

ARROWSMITH WATER SERVICE

Joint Venture Agreement

THIS AGREEMENT dated for reference the 1st day of July 2022,

BETWEEN:

REGIONAL DISTRICT OF NANAIMO

a corporation incorporated under the *Local Government Act*
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

(the "RDN")

OF THE FIRST PART

AND:

CITY OF PARKSVILLE

a municipal corporation incorporated under the *Local Government Act*
100 Jensen Avenue East, PO Box 1390
Parksville, BC V9P 2H3

("Parksville")

OF THE SECOND PART

AND:

TOWN OF QUALICUM BEACH

a municipal corporation incorporated under the *Local Government Act*
201 - 660 Primrose Street, PO Box 130
Qualicum Beach, BC V9K 1S7

("Qualicum Beach")

OF THE THIRD PART

W H E R E A S:

- A. RDN under the *Local Government Act*, and Parksville and Qualicum Beach under the *Community Charter*, each have the power to design, construct, install, own, operate, maintain, repair, and replace the Arrowsmith Bulk Water Supply Facilities;
- B. On July 10, 1996, the RDN, Parksville and Qualicum Beach entered into a Joint Venture Agreement to establish a joint venture known as (the "Arrowsmith Water Service") for the purposes of bulk water supply under the authority of the Additional Powers Joint Venture Regulation, B.C. Reg. 88/97.
- C. On July 1, 2011, the RDN, Parksville, and Qualicum Beach agreed to continue the Arrowsmith Joint Venture under their authority under the *Community Charter* and *Local Government Act*.
- D. On July 1, 2016, the RDN, Parksville, and Qualicum Beach agreed to continue the Arrowsmith Joint Venture Agreement until June 30, 2021.

- E. On July 1, 2021, the RDN, Parksville, and Qualicum Beach agreed to extend the 2016 Joint Venture Agreement by one-year. That Joint Venture Agreement continues in force until June 30, 2022;
- F. The RDN, Parksville and Qualicum Beach now wish to enter into a new joint venture agreement for the Arrowsmith Water Service.
- G. This agreement is based on the existing Joint Venture participants, their populations, and their projected growth. Amendments to participants will require a new agreement.

NOW THIS AGREEMENT WITNESSES that in consideration of their mutual covenants and agreements, the parties covenant each with the other as follows:

PART 1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Agreement,

- a) **“Administration Cost”** means the cost of administering the Arrowsmith Water Service Joint Venture on a continuing basis. This includes but is not limited to, the costs of Management Committee Support as provided under Section 5.4, Budgeting, Accounting and Financial Records Support as provided under Section 9.4, and audit fees, insurance, and licencing fees;
- b) **“Budget”** means the Operating Budget, Maintenance Budget, Administration/Management Budget, and Capital Budget;
- c) **“Bulk Water Supply Facility”** means the water supply, reservoir, conveyance system, appurtenances and related interests in land described in **Schedule A** that supply water in bulk to the City of Parksville, RDN’s Electoral E, and Qualicum Beach Community Water Systems;
- d) **“Business Day”** means any day except Saturdays, Sundays and statutory holidays in effect in British Columbia;
- e) **“Capital Costs”** means expenditures incurred or accrued by or on behalf of the Joint Venturers for or in connection with the acquisition or construction of capital assets in accordance with Public Sector Accounting Board Standards for tangible capital assets;
- f) **“Community Water Systems”** means the water distribution trunks, mains, pumps, valves, appurtenances, and related interests in land, held, or owned by a municipality or regional district that is a party to this Agreement;

- g) **“Continuing Party”** means a party that wishes to acquire the Participating Interest of a Non-Continuing Party in the Joint Venture Assets under Section 13.5;
- h) **“Event of Default”** means one of the events described in Section 12.1;
- i) **“GAAP”** means the generally accepted accounting principles (including the methods of application of the principles) established by the Chartered Professional Accountants of Canada;
- j) **“Joint Venture”** means the joint venture named Arrowsmith Water Service formed among RDN, Parksville and Qualicum Beach under this Agreement;
- k) **“Joint Venture Accounts”** means the separated accounting the Operator established under Section 7.1;
- l) **“Joint Venture Assets”** means the Facility, all property, and assets, present and future, of every nature whatsoever whether real or personal, corporeal, or incorporeal, acquired by the Joint Venturers or owned or rented on behalf of the Joint Venturers, including the Purchased Assets, in each case for the purposes of the Joint Venture whether in the name of any of the Joint Venturers or the Joint Venture;
- m) **“Joint Venture Costs”** means the Operating, Maintenance, Administration, Management Costs, and the Capital Costs;
- n) **“Joint Venturer”** means RDN, Parksville and Qualicum Beach including their respective successors and permitted assigns, and **“Joint Venturers”** means RDN, Parksville and Qualicum Beach;
- o) **“Maintenance Costs”** means all costs (other than those identified as capital and operating costs) of repairing and maintaining the equipment and capital assets of the Joint Venture to ensure the service is kept in satisfactory operating condition consistent with industry standards. It includes but is not limited to, testing, parts replacement, repairs, and any directly related materials and labour expenses; and includes such cost incurred and accrued on and after the date of the Bulk Water Supply Facility commences the supply of water in bulk under this Agreement;
- p) **“Management Board”** means the board established under Part 4;
- q) **“Management Committee”** means the Management Committee of the Joint Venture appointed under Part 5;
- r) **“Non-Continuing Party”** means a party that does not wish to continue the Joint Venture after the expiry of the Term referred to in Section 13.5 of this Agreement.
- s) **“Operating Costs”** means all costs (other than those identified as capital and maintenance costs) of operating the Arrowsmith Water Service Joint Venture on a continuing basis. This includes but is not limited to, monitoring costs, overhead costs, indirect labour, utility services, and directly related materials and labour

expenses; and includes such costs incurred or accrued on and after the date the Bulk Water Supply Facility commences the supply of water in bulk under this Agreement;

- t) **“Operator”** means the City of Parksville;
- u) **“Participating Interest”** means the percentage interest of a Joint Venturer in the Joint Venture Assets as set out in Section 2.7;
- v) **“Province”** means Her Majesty the Queen in Right of the Province of British Columbia;
- w) **“Water Licence”** means the Conditional Water License 110050 issued March 4, 1997, under the *Water Act* to the RDN, Parksville and Qualicum Beach together with the Provisional Operation Rule Arrowsmith Lake Reservoir approved March 4, 1997;
- x) **“Water Service Area”** means the City of Parksville, RDN’s Nanoose Bay Water Supply Area, RDN’s French Creek Water Supply Area and Qualicum Beach that is served by a Community Water System and is identified on Schedule B, subject to boundary alterations of the area.

