



NORTHERN BEAR

WATER & WASTEWATER FRANCHISE AGREEMENT

DRAFT

TABLE OF CONTENTS

Page

1. INTERPRETATION..... 2

1.1 DEFINED TERMS.....2

1.2 CONSTRUCTION AND INTERPRETATION.....2

1.3 SCHEDULES.....2

1.4 CONFLICTING PROVISIONS.....2

2. PURPOSE AND LEGAL RELATIONSHIP 2

2.1 PURPOSE OF THE AGREEMENT.....2

2.2 NO JOINT VENTURE3

3. GRANT AND TERM..... 3

3.1 GRANT OF FRANCHISE3

3.2 LIMITATIONS OF GRANT.....3

3.3 COUNTY NOT RESPONSIBLE.....3

3.4 TERM4

3.5 EXTENSION OF TERM4

3.6 EFFECTIVE DATE.....4

3.7 APPROVAL AND AMENDMENT.....4

3.8 COUNTY DISCRETION.....5

4. THE SERVICING RESPONSIBILITY..... 5

4.1 OPERATION AND SERVICES5

4.2 STAGES5

4.3 CLARIFICATION.....5

4.4 ALBERTA UTILITIES COMMISSION.....6

4.5 UTILITY RESPONSIBLE6

4.6 THE COUNTY RESPONSIBLE6

4.7 INSPECTION / REVIEW7

4.8 OWNERSHIP OF ASSETS.....7

4.9 OPERATING PERMITS7

4.10 KEY CONTRACTORS7

4.11 NO CHANGES7

5. THE OPERATIONS AND MAINTENANCE RESPONSIBILITY..... 8

5.1 OPERATIONS, MAINTENANCE AND SERVICES.....8

5.2 INTELLECTUAL PROPERTY9

6. REPRESENTATIONS AND WARRANTIES..... 9

6.1 REPRESENTATIONS AND WARRANTIES OF THE UTILITY9

6.2 REPRESENTATIONS AND WARRANTIES OF THE COUNTY10

6.3 RELIANCE AND SURVIVAL11

6.4 UTILITY’S DUE DILIGENCE11

7. REPRESENTATIVES 12

7.1 THE COUNTY’S REPRESENTATIVE.....12

7.2 UTILITY’S REPRESENTATIVE.....12

8. INSURANCE, DAMAGE AND DESTRUCTION AND BONDING 13

8.1 UTILITY’S INSURANCE13

8.2	AGREEMENT NOT AFFECTED BY DAMAGE OR DESTRUCTION	13
8.3	UTILITY’S OBLIGATIONS – DAMAGE OR PARTIAL DESTRUCTION	13
8.4	UTILITY’S OBLIGATIONS – COMPLETE OR SUBSTANTIAL DESTRUCTION	13
8.5	STANDARDS OF REPLACEMENT, REPAIR OR RECONSTRUCTION	13
8.6	RIGHT TO REPAIR AND RECEIVE INSURANCE PROCEEDS.....	14
8.7	REPLACEMENT INSURANCE.....	14
9.	INDEMNITY.....	14
9.1	UTILITY’S INDEMNITIES TO THE COUNTY	14
9.2	THE COUNTY INDEMNITIES TO THE UTILITY	15
9.3	RELIANCE	15
9.4	NOTICE OF INDEMNIFIED CLAIMS	16
9.5	MITIGATION.....	16
9.6	CONDUCT OF THIRD PARTY CLAIMS	16
10.	FORCE MAJEURE	16
10.1	RELIEF FROM OBLIGATIONS	16
10.2	MITIGATION	16
10.3	INFORMATION SUPPORTING RELIEF CLAIMED.....	16
10.4	NOTICE OF RESUMPTION	17
10.5	UNRESOLVED EVENT OF FORCE MAJEURE	17
11.	UTILITY DEFAULT	17
11.1	EVENT OF DEFAULT	17
11.2	NOTIFICATION	18
11.3	NOTICE OF DEFAULT OR TERMINATION	18
11.4	RIGHT TO PERFORM.....	18
11.5	COUNTY TERMINATION RIGHT	19
11.6	FAILURE TO ACHIEVE SERVICE COMMENCEMENT DEADLINE	19
11.7	COUNTY COSTS.....	19
11.8	CONTINUED EFFECT – NO WAIVER	19
12.	EFFECT OF REMEDIES.....	19
12.1	REMEDIES CUMULATIVE	19
13.	CONFIDENTIALITY.....	19
13.1	CONFIDENTIAL INFORMATION.....	19
13.2	USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION	20
13.3	EXCEPTIONS	20
13.4	ANNOUNCEMENTS.....	20
14.	DISPUTE RESOLUTION.....	20
14.1	PROCEDURE.....	20
14.2	CONTINUED PERFORMANCE	20
14.3	INTEREST ON DISPUTED AMOUNTS	21
15.	GENERAL	21
15.1	ASSIGNMENT BY THE UTILITY	21
15.2	ASSIGNMENT BY THE COUNTY	21
15.3	INTEREST ON OVERDUE AMOUNTS.....	21
15.4	SURVIVAL	22

SCHEDULES**A. SCHEDULES REGARDING GENERAL CONTRACTUAL TERMS AND CONDITIONS**

SCHEDULE A-1	DEFINITIONS
SCHEDULE A-2	INTERPRETATION AND GENERAL CONTRACTUAL TERMS
SCHEDULE A-3	NOTICE

B. SCHEDULES REGARDING FRANCHISE AREA, SERVICES AND FACILITIES

SCHEDULE B-1	FRANCHISE AREA
SCHEDULE B-2	SERVICES
SCHEDULE B-3	FACILITIES
SCHEDULE B-4	FRANCHISE FEE

C. SCHEDULES REGARDING FRANCHISE OPERATION

SCHEDULE C-1	PUBLIC PROPERTIES AND ACCESS
SCHEDULE C-2	OPERATION, MAINTENANCE AND SERVICES
SCHEDULE C-3	OPERATING PERMITS

D. SCHEDULES REGARDING INSURANCE AND SECURITY

SCHEDULE D-1	INSURANCE REQUIREMENTS
SCHEDULE D-2	CONDUCT OF THIRD PARTY CLAIMS

E. SCHEDULES REGARDING FINANCIAL OPERATIONS

SCHEDULE E-1	FINANCIAL OPERATIONS
SCHEDULE E-2	TRANSFER AND TRANSITION PROCEDURES

F. SCHEDULES REGARDING MISCELLANEOUS MATTERS

SCHEDULE F-1	INTELLECTUAL PROPERTY
SCHEDULE F-2	DISPUTE RESOLUTION PROCEDURE
SCHEDULE F-3	RECORDS, REPORTS AND REQUIREMENTS FOR FOIPP

THIS AGREEMENT dated for reference the ___ day of _____, 20__.

BETWEEN:

STRATHCONA COUNTY

a municipal corporation created under the laws
of the Province of Alberta
(the "County")

AND:

PROPERTIES OF NORTHERN BEAR INC. & TOUCHWOOD HOLDINGS LTD.

Corporations incorporated under the laws of the
Province of Alberta
(the "Utility")

WHEREAS:

- A. The Utility is, or is entitled to become, the registered owner of the Facilities servicing part or all of those Lands situated in the County as described in Schedule B-1 (Franchise Area) attached to this Agreement.
- B. The County has entered into, and may in the future enter into, the Development Agreements with the developers respecting the design, construction, commissioning and testing of the Facilities;
- C. The Development Agreements also required that upon Acceptance of the Facilities by the County, the Facilities would be transferred to the Utility for ownership, operations, maintenance, in accordance with the terms, covenants and conditions contained within this Agreement;
- D. The County wishes to make provision for the supply of the Services within the Franchise Area by the Utility, and the operation, maintenance, management and ownership of the Facilities;
- E. Pursuant to the *Municipal Government Act* the County has the right to:
 - 1. grant an exclusive right to supply a service of a public utility within the County;
 - 2. charge a fee, rate or toll in respect of any service provided by the County to the Utility; and
 - 3. charge a fee for the use and occupation of Public Properties;
- F. The Utility wishes to maintain and install all works necessary for the provision of the Services including, without restriction, pipes, valves, chambers, manholes, pumps and hydrants and other accessories, structures and equipment in, under, above, on, through or across highways, roads, streets, lanes, public space or public water within County and owned by or under the direction, control and management of the County;
- G. The parties desire to document their respective rights and obligations hereunder with respect to the foregoing.

NOW THEREFORE in consideration of the promises exchanged in this Agreement, and in consideration of payment of \$10.00 by each Party to the other and other good and valuable consideration (the receipt and sufficiency of which are irrevocably acknowledged by the County and the Utility), the County and the Utility covenant and agree with each other as follows:

1. INTERPRETATION

1.1 Defined Terms

The definitions set forth in Schedule A-1 (Definitions) to this Agreement govern the meaning of all defined terms used in this Agreement unless there is something in the subject matter or context that is expressly inconsistent therewith.

1.2 Construction and Interpretation

In this Agreement, including the recitals, Schedules and appendices to this Agreement, except where expressly stated to the contrary or the context otherwise requires, the construction and interpretation of provisions shall be in accordance with Schedule A-2 (Interpretation and General Contractual Terms).

1.3 Schedules

All Schedules are included in and form part of this Agreement.

1.4 Conflicting Provisions

If there is any conflict between:

- (a) the main body of this Agreement and any of the Schedules hereto, the provisions of the Schedules of this Agreement will prevail; or
- (b) this Schedule A-1 (Definitions) or Schedule A-2 (Interpretation and General Contractual Terms) and any other Schedule, Schedule A-1 (Definitions) or Schedule A-2 (Interpretation and General Contractual Terms), as the case may be, will prevail; or
- (c) Schedule A-1 (Definitions) and Schedule A-2 (Interpretation and General Contractual Terms), Schedule A-1 (Definitions), will prevail; or
- (d) this Agreement (including, without restriction, any of the Schedules) and the Operating Permits, and any applicable Laws, as the case may be, the Operating Permits, and applicable Laws, as the case may be, will prevail.

2. PURPOSE AND LEGAL RELATIONSHIP

2.1 Purpose of the Agreement

The purpose of this Agreement is to:

- (a) provide to the Utility the exclusive right to supply the Services within the Franchise Area, as contemplated under Section 45 of the *Municipal Government Act*;
- (b) provide to the Utility the right to utilize Public Properties under the direction, control, management, or ownership of the County for the purposes of operating and maintain the Facilities and providing the Services, it being understood and agreed that the Utility shall be responsible for obtaining any and all other rights of way necessary for the Facilities including rights of way or easements over all common property or other property under the direction, control or ownership of any condominium corporation within the Franchise Area and shall be responsible for obtaining any approvals required from the Alberta Utilities Commission;

- (c) govern the manner of which the Utility, or any of its Contractors, access and utilize any Public Properties;
- (d) govern the manner in which the Services are provided within the County, subject to the mandate and jurisdiction of the Alberta Utilities Commission; and
- (e) govern the transfer of the Facilities to the County or a renewal upon the expiration of this Agreement as contemplated under Section 47 of the *Municipal Government Act*.

2.2 No Joint Venture

No partnership, joint venture, employment, fiduciary or agency relationship is created by this Agreement or under this Agreement. The Utility shall ensure that all agreements between the Utility and all of its Contract Operators contain a disclaimer substantially similar to that contained within the preceding sentence.

3. GRANT AND TERM

3.1 Grant of Franchise

Subject to all applicable Laws and the terms and conditions of this Agreement, the County hereby grants to the Utility the exclusive right to:

- (a) perform the Operation and Maintenance of the Facilities; and
- (b) provide the Services;

within the Franchise Area throughout the Term. For clarity, the Utility is specifically prohibited from providing bulk water sales to water haulers, truck fill service to consumers, or similar water hauling services within or outside of the Franchise Area. Notwithstanding the foregoing or anything else contained within this Agreement, at all times during the Term the County shall be and remains entitled to own and operate a truck-fill station within the Franchise Area and provide water services by or through the truck fill site. Should a truck fill be located on the lands owned by the Utility within the Franchise Area, the County will negotiate with the Utility to agree upon the right to access or ownership or both of the lands upon which a truck fill will be located. In such an instance, the terms of access or transfer or both to the County shall include the obligation to re-establish the County water supply rate by a cost re-allocation for the pro-rated portion utilized by the truck fill and the Utility, as well as the opportunity (if the County is the contract operator) to re-negotiate the monthly rate as locating a truck fill in the vicinity should effectively attain some operational efficiencies in the cost to the Utility.

3.2 Limitations of Grant

Notwithstanding anything contained within this Agreement, nothing contained within this Agreement shall be deemed or interpreted in any manner whatsoever as a restriction or prohibition over the continued operation of those parties who provide the Services within the Franchise Area as of the date of this Agreement, nor as a grant of exclusivity over or to the detriment of the continued operations by such parties either in the current quantity and location or otherwise.

3.3 County Not Responsible

The County will not be liable to the Utility for any infringement of any of the exclusive rights granted to the Utility pursuant to Section 3.1 of this Agreement where the County has not granted such right to the infringing party. Subject to all applicable Laws, the County and the Utility will cooperatively use their best reasonable efforts to protect the Utility's rights granted pursuant to Section 3.1 herein.

3.4 Term

Subject to Section 3.5, the Term of this Agreement will commence on the Effective Date and will continue for a period of a maximum of twenty (20) years, and end upon the Termination Date.

3.5 Extension of Term

Upon the expiration of the Term of this Agreement, subject always to the provisions of Section 47 of the *Municipal Government Act* the Parties may seek the approval of the Alberta Utilities Commission for the renewal or replacement of this Agreement for a term not to exceed twenty (20) years and on such terms and conditions as the County and the Utility may agree (such approval being subject always to Section 45 of the *Municipal Government Act*). Not less than twenty four (24) months prior to the expiration of the Term the Parties shall meet to discuss their respective intentions and requirements with respect to renewal, replacement or expiration as contemplated within Section 47 of the *Municipal Government Act*. The Parties shall thereafter meet as often and as many times as is reasonably required in order to determine each Party's intentions or willingness or both to renew, replace, or let this Agreement expire the Term which determination shall be made not less than twelve (12) months prior to the expiration of the Term. Any proposed renewal or replacement shall require that the Parties first prepare all documentation necessary to submit to the Alberta Utilities Commission as soon as reasonably possible following the determination of the Parties' respective intentions noted above, and subsequently obtain the approval of the Alberta Utilities Commission, all in accordance with Section 45 of the *Municipal Government Act*.

