



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

PURPOSE

To approve the Englishman River Water Service Joint Venture Agreement for a five year term.

BACKGROUND

The Arrowsmith Water Service (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 has been renewed five times over the last 15 years while the partners have jointly constructed the Arrowsmith Dam and worked on the development of a capital plan for the next phase of AWS infrastructure. The current AWS Agreement expires on June 30, 2011; however, its renewal has been delayed as a result of the Town of Qualicum Beach indicating that it is reluctant to cost share in the next phase of construction for the required new intake and water treatment plant at this time, 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. 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.

To address the concerns of the Town of Qualicum Beach, a new Agreement has been developed that excludes the Town from this next phase of construction. The "Englishman River Water Service (ERWS) Joint Venture Agreement" has been developed to parallel and complement the AWS Agreement; it has only the City of Parksville and the RDN as the Joint Venture participants. A summary of the terms of the proposed ERWS Joint Venture Agreement is presented below.

Part 1 - Definitions

This section mirrors the new AWS Agreement with respect to definitions, except for the inclusion of a new definition entitled the "Englishman River Water Intake and Treatment Facility" which describes the infrastructure that will be cost shared by the two Joint Venturers.

Part 4 - Management Board

The ERWS Management Board varies slightly from the AWS Management Board. Under this governance model the two AWS Joint Venture Board appointees and their two alternates all sit on the ERWS Board for a total composition of four Board members.

Under s. 4.7, the voting structure will be based on a proportional vote system which operates very similar to a regional district weighted vote system. Under this proposed governance model, each Board member of Parksville will have three votes and each Board member of the RDN will have two votes. Every decision of the Management Board will require five votes.

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 reflects the role of local government staff in operating the ERWS Joint Venture. This section 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

Parts 7, 8 and 9 parallel the AWS Agreement to reflect the role of local government in overseeing the financing, budgeting and reporting of the activities of the ERWS Joint Venture.

Part 10 – Restrictions on Disposition

Following the model of the AWS Agreement, this section has been written 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. Section 10.2 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

Similarly, Part 13 reflects the intent of 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

Part 14 provides language on how a new party other than the Town of Qualicum Beach may become a Joint Venturer. Section 14.1 of the AWS Joint Venture Agreement describes how the Town of Qualicum Beach may exercise its option in the future to join the ERWS Agreement. 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 this 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 and joint owner of the Arrowsmith Lake dam and related infrastructure.

Schedules A, B & C

Schedule ‘A’ provides a detailed description of future capital works. Schedule ‘B’ references the current RDN Bulk Water Service Area Bylaws for Nanoose Bay and French Creek, and Schedule ‘C’ includes the capital cost apportionment percentages of the Joint Venturers. Without the Town of Qualicum Beach participating in the next phase of infrastructure, its share of 13.7% has been split proportionally between the City of Parksville and the RDN resulting in a cost allocation of 74% for Parksville and 26% for the RDN.

ALTERNATIVES

As the AWS Management Board does not have the authority to make recommendations on the Englishman River Water Service Joint Venture Agreement, this report is being presented for information only.

FINANCIAL IMPLICATIONS

The ERWS Joint Venture Agreement requires the approval of the City of Parksville Council and the RDN Board. Once approved, the Management Board and Management Committee will be established to oversee the development of the budget and the capital plan for the next phase of construction for the required new intake, water treatment plant, reservoir and distribution system.

As the ERWS Agreement limits the participation for the next phase to only the RDN and the City of Parksville, there are increased financial implications for the remaining Joint Venture partners. These costs will be developed in more detail over time with the intent that approval for the construction of the next phase will proceed to referendum once the detailed design is completed.

Without the approval of the ERWS Agreement, the Joint Venturers will not have an agreement in place to provide the authority to proceed with the next phase of planning for the construction of the Englishman River intake and water treatment plant.

SUMMARY/CONCLUSIONS

The current AWS Joint Venture Agreement expires on June 30, 2011; however, its renewal has been delayed as a result of the Town of Qualicum Beach indicating that it is reluctant to cost share in the next phase of construction 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.

To address the concerns of the Town of Qualicum Beach, a new Agreement has been developed that excludes the Town from this next phase of construction. The “Englishman River Water Service (ERWS) Joint Venture Agreement” has been developed to parallel and complement the AWS Agreement; it has only the City of Parksville and the RDN as the Joint Venture participants.

Voting of the ERWS Management Board is proposed to follow a ‘weighted vote’ system to reflect a governance model that is similar to a regional district governance structure. The ERWS Management Committee is formally recognized in the Agreement to describe the role of local government staff in overseeing the operation of this new Joint Venture service.

There is a new funding allocation for the ERWS Joint Venture based on the participation of Parksville and the RDN proceeding alone without the participation of the Town of Qualicum Beach. The original 13.7% allocation of Qualicum Beach has been split proportionally between the two Joint Venturers resulting in an allocation of 74% for Parksville and 26% for the RDN. This reallocation of costs 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 it will have financial implications for the remaining Joint Venturers in proceeding with the next phase of construction. As noted earlier in this report, approval for the next phase of construction will be proceeding to referendum once detailed design has been completed.

The Town of Qualicum Beach has the opportunity 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 under the provisions of the AWS Joint Venture Agreement.

The proposed Agreement has included language to provide additional protection to local government to ensure that the ERWS 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 15 months negotiating options to address the concerns of the participants with respect to funding and governance. A new ERWS Agreement has now been developed to ensure that the required planning continues for the Englishman River water intake and treatment plant. As this Agreement will require the approval of the City of Parksville and the RDN before the ERWS Management Board is established, it is not within the scope of the AWS Management Board to approve this Agreement. This report is being presented for information only.

RECOMMENDATION

That the Englishman River Water Service Joint Venture Agreement report be received for information.