL	15800 8 th Avenue, Surrey, BC
1000267	COMMERCIAL	Washington Ave Grill/15782 8 th Avenue, Surrey, BC
1000268	COMMERCIAL	Washington Ave Grill/15782 8 th Avenue, Surrey, BC
1000269	COMMERCIAL	Washington Ave Grill/15782 8 th Avenue, Surrey, BC
1004592	COMMERCIAL	15622 8 th Avenue, Surrey, BC

SCHEDULE B
WATER VOLUMES – 2017

Water – Westerly Lands Schedule B

Account	Account Type	Location	Volume (Ft³/Year)
1001659	Commercial	15800 8 th Avenue, Surrey, BC	7,000
1000267	Commercial	15782 8 th Avenue, Surrey BC	14,620
1000268	Commercial	15782 8 th Avenue, Surrey BC	187,300
1000269	Commercial	15782 8 th Avenue, Surrey BC	1,745
1004592	Commercial	15622 8 th Avenue	1,073