3.6 Effective Date

Notwithstanding anything set forth herein, this Agreement (save and except this Section 3.6) shall not become effective or be of any force or effect until the day following the satisfaction of the following:

- (i) County Council has given third reading to a by-law providing for the exclusivity of Services contemplated in this Agreement; and
- (b) this Agreement has been approved by the Alberta Utilities Commission by way of a decision issued pursuant to Section 45 of the *Municipal Government Act*.

If the Effective Date has not occurred by the first anniversary of the date of this Agreement or such later date as may be agreed to in writing by the Parties, the County may terminate this Agreement by delivering a Notice to that effect to the Utility.

3.7 Approval and Amendment

By executing and delivering this Agreement:

- (i) the Utility acknowledges and accepts the County's legal right and power to execute and enforce this Agreement;
- (ii) the Utility agrees that it will not oppose the intervention by the County in any regulatory proceeding affecting the enforcement of the County's rights under this Agreement;
- (iii) the Parties agree that in the event that the Alberta Utilities Commission requires amendments to this Agreement before it will provide its approval, the Utility and the County shall act reasonably and negotiate in good faith to resolve any amendments to the terms of this Agreement necessary to facilitate approval, and that failing such agreement the unresolved amendments shall be determined in accordance with the provisions of the Dispute Resolution Procedure;
- (iv) the Parties accept and agree to comply with each and every provision contained herein; and

- (v) the Utility agrees that this Agreement was granted pursuant to processes and procedures consistent with applicable Laws, and agrees that it will not raise any claim or defense to the contrary.

3.8 County Discretion

The rights granted in this Agreement are subject to the County's exercise of its statutory authority under all statutes that confer such authority on the County, and nothing in this Agreement shall be read to limit the exercise of such authority. The County, among other things, does not waive the requirements of applicable Laws including, but not limited to bylaws, codes, ordinances, and resolutions relating to zoning, building permits and fees, rules regarding the time, place and manner of construction, or the use of the lands comprising the Public Properties.

4. THE SERVICING RESPONSIBILITY

4.1 Operation and Services

The Utility shall be solely and exclusively responsible for providing the County with a water and wastewater servicing solution for the provision of the Services to the lands contained within the Franchise Area sufficient to satisfy the servicing required or contemplated by the Development Agreements, and in particular for performing the Operation and Maintenance on the terms and conditions set forth in this Agreement. Without restricting the generality of the foregoing, except as otherwise set forth in this Agreement, the Utility is fully responsible for:

- (a) Operation and Maintenance of all parts of the Facilities in accordance with the operating plans and specifications contemplated within this Agreement;
- (b) all funding or financing or both of the performance of the Operation and Maintenance;
- (c) the provision of the Services to all owners or occupiers of Lands in accordance with all applicable Laws;
- (d) all billing and collections for or in respect of the provision of the Services; and
- (e) ensuring that all of the Contract Operators and Sub-Contractors supplying goods or services or both for all or any portion of the Operation and Maintenance of the Facilities are all competent and qualified, and perform all Operation and Maintenance in accordance with the provisions of this Agreement;

in accordance with the provisions of Schedule C-2 (Operation, Maintenance and Services).

4.2 Stages

Pursuant to the provisions of the Development Agreements, the design, construction, commissioning, and transfer of the Facilities to the Utility shall occur in accordance with the Stages of the subdivision and development of the Lands contained within the Franchise Area. The Utility shall assume ownership and responsibility for, and commence Operation and Maintenance of, the Facilities in stages corresponding to the Stages of the subdivision and development of the Lands.

4.3 Clarification

The Utility's responsibilities set forth in Sections 4.1 and 4.2 shall be subject to the following:

- (a) Upon Acceptance of the Facilities for each Stage of the subdivision and development of the Lands under the corresponding Development Agreement, the Utility shall be at liberty to accept transfer of the Facilities corresponding to each Stage subject to and in accordance with the terms of the

respective Development Agreement, and thereafter commence Operations and Maintenance in accordance with this Agreement; and

- (b) notwithstanding the forgoing, the Utility shall:
 - (i) be responsible for the consequences of any Change in Law;
 - (ii) be responsible for any failure of the Facilities to meet the requirements of the Operating Permits or other applicable Laws; and
 - (iii) be responsible for any failure of the Facilities to meet the performance requirements forming part of the operational specifications contained within Schedule C-2 (Operation, Maintenance and Services).

4.4 Alberta Utilities Commission

The Parties acknowledge and agree that the provision of the Services by the Utility shall be subject to the mandate and jurisdiction of the Alberta Utilities Commission. Where the mandate and jurisdiction of the Alberta Utilities Commission applies, the Utility hereby covenants and agrees to provide the County with:

- (a) advance notice of any applications to, hearings before, proceedings with, and submissions to the Alberta Utilities Commission, which notice shall be reasonably sufficient to permit the County to appropriately respond to, appear before, or make submissions to the Alberta Utilities Commission in respect of the subject matter the application, hearing, proceeding or submission;
- (b) copies of all correspondence with and submission to the Alberta Utilities Commission in any manner respecting, relating to or concerning the Facilities, the Services and the Franchise Area contemplated under this Agreement; and
- (c) copies of all complaints or concerns received by the Alberta Utilities Commission by any consumer of the Services.

4.5 Utility Responsible

The Utility will, as between itself and the County, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of the Utility's Representative, any Contract Operator or any Sub-Contractor and all of the respective directors, officers, employees, contractors and agents of the Utility, the Utility's Representative, any Contract Operator or any Sub-Contractor. All references in this Agreement to any act, default, omission, breach or negligence of the Utility will be construed accordingly to include any such act, default, omission, breach or negligence committed by the Utility's Representative, a Contract Operator or Sub-Contractor or any director, officer, employee or agent of the Utility, the Utility's Representative, a Contract Operator or a Sub-Contractor.

4.6 The County Responsible

The County will, as between itself and the Utility, be responsible for the performance, acts, defaults, omissions, breaches and negligence of the County's Representative and all councillors, employees, contractors and agents of the County and the County's Representative. All references in this Agreement to any act, default, omission, breach or negligence of the County will be construed accordingly to include any such act, default, omission, breach or negligence committed by the County's Representative or any councillor, employee, contractor, agent or invitee of the County or the County's Representative.

4.7 Inspection / Review

Any inspection or review of documents or materials by the County pursuant to this Agreement or the Development Agreements (including, without restriction, the operating plans and specifications contained within Schedule C-2 (Operation, Maintenance and Services), as well as the completed Facilities) shall not be considered as an approval or acceptance thereof by the County unless the County, in fact, approves or accepts same in writing, and in no event shall such approval or acceptance be deemed or interpreted as an amendment of any provisions of this Agreement nor a waiver or release of any of the obligations of the Utility contained within this Agreement.

4.8 Ownership of Assets

During the Term of this Agreement, from and after the transfer of the Facilities or any portion thereof to the Utility pursuant to the terms of each Development Agreement the Facilities will be the sole property and responsibility of the Utility, subject to the transfer provisions of Schedule E-2 (Transfer and Transition Procedures).

4.9 Operating Permits

- (a) As part of the Operation and Maintenance the Utility shall be responsible for obtaining all Operating Permits including, without restriction, those listed in Schedule C-3 (Operating Permits); and
- (b) Notwithstanding anything in this Section to the contrary, the County shall have no responsibility for and shall be relieved from all liability in respect of, any delay or failure in obtaining any Operating Permit.
- (c) The Utility shall promptly provide to the County copies of all Operating Permits relating to the Facilities that it may receive, and any and all amendments, extensions and renewals thereto, as soon as such amendments, extensions or renewals are made or received.
- (d) The Utility shall immediately notify the County of all inquiries, complaints or orders received by the Utility in relation to an Operating Permit.
- (e) Acting reasonably, the County will cooperate with the Utility in pursuit of all Operating Permits or any requisite extension, renewal or modification. Such cooperation shall not in any manner restrict the County or County Council in its performance of any statutory power, duty, or other discretion reserved or otherwise assigned to the County or County Council.

4.10 Key Contractors

The Utility shall be the operator of the Facilities unless and until a Contract Operator proposed by the Utility and approved in writing by the County has been appointed.

4.11 No Changes

The Utility shall not:

- (a) change or add to the composition of the Contract Operators; and
- (b) directly, or indirectly through a Contract Operator, contract any further or other contractors or subcontractors for the performance of any of the Utility's responsibilities under this Agreement;

except with the approval of the County's Representative, such approval not to be unreasonably withheld.

5. THE OPERATIONS AND MAINTENANCE RESPONSIBILITY

5.1 Operations, Maintenance and Services

In carrying out all Operations, Maintenance, and the provision of the Services, the Utility shall:

- (a) **Access to Public Properties** – be entitled to access, use and enjoyment of all Public Properties under the direction, control, management, or ownership of the County and from time to time located within the Franchise Area, if any, together with its Contract Operators and Sub-Contractors, for the purposes of Operating and Maintaining the Facilities and providing the Services, subject to and in accordance with the provisions of Schedule C-1 (Public Properties and Access), it being understood and agreed that the Utility shall be responsible for obtaining any and all other rights of way necessary for the Facilities including rights of way or easements over all common property or other property under the direction, control or ownership of any condominium corporation within the Franchise Area;
- (b) **Insurance** – provide the County with written confirmation of the insurance coverage required under this Agreement and in accordance with the provisions of Schedule D-1 (Insurance Requirements);
- (c) **Permits and Approvals** – obtain any and all Operating Permits required in relation to the Operation and Maintenance of the Facilities, and the provisions of the Services, when and if applicable or required by the respective authority or both, in accordance with the provisions of this Agreement;
- (d) **Licenses / Rights of Entry** – obtain any required license, right of way, or right of entry from any third party which is or are necessary to allow the Utility or its Contract Operators and Sub-Contractors access to any lands (including without restriction, any roads), when and if applicable or required by the respective third party owner or other authority or both, in accordance with the provisions of Schedule C-1 (Public Properties and Access);
- (e) **General Operation** – Operation and Maintenance the Facilities, and provide the Services, in accordance with the provisions of Schedule C-2 (Operation, Maintenance and Services);
- (f) **Franchise Fee** – in consideration of the rights granted to the Utility by the County pursuant to this Agreement, the Utility agrees to pay to the County during the Term of this Agreement, the Franchise Fee calculated and payable in accordance with the provisions contained within Schedule B-4 (Franchise Fee);
- (g) **Financial Operation** – comply with and follow the financial operations terms contained within this Agreement including, without restriction, the treatment of No-Cost Capital, return on investment, and the return of investment, all subject to and in accordance with the provisions of Schedule E-1 (Financial Operations); and
- (h) **Transfer and Transition** – upon the earlier of the expiration or termination of this Agreement, transfer to the County all of the Facilities (together with such other rights, systems and works utilized in the provision of the Services, as contemplated under Section 47 of the *Municipal Government Act*) subject to and in accordance with the provisions of Schedule E-2 (Transfer and Transition Procedures).

The foregoing matters shall be more particularly described, depicted, and governed by the provisions of this Agreement identified above, and the provisions of the respective Schedule identified and applicable to the item and obligation noted above.

5.2 Intellectual Property

Schedule F-1 (Intellectual Property) sets out the Parties' rights and obligations with respect to Intellectual Property.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Utility

The Utility represents and warrants to the County that as of the Effective Date each of the following statements is accurate:

- (a) the Utility and each corporation comprising the Utility is a corporation incorporated pursuant to the *Business Corporations Act* (Alberta) and is legally entitled to carry on business in Alberta;
- (b) the Utility or its Contract Operators or both are skilled and knowledgeable in the design, construction, management, operation, maintenance, repair and replacement of facilities, works and services similar to the Facilities and the related financing thereof, and have the expertise and skill required to discharge their obligations under this Agreement in accordance with the terms hereof;
- (c) The Utility owns the Facilities existing in the Franchise Area as of the Effective Date;
- (d) the Utility has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all documents, instruments and agreements required to be executed and delivered by the Utility pursuant to this Agreement;
- (e) the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the Utility pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action on the part of the Utility, and this Agreement has been duly executed and delivered by the Utility and constitutes a legal, valid and binding obligation of the Utility enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court;
- (f) subject to the County granting to the Utility the right to access the Public Properties identified in accordance with the provisions of Schedule C-1 (Public Properties and Access), the Utility has, directly or under contract, sufficient trained personnel, facilities, materials and equipment available to perform the Operation and Maintenance;
- (g) the entering into of this Agreement by the Utility does not, and the performance by the Utility of the transactions contemplated hereby will not:
 - (i) result in a breach of any applicable Laws or any provision of the constating documents of the Utility or any agreement to which it is a party; or
 - (ii) contravene any provision of, or be an event that is (or with the passage of time will result in) a contravention of, or result in the acceleration of or entitle any party to accelerate (whether after the giving of notice or lapse of time or both) any obligation of the Utility under any security interest, agreement, instrument, order, arbitration award, judgment, injunction or decree to which the Utility is a party or by which it is bound, or conflict with any statute, rule or regulation applicable to the Utility;

- (h) all required third party consents to the execution by the Utility, and performance of its obligations under, this Agreement have been received, other than those Operating Permits noted in Schedule C-3 (Operating Permits) as Operating Permits to be obtained by the Utility after the Effective Date;
- (i) to the extent that the Utility Has Knowledge, there are no current, pending or threatened actions, claims, demands, lawsuits, assessments, arbitrations, judgments, awards, decrees, orders, injunctions, prosecutions or other proceedings, of, by, against or relating to the Utility which could have a material adverse effect on the ability of the Utility to perform its obligations under this Agreement and the Utility does not Have Knowledge of any basis for any such action, claim, demand, lawsuit, assessment, arbitration, judgment, award, decree, order, injunction, prosecution or other proceeding;
- (j) the Utility and, to the extent it Has Knowledge, the Contract Operators, have complied in all material respects with all applicable Laws and have not been, and are not now, subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which, in the aggregate, have or are reasonably likely to have a material adverse effect on the Utility;
- (k) there is no pending or threatened grievance, labour dispute, work stoppage or pending or existing claim, action, strike, nor any charge or complaint against the Utility or, to the extent it Has Knowledge, any Contract Operator, before any Court, tribunal, commission, board or other agency, whether federal, provincial or municipal, involving any charge of unfair labour practice or relating to labour or employment issues or practices generally or relating to the payment of wages or benefits, discrimination in employment or health standards or occupational safety, which, in the aggregate, have or are reasonably likely to have a material adverse effect on the Utility;
- (l) the Utility is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada); and
- (m) the Utility has carried out all reasonable due diligence and has made all such reasonable investigations and assessments (including in respect of the Disclosed Data) prior to entering into this Agreement to satisfy itself as to the nature and extent of the rights acquired by it and the risks assumed by it hereunder.

