



**REPORT TO CORE AREA LIQUID WASTE MANAGEMENT COMMITTEE
MEETING OF WEDNESDAY 13 APRIL 2011**

SUBJECT CORE AREA LIQUID WASTE MANAGEMENT PROJECT GOVERNANCE

ISSUE

A bylaw is required to establish a commission for the administration of the Core Area Wastewater Treatment Project.

BACKGROUND

The Core Area Liquid Waste Management Committee (CALWMC) has recommended and the CRD Board approved procuring the Core Area Waste Water Treatment Project using a mixed procurement approach including Design-Build-Finance-Operate, Design-Build, and Design-Bid-Build. The CRD, the Ministry of Community, Sports and Cultural Development, Partnerships BC, the parties, have agreed to establish a commission to administer the project. The attached draft establishment bylaw seeks to address the matters of interest to the parties while leaving sufficient discretion to the commission to ensure efficient, fiscally responsible and timely delivery of the project. The key topics covered in the bylaw include:

- Section 3 – Commission Membership
- Section 4 – Meetings
- Section 5 – Appointment of the Chair
- Section 6 – Commission Terms of Reference
- Section 7 – Project Implementation Plan
- Section 8 – Project Management Plan
- Section 9 – Consultation Plans
- Section 10 – Role of the Regional Board
- Section 11 – Budget
- Section 12 – Delegation
- Section 13 – Remuneration and Expenses

Given the magnitude and technical complexity of the project, there is a requirement by the province to have a governing body made up of community members representing a broad range of expertise and experience in delivering projects (refer to Section 3 for details). Agreement on the composition of the commission has not been reached. The province's position is to have one CRD Board member and the CAO on the commission in a liaison/advisory capacity. The CRD's position is two voting Board members and the CAO in an advisory role. The province is concerned that the private sector bidders will perceive additional uncertainty and hence risk as a result of involvement of the selected officials in decision making. The province's decision on funding the project will also include the conditions for acceptance of the funding. This is likely to include the requirements for the community membership of the commission and the role of CRD political and CRD staff representation. This may not be in line with the CRD position. No other significant changes to the draft bylaw by the province are expected. The draft bylaw with any subsequent changes will be brought back to the CALWMC for a final review before being presented to the Board, after a decision on funding has been announced.

RECOMMENDATION

That the Core Areal Liquid Waste Management Committee receive the bylaw to establish a commission for the administration of the Core Area Wastewater Treatment Project for information.

Core Area Liquid Waste Management Committee – 13 April 2011
Re: Project Governance
Page 2

J.A. (Jack) Hull, MBA, PEng
General Manager, Integrated Water Services

JH:hr
Attachment: 1

CAPITAL REGIONAL DISTRICT

BYLAW NO. _____

A BYLAW FOR THE ESTABLISHMENT OF A COMMISSION TO ADMINISTER THE CORE AREA WASTEWATER TREATMENT PROJECT

WHEREAS:

- A. The Regional Board of the Capital Regional District may establish a commission under Section 176(1)(g) of the *Local Government Act* to operate Regional District services, undertake operation and enforcement in relation to the Regional Board’s exercise of its regulatory authority, and manage property or an interest in property held by the Regional District.
- B. The Regional Board of the Capital Regional District wishes to establish a Commission for the purpose of administering the Core Area Wastewater Treatment Facility in the Service Area established pursuant to this Bylaw.

NOW THEREFORE the Regional Board of the Capital Regional District, in open meeting assembled, enacts as follows:

1. Definitions

In this Bylaw unless the context otherwise requires:

“COMMISSION” means the Core Area Wastewater Treatment Project Commission established under section 2 of this Bylaw;

“CALWMC” means the Core Area Liquid Waste Management Committee of the CRD, or such other committee of the Regional Board as may from time to time replace such committee;

“COMMISSIONING” means the putting into functional operation the Wastewater Treatment Facility or a component of the Wastewater Treatment Facility;

“COMMUNITY MEMBER” means a person appointed to the Commission who does not hold elected office with a local government within the Capital Regional District.