Interpretation

1.2 For the purposes of this Agreement, except as otherwise expressly provided or as the context otherwise requires:

- a) **“Agreement”** means this Agreement as from time to time supplemented or amended by one or more agreements entered into pursuant to the applicable provisions of this Agreement together with all other attachments to it;
- b) the word **“including”**, when following any general term or statement, is not to be construed as limiting the general term or statement to the specific terms or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
- c) reference to a Part or a Section means the corresponding Part or Section of this Agreement;
- d) an accounting term not otherwise defined in this Agreement has the meaning assigned to it, and except as otherwise directed in this Agreement, every calculation to be made under this Agreement is to be made in accordance with the General Accepted Accounting Principles (GAAP);
- e) except as otherwise expressly provided, all references to currency mean Canadian currency;

- f) words in the singular include the plural and words importing a corporate entity include individuals and vice-versa;
- g) reference in this Agreement to a particular numbered paragraph, article or section, or lettered schedule is a reference to the correspondingly numbered paragraph, article, or section, or lettered schedule of this Agreement;
- h) reference in this Agreement to an enactment is a reference to an enactment as defined in the *Interpretation Act (British Columbia)*, and includes a reference to an enactment of British Columbia, RDN, Parksville or Qualicum Beach, as applicable;
- i) reference in this Agreement to an enactment is a reference to that enactment as amended, revised, consolidated, or replaced; and
- j) reference in this Agreement to a party is a reference to a party of this Agreement.

Governing Law

- 1.3 This Agreement will be governed by and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada.

Headings

- 1.4 The headings given to paragraphs, articles and sections in this Agreement are for convenience of reference only and do not form part of this Agreement and must not be used in the interpretation of this Agreement.

Severance

- 1.5 If any clause or portion of this Agreement is declared or held invalid for any reason, the invalidity does not affect the validity of the remainder of that clause or this Agreement, and the terms and provisions of this Agreement continue to be in force and in effect and are to be construed as if the Agreement had been executed without the invalid portion.

Water Licence

- 1.6 This Agreement is subject to the terms and conditions contained in any Water Licence issued by the Comptroller of Water Rights of the Province of British Columbia.

PART 2 JOINT VENTURE

Formation and Purpose

- 2.1 Subject to the terms and conditions of this Agreement, RDN, Parksville and Qualicum Beach continue the Joint Venture for the following purposes:
- a) to co-own, operate, maintain, repair, renew and upgrade the Bulk Water Supply Facility; and
 - b) to supply water in bulk to Parksville, RDN and Qualicum Beach Community Water Systems.

Bulk Water Supply

- 2.2 The name of the Joint Venture will be “**Arrowsmith Water Service**” or such other name as from time to time the Management Board determines. The business and affairs of the Joint Venture will be concluded to the extent possible under such name or in the name of the Joint Venturers with the designation that they are doing business in joint venture under such name.

Nature of Obligations

- 2.3 Unless the Joint Venturers otherwise agree, the liabilities and obligations of the Joint Venturers under this Agreement, and under any agreement contemplated by or related to this Agreement, will be several to the extent of their respective Participating Interests and not joint or joint and several and all agreements made on behalf of the Joint Venture will, to the extent practicable, state the liability of the Joint Venturers to be several.

Partition

- 2.4 Except on termination of this Agreement or withdrawal under Part 13, no Joint Venturer will be entitled to demand partition of the Joint Venture or the Joint Venture Assets.

No Partnership

- 2.5 The Joint Venturers expressly disclaim any intent to create a partnership with respect to the Joint Venture or the ownership or operation of the Joint Venture Assets and disclaim any intent to create a partnership with respect to the exercise of their rights under this Agreement, the administration of the Joint Venture Assets or any other matter relating to this Agreement. None of the Joint Venturers will have any authority, actual or implied, to act for the other as agent or otherwise or to bind the others.

Representations and Warranties

- 2.6 Each Joint Venturer represents and warrants to the others as follows:
- a) it has the power and capacity to enter into this Agreement;

- b) this Agreement is valid and binding on it in accordance with its terms;
- c) the performance of its obligations under this Agreement does not breach the terms of any other agreement or obligation to which it is a party; and
- d) it now holds and will hold its Participating Interest beneficially and free and clear of all restrictions, liens, encumbrances, floating charges, or agreements of any kind except;
 - (i) for the obligations created under this Agreement; or
 - (ii) as agreed among the Joint Venturers from time to time.

Participating Interest

- 2.7 The Participating Interest of each of the Joint Venturers as at the date of this Agreement is the same as the apportionment of Capital Costs as set out in Schedule C.

PART 3 ACQUISITION

Completion of Agreements

- 3.1 Subject to the approval of the Board of RDN and Councils of Parksville and Qualicum Beach, each of the parties will cooperate fully and take all reasonable steps to negotiate, finalize and execute all agreements, instruments and other documents contemplated by or related to this Agreement.

PART 4 MANAGEMENT BOARD

Formation and Membership

- 4.1 There will be a Management Board composed of four members, 2 from Parksville, 1 from the RDN, and 1 from Qualicum Beach. Upon execution of this Agreement and subsequently prior to January 1 every year, each of the Joint Venturers must appoint as members to the Management Board, the elected officials who are the parties' appointees to the Arrowsmith Water Service and their alternatives.

Chair

- 4.2 The Management Board must elect a Chair from among its members based on one vote for each member.

Meetings

- 4.3 During each fiscal year of the Joint Venture, the Management Board will hold at least two meetings at such times and places as the Management Board may determine for the purpose of approving a budget and the annual report for the approval to the RDN Board, Parksville, and Qualicum Beach Council. The Chair of the Management Board will call additional meetings of the Management Board upon the request any member of the Management Board.

Notice of Meetings

- 4.4 The Chair will give to each member and alternate member of the Management Board 24 hours' written notice of the place, date, and time of any meeting and of the agenda for such meeting. The agenda will indicate the nature of the business to be transacted at the meeting. The requirement for 24 hours' notice may be waived by resolution passed at the commencement of the meeting by all four members or their alternate members.

Virtual Meetings

- 4.5 A member or alternate member may participate in a meeting of the Management Board virtually provided that the method used permits all persons participating in the meeting to hear each other. The member participating virtually will be deemed to be present at that meeting.

Quorum

- 4.6 A quorum for each meeting of the Management Board will be four members or their alternate.

Votes

- 4.7 At all meetings of the Management Board, each member will have one vote.

Resolutions in Writing and Minutes

- 4.8 The Chair will cause minutes of each meeting of the Management Board to be kept and a copy to be circulated to each member and alternate member. A resolution in writing signed in whole or in counterparts by all the members of the Management Board in respect of any matter falling within the authority of the Management Board will be effective as if adopted at a meeting. If a resolution is approved unanimously, an email from each member will be equivalent to a signed written resolution. The Chair of the Management Board will promptly send to the Joint Venturers and each member a copy of any such resolution.

Dispute Resolution

- 4.9 If the Management Board is unable to agree on any matter within its power that has been referred to it after consideration of that matter at two meetings of the Management Board, any of the Joint Venturers may declare a deadlock by notice in

writing to the others specifying the matter at issue and the position, with reasons, of the declaring Joint Venturer, all in reasonable detail. If the deadlock is not resolved within 15 Business Days after receipt of such notice, the Management Board Chair and CAO from each Joint Venturer will meet to discuss resolution options. These options will be presented in a subsequent Management Board meeting. If a resolve cannot be reached, the matter will go to arbitration and each party to the arbitration shall pay an equal share of the costs. The arbitration shall be conducted in accordance with section 13.5, with all necessary changes.

Deadlock As to Budget

- 4.10 If the Management Board or Joint Venturers fail to approve the Budget for the next ensuing fiscal year, the Operator will propose recommendation and approval of a budget that does not include the items that the Management Board or Joint Venturers could not reach consensus on, and propose a timeline for further review, modification and negotiation on the items in question. The Management Committee will work with the Management Board to resolve these items within this timeline and bring a revised Budget back to the Management Board for approval. Until a new Budget is approved by the Joint Venturers or determined by Section 4.9, the Operator will operate the business of the Joint Venture in the normal course on the basis as consistent as possible with the last Budget approved by the Management Board.