6.2 Representations and Warranties of the County

The County represents and warrants to the Utility that as of the Effective Date each of the following statements is accurate:

- (a) The County is a municipal corporation incorporated pursuant to the *Municipal Government Act*;
- (b) the County has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all documents, instruments and agreements required to be executed and delivered by the County pursuant to this Agreement;
- (c) the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the County pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action on the part of the County, and this Agreement has been duly executed and delivered by the County and constitutes a legal, valid and binding obligation of the County enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court;

- (d) all required third party consents to the execution by the County of, and performance of its obligations under, this Agreement have been received;
- (e) to the extent that the County Has Knowledge, there are no current, pending or threatened actions, claims, demands, lawsuits, assessments, arbitrations, judgments, awards, decrees, orders, injunctions, prosecutions or other proceedings, of, by, against or relating to the County or the County which could have a material adverse effect on the ability of the County to perform its obligations under this Agreement and the County does not Have Knowledge of any basis for any such action, claim, demand, lawsuit, assessment, arbitration, judgment, award, decree, order, injunction, prosecution or other proceeding;
- (f) the entering into of this Agreement by the County does not, and the performance by the County of the transactions contemplated hereby will not:
 - (i) result in a breach of any applicable Laws or any provision of the constating documents of the County or any agreement to which it is a party; or
 - (ii) contravene any provision of, or be an event that is (or with the passage of time will result in) a contravention of, or result in the acceleration of or entitle any party to accelerate (whether after the giving of notice or lapse of time or both) any obligation of the County under any security interest, agreement, instrument, order, arbitration award, judgment, injunction or decree to which the County is a party or by which it is bound, or conflict with any statute, rule or regulation applicable to the County; and
- (g) to the extent the County Has Knowledge, the County, has complied in all material respects with all applicable Laws and has not been, and is not now, subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which, in the aggregate, have or are reasonably likely to have a material adverse effect on the County.

6.3 Reliance and Survival

Notwithstanding any investigations made by a Party or anything else contained in any of the documents provided by each Party to the other, each Party expressly acknowledges and agrees that it is and shall be at all times relying upon the representations and warranties given herein by the other Party. Except as otherwise set out in this Section 6.3, all representations and warranties shall be given as of the Effective Date only, although such representations and warranties, and the indemnity provided in Section 9.1(e) or 9.2(d), as the case may be, shall survive the execution and delivery of this Agreement, to the extent that any such representation or warranty was false or inaccurate as of the date on which it was given. Further, it shall be deemed, without further action or notice, that the respective representations and warranties given by each Party in Sections 6.1(a) to 6.1(f), inclusive, and 6.2(a) to 6.2(b), inclusive, shall survive the execution and delivery of this Agreement and be given on an ongoing and continual basis throughout the Term of this Agreement.

6.4 Utility's Due Diligence

Notwithstanding any of the foregoing, in respect of the acceptance of transfer of all or any portions of the Facilities, the Utility acknowledges and agrees that it is acting and relying solely upon its own investigations due diligence respecting the adequacy and requirements of necessary services comprising the Facilities, and costs and other requirements associated with the Operation and Maintenance of the Facilities, and the adequacy, quality and acceptability of any design or specification of or in respect of the Facilities. Furthermore, the County:

- (a) gives no warranty or undertaking of whatever nature in respect of the knowledge, understanding or due diligence of the Utility, nor whether or not the Utility's knowledge, understanding or due diligence is adequate in the circumstances;

- (b) will not be liable to the Utility in respect of any failure or inadequacy of or in respect of any operating plans or specifications contained within Schedule C-2 (Operation, Maintenance and Services); and
- (c) will not be liable to the Utility for, and the Utility will not seek to recover from the County or any County Indemnified Parties, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use, reliance on or application of any design or specification of the Facilities, any approval by the County in respect thereof, and any Acceptance of all or any portion of the Facilities by the County.

7. **REPRESENTATIVES**

7.1 **The County's Representative**

The following will apply with respect to the appointment and authority of the County's Representative:

- (a) during any Operating Period, the County Representative will be the Person appointed by the County by notice in writing to the Utility under this Agreement;
- (b) the County's Representative will have limited authority to act on behalf of and bind the County, as determined by the delegation of the County Council;
- (c) the County's Representative will be entitled at any time upon five (5) Business Days' notice in writing to the Utility to authorize any other Person to exercise the functions and powers of the County delegated to him pursuant to this Section 7.1, either generally or specifically, and any act of any such Person will, for the purposes of this Agreement, constitute an act of the County's Representative and all references to "the County's Representative" in this Agreement (apart from this Section) will be taken as references to such Person so far as they concern matters within the scope of authority of the County's Representative; and
- (d) the County may, upon five (5) Business Days' notice in writing to the Utility, change the County's Representative, provided that:
 - (i) where the County wishes to do so it will, by written notice to the Utility, propose a substitute for approval, taking into account the need for liaison and continuity in respect of the Facilities; and
 - (ii) such appointment will be subject to the approval of the Utility (not to be unreasonably withheld or delayed).

7.2 **Utility's Representative**

The following will apply with respect to the appointment and authority of the Utility's Representative:

- (a) during any Operating Period, the Utility's Representative will be the Person appointed by the Utility by notice in writing to the County under this Agreement;
- (b) the Utility's Representative will have full authority to act on behalf of and bind the Utility for all purposes of this Agreement and, except as previously notified in writing before such act by the Utility to the County, and the County's Representative will be entitled to treat any act of the Utility's Representative in connection with this Agreement as being expressly authorized by the Utility and the County and the County's Representative will not be required to determine whether any express authority has in fact been given;

- (c) the Utility's Representative will be entitled at any time upon five (5) Business Days' notice in writing to the County to authorize any other Person to exercise the functions and powers of the Utility delegated to him pursuant to this Section 7.2, either generally or specifically, and any act of any such Person will, for the purposes of this Agreement, constitute an act of the Utility's Representative and all references to the Utility's Representative in this Agreement (apart from this Section) will be taken as references to such Person so far as they concern matters within the scope of authority of the Utility's Representative; and
- (d) the Utility may, upon five (5) Business Days' notice in writing to the County, change the Utility's Representative, provided that:
 - (i) where the Utility wishes to do so it will by notice to the County propose a substitute for approval, taking into account the need for liaison and continuity in respect of the Facilities; and
 - (ii) such appointment will be subject to the approval of the County (not to be unreasonably withheld or delayed).

8. INSURANCE, DAMAGE AND DESTRUCTION AND BONDING

8.1 Utility's Insurance

The Utility will obtain and maintain, either directly or indirectly through a Contract Operator, that insurance coverage specified to be the responsibility of the Utility and described in Schedule D-1 (Insurance Requirements), and in all cases subject to and in accordance with the provisions of Schedule D-1 (Insurance Requirements).

8.2 Agreement Not Affected by Damage or Destruction

Except as otherwise expressly provided in this Agreement, the partial destruction or damage or complete destruction by fire or other casualty of the Facilities comprising each portion of the Facilities will not terminate this Agreement, nor entitle the Utility to surrender possession of the Facilities, nor entitle the Utility to abandon the respective Project.

8.3 Utility's Obligations – Damage or Partial Destruction

If the Facilities are damaged or partially destroyed during the Operating Period, the Utility will repair, replace or restore any part of the Facilities so damaged or destroyed.

8.4 Utility's Obligations – Complete or Substantial Destruction

If the Facilities are completely or substantially destroyed during the Operating Period, the Utility will, as soon as practicable and before undertaking any material remedial work, use commercially reasonable efforts to provide the County with a report (the "Restoration Report") as to the extent of the damage and the cost and proposed construction timetable to repair, replace or restore the Facilities. Thereafter, the Utility will repair, replace or restore the Facilities in accordance with the Restoration Report and this Agreement.

8.5 Standards of Replacement, Repair or Reconstruction

Any replacement, repair, or reconstruction of the Facilities or any part thereof pursuant to the provisions of Sections 8.3 or 8.4 will be made or done in compliance with the operating plans and specifications contained within Schedule C-2 (Operation, Maintenance and Services), subject to any agreement made between the County and the Utility to revise the operating plans and specifications requirements as they pertain to any replacement, repaired or reconstructed Facilities.

8.6 Right to Repair and Receive Insurance Proceeds

If the Utility fails to undertake or complete the repair, replacement or restoration of the Facilities in accordance with its obligation under Section 8.3 or 8.4, as the case may be, such that the Utility's conduct constitutes an Event of Default and all notice periods and cure periods in respect of such Event of Default have expired such that the County is entitled to pursue its remedies in respect of such Event of Default, the County shall be entitled, in addition to all remedies available to the County, to effect such restoration, reconstruction or replacement and all Insurance Proceeds shall be applied thereto and all other costs or expenses associated with the restoration, reconstruction or replacement shall be borne in the same manner as would have been the case had the Utility effected such restoration, reconstruction or replacement.

8.7 Replacement Insurance

If the Utility at any time during the Term fails to obtain and maintain all or any part of the insurance coverage that the Utility is required to obtain and maintain pursuant to this Agreement, then the County may (but shall not be obligated to) obtain and maintain such insurance coverage as was required to be maintained by the Utility (and to the extent reasonably possible, such coverage shall be obtained on the same terms and conditions, including amounts, deductibles and term of coverage, as was required to be maintained by the Utility) and the Utility shall pay to the County, within thirty (30) days of receiving an invoice, such amounts as the County has reasonably incurred in order to obtain and maintain such insurance.

9. INDEMNITY

9.1 Utility's Indemnities to the County

Subject to the terms of this Agreement, the Utility will indemnify and keep the County and the County Indemnified Parties indemnified at all times from and against all Direct Losses that any of them may sustain in connection with:

- (a) any Claim:
 - (i) for, or in respect of, the death or personal injury of any Person arising out of, or in the course of, the Operation and Maintenance;
 - (ii) made by one or more third parties (including Claims for direct economic loss);
 - (iii) for any loss of or physical damage to property or assets of the County or any other Person; or
 - (iv) by one or more third parties arising by reason of any aspect of the Facilities infringing, or being alleged to infringe, the Intellectual Property rights of any Person;

in each case arising by reason of any:

 - (v) negligent act or omission of;
 - (vi) willful misconduct of; or
 - (vii) breach of any of the express provisions of this Agreement by;

the Utility or any Person for whom the Utility is responsible under Section 4.4;
- (b) the Hazardous Substances for which the Utility is responsible for;
- (c) non-compliance by the Utility with any of its obligations under any Law;

- (d) non-compliance by the Utility with any of its obligations to the County under this Agreement, except to the extent such non-compliance is excused as a result of an event of Force Majeure; and
- (e) any breach of any representation or warranty of the Utility to the County under this Agreement;

except in each case to the extent caused or contributed to by breach of any express provision of this Agreement by the County or any negligent act, omission or willful misconduct of the County or any Person for whom the County is responsible under Section 4.6.

9.2 The County Indemnities to the Utility

Subject to the terms of this Agreement, the County will indemnify and keep the Utility and the Utility Indemnified Parties indemnified at all times from and against all Direct Losses that any of them may sustain in connection with:

- (a) any Claim:
 - (i) for, or in respect of, the death or personal injury of any Person;
 - (ii) made by one or more third parties (including Claims for direct economic loss);
 - (iii) for any loss of or physical damage to the Facilities or to the property or assets of the Utility or any other Person, including any Contract Operator or Sub-contractor;

in each case arising by reason of any:

 - (iv) negligent act or omission of;
 - (v) willful misconduct of; or
 - (vi) breach of any of the express provisions of this Agreement by;

the County or any Person for whom the County is responsible under Section 4.6;
- (b) non-compliance by the County with any of its obligations under any Law, except to the extent such non-compliance is excused as a result of an event of Force Majeure;
- (c) non-compliance by the County with any of its obligations to the Utility under this Agreement, except to the extent such non-compliance is excused as a result of an event of Force Majeure; and
- (d) any breach of any representation or warranty of the County to the Utility under this Agreement;

except in each case to the extent caused or contributed to by breach of any express provision of this Agreement by the Utility or any negligent act, omission or willful misconduct of the Utility or any Person for whom the Utility is responsible under Section 4.5.

9.3 Reliance

This Article 9 may be relied upon by the County Indemnified Parties and Utility Indemnified Parties and may be enforced directly by any of them against the Party providing an indemnity hereunder in their favour in the same manner and to the same extent as if pursuant to a direct contractual indemnity between them and the Party providing the indemnity.

9.4 Notice of Indemnified Claims

Any Party receiving a Claim for which it appears that such Party is or may become entitled to indemnification pursuant to this Article shall, as soon as reasonably practicable, and in any event within ten (10) days of receipt of the Claim, give notice to the other Party. Such notice shall specify with reasonable particularity, to the extent known, the factual basis for the Claim and the amount of the Claim. Any failure by a Party to notify the other Party of a Claim hereunder shall not relieve such other Party of any liability it may have hereunder, except to the extent such Party demonstrates that it has been prejudiced by the failure to receive proper notice.

9.5 Mitigation

For greater certainty, notwithstanding that any Party (including, for purposes of this Section, any County Indemnified Parties, and Utility Indemnified Parties) may have a claim for indemnity pursuant to this Agreement, such claim for indemnity shall not lessen any obligation such Person may have to take reasonable steps to mitigate the circumstances which give rise to the claim for indemnity.