“CORE AREA MUNICIPALITIES” means the City of Colwood, the Township of Esquimalt, the City of Langford, the District of Oak Bay, the District of Saanich, the City of Victoria and the Town of View Royal;

“CRD” means the Capital Regional District;

“CRD CORE AREA WASTEWATER TREATMENT PROJECT” means all work connected with the design, tendering, construction and commissioning of a Wastewater Treatment Facility to serve the Core Area Municipalities but does not include the operation of the Wastewater Treatment Facility;

“CRD MEMBER” means a member of the Commission appointed by the Regional Board and who is also a director or alternate director of the Regional Board;

“LIQUID WASTE MANAGEMENT PLAN” means the plan adopted by the CRD and approved by the Minister of Environment under the *Environmental Management Act*, as amended from time to time;

“MEMBER” means a member of the Commission;

“PROJECT” means the CRD Core Area Wastewater Treatment Project;

“PROJECT TEAM” means the CRD employees and consultants responsible for the delivery of the Project.

“REGIONAL BOARD” means the Board of the Capital Regional District;

“SENIOR GOVERNMENTS” means the government of the Province of British Columbia and the government of Canada.

“WASTEWATER TREATMENT FACILITY” means the wastewater management system for the Core Area Municipalities contemplated by section 6 of the Liquid Waste Management Plan;

“VOTING MEMBER” means the Community Members and the CRD Members

2. Establishment of Commission

2.1 The Regional Board establishes the Core Area Wastewater Treatment Project Commission.

2.2 The purpose of the Commission is all aspects of the management of the Project except as set out in this Bylaw.

3. Commission Membership

3.1 The Commission shall consist of the following persons:

(a) seven (7) Voting Members who shall be appointed by the Regional Board as follows:

(i) five (5) Community Members; and

(ii) two (2) CRD Members; and

(b) one (1) non-voting member who shall be

(i) the Chief Administrative Officer of the CRD.

3.2 In the appointment of the Community Members appointed under section 3.1(a)(i) the Regional Board shall select representatives who have experience or expertise in one or more of the following areas:

(a) wastewater engineering;

(b) wastewater treatment operations;

(c) tendering and construction law;

- (d) alternative procurement methods;
 - (e) project management;
 - (f) project finance;
 - (g) major project construction;
 - (h) public communications.
- 3.3 The Regional Board shall ensure that there is diversity of expertise and experience among the Community Members.
- 3.4 Three (3) of the Community Members appointed under section 3.1(i) shall be appointed for terms of twelve (12) months and two (2) of the Community Members appointed under section 3.1(i) shall be appointed for terms of two (2) years as specified by the Regional Board at the time of the initial appointment. Thereafter, appointments shall be for terms of two (2) years.
- 3.5 (a) The term for CRD Members ends immediately before the first Monday following December 1 in the year of the general local election;
- (b) Despite paragraph (a), the appointment of a CRD member who resigns from the Regional Board or who is incapacitated, the Regional Board shall appoint a replacement.
- 3.6 The appointment of a Community Member expires at the end of his or her appointed term.
- 3.7 Despite section 3.3, the term of office of all Commission Members shall expire:
- (a) following the completion of the CRD Core Area of the Wastewater Treatment Project; or
 - (b) upon the death, incapacity or resignation of a Commission Member.
- 3.8 The Regional Board shall appoint a person to fill a vacancy on the Commission no later than sixty (60) days of the position becoming vacant, provided that in the case of a Community Member, the Regional Board may extend the time for appointment for an additional thirty (30) days if necessary to find a prospective appointee who has experience or expertise in an area referred to in section 3.2.
- 3.9 Notwithstanding s. 3.7, The Regional Board may choose not to appoint a replacement Commission Member in the case of a vacancy occurring less than twelve (12) months before the expected date for commissioning of the final component of the Wastewater Treatment Facility.
- 3.10 Rules pertaining to conflicts of interest, gifts, use of influence and use of insider information applicable to Regional Board directors as set out in sections 100 to 108 of the *Community Charter* apply to the Community Members, with the necessary changes and insofar as they are applicable to the CRD Members.
- 3.11 A Community Member may not appoint an alternate to take his or her place.
- 3.12 The Regional Board may reappoint a Community Member whose term expires and there is no limit on the number of terms.

