

DATE: November 10, 2020

FILE: 5600-03/Royston

TO: Chair and Directors
Electoral Areas Services Committee

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

RE: Royston Water Local Service Area – Water Supply Agreement

Purpose

To provide the Royston Water Local Service Area (WLSA) renewed water supply agreement with the Village of Cumberland (Village) for consideration by the Electoral Areas Services Committee.

Recommendation from the Chief Administrative Officer:

THAT the Royston water supply agreement between the Comox Valley Regional District and the Village of Cumberland attached as Appendix A be approved;

AND FURTHER THAT the Chair and Corporate Officer be authorized to execute the agreement.

Executive Summary

The Royston WLSA receives water from the Village water system via a connection on Royston Road. This relationship is governed under a water supply agreement between the Comox Valley Regional District (CVRD) and the Village that was signed in 2017 and expires at the end of 2020. Within the existing agreement the CVRD acknowledged that the Village has water capacity limitations and agreed to actively investigate switching to an alternative water source for the Royston WLSA, with the goal of disconnecting from the Village water supply system.

CVRD staff have worked with the Village staff to develop a revised water supply agreement, attached as Appendix A. The proposed agreement contains the following minor changes:

- An updated term of three years, with automatic renewal in one year increments for a maximum of two years; and
- Updated volumetric bulk water rate remaining constant at \$0.81 per cubic meter for the three year term of the agreement, rather than being open for adjustment on an annual basis.

Since signing of the agreement in 2017, CVRD staff have been working with stakeholders in developing a concept for water servicing south from the Comox Valley Water System. Staff recommend that this agreement be approved by the Electoral Areas Services Committee as it provides water security for the service for at least another three years, and provides additional time for progression of the water servicing south extension project should it be required.

Prepared by:

Concurrence:

Concurrence:

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Stakeholder Distribution (Upon Agenda Publication)

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| Village of Cumberland council | ✓ |
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Attachments: Appendix A – “CVRD/Cumberland water supply agreement”

WATER AGREEMENT

THIS AGREEMENT made as of the day of November, 2020.

BETWEEN:

THE CORPORATION OF THE VILLAGE OF CUMBERLAND

Box 340, 2673 Dunsmuir Avenue
Cumberland, BC V0R 1S0

(referred to as the “Village”)
OF THE FIRST PART

AND

COMOX VALLEY REGIONAL DISTRICT

700 Harmston Avenue
Courtenay, BC V9N 0G8

(referred to as “CVRD”)
OF THE SECOND PART

WHEREAS:

- A. The Village entered into an agreement dated the 21st day of April, 2008 with Royston Improvement District (“RID”) where the Village agreed that it would sell and the RID agreed that it would purchase bulk water from the Village upon the terms and conditions in the Agreement;
- B. The Royston Improvement District was dissolved by Order In Council No. 626 and all of its obligations under the water service were transferred to the CVRD, and the CVRD established a local service for the supply of water for the Royston Water Local Service Area (RWLSA);
- C. The Village and CVRD entered into an amendment to the said agreement setting the bulk water rate for 2010, and further entered into a new agreement on the 11th day of December 2012, the 1st day of January 2015 and the 1st day of January 2018;
- D. The said agreement expires on the 31st day of December, 2020 and the Parties wish to enter into a further agreement for the supply of bulk water, subject to the terms and conditions contained in this agreement and provided always that the Village retain the ownership of its present water supply system and retain the authority under law to maintain, improve and extend said water supply system;

- E. The Village has completed the necessary system improvements to meet the Provincial Surface Water Treatment objectives.

NOW THEREFORE in consideration of the covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Village shall sell water to the CVRD and the CVRD shall purchase water from the Village subject to the terms and conditions in this agreement. The bulk water purchased by the CVRD shall be solely used for supplying water to the RWLSA.
2. It is acknowledged that it is not possible for the Village to warrant the supply of water, as droughts and other conditions beyond the control of the Village of Cumberland impact the amount of water available for the Village to distribute to its residents and the RWLSA.
3. During times of diminished water supply, the terms of any bylaw or policy of the Village restricting water consumption shall apply equally to the residents of RWLSA and the CVRD shall adopt and make all reasonable efforts to enforce bylaws consistent with the Village's to govern the use of bulk water in RWLSA.
4. The CVRD acknowledges that the Village has existing water storage capacity limitations and demands for increased water consumption within the Village, and agrees that it will actively investigate switching to an alternative water source for the RWLSA, with the goal of disconnecting from the Village of Cumberland water supply system.
5. The Parties agree that in the event water consumption by the RWLSA exceeds an average of 1900 cubic metres per day in any one month period, the surcharge set out in section 8 hereof shall apply. The parties acknowledge that in the event that water consumption by the CVRD exceeds the said average daily consumption limit due to an unforeseeable major system supply break, fire, Act of God or other natural disaster or emergency, the surcharge set out in section 8 hereof shall not apply.
6. The CVRD shall be solely responsible for the design, installation and maintenance of all necessary facilities and infrastructure for the distribution of water within RWLSA, including any required reservoirs, treatment system and pressure reducing valves where necessary, in a manner that their operation does not negatively affect the operation of the Village's waterworks system.