9.6 Conduct of Third Party Claims

The provisions of Schedule D-2 (Conduct of Third Party Claims) will apply to the conduct of Claims made by a Third Party against a Party having, or claiming to have, the benefit of an indemnity under this Agreement.

10. FORCE MAJEURE

10.1 Relief from Obligations

Subject to the remainder of this Article 10, if the occurrence of an event of Force Majeure prevents either Party from performing any of its material obligations under this Agreement, then the said Party shall be entitled to relief from its obligations hereunder to the extent required as a consequence of such event of Force Majeure, provided that no such relief may be claimed in respect of any obligation to make any payments or pay other amounts that may from time to time become owing hereunder.

10.2 Mitigation

If either Party is (or claims to be) affected by an event of Force Majeure:

- (a) the Party will use commercially reasonable efforts to mitigate the consequences of such event upon the performance of any of its material obligations under this Agreement (provided that in doing so it will not be obligated to incur material expenditure which the other party has not agreed to pay), and resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all commercially reasonable efforts to remedy its failure to perform; and
- (b) the Party will not be relieved from liability under this Agreement to the extent that it did not, or was not able to, perform its obligations under this Agreement due to its failure to comply with Section 10.2(a).

10.3 Information Supporting Relief Claimed

After the occurrence of an event of Force Majeure, the Party claiming relief shall:

- (a) as soon as practicable (making all reasonable efforts to do so within 5 Business Days) after it Has Knowledge of the relevant event of Force Majeure, give to the other Party an initial notice of the event of Force Majeure, which initial notice will give sufficient details to identify the particular event claimed to be an event of Force Majeure, its consequences and the nature of the relief claimed;

- (b) deliver a subsequent notice to the other Party as soon as practicable (making all reasonable efforts to do so within a further 5 Business Days) which will contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the effect of the event of Force Majeure on the ability of the said Party to perform, the action being taken in accordance with Section 10.2, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it or its effects; and
- (c) if, following the issue of any such notice, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (or any failure to perform), it will submit such further information to the other Party as soon as reasonably possible.

10.4 Notice of Resumption

The Party claiming relief will notify the other Party as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.

10.5 Unresolved Event of Force Majeure

If an event of Force Majeure has prevented the performance of all or a material portion of the obligations of a Party or otherwise prevented a Party from being in compliance with this Agreement (other than in relation to any obligation to make payments or pay other amounts that may from time to time become owing hereunder) for a period of one hundred and eighty (180) days or more, the Parties will endeavour to agree on modifications to this Agreement which may be equitable having regard to the nature of the event of Force Majeure, and taking into account any failure by the parties to give notice or implement mitigation measures as required by this Article 10.

11. UTILITY DEFAULT

11.1 Event of Default

For the purposes of this Agreement, “Event of Default” means any of the following events or circumstances:

- (a) if the Utility fails to perform or observe any material term, condition, covenant or undertaking to the County contained in this Agreement and such failure materially and adversely affects the performance of the Operation and Maintenance;
- (b) if any material representation or warranty made by the Utility to the County in this Agreement is incorrect in any material respect when made or deemed made, and such incorrect representation or warranty materially and adversely affects the performance of the Operation and Maintenance;
- (c) if the Utility commits any material breach of the terms of any Operating Permit, and such breach materially and adversely affects the performance of the Operation and Maintenance;
- (d) if the Utility abandons the Operation and Maintenance (other than pursuant to the exercise of and in accordance with a right of suspension or termination provided for by this Agreement);
- (e) if the Service Commencement Date for any Stage will be more than two (2) days after the applicable Service Commencement Deadline (other than as a consequence of a Force Majeure or a breach by the County of its obligations under this Agreement);
- (f) if any of the following events occurs in respect of the Utility:
 - (i) any proceedings with respect to the Utility being commenced under the *Companies’ Creditors Arrangement Act* (Canada) which are not stayed, dismissed or otherwise remedied within twenty (20) business Days;

- (ii) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Utility;
- (iii) the Utility ceasing to carry on business;
- (iv) the Utility making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Utility under the *Bankruptcy and Insolvency Act* (Canada) or otherwise and, if commenced against the Utility, not stayed, dismissed or otherwise remedied within thirty (30) days of its commencement;
- (v) a petition being filed (and not being contested in good faith using all reasonable efforts), or a resolution being passed or an order being made for the winding-up, liquidation or dissolution of the Utility;
- (g) if
 - (i) the Utility sells, transfers or disposes of the Facilities or any portion thereof, or
 - (ii) the shareholders of the Utility enter into any share sale, transfer or other disposition resulting in the change of ownership of more Ten (10%) percent of the issued and outstanding shares of the Utility or resulting is a change of voting control of the Utility, without the prior written authorization or consent of the County or, where applicable, the Alberta Utilities Commission, or
 - (iii) there is a share sale, transfer or other disposition arising from the death of the shareholders of the Utility resulting in the change of ownership of more Ten (10%) percent of the issued and outstanding shares of the Utility or resulting is a change of voting control of the Utility, without the prior written authorization or consent of the County or, where applicable, the Alberta Utilities Commission.

11.2 Notification

The Utility will, promptly on becoming aware of its occurrence, notify the County of the occurrence and details of any Event of Default.

11.3 Notice of Default or Termination

After the occurrence of an Event of Default and while an Event of Default is subsisting, the County may:

- (a) in the case of an Event of Default referred to in Section 11.1(a), 11.1(b) or 11.1(c), serve a written notice of default on the Utility, specifying in reasonable detail the type and nature of the default, requiring the Utility to remedy the Event of Default referred to in such notice of default (if it is continuing) within ten (10) Business Days of such notice of default; or
- (b) in the case of an Event of Default referred to in any of Sections 11.1(d), 11.1(e), 11.1(f) or 11.1(g) terminate this Agreement in its entirety by notice having immediate effect.

11.4 Right to Perform

Upon the occurrence of an Event of Default, in addition to any and all other remedies that may be available of the County the County shall have the right to perform and otherwise correct and remedy any such obligations of the

Utility in default. Any and all costs incurred by the County in carrying out the rectification of the Utility's obligations in default shall be due and payable by the Utility upon demand.

11.5 County Termination Right

If an Event of Default that is the subject of a notice of default served under Section 11.3(a) is not remedied before the expiry of the stipulated rectification period, then the County may, terminate this Agreement in its entirety by notice to the Utility with immediate effect.

11.6 Failure to Achieve Service Commencement Deadline

In addition to any other rights of the County under this Agreement and subject to any relief to which the Utility may be entitled under this Agreement, if the Utility does not achieve Service Commencement on or before the respective Service Commencement Deadline, the Utility will pay to the County liquidated damages comprised any and all Direct Losses suffered by the County resulting from the failure to achieve Service Commencement on or before the Service Commencement Deadline including, without restriction:

- (a) any and all claims by third parties for damages resulting from such failure; and
- (b) any and all legal costs on a solicitor and his own client full indemnity basis, incurred by the County in defending against, or otherwise dealing with, such claims.

11.7 County Costs

The Utility will reimburse the County for all reasonable Direct Losses incurred by the County in exercising any of its rights (including any actual legal expenses) under this Article 11.

11.8 Continued Effect – No Waiver

Notwithstanding any breach of this Agreement by the Utility, and without prejudice to any other rights which the County may have in relation to it, the County may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of the County to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, will not be deemed a waiver of such right for any continuing or subsequent breach.

12. EFFECT OF REMEDIES

12.1 Remedies Cumulative

- (a) The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.
- (b) A Party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.
- (c) No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

13. CONFIDENTIALITY

13.1 Confidential Information

In this Section, "Confidential Information" means all confidential information of a Party which is supplied, or to which access is granted, to or on behalf of the other Party (whether before or after the date of this Agreement), either

in writing, orally or in any other form, directly or indirectly pursuant to discussions with the other Party. "Confidential Information" includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information.

13.2 Use and Disclosure of Confidential Information

Each Party will hold in confidence any Confidential Information received from the other Party, provided that the provisions of this Section will not restrict either Party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that the Utility may, subject to obtaining confidential restrictions similar to those set out in this Agreement, provide to a Contract Operator, or cause to be provided to other third parties, documents and other information which are necessary or useful for the Utility's performance of its obligations under this Agreement.

13.3 Exceptions

Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

- (a) which the Party disclosing the Confidential Information confirms in writing is not required to be treated as Confidential Information;
- (b) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement,
- (c) to the extent any Person is required to disclose such Confidential Information by Law;
- (d) to the extent consistent with any County policy concerning the County's Confidential Information, the details of which have been provided to the Utility in writing prior to the disclosure; or
- (e) as the County may be entitled to receive from the Utility pursuant to this Agreement in the event of, or following, termination of this Agreement.

13.4 Announcements

Unless expressly provided in this Agreement or otherwise required by any Law (but only to that extent), neither Party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the prior written consent of the other Party (which will not be unreasonably withheld or delayed).

14. DISPUTE RESOLUTION

14.1 Procedure

Except as otherwise provided in this Agreement (including, without restriction, the operation of Article 11), any Dispute will be resolved in accordance with the Dispute Resolution Procedure.

14.2 Continued Performance

The Parties will continue to perform their obligations under this Agreement, notwithstanding the giving of any Dispute Notice, or the commencement or performance of the Dispute Resolution Procedure.

14.3 Interest on Disputed Amounts

If payment of any amount payable under this Agreement is delayed while the matter is in Dispute, upon resolution of the Dispute, Interest will be payable on any amount determined payable pursuant to the Dispute Resolution Procedure and will be calculated from the time such amount became payable under this Agreement until paid.

15. GENERAL**15.1 Assignment by the Utility**

The Utility will not, without the prior consent of the County (such consent not to be unreasonably withheld or delayed), assign, transfer or otherwise dispose of any interest in this Agreement. Despite the foregoing:

- (a) the Utility may, without the prior written consent of the County but subject to the execution of an assumption agreement satisfactory to the County, assign its interest under this Agreement to any Affiliate of the Utility, provided that such assignee remains at all material times an Affiliate of the Utility;
- (b) any assignee pursuant to Section 15.1(a) assumes all of the obligations of the Utility under this Agreement, pursuant to an agreement in writing among the Utility, the assignee, and the County; and
- (c) despite such assignment, transfer or other disposition, the original Party executing this Agreement as Utility remains fully liable under this Agreement.

15.2 Assignment by the County

The County will not, without the prior consent of the Utility (such consent not to be unreasonably withheld or delayed), assign, transfer or otherwise dispose of any interest in this Agreement except on the following terms:

- (a) the County may, without the prior written consent of the Utility, and at any time and from time to time, assign its interest under this Agreement to the County or another wholly-owned subsidiary of the County;
- (b) any assignee pursuant to Section 15.2(a) assumes all of the obligations of the County under this Agreement, pursuant to an agreement in writing among the Utility, the assignee, and the County; and
- (c) despite such assignment, transfer or other disposition, the County remains fully liable under this Agreement.

15.3 Interest on Overdue Amounts

Subject to Section 14.3, if payment of any amount payable under this Agreement is not made when due, interest will be payable on such amount at the Default Interest Rate and will be calculated from the date due under this Agreement until paid.

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15.4 Survival

Notwithstanding any other provision of this Agreement the provisions of Sections 3.3, 4.5, 4.6, Article 9, Article 13, Article 14, Schedule A-1 (Definitions), Schedule A-2 (Interpretation and General Contractual Terms), Schedule A-3 (Notice), Section 1(a)(i) of Schedule C-3 (Operating Permits), Schedule D-3 (Conduct of Third Party Claims), Schedule E-2 (Transfer and Transition Procedures), Schedule E-1 (Financial Operations), Schedule F-1 (Intellectual Property), and Schedule F-2 (Dispute Resolution), and Schedule F-3 (Records, Reports and Requirements for FOIPP), will survive the expiry or any earlier termination of this Agreement until all obligations owed by the Parties are fully performed or otherwise discharged., Schedule E-2 (Transfer and Transition Procedures), Schedule E-1 (Financial Operations), Schedule F-1 (Intellectual Property), and Schedule F-2 (Dispute Resolution), and Schedule F-3 (Records, Reports and Requirements for FOIPP), will survive the expiry or any earlier termination of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

STRATHCONA COUNTY

Per: _____
Jason Casault
Director, Utilities

Per: _____

PROPERTIES OF NORTHERN BEAR INC.

Per: _____

Per: _____

(Seal)

TOUCHWOOD HOLDINGS LTD.

Per: _____

Per: _____

(Seal)

SCHEDULE A-1**DEFINITIONS**

In this Agreement, including the Schedules, the following words and expressions have the following meanings:

“Acceptance” means the acceptance of the Facilities by the County, including the design, construction and installation of the Facilities, under the any Development Agreements entered between the County and a developer;

“Affiliate” in respect of a Person means any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person where “control” means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person;

“Agreement” means this agreement including any recitals and schedules to this agreement, as amended, supplemented or restated from time to time;

“Avoidable Costs” means all costs and expenses which are, or which would have been had the Utility acted reasonably avoided by the Utility during any stoppage or reduction of the Operation and Maintenance during the Operating Period;

“Beneficiary” has the meaning given in Schedule D-2;

“Book Value” means the capital cost of acquiring, constructing or improving the Facilities, or a particular portion thereof as applicable, excluding any No-Cost Capital contributed to such costs, in each case as determined in accordance with International Financial Reporting Standards (IFRS) and forming a part of the rate base for the Utility in accordance with and for purposes of this Agreement, and for clarity and for the purposes of calculation shall exclude any value associated with:

- (a) all rights of way, easements, or other land dedications by developers; and
- (b) all right and privileges granted under this Agreement;

“Business Day” means a day other than a Saturday, Sunday or statutory holiday in Alberta;

“Change in Law” means the coming into force of any new Law in Canada or amendments to or change in interpretation of any Law in Canada, after the Effective Date, having a material effect (positive or negative) on:

- (a) the Facilities;
- (b) the Utility, in its capacity as Utility;
- (c) any Contract Operator, in its capacity as a Contract Operator.