4. Meetings

- 4.1 The Commission shall meet at least once per month, and more frequently as required for the proper management of the Project.
- 4.2 A quorum of members of the Commission is a majority of the Voting Members.
- 4.3 A decision of the Commission shall be decided by a majority of the Voting Members.
- 4.4 Meetings shall be open to the public except insofar as the Commission determines, in accordance with sections 90 and 91 of the *Community Charter*, that a meeting should be closed to the public.
- 4.5 Meetings of the Commission shall be conducted in accordance with the Procedure Bylaw of the CRD in force from time to time, insofar as this is applicable to the proceedings of the Commission, and applicable legislation.

5. Appointment of Chair

- 5.1 The Regional Board must appoint as Chair a Community Member agreed upon by the Province.
- 5.2 The Commission shall each year elect a Vice-Chairperson from among the Community Members.

6. Commission Terms of Reference

- 6.1 The Commission must, within the time stipulated by the Regional Board or such other reasonable time frame, determine any matter relating to the Project referred to the Commission by the Regional Board.
- 6.2 The Commission must cause the following plans to be prepared:
 - (a) a Project Implementation Plan;
 - (b) a Project Management Plan; and
 - (c) Public Communications and Consultation Plans,that will document all aspects of the Project.
- 6.3 The Commission must, from time to time as necessary, cause the Project Implementation, Project Management Plan and Consultation Plans to be amended or updated.
- 6.4 The Commission must report in writing to the Regional Board at least once every thirty (30) days on the progress of the Project with sufficient detail to permit the Regional Board to remain reasonably updated on the Project and aware of significant issues.
- 6.5 The Commission must on or before September 30 of each year prepare an annual Project cash flow forecast, as part of its comprehensive financial accounting reporting, which must include updated forecasts of all capital costs to be incurred in the ensuing year and apportion them by funding entitlement such that each of the CRD, the federal government and the provincial government may commit their pro-rata shares in their provisional and annual budgets.
- 6.6 The Commission must establish a Project Team to deliver the Project and include current CRD Project Staff as members of the Team.

6.7 The Commission must:

- (a) appoint consultants as necessary to the Project Team to deliver the Project;
- (b) appoint advisors to the Project Team including a Fairness Advisor and a Conflict of Interest Adjudicator;

The procurement of these services shall follow the general tendering procedures outline in CRD's Procurement Policy

6.8 The Commission must appoint a Project Director

6.9 The Commission must provide direction to the Project Team as necessary to complete the Project in accordance with the Project Implemental Plan and the Project Management Plan.

6.10 The Commission must oversee the implementation of the procurement methods selected by the Regional Board, including the preparation of procurement documentation, review of responses to procurement calls, obtain regulatory permits and approvals and the settlement of consulting, construction, maintenance, warranty and security agreements relating to the Project.

6.11 The Commission must cause to be prepared and provide the Regional Board with draft reports to permit the Regional Board to report to Senior Governments as required under agreements between the Senior Governments and the CRD or as required by an enactment.

6.12 The Commission must cause all actions to be taken to enable the CRD to fulfill its obligations under agreements between the Senior Governments and the CRD or as required by an enactment to the extent that such actions are within the powers, duties and functions of the Commission.

7. Project Implementation Plan

7.1 The Project Implementation Plan to be prepared under section 6.2 must:

- (a) document and finalize the Project's scope, budget and schedule, the expectations of the Regional Board and the Senior Governments regarding the Project;
- (b) establish milestone dates for completion of the Project;
- (c) specify in a comprehensive manner how the Commission will deliver the Project in accordance with the plan parameters and with the expectations of the Regional Board and the Senior Governments;
- (d) address such other issues in relation to the Project as may be requested from time to time by the Regional Board.