7. The Parties shall meet regularly as required to discuss planned expansions and upgrades to the bulk water supply system.
8. During the term of this agreement the CVRD shall pay to the Village for all water supplied under this Agreement at the rate of 0.81 cents per cubic metre of water. Three months prior to the expiration of the term of the agreement as defined in section 16, where an extension of the agreement is to be exercised, a review of the rates shall be performed and may be adjusted by mutual agreement of the Parties.

In the event water consumption exceeds the maximum quantity set out in clause 5 hereof in any month, the CVRD shall pay a surcharge equal to 100% of any amount that exceeds the maximum quantity for that month. The Village shall invoice the CVRD and the CVRD shall pay the Village at three month intervals throughout the term of this Agreement.

9. The Village agrees to properly maintain a satisfactory meter to record the amount of water consumed by the RWLSA pursuant to this Agreement. In the event it is found that the meter has malfunctioned, the Village will adjust accounts to the CVRD based on the average quantity of water purchased by the CVRD in the immediately preceding period similar to the period in which the meter malfunctioned. In the event that the Village meter does not correspond within 5% of the CVRD meter the dispute will be resolved as per section 19 of this agreement.
10. The Village is not liable for interruptions in service or supply and the Village will remedy such interruptions as expeditiously as reasonably possible. The Village agrees to notify the CVRD of any interruption in service and provide the expected time for return to service. The CVRD agrees to indemnify and save harmless the Village from any and all causes of action or claims for any loss caused by a "shut off" of the water supply.
11. In the event that the Village knowingly causes a reduction in water quality due to the operation or maintenance of the bulk water supply system the CVRD is to be notified of such a reduction in a timely manner.
12. During the currency of this Agreement, any proposed new connection to the water system within RWLSA required by way of expansion of the boundaries of the RWLSA shall be subject to the written approval of the Village. This approval shall not be

unreasonably withheld, but must be in compliance with any existing policy of the Village restricting water connections.

13. Upon approval of all new water connections with the RWLSA, the CVRD shall ensure that a water meter is installed.
14. The Village, its elected and appointed officers and employees shall not be responsible for any loss occurring as a result of the inability to fight fire or carry on gardening or any other use within the RWLSA due to insufficient supply of water, insufficient water pressure or any other reason relating to the provision of bulk water under this Agreement.
15. The CVRD shall indemnify and save harmless the Village, its elected and appointed officers and employees from any and all actions, causes of action, suits or other liability whatsoever which may arise as a consequence of the Village entering into or carrying out the provisions of this Agreement.
16. This Agreement shall come into force on the 1st day of January 2021 and shall terminate on the 31st day of December 2023, unless the Parties mutually agree to an earlier termination date. This Agreement will be renewed in one year increments for a total of two additional years unless mutually agreed by both parties to an earlier termination date..
17. This Agreement shall not be assigned by any of the Parties except with the prior written consent of the other, which consent shall not be unreasonably withheld.
18. Termination of this agreement will be by mutual consent of both Parties. Either Party may initiate the termination upon six (6) months' written notice to the other Party. Where such notice is given and is mutually consented to, and upon the expiry of the six month period, this Agreement will terminate and the Parties will be under no further obligation to each other except that the CVRD shall pay to the Village any amounts outstanding for services supplied up to the date of termination.
19. If a dispute relating to this Agreement should arise, and the Parties cannot settle the dispute through mutual agreement or negotiation, then the Parties must attempt in good faith to resolve the dispute through non-binding mediation, with each Party appointing one impartial mediator. If mediation is unsuccessful, the Parties may submit the dispute to binding arbitration pursuant to the *Commercial Arbitration Act (BC)*. If

any dispute is referred to mediation or to an arbitrator, the costs shall be borne equally by the Parties.

20. This Agreement may be amended from time to time upon terms and conditions mutually acceptable to the Parties and any amendments must be in writing and executed by the Parties.

The Parties have executed this Agreement as evidence by the signatures of their duly authorized signatories.

THE CORPORATION OF THE VILLAGE OF
CUMBERLAND

Per: _____
Mayor

Per: _____
Corporate Officer

COMOX VALLEY REGIONAL DISTRICT

Per: _____
Chair

Per: _____
Corporate Officer