



TO: AWS Management Board **DATE:** June 16, 2011
FROM: AWS Management Committee **FILE:** 2240-20-AWS
SUBJECT: **Arrowsmith Water Service Joint Venture Agreement**

PURPOSE

To approve the renewal of the Arrowsmith Water Service Joint Venture Agreement for a five year term.

BACKGROUND

The Arrowsmith Water Service (AWS) Joint Venture Agreement expires on June 30, 2011. The Agreement requires renewal in order for the partnership to continue between the City of Parksville, the Town of Qualicum Beach and the RDN for the operation of the AWS Joint Venture bulk water supply facilities.

The AWS Joint Venture Agreement was first approved on July 10, 1996. Its purpose was to establish a Joint Venture for construction of the Arrowsmith Lake Dam and other associated capital infrastructure for the supply and treatment of water from the Englishman River to the City of Parksville, Town of Qualicum Beach and the Nanoose Bay and French Creek Bulk Water Service Areas of the Regional District of Nanaimo.

The Agreement was renewed in 2001, 2004 and again in 2006 under essentially to same terms and conditions of the original 1996 Agreement. The 2006 Agreement was renewed for a one year term expiring on March 31, 2011 and subsequently extended to June 30, 2011 when the Town of Qualicum Beach indicated that it was reluctant to cost share in the next phase of capital infrastructure for the required new intake and water treatment plant at this time. Consequently, the AWS Management Board directed staff of the three jurisdictions to negotiate a new Agreement for consideration by the Joint Venture partners that would address the outstanding issues related to the governance and funding of the bulk water service. Over the last 15 months, senior staff have been negotiating a revised Agreement that includes a number of changes to address the concerns of the Joint Venture participants. A summary of the changes to the proposed AWS Joint Venture Agreement is presented below.

Part 1 - Definitions

This section has been updated to more accurately define “capital costs”, “maintenance costs”, and “operating costs” as they pertain to local government budgeting. There is a new definition for “operator” to reflect the existing role of the City of Parksville as the operator of the facilities. There are also new definitions for “continuing party” and “non-continuing party”.

Part 4 - Management Board

Part 4 of the Agreement has been updated to provide for the annual appointment of an elected official and an alternate, rather than every two years. The Agreement is also amended to provide for the election of a Board Chair rather than the rotation of the Chair between the Joint Venturers and the minimum requirement for two annual meetings to approve the AWS budget and annual report.

A substantive change to this section is under s. 4.8 – Votes. The new voting structure is based on a proportional vote system which operates very similar to a regional district weighted vote system. Under this proposed governance model, Parksville will have three votes, the RDN will have two votes and Qualicum Beach will have one vote. Every decision of the Management Board will require a majority of votes cast, rather than the affirmative vote of all three Board members.

Section 4.16 describes the limits placed on the Management Board with respect to its power. Specifically, the Board does not have the power to do anything which requires authorization or approval under the *Local Government Act*, *Community Charter* or other applicable legislation without the individual approval of the Joint Venturers.

Part 5 – Management

This section has been revised to more accurately reflect the role of local government staff in operating the AWS Joint Venture. This section now refers to appointment of a “Management Committee” comprised of each jurisdiction’s CAO, plus one other staff member from each Joint Venturer appointed by each CAO.

Part 7, 8 & 9 – Finances, Budgets & Budget, Accounting and Financial Reports and Records

Housekeeping amendments have been made to the Agreement to separate into new sections Parts 7, 8 and 9 to more accurately reflect the role of local government in overseeing the financing, budgeting and reporting of the activities of the AWS Joint Venture.

Part 10 – Restrictions on Disposition

This section has been revised to ensure that the interests of the Joint Venturers with respect to public ownership are protected in the event of disposition of a participating interest. A new section 10.2 has been added which gives the right of first refusal on the purchase of a participating interest. If a Joint Venturer receives a legally binding offer to purchase all or a portion of that interest, the offer cannot be accepted unless it is from another local government, and with the condition that the other Joint Venturers will have the option to purchase that interest on the same terms and conditions and will have 180 days to consider that option.

If the other Joint Venturers wish to purchase the interest, they will have up to one year to conclude the purchase, unless other terms for payment are agreed upon by the Joint Venturers. In addition, the time for payment by a purchasing Joint Venturer may be extended by up to five years, or a longer period if approval of the electors has been obtained.

Part 13 – Term, Withdrawal and Termination

Part 13 has been revised to reflect the changes made to Part 10 of the Agreement with respect to local government interest to ensure that the utility remains in local government ownership in the event of the dissolution of the Joint Venture. Specifically, s. 13.5 reinforces the option of a Joint Venturer to have the right of first refusal in purchasing another Joint Venturer’s participating interest and under s. 13.6 also provides for a dispute resolution process which follows the provisions of s. 813.13(3) of the *Local Government Act* through the appointment of an arbitrator by the Minister of Community, Sport and Cultural Development to mediate a resolve to the dispute.

Failing resolution under the provisions of Part 13, with no party wishing to purchase the interest of the other Joint Venturers, a Liquidator will be appointed to act on the collective behalf of the Joint Venturers to liquidate the assets.

Part 14 – New Party

A new section to Part 14 has been added that sets out the provisions under which the Town of Qualicum Beach can exercise its option to become a Joint Venturer under the “Englishman River Water Service (ERWS) Joint Venture Agreement”.

