



**LIDSTONE & COMPANY**  
BARRISTERS AND SOLICITORS

**MEMORANDUM**

**TO:** T. Graff, CAO, District of Lantzville  
**FROM:** Don Lidstone, Q.C.  
**DATE:** July 14, 2014  
**RE:** Water Agreement with City of Nanaimo  
**FILE:** 10047-108

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You have asked me to comment generally on the draft Lantzville/Nanaimo Water Agreement.

Further to Council's March 10, 2014 resolution to instruct us to negotiate amendments with City staff and counsel, we have completed the negotiations and now recommend the draft agreement for the consideration of Council.

The principal reasons for the recommendation are as follows:

1. The new draft agreement gives Council the discretion to buy water on an as-needed basis, if and when the water is required, whereas the Nanaimo draft agreement required the connection buy-in immediately whether or not the water would be used.
2. The agreement gives Council the option, but not the obligation, to take water from the established Nanaimo potable water supply system (in lieu of other options such as connecting to Arrowsmith or developing wells in the rural area at greater cost).
3. The current draft does not require approval of the electors, as a number of revisions have rendered it an operating instead of a capital liability. Council nonetheless could voluntarily seek the opinion of the electors if desired.
4. The connection fee arose from a report prepared by Allan Neilson-Welch, a highly regarded public policy and financial consultant. It is open to Council to decide if it wishes to recover this in some cases or not from owners who now connect.

5. We negotiated a number of changes from the City of Nanaimo draft agreement:

- (a) the elimination of the condition that the District shall not withdraw from its cost sharing obligations for RDN services (Council had previously accepted the obligation to cost-share the economic development and Port Theatre services, and now it makes sense to cost-share on the Drinking Water and Watershed protection services, but the City of Nanaimo had included "all other RDN services...", which condition is now deleted);
- (b) the equitable revision of the agreement to the effect that a water supply reduction or shut off shall apply *pro rata* to users in both Lantzville and Nanaimo, and not just to Lantzville;
- (c) rendering the agreement operational instead of capital, to eliminate the obligation to seek elector approval;
- (d) allowing the Council to have discretion to determine how many connections to allow each year, instead of the former "use 50 or lose 50" provision;
- (e) extending the Term indefinitely, at Council's discretion every twenty years;
- (f) changing the initial connection fee to a time suitable to Council instead of immediately.