Management Board's Power

- 4.11 In addition to the powers conferred on it by any provision of this Agreement, the Management Board must:
- a) review and recommend, for the approval of the Joint Venturers, the Budget;
 - b) review, and make recommendations to the Joint Venturers with respect to (but not to approve) any material agreements to be entered into by the Joint Venture;
 - c) conduct, direct and supervise the business, affairs, and operations of the Joint Venture;
 - d) give direction to the Management Committee;
 - e) make recommendations to the Joint Venturers with respect to any amendments to this Agreement;
 - f) cause to be entered into and amended all agreements which are necessary or appropriate for the day-to-day operation of the Joint Venture, except those agreements which the Management Board would not have the power to approve under Section 4.12 and, if considered advisable by the Management Board in the interests of the Joint Venture, terminate such agreements;
 - g) request technical studies when deemed advisable;
 - h) review plans for capital expenditures;

- i) review and recommend consideration of the annual and periodic financial statements of the Joint Venture.

Limits on Management Board's Power

4.12 Despite Section 4.11, the Management Board will not have the power, without the approval of each of the Joint Venturers:

- a) to do anything for which RDN, Parksville or Qualicum Beach requires authorization or approval under the *Local Government Act, Community Charter*, successor legislation or other applicable enactments without the prior confirmation from them that such authorization or approval has been obtained by RDN, Parksville or Qualicum Beach, as applicable;
- b) to do anything within the legislative discretion of a Joint Venturer;
- c) to authorize Joint Venture Borrowing or making an annual Budget;
- d) to authorize any distributions of available excess contributions to the Joint Venturers;
- e) the disposition of all or any part of the interest of a Joint Venturer in this Agreement.

Powers of the Management Board Chair

4.13 The function of the Management Board Chair will be to carry out the functions and duties prescribed by the Management Board and, if present, to preside at meetings of the Management Board. If the Management Board Chair is absent from a meeting, then his or her alternate member must preside.

Technical Committees

4.14 The Management Board may from time to time consult with qualified professionals and other persons with technical expertise as it considers appropriate in the circumstances.

Expenses

4.15 The members and alternate members of the Management Board will not be entitled to be paid any compensation by the Joint Venture and any remuneration that may be paid to them in such capacity by the Joint Venturers by which they have been appointed will not form part of the Operating Costs.

PART 5 MANAGEMENT

Appointment of Management Committee

- 5.1 The Management Committee will consist of at least six staff members, two members from each Joint Venturer, who are appointed by that Joint Venturer's Chief Administrative Officer. Staff with additional administrative or technical expertise may be appointed by the CAOs as needed to supplement the Committee's capacity.

Duties and Functions of the Management Committee

- 5.2 The Management Committee will provide assistance and support to the Management Board as follows:
- a) make recommendations to the Management Board on matters relating to the Joint Venture;
 - b) prepare and distribute agendas for Management Board meetings;
 - c) keep minutes of meetings of the Management Board;
 - d) administer this Agreement and any agreements made by or on behalf of the Joint Venture;
 - e) make recommendations to the Management Board respecting the making, amending or implementation of agreements made by or on behalf of the Joint Venture;
 - f) monitor the operational and financial performances of the Joint Venture;
 - g) generally, do all things necessary or advisable in connection with the business of the Joint Venture in accordance with this Agreement;
 - h) do such other acts and things on behalf of the Joint Venture as the Management Board may direct from time to time;
 - i) provide recommendations to the Operator;
 - j) Ensure the contracts for goods and services are in accordance with the Operator's purchasing policies;
 - k) initiate technical studies when deemed advisable; and
 - l) prepare annual plans for operational, maintenance, administrative, and management expenses and capital expenditures.

Limits on Management Committee

- 5.3 None of the powers, authorities or discretions delegated to the Management Committee may encroach on powers, authorities, or discretions properly exercisable

by the Management Board. The powers, authorities and discretions exercised by the Management Committee are subject to the direction of and guidelines established by the Management Board and any other restrictions, limitations and approvals set out in this Agreement, including the limitations set out in Section 4.12 and within the constraints of the Budget from time to time.

Management Committee Support

- 5.4 The Operator shall provide, at the cost of the Joint Venture, administrative support to the Management Committee and the Management Board as required by this Agreement.

Liability

- 5.5 The Joint Venturers release the Management Committee members, Management Board members, the Operator and the Joint Venturers' agents of and from any and all loss, costs, damages, expenses and liabilities suffered or incurred by the Joint Venturers or any of them in respect of the matters arising out of or attributable to any negligence of, or breach of the provisions of this Agreement by the Management Committee, Management Board members or Joint Venturers' agents, in connection with the observance and performance of any of the covenants, agreements or duties of the Management Committee, Management Board members, the Operator or Joint Venturers' agents to be observed or performed under this Agreement, except losses, costs, damages, expenses and liabilities caused by the wilful wrongful act of any one or more of the Management Committee, Management Board members, the Operator or Joint Venturers' agents.

PART 6 OPERATIONS

Operations

- 6.1 Subject to this Agreement, the Operator will, on behalf of the Joint Venture, operate, maintain, and repair the Bulk Water Supply Facility as described in Schedule A.
- 6.2 The Operator may, subject to direction from the Management Committee, contract for goods and services on behalf of the Joint Venture in accordance with the Operator's purchasing policy and subject to this Agreement.

PART 7 FINANCES

Joint Venture Accounts, Deposits, Disbursement, and Investment of Funds

- 7.1 The Operator will manage the recording and preparation of the accounts of the Joint Venture, including but not limited to preparation of accounts receivable and accounts payable, annual budgets and financial reports to the Management Committee and Management Board, ensuring that the accounts of the Joint Venture are audited

annually in accordance with the *Local Government Act*, and investing any excess contributions to the Joint Venture in the manner approved by the Management Board from time to time.

- 7.2 The Operator will manage the financial affairs of the Joint Venture in accordance with the approved Budget and GAAP.

Cash Requirements

- 7.3 The Joint Venturers will take all reasonable steps to ensure that sufficient funds are available to allow the Joint Venture to complete transactions called for by agreement of the parties under this Agreement. The Management Committee may request that the Joint Venturers provide additional contributions on account of unforeseen costs. Otherwise, the Joint Venturers must pay an annual requisition provided for in the Budget by May 31 of each year.

Application of Joint Venturer's Contributions

- 7.4 Joint Venturers' contributions per the Budget will be applied to pay Operating, Administration/Management and Maintenance Costs as they fall due or in the normal course of operations.

Additional Contributions

- 7.5 If an approved Budget contemplates contributions from the Joint Venturers to finance Capital Costs, the Joint Venturers will advance the contemplated contribution to the Joint Venture promptly upon receipt from the Management Committee of a request to do so.

Place of Payments

- 7.6 All payments to be made under this Agreement to the Joint Venture will be made to the City of Parksville as the Operator of the Facility.

Cash Contributions

- 7.7 Within 90 days after each fiscal year end of the Joint Venture, excess Joint Venturers' contributions will be used to:
- a) pay down Joint Venture Borrowing; or
 - b) increase reserves for Capital, Maintenance, or Operating Costs.