During negotiations with the Town of Qualicum Beach, based on water demand projections from the AWS Consultant report that Qualicum Beach may not require water from the AWS bulk water supply for the next 30 years, Qualicum Beach advised the other Joint Venture partners that they do not wish to cost share in the next phase of capital works at this time. They have advised that they wish to retain their 13.7% interest in the AWS dam and related infrastructure, but do not wish at this time to participate in the construction of a new intake, water treatment plant, reservoir and distribution system.

Consequently, a new Agreement has been developed which only includes the City of Parksville and the RDN as participants in a new Joint Venture arrangement. This agreement is discussed under a separate report from the AWS Management Committee. While the Town of Qualicum Beach would not be a signatory to the ERWS Joint Venture Agreement, under the AWS Agreement it would have the option to ‘buy in’ to that infrastructure at a future date. This option is provided in recognition of the rights that Qualicum Beach possesses as a Joint Venture partner on the AWS water licence for Englishman River.

Section 14.1 of this Part specifies that when the Town of Qualicum Beach wishes to become a party to the ERWS Agreement, it will be required to pay a purchase price value based on the actual cost at the time of construction plus any increase in the Consumer Price Index (British Columbia) over time to the time of purchase. This valuation is also applicable to the purchase of any lands acquired by the ERWS Joint Venturers.

Schedules A, B & C

Schedule ‘A’ has been updated to provide a more accurate description and location of the existing infrastructure. Schedule ‘B’ has been updated to reference the current RDN Bulk Water Service Area Bylaws for Nanoose Bay and French Creek, and Schedule ‘C’ includes the capital cost apportionment percentages as originally agreed to by the Joint Venturers of 63.9% for Parksville, 13.7% for Qualicum Beach and 22.4% for the RDN.

ALTERNATIVES

1. That the Arrowsmith Water Service Joint Venture Agreement be approved for a five year term expiring on June 30, 2016.
2. That the AWS Management Board provide alternate direction.

FINANCIAL IMPLICATIONS

If the AWS Management Board approves the AWS Joint Venture Agreement, the Agreement will be forwarded to the City of Parksville Council, the Town of Qualicum Beach Council and the RDN Board for individual approval by each local government.

As the AWS Agreement has been amended to limit participation of the Joint Venturers to cost sharing only on the AWS dam and related infrastructure, there are financial implications for the City of Parksville and the RDN with respect to the next phase of capital infrastructure. These costs will be developed in more detail over time as estimates for the new water intake, treatment plant and reservoir are refined. Under the proposed AWS Joint Venture Agreement, the cost sharing allocation for existing AWS infrastructure will remain the same as the original percentages between the participants.

If the AWS Joint Venture Agreement is not approved by June 30, 2011, the termination provisions of the current agreement will apply. A Liquidator will be appointed to dispose of the assets.

SUMMARY/CONCLUSIONS

The Arrowsmith Water Service (AWS) Joint Venture Agreement expires on June 30, 2011. The Agreement requires renewal in order for the partnership to continue between the City of Parksville, the Town of Qualicum Beach and the RDN for the operation of the AWS Joint Venture bulk water supply facilities.

The 2006 Agreement was renewed for a one year term expiring on March 31, 2011 and subsequently extended to June 30, 2011 when the Town of Qualicum Beach indicated that it was reluctant to cost share in the next phase of capital infrastructure for the required new intake and water treatment plant at this time. Consequently, the AWS Management Board directed staff of the three jurisdictions to negotiate a new Agreement for consideration by the Joint Venture partners that would address the outstanding issues related to the governance and funding of the bulk water service. Over the last 15 months, senior staff have been negotiating a revised Agreement that includes a number of changes to address the concerns of the Joint Venture participants.

There have been significant changes made to the Agreement to address the issues of governance and funding. Specifically, voting of the AWS Management Board is proposed to follow a 'weighted vote' system rather than a unanimous vote system to better reflect a governance model that is similar to a regional district governance structure. The AWS Management Committee is now formally recognized in the Agreement to more accurately describe the role of local government staff in overseeing the operation of the Joint Venture service.

Funding allocation of the AWS Joint Venture has not changed; however, the revised Agreement has removed reference to participation in the next phase of capital infrastructure. This change addresses Qualicum Beach's interest in not wishing to cost share in the water intake, treatment plant, reservoir and distribution infrastructure at this time, but will have financial implications for the remaining Joint Venturers in proceeding with the next phase of construction. The Agreement also provides a mechanism for the Town of Qualicum Beach to access future infrastructure at a purchase price based on the actual construction cost plus any increase in the Consumer Price Index (British Columbia) at the time of purchase.

The proposed Agreement has included new language to provide additional protection to local government to ensure that the AWS assets remain in local government ownership and control. This language includes the right of first refusal if a Joint Venturer wishes to dispose of its assets.

With the direction of the AWS Management Board, staff of the three Joint Venturers have spent many months negotiating this Agreement to address the concerns of funding and governance. New language has now been included in the proposed Agreement to address these issues. Staff recommend that the AWS Management Board approve the Agreement as presented and forward it to the City of Parksville, Town of Qualicum Beach and the RDN for approval.

RECOMMENDATION

That the Arrowsmith Water Service Joint Venture Agreement be approved for a five year term expiring on June 30, 2016.