8. Project Management Plan

8.1 The Project Management Plan to be prepared under section 6.2 must:

- (a) document all organizational aspects of the Project, including individual responsibilities of Project Team members, their reporting relationships and with consultants and contractors and the administrative responsibilities conferred on Project Team members;
- (b) provide for a schedule for reporting to the Regional Board; and

- (c) address such other issues in relation to the Project as may be requested from time to time by the Regional Board.

9. Consultation Plans

9.1 The Consultation Plans under section 6.2 must provide for early, ongoing and continuous consultation with:

- (a) the public;
- (b) public organizations having an interest in the Project;
- (c) Core Area Municipalities and other public authorities; and
- (d) The Esquimalt and Songhees First Nations and any other First Nation identified by the Regional Board,

during the Project.

10. Role of the Regional Board

10.1 Without limiting the powers, duties or functions of the Regional Board under the *Local Government Act* or any other enactment,

- (a) it shall be the function of the Regional Board to:
 - (i) decide the procurement method for each aspect of the Project;
 - (ii) approve of any change to a procurement method;
 - (iii) approve all amendments to the Liquid Waste Management Plan;
 - (iv) to develop mitigation guidelines for the Project;
 - (v) approve any agreement for the advancement to the CRD of any funds from any source other than the Regional District.
- (b) it shall be the function of the Regional Board, through CRD staff to:
 - (i) negotiate and administer cost sharing or contribution agreements with Senior Governments.

11. Budget

11.1 The Commission shall, on or before the 30th day of September in each year prepare and submit a proposed budget covering all anticipated costs of the Project under the management of the Commission for presentation to the Regional Board.

11.2 The proposed budget must:

- (a) be in a form approved by the Chief Financial Officer of the CRD;
- (b) provide for the necessary funds for the Project;

- (c) be approved by the Regional Board;
 - (d) if directed by the Regional Board, be amended to the satisfaction of the Regional Board and be resubmitted not later than December 31 in each year;
 - (e) at no time provide for the creation of a deficit or unauthorized debt.
- 11.3 The Commission must not authorize an expenditure other than an expenditure provided for in the budget as included in the approved financial plan of the CRD.
12. Delegation
- 12.1 Subject to section 10.1 and section 12.3 the Regional Board delegates to the Commission all of its powers, duties and functions in relation to the management of the Project until the completion of commissioning of the Project.
- 12.2 Without limiting section 12.1, the Commission may authorize entering into contracts related to the Project in the name of the CRD provided that:
- (a) the contract falls within the Commission's delegated authority in relation to the Project; and
 - (b) the necessary expenditures to meet the obligations of the CRD for the contract are contained within the approved financial plan of the CRD.
- 12.3 Delegation of authority under this Bylaw is subject to:
- (a) the policies and procedures of the Regional Board, and
 - (b) delegations of authority to officers and employees contained in sections 3 and 4 of the Capital Regional District Delegation Bylaw No. 1.
- 12.4 For certainty, the delegation of powers duties and functions of the Regional Board to the Commission under section 12.1 expires following the completion of the CRD Core Area Wastewater Treatment Project.
13. Remuneration and Expenses
- 13.1 The Regional Board shall determine the remuneration for the Chair, Vice-Chair and Community Members.
- 13.2 Expenses incurred by the Commission while engaged in the business of the Commission will be reimbursed in accordance with the policies of the Regional Board.
14. Severability
- 14.1 If any part of this Bylaw is found to be invalid by a court of competent jurisdiction, it must be severed without affecting the validity of the remainder of the Bylaw.
15. Citation
- This Bylaw may be cited as the CRD Core Area Wastewater Treatment Commission Bylaw No. XXX, 2011.

READ A FIRST TIME THIS	DAY OF	2011
READ A SECOND TIME THIS	DAY OF	2011
READ A THIRD TIME THIS	DAY OF	2011
ADOPTED THIS	DAY OF	2011

“DRAFT”

CHAIR

“DRAFT”

CORPORATE OFFICER

DRAFT