Capital, Maintenance, Administrative/Management Costs Apportionment

- 7.8 The Capital, Maintenance, and Administrative/Management Costs will be apportioned between RDN, Parksville and Qualicum Beach based on the percentage apportionment set out in Schedule C.

Operating Cost Apportionment

- 7.9 The Operating Costs will be apportioned between RDN, Parkville and Qualicum Beach based on relative metered flow of water from the Facility to each Joint Venturer's Community Water System.

PART 8 BUDGETS

Fiscal Year

- 8.1 The fiscal year end of the Joint Venture will be December 31.

Provisional Budgets

- 8.2 On or before December 15th of the year preceding each fiscal year of the Joint Venture, the Management Committee will submit to the Management Board for its review a provisional five-year budget. The Management Board must recommend these provisional Budgets for the consideration of the Joint Venturers.

Budget Recommendations

- 8.3 On or before January 31st in each fiscal year of the Joint Venture, the Management Board must advance a recommended five-year Budget to the Joint Venturers for their consideration.

Operations in Conformity with Budgets

- 8.4 All operations of the Joint Venture in each fiscal year will be conducted in conformity with the Budgets applicable to that fiscal year approved by the Joint Venturers. Budget amendments may take place on the recommendation of the Management Board and with the approval of the Joint Venturer's Board and Councils.
- 8.5 The Operator's CAO is authorized to expend of the Joint Venturer funds which are not included in the financial plan as required for the preservation of life, health and the protection of property during an emergency or disaster, on the following basis:
- a) up to and including Two Hundred and Fifty Thousand Dollars (\$250,000) at the discretion of the Operator CAO, and
 - b) Two Hundred and Fifty Thousand Dollars (\$250,000) and above, at the discretion of the Management Board.
- 8.6 Any expenditure made in accordance with Section 8.5 must be presented to the Management Board and the Joint Venturer's Board and Councils in a report under the signature of the Management Board Chair at the earliest opportunity following the emergency or disaster.

Approval of Budgets

- 8.7 Subject to Section 4.11 the Management Board will recommend to the Joint Venturers with or without amendment, all Budgets submitted to the Management Board by the Management Committee.

Effect of Approved Budgets

- 8.8 The Operator, under the direction of the Management Committee, as applicable under Part 5, will implement the approved Budgets and carry out all activities and operations of the Joint Venture in accordance therewith. The Management Committee will not, without the approval of the Joint Venturers, incur or commit in any fiscal year on behalf of the Joint Venture any expenditure not provided for in the applicable Budgets. Despite the failure of the Joint Venturers to give any approval required, the Operator may incur on behalf of the Joint Venture any Cost which needs to be incurred at that time to prevent loss, damage, or injury, or comply with the requirements of any insurer or regulatory authority or law and any such expenditure will form part of Operating Costs.

PART 9 BUDGET, ACCOUNTING AND FINANCIAL REPORTS AND RECORDS

Accounting Books and Records

- 9.1 The Operator will be responsible for the preparation of financial reports (other than those to be prepared by the Joint Venture's auditors) to be furnished to the Joint Venturers and the Management Committee hereunder, the maintenance of adequate accounts, books and records, the allocation between the Joint Venturers of Maintenance, Operating, and Capital Costs, and will use reasonable efforts to ensure that such accounts, books, records and the financial reports meet reasonable accounting and tax reporting requirements of each Joint Venturer.

Financial Reports

- 9.2 The Operator will, upon request from the Management Board or Joint Venturers, provide the Joint Venturers, Management Board and/or Management Committee with unaudited financial statements, reflecting in reasonable detail, but in summary form, the results of operations and financial situation of the Joint Venture for the periods requested.

Location and access to Records

- 9.3 The Operator will cause all books and records of the Joint Venture to be kept in its offices. The Operator will permit each Joint Venturer, its auditors, and other representatives, at the Joint Venturer's own expense and at all reasonable times, to examine and make copies of these documents and any documents under the control of the Operator relating to the Joint Venture.

Budgeting, Accounting and Financial Records Support

- 9.4 The Operator shall provide at the cost of the Joint Venture, budgeting, accounting, financial reporting and administrative support to the Management Committee and the Management Board as necessary.

PART 10 RESTRICTIONS ON DISPOSITION

No Disposition of Participating Interest

- 10.1 A Joint Venturer will not sell, assign, pledge, mortgage or otherwise dispose of its interest in this Agreement and the Joint Venture Assets, (referred to in Section 10.6 as a “Share”), except as set out in Sections 10.2 or Part 13.

Right of First Refusal to Purchase Participating Interest

- 10.2 If a Joint Venturer receives a legally binding offer to purchase all or a portion of the Joint Venturer’s interest in this Agreement and the Joint Venture Assets, the Joint Venturer will not accept such offer (unless such acceptance is conditional on compliance with this Section 10.2) unless:
- a) with respect to the RDN, the offer meets the requirements of Section 288 of the *Local Government Act*;
 - b) with respect to Parksville, the offer meets the requirements of Section 28 of the *Community Charter*;
 - c) with respect to Qualicum Beach, the offer meets the requirements of Section 28 of the *Community Charter*;
 - d) it has delivered to the other Joint Venturer a copy of such offer, which delivery will be deemed to be an irrevocable offer by the first Joint Venturer, to dispose of its Participating Interest in this Agreement and the Joint Venture Assets on the same terms, and conditions to the other Joint Venturer, and;
 - e) the party acquiring the Participating Interest, interest in this Agreement or Joint Venture Assets agrees to assume and perform all the obligations under this Agreement of the Joint Venturer making the disposition.
- 10.3 An agreement to dispose of all or a portion of a Joint Venturer’s Participating Interest, and interest in this Agreement or Joint Venture Assets pursuant to Section 10.2 will be completed on the business day that is not later than one year after the date on which the offer was first delivered to the other Joint Venturer under Section 10.2d and:
- a) time will be of the essence;

- b) the Joint Venturer making the disposition will execute and deliver such transfers or other instruments of conveyance, in registerable form if applicable, as may be necessary to affect the disposition and will do all such things and take all such actions as may be necessary to comply with and fulfil the intent of this Agreement and to ensure that water service to either Parksville, the RDN Electoral Area E, and Qualicum Beach will not be interrupted or otherwise negatively affected;
 - c) the other Joint Venturers will execute and deliver all such documents and do all such things and take all such actions as may be necessary to fulfil the intent of this Agreement and to ensure that water service to either Parksville and the RDN Electoral Area E, and Qualicum Beach will not be interrupted or otherwise negatively affected.
- 10.4 The interest sold out by the selling Joint Venturer will be transferred free and clear of all financial liens, charges, and encumbrances whatsoever. Without limiting Section 2.6, each of the Joint Venturers hereby irrevocably and conclusively waives the benefits of all provisions of law relating to actions for a partition or sale in lieu of partition or administration of real and personal property including, without limitation, the *Partition of Property Act* (British Columbia) and each of the Joint Venturers agrees with the others that it will not commence any action at law or in equity for a partition or sale in lieu of partition of any real property that forms part of the Joint Venture Assets or seek administration in respect thereof.
- 10.5 A Joint Venturer must not accept an offer under Section 10.2 received less than one year before the end of the Term of this Agreement under Section 13.1(c).
- 10.6 A Joint Venturer may not transfer a Participating Interest, an interest in this Agreement, or any Joint Venture Assets to a party other than a Joint Venturer except in accordance with Part 10 or Part 13.
- 10.7 Notwithstanding Section 10.2, in the event that the other Joint Venturers exercise their Right of First Refusal under this part, the terms and conditions will be those as contemplated in Section 10.2 with the exception that the time for payment of the purchase price to the selling Joint Venturer contemplated by the offer to purchase will, at the option of the purchasing Joint Venturer or Joint Venturers, be extended up to five (5) years; or for such longer term where the assent of the electors has been obtained.