“Claim” means any claim, demand, action, proceeding or liability;

“Confidential Information” has the meaning given in Section 13.1;

“Contract Operator” means that party appointed and approved from time to time as the Contract Operator pursuant to Section 4.10 and 4.11 of this Agreement;

“**County**” means the Strathcona County;

“**County Council**” means the Council of Strathcona County;

“**County Indemnified Parties**” means the County and any councillor, officer, employee, agent, servant, representative or advisor (including legal and financial advisors) of any of them, any contractor or subcontractor of the County, the County Representative, any delegate of the County's Representative, and any director, officer, employee, agent, servant, representative or advisor (including legal and financial advisors) of the County or any of the foregoing;

“**County's Representative**” means the Person appointed by the County under Section 7.1;

“**Default Interest Rate**” means interest at 2% over the Prime Rate;

“**Development Agreement**” means any development agreements entered into between the County and developers respecting the design, construction, commissioning and testing of the Facilities;

“**Direct Losses**” means, in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services), proceedings, demands and charges (subject to any duty to mitigate at Law), whether arising under statute, contract or at common law, which result directly from such condition, event or omission and which, in the case of negligence, are reasonably foreseeable as likely to occur:

- (a) net of related Insurance Proceeds and Insurance Receivables; and
- (b) excluding any Indirect Losses;

“**Dispute**” means any disagreement, failure to agree or other dispute between the County and the Utility arising out of or in connection with this Agreement, including in respect of the interpretation, breach, performance, validity or termination hereof, whether in the law of contract or any other area of law;

“**Dispute Notice**” has the meaning given to it in Section 4 of Schedule F-2 (Dispute Resolution Procedure);

“**Dispute Resolution Procedure**” means the procedure set out in Schedule F-2 (Dispute Resolution Procedure);

“**Effective Date**” means the date contemplated within Section 3.6 of this Agreement;

“**Environmental Laws**” mean all Laws relating to the protection of Environmental Resources and human health;

“**Environmental Resources**” includes all plant, animal, land, water and air resources that may be affected by the Facilities;

“**Equipment**” means all equipment designed, constructed or supplied by the Utility comprising or used in the Facilities comprising each portion of the Facilities including testing and control systems;

“**Event of Default**” has the meaning given in Section 11.1;

“**Expiry Date**” means the 20th anniversary of the Effective Date of this Agreement;

“**Facilities**” means those facilities described within Schedule B-3 (Facilities), and all related Equipment;

“**Facilities Data**” means drawings, reports, documents, plans, software, formulae, calculations and all other materials, data, or information, whether oral or fixed in any form, relating to the Facilities, prepared by or on behalf of the Utility;

“**Facilities Intellectual Property**” means the Intellectual Property which is created, brought into existence, acquired, licensed or used by the Utility, any Contract Operator, any Sub-Contractor or any other third party, directly or indirectly, for the purposes of the Operation and Maintenance, improvement or testing of the Facilities comprising each portion of the Facilities or otherwise for the purposes of this Agreement;

“**Force Majeure**” means:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Utility;
- (c) tornado, earthquake or flood directly affecting the Facilities; or
- (d) pressure waves caused by devices traveling at supersonic speeds;

“**Franchise Area**” means that portion of Strathcona County designated in Schedule B-1 (Franchise Area), as amended from time to time by the Parties;

“**GAAP**” means generally accepted accounting principles in effect in Canada including the accounting recommendations published in the Handbook of the Canadian Institute of Chartered Accountants;

“**Good Industry Practice**” means “Good Industry Practice” means the standards, practices, methods and activities and actions generally accepted and utilized by and within the treated water management and treatment industry in Canada, generally consisting of standards and practices intended to achieve a cost-effective result consistent with Laws, Regulatory Requirements, environmental considerations, reliability, safety and expedition, including such standards and practices that are from time to time prepared, endorsed, promoted or promulgated by:

- (a) the American Water Works Association, the Canadian Water and Wastewater Association, and the Association of Professional Engineers and Geoscientists of Alberta (APEGA), or successor organization, to the extent that those are consistent or complementary to each other and accepted and utilized by and within the water management and treatment industry in Canada; and
- (b) the Alberta Ministry of Environment and Protected Areas (and, where applicable, any predecessor or successor or Relevant Authority), including the:
 - (i) Part 1 Standards for Municipal Waterworks, published in April 2012, as amended or replaced from time to time;
 - (ii) Part 2 Guidelines for Municipal Waterworks, published in April 2012, as amended or replaced from time to time;

and in the event of a conflict between any of the aforesaid standards and practices, a standard or practice which is generally applied in the industry in Canada and is in compliance with Applicable Laws will apply;

“**Has Knowledge**” or “**Have Knowledge**” means:

- (a) a natural person knows or has knowledge when information is acquired by the person under the circumstances in which a reasonable person would take cognizance of it; and
- (b) a corporation knows or has knowledge when information has come to the attention of:
 - (i) a director or officer of the corporation; or

- (ii) a senior employee of the corporation with responsibility for matters to which the information relates;

under circumstances in which a reasonable person would take cognizance of it;

“**Hazardous Substance**” means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation, or release into or presence in the environment is prohibited, controlled or regulated under Environmental Laws;

“**Indemnifier**” has the meaning given in Section 9.6;

“**Indirect Losses**” means loss of profits, loss of use, loss of revenue, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity, exemplary or punitive damages or any consequential loss or indirect loss of any nature;

“**Insurance Proceeds**” means the amount of any insurance proceeds received by a Person in respect of a claim made under any policy of insurance required to be maintained by the Utility under this Agreement;

“**Insurance Receivables**” means the amount of any insurance proceeds which a Person is entitled to receive pursuant to policies of insurance required to be maintained by the Utility under this Agreement but which have not been received;

“**Intellectual Property**” means any or all of the following and all rights, arising out of or associated therewith: (a) all national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (b) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, Technology, technical data, product formulations, designs and specifications, and all documentation relating to any of the foregoing throughout the world; (c) all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world; (d) all industrial designs and any registrations and applications therefor throughout the world; (e) all rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world; (f) all moral rights of authors and inventors; and (g) any similar or equivalent rights to any of the foregoing anywhere in Canada;

“**Interest**” means interest at the Prime Rate;

“**Lands**” means the lands contained within the Franchise Area;

“**Laws**” means all laws, statutes, regulations, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Relevant Authority having the force of law from time to time, including, for greater certainty, those related to the issuance of Operating Permits;

“**Municipal Government Act**” means the *Municipal Government Act*, RSA 2000, c.M-26;

“**Net Book Value**” means the Book Value of the Facilities or identified portions thereof, less the accumulated depreciation thereon calculated in accordance with Good Industry Practice as the depreciation expense claimed and recovered by the Utility through its rates;

“**No-Cost Capital**” means the cost of acquiring, constructing or improving the Facilities or identified portions thereof or capital replacements, in each case to the extent that such cost is paid for by:

- (a) grants or contributions from of Canada, Province of Alberta, or the County;

- (b) developers, including contributions of additions to or extension of the Facilities, or financial contributions and similar payments funding the cost of acquiring, constructing or improving the Facilities or identified portions thereof;
- (c) payments or contributions from any other Person or entity (excluding the Utility) on account of the cost of acquiring, constructing or improving the Facilities or identified portions thereof, or capital replacements thereof, including connection fees, capital cost rate components, and similar payments by consumers funding the cost of acquiring, constructing or improving the Facilities or identified portions thereof, or funding capital replacements thereof;

“**Notice**” has the meaning given in Schedule A-3 (Notice);

“**Operating Period**” means in respect of each Stage of the Facilities, the period between the date of commencement of the provision of Operation and Maintenance of the Facilities or the provision of the Services or both, until the transfer of the Facilities to the County;

“**Operating Permits**” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations required from any Relevant Authority to carry out the Facilities in accordance with this Agreement including the approvals referred to within Schedule C-3 (Operating Permits);

“**Operation and Maintenance**” means the management, operation, maintenance, repair and replacement of the Facilities, or any components thereof, including the delivery of Services to owners or occupants of Lands contained within the Franchise Area, in accordance with this Agreement and the operating specifications set forth within Schedule C-2 (Operation, Maintenance and Services);

“**Parties**” means the County and the Utility and their successors and permitted assigns;

“**Person**” means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Relevant Authority;

“**Prime Rate**” on any day means the annual rate of interest announced by Bank of Montreal (or its successor), or any other Canadian chartered bank agreed to by the Parties, from time to time as its reference rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

“**Public Properties**” means all titles, leases, licences, rights-of-way, undersurface rights, easements and other interests in land acquired by the County as required pursuant to Schedule C-2 (Public Properties and Access);

“**Regulatory Requirements**” means the standards enacted or imposed by any Relevant Authority, applicable Laws or Operating Permits applicable to the Operation and Maintenance of the Facilities and the provision of the Services;

“**Relevant Authority**” means, with respect to any circumstance or matter, any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government, in each case having jurisdiction over such circumstance or matter;

“**Restoration Report**” has the meaning given in Section 8.4;

“**Service Commencement**” means the commencement Operations and Maintenance of each Stage of the Facilities by the Utility in accordance with the Franchise Agreements;

“**Service Commencement Date**” means the date on which Service Commencement is achieved;

“**Service Commencement Deadline**” means that date falling 14 days following the transfer of any new additions to the Facilities to the Utility as contemplated within the respective Development Agreement, or the corresponding

deadline for completion of any additions to the Facilities undertaken by the Utility where agreed upon pursuant to the provisions of Schedule E-1 (Financial Operations);

“**Services**” means potable water services, and domestic wastewater services, contemplated or described within Section 4.1 and Schedule B-2 (Services), sufficient to satisfy the servicing required or contemplated by the Development Agreements;

“**Sprinkler System**” means fire sprinkler system designed, intended or relied upon to provide for a water based fire suppression system, together with associated distribution system, which are located within a building on privately owned lands, and under the ownership and control of the owner(s) of the lands and/or building;

“**Stage**” means a stage of the subdivision of any of the Lands, as set forth within the applicable Development Agreements;

“**Sub-Contract**” means any contract entered into by a Contract Operator, or sub-contractor of a Contract Operator or any of their respective sub-contractors, with one or more third parties in relation to the carrying out of the Operation and Maintenance, and the provision of the Services, as amended or replaced from time to time in accordance with this Agreement;

“**Sub-Contractor**” means any third party that enters into a Sub-Contract;

“**Term**” has the meaning given in Section 3.4;

“**Termination Date**” means the Expiry Date or such earlier date on which the termination of this Agreement may become effective in accordance with the terms hereof;

“**Third Party**” means a Person other than the County or the Utility or a Contractor or Sub-Contractor of the Utility;

“**Utility**” means Properties of Northern Bear Inc. and Touchwood Holdings Ltd. whether operating individually or jointly, or such other parties as may be approved by the County as the grantee under any of the Franchise Agreements;

“**Utility Indemnified Parties**” means (a) any Affiliate of the Utility (b) the Utility’s Representative; (c) any delegate of the Utility’s Representative; (d) any Contract Operator or other contractor of the Utility; (e) any Sub-Contractor; and (f) any director, officer, employee, agent, servant, representative or advisor (including legal and financial advisors) of the Utility or any of the foregoing;

SCHEDULE A-2**INTERPRETATION AND GENERAL CONTRACTUAL TERMS****1. Construction and Interpretation**

In the Agreement, including the Schedules, and in any amendments thereto, except as otherwise expressly provided, or unless the context otherwise requires:

- (a) the recitals and headings to Articles, Sections and Schedules are for convenience only and will not affect the interpretation of the Agreement;
- (b) all references in the Agreement or in any Schedule to “articles”, “sections”, “subsections”, “paragraphs”, “clauses”, and “subclauses” or to other designated subdivisions are to the designated subdivisions of the Agreement or the applicable Schedule, as the case may be;
- (c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria (to the extent binding and having the force of law) made under that statute and any successor statute, each as amended, replaced or re-enacted from time to time;
- (d) each reference to a ministry, office, agency or similar body of any Relevant Authority is deemed to be a reference to any successor or replacement of such ministry, office, agency or similar body;
- (e) each reference to a guideline, policy, regulation, rule or directive is deemed to be a reference to any successor or replacement of such guideline, policy, regulation, rule or directive;
- (f) words importing the singular include the plural and vice versa, words importing gender include all genders, and words importing individuals shall include firms and corporations, and vice versa;
- (g) references to time of day or date mean the local time or date in Strathcona County, Alberta;
- (h) all references to amounts of money mean lawful currency of Canada;
- (i) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP consistently applied;
- (j) the word “written” includes printed, typewritten, faxed, e-mailed or otherwise capable of being visibly reproduced at the point of reception and “in writing” has a corresponding meaning;
- (k) the words “include” and “including” are to be construed as meaning “including, without limitation”;
- (l) except to the extent otherwise expressly provided by the Agreement, any requirement contained in the Agreement, including any Schedule, for the Utility to consult with, or have regard to the proposals or comments of any Person or to have due regard to, or take account of, any matter or representation will not be construed as a requirement to adopt, incorporate or comply with the result of any such consultation, such proposals or such matter;
- (m) the words “herein” and “hereunder” and words of similar import refer to the Agreement as a whole including the Schedules and not to any particular section or other subdivision;
- (n) any reference to an entity shall include and be deemed to be a reference to an entity (or entities) that is a successor, assign or successor in title to such entity, including any entity which assumes by agreement, by operation of law or otherwise, the rights or obligations or both of the entity;

- (o) words that have well-known technical or trade meanings and that are not specifically defined in the Agreement are used in the Agreement in accordance with their recognized meanings;
- (p) any reference to “approval”, “authorization” or “consent” of any Person, including any Party, means the written approval, written authorization or written consent of such Person;
- (q) a reference to a day is a reference to a period of time commencing at midnight and ending the following midnight;
- (r) a reference to a month is a reference to a calendar month;
- (s) if the time for performing an obligation under the Agreement expires on a day that is not a Business Day, the time shall, unless specifically indicated to the contrary, be extended until that time on the next Business Day;
- (t) where a word or phrase is specifically defined, other grammatical forms of that word or phrase have corresponding meanings; and
- (u) a reference to time is a reference to the time in effect in Alberta, taking into account the *Daylight Saving Time Act*, RSA 2000, c.D-5.