PART 11 LIABILITY OF THE JOINT VENTURE

Liability, Indemnification, and Insurance

- 11.1 If a claim by any third party arising out of the operations of the Joint Venture is made against the Joint Venturers or any of them, each of the Joint Venturers will share the liability (including interest and legal fees on a solicitor and client basis) for the claim

pro rata to its Participating Interest and will indemnify and save harmless the other Joint Venturer against liability for the claim to the extent of its Participating Interest.

Notwithstanding the foregoing, where a claim arose out of the negligence of one of the Joint Venturers, without any contributory negligence of the other Joint Venturer, the Joint Venturer who was negligent will be fully liable for such claim and will indemnify and save harmless from liability the other Joint Venturer with respect to such claim.

Notice of Claims

- 11.2 Each Joint Venturer against whom a third-party claim is advanced, will give prompt and timely notice of that claim to the other Joint Venturers and will allow the other Joint Venturers to participate in the defence, negotiation, or settlement of such claim at the cost of the Joint Venturer.

Insurance

- 11.3 The Operator will maintain at the Joint Venture's expense, in good standing for the Term, liability insurance against the third party claims arising from the its operation of the Arrowsmith Bulk Water Facility with inclusive limits of not less than Five Million (\$5,000,000) Dollars for bodily injury, including death and property damage, will add the other Joint Venturers as additional insureds and will, on request, provide evidence that such insurance is, at all times during the Term, enforceable and in effect.

The Operator will maintain at the Joint Venture's expense, in good standing for the Term, property insurance for the Joint Venture Assets, in an amount not less than its full replacement value and will add the other Joint Venturers as additional insureds and will, on request, provide evidence that such insurance is, at all times during the Term, enforceable and in effect.

PART 12 DEFAULT

Default

- 12.1 The occurrence of any of the following events will be an Event of Default by a Joint Venturer under this Agreement:
- a) the failure of a Joint Venturer to perform or observe any of its covenants or agreements in this Agreement, if such failure is not cured within 45 days of written notice from the other Joint Venturers specifying such failure;
 - b) a Joint Venturer becomes insolvent; or
 - c) an administrative commissioner is appointed in respect of a Joint Venturer under section 767 of the *Local Government Act* and is not discharged within 45 days.

Remedies Upon an Event or Default

12.2 Upon the occurrence of an Event of Default by or with respect to a Joint Venturer:

- a) the defaulting Joint Venturer will forthwith upon the written request of the other Joint Venturers given within 60 days after the Event of Default, sell its Participating Interest to the other Joint Venturers free and clear of all liens, charges and encumbrances other than security for liabilities incurred in accordance with this Agreement in the business of the Joint Venture, for a price equal to the defaulting Joint Venturer's Participating Interest in the net book value of the Joint Venture Assets as at the date of the written request, less 10% of such book value;
- b) if the Joint Venturers do not agree as to the net book value of the Joint Venture Assets within 10 Business Days after the date of the written request, then at the direction of any of the Joint Venturers, the net book value will be determined by the auditors for the Joint Venture if the auditors have been appointed for the Joint Venture and are willing to accept such engagement, and otherwise by the business valuator appropriately qualified by the Canadian Institute of Chartered Business Valuators selected by the non-defaulting Joint Venturer, whose opinion will be binding upon the Joint Venturers and whose fees and disbursements for these services will be borne by the defaulting Joint Venturer;
- c) the closing date for the sale of the defaulting Joint Venturer's interest will be 120 calendar days after the determination of the purchase price and will be completed by the execution and delivery by the defaulting Joint Venturer (the "Seller") of such transfers, bills of sale, assignments and other conveyancing documents from the seller to the purchasing Joint Venturer (the "Buyer") in such form as reasonably required by the Buyer and by the delivery of possession on the Joint Venture Assets to the Buyer;
- d) the purchase price will be paid by the Buyer on the Closing Date;
 - (i) by set-off to the extent determined by the Buyer against monies due and owing by the Seller to the Buyer, if any;
 - (ii) by the assumption, to the extent determined by the Buyer, of the Seller's share of the liabilities of the Joint Venture; and
 - (iii) as to any balance by certified cheque or bank draft payable to the Seller's order;
- e) the obligation of the Buyer to complete the purchase is subject to the condition that all required consents and approvals to the sale have been obtained but this condition is for the sole benefit of the Buyer and may be waived in whole or in part by the Buyer at any time.

- 12.3 The rights and procedures set forth in this Section 12.3 will be concurrent with and in addition to and without prejudice to any other rights or remedies at law or in equity which any Joint Venturer may have in respect of any Event of Default.

PART 13 TERM, WITHDRAWAL AND TERMINATION

Term

- 13.1 This Agreement and the Joint Venture will continue in force until the earlier of:
- a) the date when all the Joint Venture Assets have been disposed of and all liabilities and obligations incurred from the business of the Joint Venture have been satisfied;
 - b) the date when a single Joint Venturer acquires all the interest of the Joint Venturers in the Joint Venture Assets and the business of the Joint Venture; or
 - c) four years and six months from the date of the making of this Agreement, subject to extension via 13.2 below.
 - d) provided that following the time referred to in paragraph (c) the parties may then during the following six months exercise their rights of acquisition under Sections 13.4, 13.5, or 13.9 of this Agreement and for certainty this Agreement shall remain in force for such time insofar as necessary to permit the transactions to be completed.

Withdrawal

- 13.2 A Joint Venturer may withdraw from this Agreement with the approval of the other Parties to the Agreement and, unless otherwise agreed, subject to the following conditions:
- a) all capital funds provided to the date of the Notice of Withdrawal by the party proposing to withdraw from the Joint Venture are deemed to be Joint Venture Assets;
 - b) the additional Operating Costs arising from the withdrawal of a party under this Agreement must then be assumed by the remaining parties;
 - c) the additional Maintenance Costs arising from the withdrawal of the party must be assumed by the remaining parties;
 - d) the Joint Venture Assets are, on and after the date of the Notice of Withdrawal given by the party withdrawing, solely assets of the remaining Joint Venturers.

Actions on Termination

- 13.3 Upon the termination of this Agreement and the Joint Venture, other than pursuant to Section 13.1(b), unless the Joint Venturers otherwise agree, two representatives of each of the Joint Venturers shall meet within 10 business days of the termination and:
- a) each party shall advise the other party whether they wish to enter into a new agreement regarding the Joint Venture;
 - b) if one party does not wish to enter into a new agreement regarding the Joint Venture then, unless the parties otherwise agree, the end of the participation of a Non-Continuing Party in the Joint Venture will be determined under Section 13.4;
 - c) if neither party wishes to enter into a new agreement regarding the Joint Venture, and only one party wishes to acquire the Participating Interest of another party or parties in the Joint Venture Assets (the "Continuing Party"), the transfer will be governed by Section 13.5; and
 - d) in all other cases the terms and conditions of the dissolution of the Joint Venture will be governed by Section 13.5.

Non-Continuing Party

- 13.4 If the parties cannot otherwise agree on the terms and conditions regarding the end of the participation of a Non-Continuing Party in the Joint Venture, the Non-Continuing Party will upon the written request of the Continuing Parties given within sixty (60) days after the meeting referred to in Section 13.3, dispose of Participating Interest to the Continuing Parties on the terms and conditions and in accordance with the procedure in Section 12.2 of this Agreement, provided that the closing date of the sale must take place within five (5) years of the date of this Agreement unless a longer closing date has been approved by the electors.

Dissolution of Joint Venture – Right of First Refusal

- 13.5 a) If none of the parties wish to enter into a new joint venture agreement, then each party will decide whether it wishes to dispose of its Participating Interest in the Joint Venture Assets, and advise the other parties of its decision in writing within thirty (30) days of the meeting referred to in Section 13.3 of this Agreement;
- b) A party wishing to dispose of its Participating Interest must offer to sell its Participating Interest in the Joint Venture Assets to the other parties with such sale to be on the terms and conditions and in accordance with the procedure set out in Section 12.2 of this Agreement, provided that the closing date of the sale must take place within five (5) years of the date of this Agreement, unless

a longer closing date has been approved by the electors.

- c) Where a party has not advised the other party of its decision within the time limit referred to in paragraph (a), it will be deemed to have offered to dispose of its Participating Interest in the net book value of the Joint Venture Assets to the other parties under paragraph (b).

Dispute Resolution on Dissolution

13.5 Terms and conditions of the withdrawal of a Non-Continuing Party in circumstances not otherwise addressed in this Agreement may be resolved before a single arbitrator in accordance with the procedure set out in section 366 of the *Local Government Act*, with necessary changes insofar as they are applicable as follows:

- a) the terms and conditions for withdrawal must be resolved before a single arbitrator by full arbitration, unless the parties agree to final proposal arbitration;
- b) the parties will select the arbitrator, as agreed upon by the parties, or, failing agreement, as appointed by a judge of the British Columbia Supreme Court;
- c) the arbitrator may conduct the proceedings at the time and in the manner he or she determines;
- d) the arbitrator must consider any terms and conditions agreed upon by the parties that are to govern the arbitration;
- e) the terms and conditions must be resolved by the arbitrator, who is not restricted in his or her decision to submissions made by the parties on the disputed issues;
- f) the final resolution may establish different terms and conditions for different Non-Continuing Parties;
- g) the arbitrator must give written reasons for the decision; and
- h) the costs of the arbitration must be borne by the parties as if they were Maintenance Costs under this Agreement.

In reaching his or her decision, the arbitrator must, to the extent practicable, impose terms and conditions that avoid the alienation or transfer of Joint Venture assets from public ownership and for that purpose, ensure that any interest of a party is offered first to the other parties under this Agreement and secondly to another local government before such assets are made available to any other party.

Liquidation

13.6 Subject to section 288 of the *Local Government Act* and section 28 of the *Community Charter*, if no Joint Venturer wishes to continue the Joint Venture, and neither Joint Venturer wishes to purchase the interest of the other Joint Venturer pursuant to Sections 13.3 and 13.4, then the Joint Venturers will appoint a liquidator to act on their

collective behalf to liquidate the Joint Venture Assets. If a liquidator is appointed, then he or she will act on behalf of the Joint Venturers to realize the Joint Venture Assets, satisfy all Joint Venture Liabilities, and pay the balance of the proceeds of realization to the Joint Venturers in proportion to their Participating Interests. Each of the Joint Venturers will be entitled to bid for and purchase the whole or any part of the Joint Venture Assets on liquidation. Subject to requirements of the *Local Government Act* and *Community Charter* and to agreement otherwise, liquidation will be carried out under the procedure of Part 10 of the *Business Corporations Act* (British Columbia) insofar as applicable to a Joint Venture.

Determining Value

- 13.7 If the parties agree on a sale of the Non-Continuing Party's Participating Interest but do not agree as to the net book value of the Joint Venture Assets, such value may be determined in accordance with the procedure set out in Section 12.2(b) and the sale of the Non-Continuing Party's Participating Interest will be carried out in accordance with the procedure set out in Sections 12.2(c) to 12.2(e).

Completion of Sale

- 13.8 If the arbitrator's decision involves the sale of a Non-Continuing Party's Participating Interest such sale must be completed no later than five (5) years from the date of this Agreement unless assent of the electors to such longer term has been obtained.

Survival of Obligations

- 13.9 The provisions of this Part 13 and all other provisions of this Agreement necessary to give full effect thereto will survive the termination of this Agreement and, despite termination of this Agreement or the Joint Venture; no party will by reason of such termination be relieved of any obligation or liability toward any other party accrued hereunder prior to termination all of which will remain unenforceable until fully satisfied.

PART 14 GENERAL

Amendments

- 14.1 This Agreement may not be modified or amended except by written agreement of all the parties hereto.

Notices

- 14.2 Any notice or other communication hereunder will be in writing and will be given by the delivery or rendering thereof its addressee by hand, by prepaid first-class mail or by email, to the address below:

- (a) if to RDN:

6300 Hammond Bay Road
Nanaimo, BC V9T 6N2
Email: corpsvc@rdn.bc.ca

Attention: Corporate Officer

- (b) if to Parksville:

PO Box 1390
100 Jensen Ave East
Parksville, BC V9P 2H3
Email: aweeks@parksville.ca

Attention: Corporate Officer

- (c) if to Qualicum Beach:

Box 130
Qualicum Beach, BC V9K 1S7
Email: hsvensen@qualicumbeach.com

Attention: Corporate Administrator

- 14.3 Any notice or other communication so given will be deemed to have been received at the time of its delivery if delivered by hand or by email and FIVE Business Days after the date of mailing if mailed. Each party will notify the other parties of any change of address.

Entire Agreement

- 14.4 This Agreement contains the entire agreement among the parties hereto with respect to the subject matter hereof and replaces and supersedes all previous agreements between the parties relating to the subject matter hereof.

Arbitration

- 14.5 In the case of a disagreement or a dispute between the parties hereto with respect to this Agreement or the interpretation thereof which has not been resolved within 45 calendar days of either Joint Venturer giving notice to other Joint Venturer thereof, or in the case of a deadlock as described in Section 4.12, the dispute, disagreement or deadlock will, upon notice from either Joint Venturer to the other Joint Venturer, be referred to a single arbitrator pursuant to the *Arbitration Act* (British Columbia) whose decision will be final and binding. The arbitration shall be conducted in accordance with section 13.5, with all necessary changes.

Inurement

- 14.6 This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns hereunder.

Further Assurances

- 14.7 Each party will perform any act and execute and deliver any document reasonably required by any other party to carry out the terms of this Agreement in accordance with the true intent and meaning hereof.

Schedules

- 14.8 The following Schedules are attached to and form part of this Agreement:
- a) Schedule A - Description of Assets covered by
 - b) Schedule B - Water Service Areas;
 - c) Schedule C - Capital Cost Apportionment.