2. Governing Law

The Agreement and each of the documents contemplated by or delivered under or in connection with the Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of Alberta and the laws of Canada applicable in Alberta, which will be deemed to be the proper law of the Agreement.

3. Severability

If any provision of the Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of the Agreement or the legality, validity or enforceability of that provision in any other jurisdiction except that if:

- (a) on the reasonable construction of the Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable; and
- (b) as a result of the determination by a court of competent jurisdiction that any part of the Agreement is unenforceable or invalid and, as a result of such determination or this Paragraph 3, the fundamental intentions of the Parties in the Agreement are frustrated, the Parties will use reasonable efforts to amend, supplement or otherwise vary the Agreement to put each Party in a position substantially equivalent to that which is consistent with their mutual intention in entering into the Agreement. If the Parties cannot agree on the aforementioned adjustments within six (6) months, the Agreement may be terminated by either Party.

4. Further Assurances

The Parties shall, with reasonable diligence, hold all meetings, perform all acts, execute and deliver all documents and instruments, do all things and provide all reasonable assurances as may be reasonably necessary or desirable to give effect to the provisions and intent of the Agreement and to complete the transactions contemplated by the Agreement.

5. Approvals

No approval, authorization, sanction or permission required to be provided under the Agreement shall, unless specifically indicated to the contrary, be unreasonably or arbitrarily withheld or delayed by the Party providing same.

6. Waivers

No waiver of any provision of the Agreement is binding unless it is in writing and signed by all the Parties, except that any provision which does not give rights or benefits to particular Parties may be waived in writing, signed only by those Parties who have rights under, or hold the benefit of, the provision being waived if those Parties promptly send a copy of the executed waiver to all other Parties. No failure to exercise, and no delay in exercising, any right or remedy under the Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of the Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

7. Enurement

The Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

8. Time of the Essence

Time, where mentioned herein, shall be of the essence.

9. Exclusive Warranties

The warranties expressly set forth in the Agreement are exclusive and are in lieu of all other warranties, whether statutory, express or implied (including warranties of merchantability and fitness for a particular purpose, and warranties arising from course of dealing or usage of trade). The Utility will have no liability and the County will have no remedy for breach of warranty, including for defects, except as expressly set forth, and in accordance with the provisions of the Agreement.

10. Counterparts

The Agreement and all documents contemplated by or delivered under or in connection with the Agreement may be executed and delivered in any number of counterparts with the same effect as if all Parties had signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

11. Delivery by Fax

Any Party may deliver an executed copy of the Agreement by facsimile or electronic transmission provided that the Party will promptly dispatch by delivery in person to the other Party an originally executed copy of the Agreement.

12. Amendments

Except as specifically provided in the Agreement, no amendments, supplement, restatement or termination of any provision of the Agreement is binding unless it is in writing and signed by each Party at the time of the amendment, supplement restatement or termination.

13. Submission to Jurisdiction

Subject to the Dispute Resolution Procedure, each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of Alberta and all courts having appellate jurisdiction over those courts in any suit, action or other proceeding in any way related to or arising out of the Agreement by any Party against the other Party.

14. Entire Agreement

The Agreement and all documents contemplated by or delivered under or in connection with the Agreement, constitute the entire agreement between the Parties with respect to the subject matter of the Agreement and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings in respect thereof, whether written or oral, express or implied, statutory or otherwise.

15. Continuing Nature of Rights and Obligations

The expiry or termination of the Agreement shall not relieve any Party of any rights, liabilities or obligations that by their nature survive expiry or termination, including warranties, remedies, indemnities and obligations of confidentiality or environmental compliance, or that arose prior to the expiry or termination of the Agreement.

16. No Application of Contra Preferentum

The provisions of the Agreement were negotiated by the Parties and the Agreement shall be deemed to have been drafted by both Parties. The Parties hereby acknowledge that they have read the Agreement in its entirety and that each has obtained independent legal advice in connection with the preparation and execution of the Agreement and the principle of *contra preferentum* shall not be argued, pleaded or applied in any proceeding subsequent to the execution hereof in respect to any provision of the Agreement.

SCHEDULE A-3**NOTICE**

Except as otherwise expressly provided in this Agreement, any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Agreement (each, a “**Notice**”) to a Party must be given in writing. A Notice may be given by delivery to an individual or electronically by fax or electronic mail, and will be validly given if delivered on a Business Day at the following address, or if transmitted on a Business Day by fax or e-mail addressed as follows:

To the County:

Strathcona County
Utilities Department
2001 Sherwood Drive
Sherwood Park, Alberta
T8A 3W7

Attention: Director of Utilities

Telephone No.: (780) 464-8175
Fax: n/a
E-Mail: Jason.Casault@strathcona.ca

To the Utility:

Properties of Northern Bear Inc. & Touchwood Holdings Ltd.
c/o Timothy D. McFetridge, Barrister & Solicitor
Suite 323 6650-177 Street
Edmonton, Alberta
T5T 4J5

Telephone: (780) 421-1071
Fax: (780) 428-7533
E-Mail: propertiesofnorthernbearinc@gmail.com;
tdmcfet@telus.net

or to any other address or fax number or individual that such Party designates. Any Notice:

- (a) if validly delivered, will be deemed to have been given when delivered;
- (b) if validly transmitted electronically by fax or e-mail before 3:00 pm. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day; and
- (c) if validly transmitted electronically by fax or e-mail after 3:00 p.m. (local time at the place of receipt) on a Business Day or at any time on a non-Business Day, will be deemed to have been given on the Business Day after the date of transmission.

SCHEDULE B-1**FRANCHISE AREA**


The Franchise Area shall consist of the lands legally described as follows:

1. Plan 992 3071, Block 1, Lots 2 and 4;
2. Plan 092 9892, Block 1, Lots 18 and 19;
3. Plan 092 9861, Block 1, Lots 20 and 21
4. all those lands contained within CDE 012 5764, being West Bear Haven;
5. all those lands contained within CDE 092 9928; and
6. Plan 012 5748, Block 1, Lot 8, being the Treated Water Reservoir Site and Pumphouse forming a part of the Facilities;

as shown upon the aerial map attached to and forming a part of this Schedule B-1. Notwithstanding the foregoing or anything else contained within this Agreement, at all times during the existence of this Agreement the County shall be and remain entitled to own and operate a truck-fill station within the Franchise Area and provide water services by or through the truck fill site.



NORTHERN BEAR FRANCHISE AREA

 Franchise Area Boundary



DATE DRAWN: February 2023

SCHEDULE B-2**SERVICES**

The Services shall consist of the potable water and domestic wastewater service required or contemplated under the Development Agreements including the following service:

1. Household Potable Water Service – subject always to:

- (a) the execution or acceptance of the service agreement or terms of service required by the Utility or both; and
- (b) payment of all rates, tolls and charges imposed by the Utility;

in each case as approved from time to time by the Alberta Utilities Commission, the Utility shall provide to each customer within the Franchise Area, treated water service suitable for human consumption at the following rates:

Average Daily Demand (ADD) for:	
• Residential (single family)	0.7 m ³ /day
• Residential (multi-family)	0.63 m ³ /day
Maximum Daily Demands (MDD)	2.10 x ADD
Peak Hour Demands (PHD)	3.7 x ADD
Minimum Operating Pressure (at the service connection)	300 kPa (44 psi)

per residential household service location. For clarity, the said water service shall include, where applicable, water service necessary for the operation of fire suppression systems consisting of individual Sprinkler Systems contained within the respective developments serviced by the Utility; and

2. Domestic Wastewater – subject always to:

- (a) the execution or acceptance of the service agreement or terms of service required by the Utility (including, without restriction, any requirements for individual holding tanks and pumps, applied universally) or both; and
- (b) payment of all rates, tolls and charges imposed by the Utility;

in each case as approved from time to time by the Alberta Utilities Commission (or failing such approval by the Alberta Utilities Commission, then by the County), the Utility shall provide to each customer within the Franchise Area, domestic wastewater collection and transmission service suitable for the following:

Source	Service Level/Capacity
Development Requirements and Development Agreement	Meeting the servicing requirements of the developments within the Franchise Area, at flow rates sufficient to accommodate the disposals resulting from the corresponding water supplies.
Construction/Service Standards	Maintaining a system capacity sufficient to carry peak flows from the Franchise Area plus an inflow and infiltration allowance

Construction/Service Standards	<p>Without restricting the requirement to for individual lot owners to comply with the then current County Construction/Service Standards at the time of development and connection of any lot within the Franchise Area, the following current standards would apply to wastewater servicing by the Utility:</p> <ul style="list-style-type: none"> • Each lot shall have its own separate sanitary service connection with a curb stop, marked “SEWER” at the private property line. • Service connections shall be located such that they do not conflict with driveway locations. • Each lot shall have a Septic Tank/Pump compliant with Alberta Plumbing Codes and: <ul style="list-style-type: none"> ○ Have a full day of emergency storage above the high water alarm level. ○ Have 12-hour retention time. ○ Be a sealed watertight tank. • No drainage or any water other than sanitary waste water shall be allowed to enter the tank.
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For clarity, the Services shall specifically exclude bulks sales to water haulers, truck fill service to consumers, truck hauling/disposal of wastewater, and similar water hauling services, within or outside of the Franchise Area.

3. **Potable Water Service** – to commercial enterprises within the Franchise Area for the purposes of conducting regular commercial operations, excluding irrigation, provided such commercial enterprise has all appropriate development/operating permits from the County and other regulatory bodies as required.
4. **Wastewater Service** – to commercial enterprises within the Franchise Area for conducting regular commercial operations, but excluding storm or overland water management purposes, provided such commercial enterprise has all appropriate development/operating permits from the County and other regulatory bodies as required.

SCHEDULE B-3**FACILITIES**

The Facilities shall consist of any and all system or works owned or operated by the Utility for the purposes of providing the Services including, without restriction:

1. **Water Supply & Wastewater Service Agreement** – any and all rights and privileges under any water supply agreement between the County (as supplier) and the Utility (as customer), and wastewater receipt and treatment agreement or arrangement between the County (as treatment and disposal service provider) and the Utility (as customer), as amended or replaced from time to time;
2. **Water System:**
 - (a) **Reservoir/Pumphouse Lands** – legally described as Lot 8, Block 1, Plan 012 5748;
 - (b) **Treated Water Reservoir and Pumphouse** – located upon the reservoir/pumphouse lands;
 - (c) **Distribution System** – system or works comprising the treated water distribution network and service lines to the lot line of private property serviced by the Utility;
 - (d) **Metering** – all metering and meter reading technology/devices affixed to water meters; and
 - (e) **Rights of Way** – any and all private easements, rights of way, surface lease or other rights of way necessary for the construction, operation or maintenance of any of the foregoing including the following:
 - (i) 092 374 327 - Utility Right of Way;
 - (ii) 092 374 328 - Utility Right of Way;
 - (iii) 012 384 437 - Utility Right of Way;
 - (iv) 012 382 843 - Access Easement Agreement;
 - (v) 012 384 436 - Utility Right of Way; and
 - (vi) 012 384 439 - Utility Right of Way.
3. **Wastewater System:**
 - (a) **Collection and Transmission System** – 50 mm sanitary sewer force main, located throughout the Franchise Area;
 - (b) **Rights of Way** – any and all private easements, rights of way, surface lease or other rights of way necessary for the construction, operation or maintenance of any of the foregoing including the following:
 - (i) 092 374 327 - Utility Right of Way;
 - (ii) 092 374 328 - Utility Right of Way;
 - (iii) 092 374 330 - Utility Right of Way;

- (iv) 092 374 331 - Utility Right of Way;
- (v) 092 374 332 - Utility Right of Way;
- (vi) 012 384 437 - Utility Right of Way;
- (vii) 012 382 843 - Access Easement Agreement;
- (viii) 012 384 436 - Utility Right of Way; and
- (ix) 012 384 439 - Utility Right of Way.

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SCHEDULE B-4**FRANCHISE FEE****1. Approval of Fee**

The Franchise Fee payable by the Utility to the County shall be established as:

- (a) a specified fee, calculated as a percentage of gross utility accounts collected by the Utility as further provided for within this Schedule; or
- (b) a specified fee, calculated as a percentage of gross utility accounts collected by the Utility as further provided for within this Schedule, with periodic increases established by such formula as may be acceptable to County Council and the Alberta Utilities Commission; or
- (c) an approved fee range (i.e. within a maximum and minimum fee limit) as may be acceptable to County Council and the Alberta Utilities Commission, within which County Council may set the fee no more often than once annually as contemplated within this Schedule; or
- (d) such other fee as County Council may propose and the Alberta Utilities Commission may approve;

which shall be first approved by County Council, and subsequently approved by the Alberta Utilities Commission upon a submission by the County for approval.

2. Calculation of Fee

Subject always to the foregoing, the Franchise Fee payable by the Utility to the County shall be calculated and paid as follows:

- (a) the setting and changes to the Franchise Fee shall be subject to establishment by County Council from time to time by bylaw;
- (b) alterations to the Franchise Fee shall occur no more often than once annually;
- (c) the maximum amount of the Franchise Fee shall be ten (10%) percent of gross utility accounts collected by the Utility (excluding goods and services taxes and similar taxes), including consumption rate/commodity charge, the fixed rate, and any surcharges;
- (d) the Franchise Fee shall be reviewed annually by the County in consultation with the Utility;
- (e) prior to seeking approval of or the imposition of any Franchise Fee or amendments thereto, the County shall consult with the Utility for the purposes of establishing the Franchise Fee;
- (f) the Franchise Fee shall be:
 - (i) for the years 2022 to 2027 inclusive: zero; and
 - (ii) for the years from and including 2028: as determined by County Council;
- (g) the Utility shall collect and pay the Franchise Fee amount to the County, on a quarterly basis (or such more frequent basis as the Utility may choose to invoice customers), within sixty (60) days after billing each customers;

- (h) concurrently with payment of the Franchise Fee amount the Utility shall provide to the County the financial information used by the Utility to verify the Franchise Fee amount; and
- (i) the Utility shall disclose to each customer the Franchise Fee amount, in dollars, on each bill.

3. Nature of Fee

The Franchise Fee is a charge for the use and occupation of the Public Properties, County costs and the Utility's exclusivity hereunder and is in lieu of taxes (including, without limiting the generality of the foregoing, business, property and linear property taxes) or local improvement charges payable to the County. This Agreement shall constitute an agreement pursuant to s. 360 of the *Municipal Government Act*.

4. Partial Years

The Franchise Fee to be paid by the Utility to the County is based on the assumption that the rights granted to the Utility will accrue on a per diem basis throughout a full calendar year, and whenever any of those rights commence on any day other than January 1 in any year or are terminated, cease or expire before December 31 in any year, the amount to be paid by the Utility to the County therefor, shall be adjusted on a per diem basis.

5. Financial Information

To verify the amount of the Franchise Fee, the Utility, on the written request of the County, shall provide to the County on or before April 30 in each year, or such other time agreed upon by the parties, an audited financial statement stating the amount of Franchise Revenue which is subject to the Franchise Fee. If an audited financial statement reveals that the amount of the Franchise Fee paid by the Utility to the County was more or less than the amount due and payable, the difference shall be immediately due and payable by the County to the Utility or by the Utility to the County as the case may be.

SCHEDULE C-1**PUBLIC PROPERTIES AND ACCESS****1. Use of Public Properties in the Performance of the Operation, Maintenance and Services**

Subject always to the provisions of this Schedule and the terms of this Agreement, the County hereby grants to the Utility the right, permission and power to use, break-up, dig, trench, or excavate in the public highways, streets, roads, lanes, boulevards, parks and similar Public Properties under the control of the County, within or adjacent to the Lands, and otherwise to do such work therein and thereon as may be necessary from time to time to construct, develop, erect, lay, operate, maintain, repair, extend, relay and remove any Facilities forming part of the Operation and Maintenance, and the provision of the Services, of the Utility, as may be necessary for the purpose of this Agreement. Notwithstanding anything contained within this Schedule:

- (a) the rights of use and occupation granted under this Agreement are not exclusive and it does not explicitly or implicitly affect the County's right to authorize use of the lands comprising the Public Properties by other Persons. A grant under this Agreement shall not fetter the County's management authority over the Public Properties;
- (b) this Agreement does not confer rights other than as provided by this Agreement or applicable Laws;
- (c) no privilege or exemption is granted or conferred except those specifically prescribed herein;
- (d) nothing in this Agreement shall be read to create an expectancy of renewal or to an entitlement to the renewal or extension of the Term or the extension of the Franchise Area, except as may otherwise be provided by applicable Laws; and
- (e) any privilege claimed under this Agreement by the Utility in respect to any Public Properties or other public property shall be subordinate to any prior lawful use or occupancy in respect to such Public Properties or other public property.

2. Authorizations

No Operation and Maintenance, and the provision of the Services, shall be commenced prior to the Utility obtaining the written consent of the County to enter upon such Public Properties; and the County shall not unreasonably delay or withhold such written consent. Access to all Public Properties shall be subject to the following process and terms:

- (a) not less than Fourteen (14) days prior to the date that the Utility intends to enter upon any Public Property for the purposes of constructing or installing any new or additional Facilities or other improvements, as well as all alterations or extensions to all existing Facilities (except in the case of emergency repair work), the Utility shall provide to the County detailed written proposals, for approval by the County, for the Operation and Maintenance to be done within any such property, including:
 - (i) a specific work schedule and procedures proposed to be followed;
 - (ii) detailed engineering drawings of all additional Facilities or other improvements to be constructed or installed, as well as all alterations, extensions or connections to or impacts upon all existing Facilities or other municipal infrastructure, property and services;
 - (iii) provisions to be implemented for temporary access and services;

- (iv) installation of temporary traffic control devices and personnel deployment to minimize traffic disruption; and
 - (v) form and schedule of notification and public relation strategy to be utilized;
- (b) not less than Seven (7) days prior to the date that the Utility intends to enter upon any Public Property for the purposes of maintaining or repairing all existing Facilities (except in the case of emergency repair work), the Utility shall provide to the County detailed written proposals, for approval by the County, for the Operation and Maintenance to be done within any such property, including:
- (i) a specific work schedule and procedures proposed to be followed;
 - (ii) detailed descriptions of the maintenance and repairs to be performed to all existing Facilities;
 - (iii) provisions to be implemented for temporary access and services;
 - (iv) installation of temporary traffic control devices and personnel deployment to minimize traffic disruption; and
 - (v) form and schedule of notification and public relation strategy to be utilized;
- (c) in the case of emergency repair work, as soon as reasonably possible after commencement of the emergency repair work, the Utility shall provide to the County detailed written record of the emergency repair work required to be undertaken by the Utility, for the County's records, including:
- (i) the timeline of emergency repair work completed, and schedule and procedures proposed to be followed for any further emergency repair work still required;
 - (ii) detailed descriptions of the maintenance and repairs performed, or to be performed, to all existing Facilities;
 - (iii) nature of temporary access and services utilized, and provisions to be implemented for temporary access and services for any further emergency repair work still required;
 - (iv) installation of temporary traffic control devices and personnel deployment to minimize traffic disruption for any further emergency repair work still required; and
 - (v) form and timing of notifications provided to the public in respect of the emergency repair work completed, and form and schedule of notification and public relation strategy to be utilized for any further emergency repair work still required.

Without restricting the foregoing, the Utility shall provide all required information and obtain all required municipal and provincial approvals normally required prior to commencing any Operation and Maintenance, and the provision of the Services.

3. Conditions and Terms of Use of Public Properties

Notwithstanding the foregoing, unless otherwise specifically agreed to the access to, use of, and conduct of all activities and Operation and Maintenance upon all Public Properties shall be subject always to the following terms and conditions:

- (a) design of the Facilities, construct, operate and maintain the Facilities in accordance with all relevant municipal, provincial and federal standards, and the terms of any of any easements, right of way agreements, or leases comprising or otherwise affecting the Public Properties as may be applicable;
- (b) lay, construct, replace, repair, maintain, inspect, operate and remove the Facilities under or within the Public Properties in a good and workmanlike manner and in compliance with all the terms and conditions of this Agreement;
- (c) The Operation and Maintenance shall be conducted and completed in a good workmanlike manner, and in accordance with generally accepted engineering and operating standards for works and facilities similar to the Facilities;
- (d) The Operation and Maintenance shall be performed in a manner that safeguards and protects all other structures, transmission lines, facilities and improvements of any kind present in the Public Properties;
- (e) The Utility shall ensure that all work carried out in the Public Properties shall have sufficient and proper traffic control, safety devices and warning devices or flagman as and where necessary.
- (f) The Utility shall leave the Public Properties in substantially the same condition in which it existed immediately prior to the work. If within ninety (90) days subsequent to notifying the Utility that the restoration of the Right-of-way is inadequate given reasonable cause for such inadequacy, County may take reasonable measures to complete the required restoration, and the cost of such restoration to be borne by the Utility;
- (g) If County requires that any Operation and Maintenance be stopped, the Utility shall cease such Operation and Maintenance upon delivery of a written notice to the Utility to that effect by County;
- (h) The Utility shall be responsible for all Operation and Maintenance, including the cost of such Operation and Maintenance;
- (i) The Utility shall carry out such work in the Public Properties only during daylight hours except if required otherwise in cases of emergency;
- (j) A crossing of any Road by and Facilities shall be constructed at a 90 degree angle to the physical roadway.
- (k) that the Operation and Maintenance within Public Properties by the Utility and its agents, contractors and subcontractors shall be subject to the inspection rights of the County as set forth in this Agreement and all directions and requirements of the County shall be obeyed;
- (l) that the Utility shall do as little damage as possible in the performance of the Operation and Maintenance, and will cause as little obstruction to such Public Properties as possible;
- (m) that upon completion of the Operation and Maintenance the Utility shall restore all such Public Properties to a condition and state of repair equivalent to that which prevailed prior to the performance of such Operation and Maintenance, including, where necessary, the re-planting or replacement of trees and shrubs, and shall maintain such restored portions of such Public Properties, including such replaced or re-planted trees and shrubs throughout the Warranty Period, ordinary wear and tear excepted; and
- (n) that the Utility shall indemnify and save harmless the County from and against all losses, costs, claims, suits or demands of any nature (including all legal costs and disbursements on a solicitor

and client basis) which may arise by reason of the performance of Operation and Maintenance by or on behalf of the Utility upon or within all Public Properties.

4. Utility to Obtain Approvals from Other Utilities

The Utility shall be solely responsible for locating, or causing to be located, all existing utilities or utility lines on or adjacent to lands comprising the Public Properties. The Utility shall notify all other utility operators and ensure those utilities and utility mains are staked prior to commencement of construction. The County shall not be responsible for any damage caused by the Utility to any other utility facilities or any third party as a result of the Utility's activities upon lands comprising the Public Properties. The Utility must obtain approval from the owner of any third party utility prior to relocation of any facility owned by such third party utility.

5. Contractors

The Utility's contractors shall be licensed and bonded in accordance with the County's bylaws, regulations or requirements of any contractors working in the Public Properties. Any act or omission of any contractor of the Utility, which violates any provision of this Agreement, shall be considered an act or omission of the Utility for the purposes of this Agreement. The Utility shall designate any of its contractors as Prime Contractor in accordance with the *Occupational Health and Safety Act*, SA 2020, c O-2.2 and the Regulations thereunder. The Utility's engineers, contractors and agents shall have a valid Certificate of Recognition issued by Alberta Employment and Immigration.

6. Emergency Work / Access

In the event of an emergency involving the Utility's Facilities:

- (a) the Utility may perform such Operation and Maintenance as is strictly necessary to end the emergency without the prior consent of County, provided that the Utility notifies the County of the occurrence of the Operation and Maintenance without delay;
- (b) the Utility shall attempt to give County verbal notice before commencing any Operation and Maintenance involving a ground disturbance;
- (c) notwithstanding Section 3 of this Schedule, no prior written notice shall be required to be given to the County for the Utility to enter any Public Properties

In this regard, emergency Operation and Maintenance means the installation, maintenance, repair or replacement of Facilities in Public Properties where health, safety or the provision of the Services is endangered.

7. Construction Clean-up and Debris

The Utility covenants and agrees that it shall, at the Utility's own cost and expense, be responsible for the cleanup and removal of all construction debris, foreign material and dirt from all Public Properties, including roadways, within and adjacent to the Lands, subject to the following conditions:

- (a) it shall be the responsibility of the Utility to monitor the condition of Public Properties and take immediate action as necessary to comply with the provisions of this Section; and
- (b) in the event that the County considers that any cleanup or removal of construction debris, foreign material or dirt is required, the Utility shall, within Forty-eight (48) hours of receiving notice from the County, take all necessary action as determined by the County, failing which, the County may take action and charge back all costs and expenses to the Utility.

8. Liability And Indemnification

- (a) The County shall not, in connection with this Agreement, be liable for any damage to the Facilities or other property of the Utility, or for the injury or death of any officer, employee, agent, contractor, licensee or invitee of the Utility except where caused by the willful misconduct or gross negligence of County or its employees.
- (b) The Utility hereby indemnifies County from and against all losses, liabilities, costs, damages, and expenses (including legal fees on a solicitor-client full indemnity basis and disbursements) incurred by County in connection with this Agreement as a result of any claim, action, suit or proceeding based on a claim of injury to the person or property of any third party caused by the misconduct or negligence of the Utility, its officers, employees, agents, contractors, licensees or invitees.
- (c) Notwithstanding anything contained in this Agreement, County shall not be liable in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement or with any Facilities, other property or Public Properties governed hereby.

9. Environmental Responsibility

- (a) The Utility agrees to assume all environmental liability relating to its occupancy and use of the Public Properties, including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around Public Properties which result from:
- (b) The operations of the Utility in, on, under, along, across or around the Public Properties; or
- (c) Any products or goods brought in, on, under, along, across or around the Public Properties by the Utility, or by any other person with the express or implied consent of the Utility.

10. Relocation

- (a) Upon receipt of sixty (60) days advance written notice from County, or such other time as is mutually agreed to by the parties, the Utility shall, at its own expense, relocate Facilities or perform any other Operation and Maintenance in connection with the Public Properties as may be required by County for municipal purposes. However, in cases of emergency, County may take any measures deemed necessary for public safety with respect to the Facilities that may be required in the circumstances as County shall determine and the Utility shall reimburse County for all related expenses thereby incurred.
- (b) If the company fails to complete the relocation of the Facilities, or fails to repair the Public Properties or to perform any other Operation and Maintenance required to be done by the Utility pursuant to this Agreement in a timely and expeditious manner to the satisfaction of County, County may, but is not obligated to, at its sole option, complete such relocation or other Operation and Maintenance. In such event, the Utility shall pay the cost of such relocation Operation and Maintenance to County, together with an administrative charge of fifteen percent (15%) of such cost.

11. Occupational Health and Safety and Traffic

The company shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all health and safety laws including any regulations requiring installing of safety devices or appliances, and any applicable traffic laws or regulations (collectively "Safety Rules"). The County may, on twenty-four (24) hours written notice to the Utility, or sooner, if in the opinion of County the likelihood of harm to persons is imminent, suspend Operation and Maintenance performed by or on behalf of the Utility on that portion of

the Facilities located in, on, under, along or across Public Properties where there appears to be a lack of compliance with the Safety Rules or because conditions of danger exist that would likely result in injury to any person. Such suspension shall continue until the lack of compliance or danger is eliminated.

12. Utility and Inspection Fees

- (a) The County shall be entitled to have a representative present at the Public Properties prior to, during and following the work.
- (b) The Utility agrees to pay an inspection fee as established by County to cover the cost of the inspections and related administration costs.

13. County Control, Use and Discretions

The right, privilege and license herein granted to the Utility are strictly limited to the rights expressly granted herein. Nothing contained in this Schedule shall be deemed to limit or in any manner prohibit County or its assigns or licensees from fully using and enjoying any portions of the Public Properties in any lawful manner whatsoever.