Local Government Act and Community Charter

- 14.9 The obligations of the parties under this Agreement are subject to the requirements of the *Local Government Act* and the *Community Charter* respecting the provision of the Bulk Water Supply services by the Joint Venturers.

IN WITNESS WHEREOF the parties hereto executed this Agreement as of the day month and year first above written.

REGIONAL DISTRICT OF NANAIMO by its)
authorized signatories)

_____)
Name:)
Title:)

_____)
Name:)
Title:)

CITY OF PARKSVILLE by its authorized)
signatories)

_____)
Name:)
Title:)

_____)
Name:)
Title:)

TOWN OF QUALICUM BEACH by its)
authorized signatories)

_____)
Name:)
Title:)

_____)
Name:)
Title:)

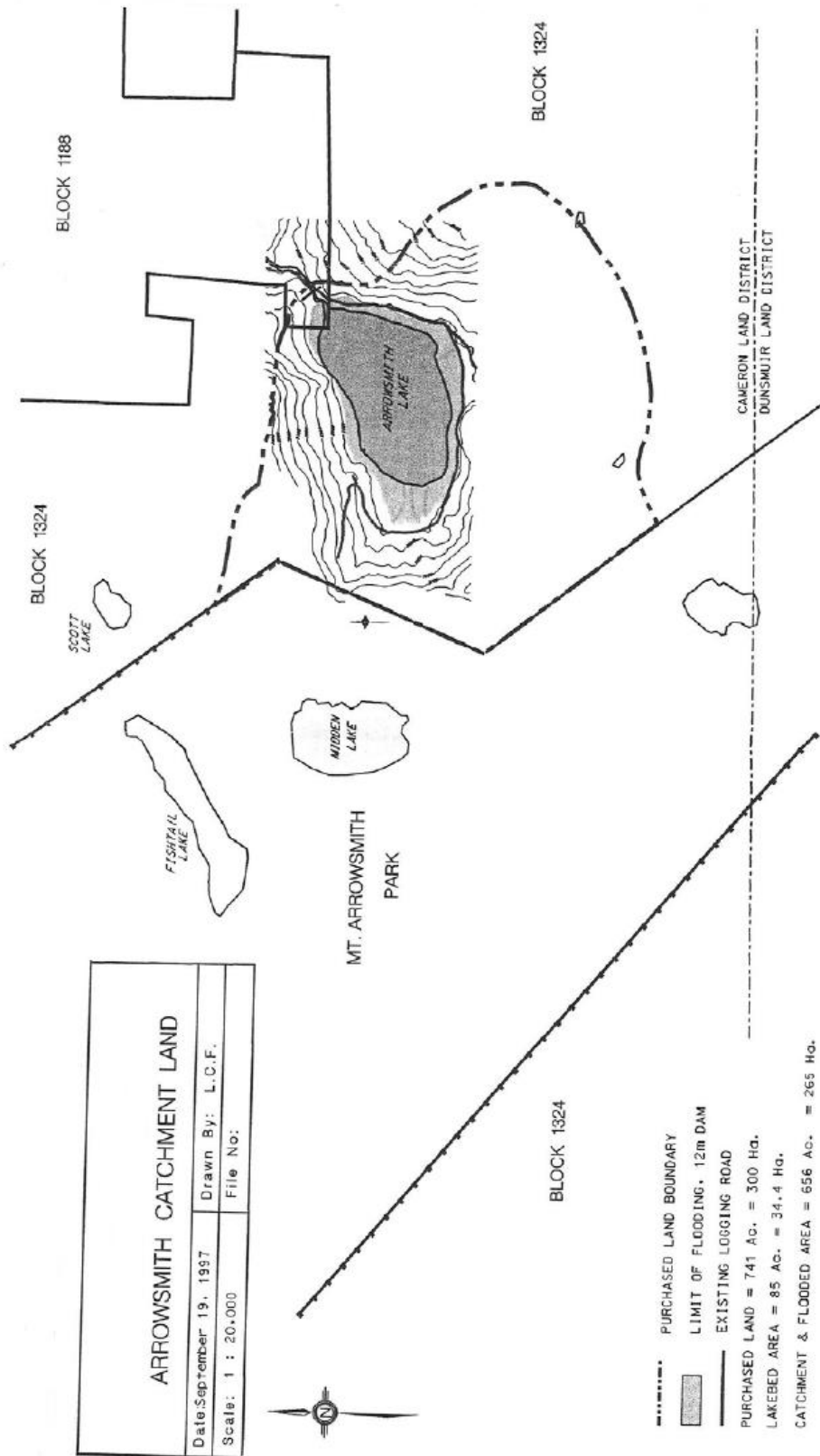
SCHEDULE “A”

Arrowsmith Dam Bulk Water Supply Facility, Description of Current Infrastructure, Provisional Operational Rule and Conditional Water License

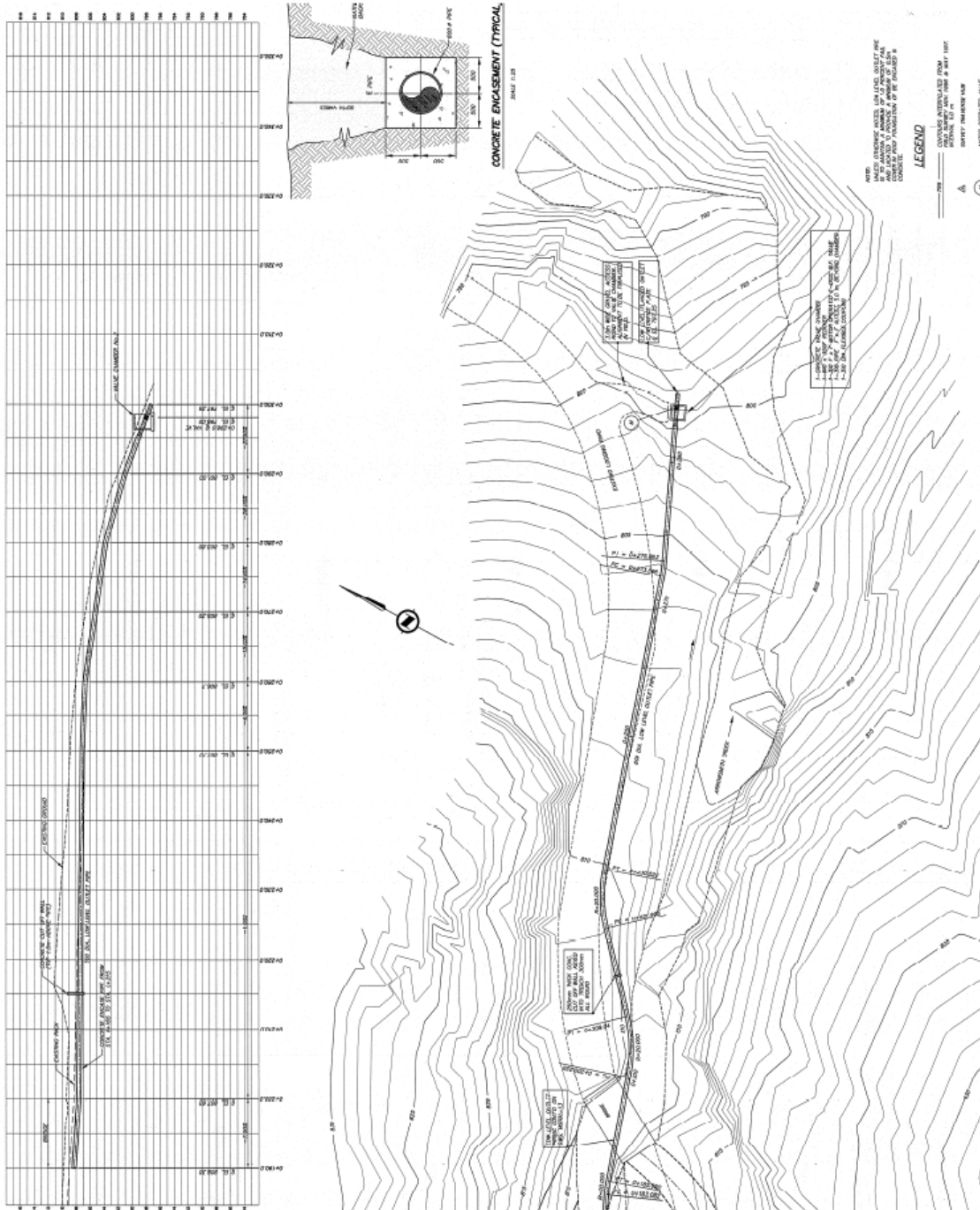
1. The three hundred (300) hectares of Arrowsmith Lake Catchment Boundary land surrounding Arrowsmith Lake as shown in Schedule A-1 attached hereto;
2. 12m high concrete dam formally known as Arrowsmith Dam, Location: Lat. 49°13'15.18"N, Long. 124°32'14.24"W, including all control valves, chambers, intake structures, siphon line, outlet structures, security fencing, gates and control weirs as shown in Schedule A-2 attached hereto;
3. Arrowsmith Dam Control Station Building housing: a thermal electric generator, diesel / electric generator, piezometers, diesel fuel tank, propane fuel tanks, propane heater, Supervisory Control and Data Acquisition (SCADA) equipment, batteries, Spread Spectrum Radio control equipment and instrumentation equipment.
4. Arrowsmith Lake radio repeater station including solar panels, batteries, instrumentation and a Spread Spectrum Radio. Location: Lat. 49°13'7.20"N, Long. 124°32'1.18"W.
5. Spread Spectrum Radio equipment stored at Mt. Cokely Communications Station. Location: Lat. 49°14'21.56"N, Long. 124°35'11.74"W.
6. Provisional Operational Rule – Arrowsmith Lake Reservoir and Conditional Water License: 110050.

Arrowsmith Dam Bulk Water Supply Facility - Description of Future Capital Works

1. Security cameras and Long Watch video recorder equipment
2. Provincial Dam Safety review requirements including consulting fees, settlement monitoring and dam remedial works.

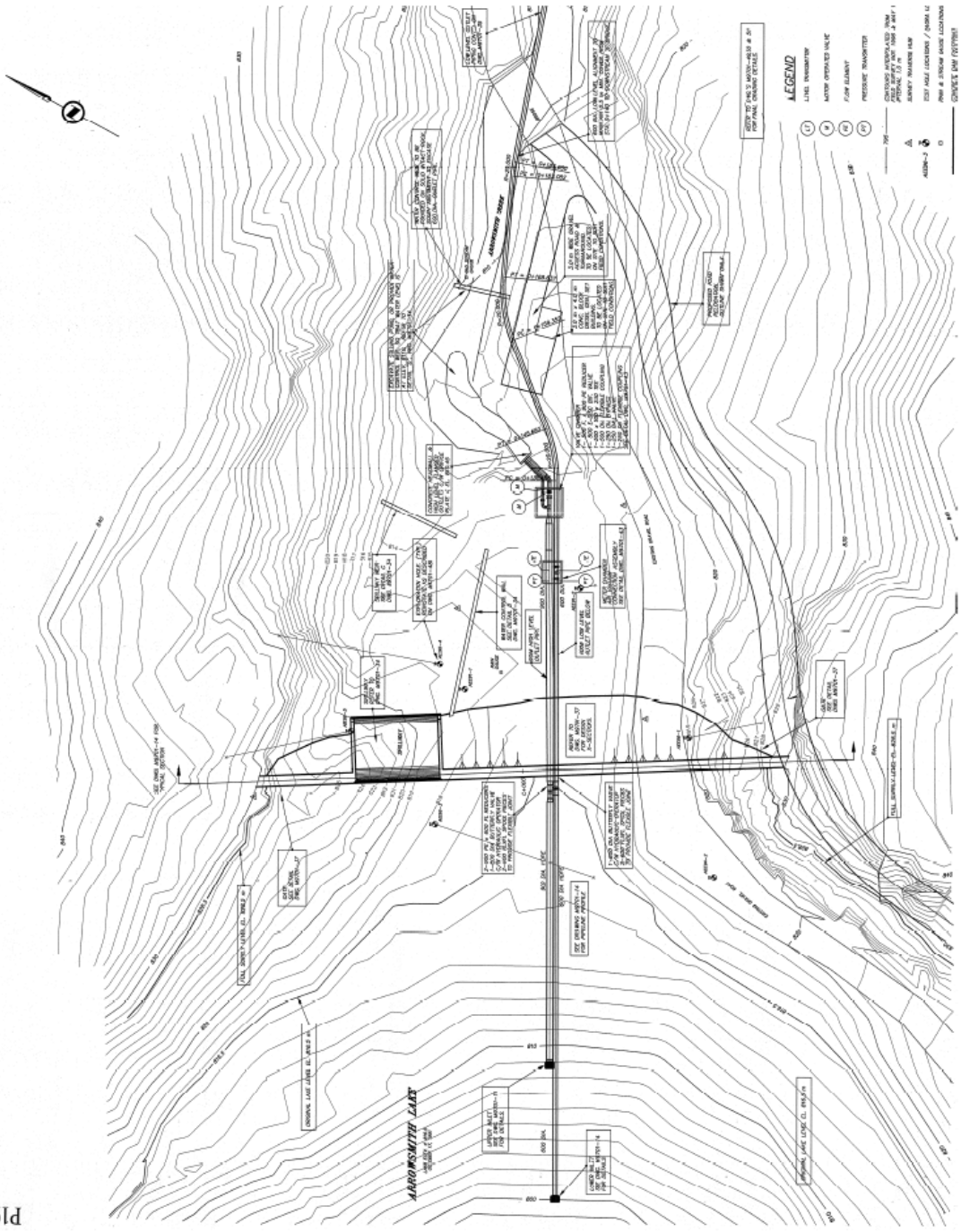


SCHEDULE A-1



SCHEDULE A-2

P1932



SCHEDULE A-2

SCHEDULE “B”

WATER SERVICE AREAS

The areas delineated in the following bylaws or descriptions, as shown on the Water Service Area Maps appended to the bylaws are the Water Service Areas:

- Nanoose Bay Bulk Water Supply Service Establishment Bylaw No. 1049
- French Creek Bulk Water Supply Service Establishment Bylaw No. 1050
- City of Parksville
- Town of Qualicum Beach

SCHEDULE “C”**CAPITAL COST APPORTIONMENT**

The Arrowsmith Water Service Bulk Water Supply Facility Capital Cost Apportionment

(a) in respect of joint facilities will be as follows:

Parksville: 63.9%

Qualicum Beach 13.7%

RDN: Nanoose 14.4%
 French Creek 8.0%