14. Limitations of Grants

The grant of access to Public Properties contemplated within this Schedule shall not restrict the County's rights to use, or allow any person not a party to this Agreement to use, the Public Properties for any purpose, provided that such use will not materially hinder or interfere with the Utility's use in accordance with this Schedule and further provided that the Utility's use is in accordance with the terms and conditions of this Agreement.

15. No Interest

No use of Public Properties pursuant to this Agreement shall create or vest in the Utility any ownership or other property rights in the Public Properties or any portion thereof (save and except for as agreed upon and documented between the County and the Utility pursuant to specific agreement to that effect), and the Utility shall be and remain a mere licensee of the Public Properties.

SCHEDULE C-2**OPERATION, MAINTENANCE AND SERVICES**

The following provisions shall apply to the Operation and Maintenance of the Facilities and the delivery of the Services by the Utility:

1. General Operating Requirements

- (a) **Scope of Work** - the Utility shall provide all Services within the Franchise Area 24 hours a day and 365 days each year during the Term, and in so doing, the Utility shall:
 - (i) provide full-time, continuous and effective management of the Facilities at all times;
 - (ii) ensure adequate staffing levels are in place at all times, including adequate supervisory, administrative, customer service, technical, operational and maintenance staff;
 - (iii) supply and ensure the availability of all necessary tools, equipment and transportation facilities; and
 - (iv) exercise Good Industry Practice in operating and maintaining the Facilities, to the extent not contrary to any Regulatory Requirements;
- (b) **Operating Requirements** - the Utility shall, at all times during the Term and subject to the further provisions of this Agreement, accept all requests for the provision of Services within the Franchise Area, and ensure that the quality, designated capacity and system operating parameters required to provide the Services delivered at the customer's property line, meet the prescribed standards under all Operating Permits and all Regulatory Requirements;
- (c) **Interruptions** - the Utility shall, at all times during the Term:
 - (i) ensure that continuous Services are provided by the Facilities within their design capabilities, provided that the Utility may interrupt or cut all the service of any part of the Facilities for such periods of time as it may reasonably require for the purpose of effecting any repairs, maintenance, replacement, upgrading or other work related to the Facilities;
 - (ii) give the County and customers prior written notice of any scheduled interruption as soon as is reasonably possible and at least seventy- two (72) hours prior to such interruption, and shall restore Services as soon as reasonably possible. During periods of interruption the Utility may reduce the level, quality or quantity of service provided; however the Utility shall treat all users affected by the interruption fairly, equitably and without preference, subject to any operating constraints then in effect; and
 - (iii) keep the County apprised of the relevant circumstances during each interruption of Services and coordinate with the County the repairs, maintenance, replacement, upgrading and other work referred to above, in order to minimize the inconvenience to customers;
- (d) **Staffing** - the Utility shall, at all times during the Term:
 - (i) employ staff and employees experienced in water and wastewater systems operations and Facilities maintenance procedures to provide the Services; and
 - (ii) undertake Operation and Maintenance of the Facilities only under the direct supervision of personnel who possess valid certificates of competency as required by Regulatory

Requirements and who maintain continuing education competency certification in accordance with Regulatory Requirements;

- (e) **Maintenance** - the Utility shall, at all times during the Term:
 - (i) maintain security systems for all of the Facilities;
 - (ii) complete or cause to be completed all required maintenance, repairs, replacements and enhancements to the Facilities. The scheduling of proper service intervals shall be undertaken pursuant to a program developed by the Utility; and
 - (iii) keep clean and neat all existing buildings, structures and grounds in which the Facilities are located, provided that, the Utility shall be under no obligation to improve the current condition of any existing buildings, structures and grounds except as required under any capital expenditure program for which the Utility has responsibility;
- (f) **Regulatory Requirements** - comply with all Regulatory Requirements including, but not limited to:
 - (i) operating and maintaining the Facilities in accordance with the Code of Practice for Waterworks System Consisting Solely of a Water Distribution System (effective June 1, 2012) or the most current version of this Code of Practice, Code of Practice for a Wastewater Systems Consisting Solely of a Wastewater Collection System (effective September 2003), and Standards and Guidelines For Municipal Waterworks, Wastewater and Storm Drainage Systems, each as amended or replaced from time to time;
 - (ii) providing the routine testing and laboratory analyses required by currently existing and future regulations, licenses and Operating Permits;
 - (iii) preparing and signing all Provincial regulatory agency-required monitoring and operating reports and submitting them to the proper Provincial agencies and providing copies of such reports to the County;
 - (iv) submitting samples to an authorized Provincial regulatory agency in compliance with Regulatory Requirements. All test results shall be kept in a permanent file in the Utility offices on site and shall be available for inspection by the County; and
 - (v) prepare applications for renewal of the Operating Permits as required from time to time including attendance at or preparation for any public hearings relating to such Operating Permits or otherwise relating to the Facilities;
- (g) **Utility Metering and Account Management:**
 - (i) the Utility will be responsible for the reading of water meters, estimating wastewater production based upon the reading of water meters, and the monthly (or such other period as the Utility may apply to billing) issuance to customers of an itemized bill detailing the previous months water consumption, the applicable monthly service charge and related taxes related to water service, the applicable monthly service charge and related taxes related to wastewater service, the Franchise Fee, and any late or outstanding payments; and
 - (ii) the Utility will be responsible for the collection of all charges billed to customers.

2. Water Distribution and Wastewater Collection / Transmission Design, Specification and Flows

The Utility agrees that the Facilities shall be designed, sized and specified for domestic flows as defined by all applicable Regulatory Requirements (including, without restriction, the Code of Practice for Waterworks System

Consisting Solely of a Water Distribution System (effective June 1, 2012) or the most current version of this Code of Practice, Code of Practice for a Wastewater Systems Consisting Solely of a Wastewater Collection System (effective September 2003), and Standards and Guidelines For Municipal Waterworks, Wastewater and Storm Drainage Systems), and the Strathcona County Engineering Services Standards (available at www.strathcona.ca), in each case as amended or replaced from time to time. In the event of a conflict between the Regulatory Requirements and the specific standards required within the Strathcona County Engineering Services Standards, the standard providing for the greater safety or higher standard shall be adhered to.

3. Utility Strategy Plan

The Utility and the County shall jointly establish a utility strategy plan (or, in the alternative, such consultation and communications arrangements as may be approved by the County from time to time) for the entire Franchise Area for the Services which shall be compatible with the approved Area Structure Plan. The utility strategy plan shall be updated if the Area Structure Plan or the Franchise Area is amended. In the event that the Parties are unable to agree upon a utility strategy plan or any amendments thereof, the dispute shall be resolved through the Dispute Resolution Procedure.

4. Quality Management Plan

The Utility shall establish a quality management plan and system satisfactory to Alberta Environment or, in the absence of Alberta Environment standards or requirements to rely upon, acceptable to the County acting reasonably, that shall apply to all quality management activities related to the provision of the Services. The County may carry out quality audits to satisfy itself that quality management plan requirements are met. In the event that the Parties are unable to agree upon a quality management plan or any amendments thereof, the dispute shall be resolved through the Dispute Resolution Procedure.

5. Emergency Response Plan

The Utility shall establish an Emergency Response Plan, to be approved by the County, that shall be responsible for reactions to all interruptions to or impacts upon the Facilities or the Services provided through the Facilities. In the event that the Parties are unable to agree upon an Emergency Response Plan or any amendments thereof, the dispute shall be resolved through the Dispute Resolution Procedure.

6. Communication Plan

The Parties will jointly develop a communication plan (or, in the alternative, such consultation and communications arrangements as may be approved by the County from time to time) designed to ensure prompt response to Customer concerns regarding the Services. In the event that the Parties are unable to agree upon a quality management plan or any amendments thereof, the dispute shall be resolved through the Dispute Resolution Procedure.

7. Annual Reports

Within sixty (60) days after the close of the Utility' fiscal year, the Utility shall submit to the County a written annual report, in a form acceptable to the County, which shall include the following information for the Franchise Area:

- (a) copy of annual reports to Alberta Environment, together with any submissions to the Alberta Utilities Commission during the previous year, to the extent not already provided to the County under Paragraph 9 of this Schedule;
- (b) subject always to limitations imposed upon the Utility respecting the protection of personal information and the protection of privacy, a summary of the previous year's activities in development of the Facilities, including, but not limited to, services begun or discontinued during the reporting year, and the number of customers for each class of service (i.e., residential, commercial, institutional, etc.);

- (c) the current five (5) year capital improvement plan consistent with the approved utility strategy plan contemplated by this Schedule and any applicable Area Structure Plan; and
- (d) any changes to the Utility's officers, members of its boards of directors, and other principals of the Utility.

8. Facilities Operations Report

The Utility shall, upon request, submit to the County a report (in any event, no more often than quarterly) in sufficient detail to enable the County to ascertain that the Services requirements and technical requirements of this Agreement have been achieved and maintained. At any time during the Term of this Agreement, the County may, at its sole discretion and cost, solicit and engage a mutually acceptable independent qualified engineering consultant, to conduct a complete survey of the Facilities.

9. Copies of Federal and Provincial Reports

The Utility shall, upon request, submit to the County copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Utility or its parent corporation(s), to any federal or provincial, regulatory agencies and other government bodies (i.e., Alberta Environment reporting) in connection with any application or proceeding of a regulatory nature relating to the Utility or the provision of the Services. The Utility shall not claim confidential, privileged or proprietary rights to such documents unless under federal, provincial, or local law such documents have been determined to be confidential by a Court of competent jurisdiction, or a federal or provincial authority. Subject to the FOIPP Act and PIPA, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by the County and its authorized agents and shall not be made available for public inspection. With respect to all other reports, documents, and notifications provided to any federal or provincial regulatory agency as a routine matter in the course of operating the Facilities, the Utility shall make such documents available to the County upon the County's request.

10. Complaint File and Reports

The Utility shall keep an accurate and comprehensive file of any and all significant complaints regarding the operation of the Facilities, in a manner consistent with the privacy rights of consumers, and the Utility's actions in response to those complaints. Subject always to limitations imposed upon the Utility respecting the protection of personal information and the protection of privacy, these files shall remain open to the County and the public during normal business hours. The Utility shall provide the County an executive summary monthly, which shall include information concerning customer complaints.

11. Connections

The Utility shall complete a summary of connection requests, identifying the number and nature of the requests and their disposition for each 3-month period and submit it to the County by the tenth (10th) day after each quarter.

12. Service Interruptions

The Utility shall maintain a log of all service interruptions and provide a copy to the County quarterly.

13. Capital Improvement Plan

The Utility shall:

- (a) establish a five (5) year capital improvement plan consistent with the utility strategy plan contemplated within this Schedule and any applicable Area Structure Plan including plans, budgets and funding program consistent with industry standards and sufficient to continuously meet sound operating practices, the Operating Permits and all Regulatory Requirements applicable to the Facilities;

- (b) provide the County with a copy of such program for review no less often than annually;
- (c) together with the County, establish criteria designed to enable the Parties to prioritize the capital improvement and expenditures which are required to be completed having regard to safety, regulatory, environmental, and operating requirements; and
- (d) subject to the further provisions of this Agreement, be responsible for the completion of the capital improvements and expenditures including:
 - (i) establishing the scope of the works;
 - (ii) engaging the engineers and other consultants and monitoring and giving direction to such engineers and consultants;
 - (iii) notifying Alberta Environment of any system alterations or additions, and providing a copy of such notification to the County;
 - (iv) preparing contract documents;
 - (v) calling and reviewing of tenders when required;
 - (vi) letting the contracts in the Utility's name;
 - (vii) supervising the contractors;
 - (viii) approving progress and final payments under the contracts;
 - (ix) rectifying deficiencies and completing warranty services in respect to those portions of the Facilities constructed or installed by the Utility; and
 - (x) reporting to the County the results of the capital improvements and expenditures including financial and physical performance.

SCHEDULE C-3**OPERATING PERMITS**

1. **Operating Permit** – existing Alberta Environment Code of Practice for the water distribution system, and the wastewater collection system, respecting the operation of the Facilities; and
2. **Alberta Utilities Commission** – approval of all rates, tolls, charges, and terms of service of the Utility, by the Alberta Utilities Commission. The required approval and on-going compliance may be obtained in due course including after the Effective Date of this Agreement.

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SCHEDULE D-1**INSURANCE REQUIREMENTS****1. Comprehensive General Liability**

From the Service Commencement Date until the Transfer Date, the Utility will obtain and keep in force or cause to be kept in force Comprehensive General Liability insurance covering Operation and Maintenance for personal injury (including bodily injury, death and third party property damage), which insurance coverage shall:

- (a) include the Utility as the insured, and the County as an additional named insured;
- (b) include the Utility's Indemnified Parties, any Contract Operator, Sub-Contractor, any contractor of a Subcontractor, and any architects, engineers and other professionals engaged in Design and Construction, as additional insureds;
- (c) be in an amount of not less than \$10,000,000.00 per occurrence, or such lower amount as the County may accept from time to time;
- (d) without limiting the forgoing, include coverage for:
 - (i) independent contractors;
 - (ii) broad form property damage;
 - (iii) completed operations;
 - (iv) blanket contractual liability, including this Agreement;
 - (v) shoring, blasting, excavating, underpinning, demolition, pile driving and caisson work, work below ground surface, tunneling and grading;
 - (vi) employees as additional insureds;
 - (vii) contingent employers' liability;
 - (viii) non-owned automobiles;
 - (ix) sudden and accidental pollution;
 - (x) cross liability; and
 - (xi) firefighting expenses;
- (e) provide that the coverage shall be the primary coverage, and that the policy maintain by the County pursuant to Section 3.1 shall be excess coverage to this primary policy.

2. Other Operation and Maintenance Coverage

From the Service Commencement Date until the Transfer Date, the Utility will obtain and keep in force or cause to be kept in force the following:

- (a) Automobile Liability insurance, which insurance coverage shall:
 - (i) include the County as an additional insured;

- (ii) cover all licensed motor vehicles owned, rented, leased or operated by the Utility in connection with the performance of Operation and Maintenance under this Agreement;
 - (iii) cover bodily injury and property damage liability to a limit of no less than one million dollars (\$1,000,000.00) dollars for each occurrence involving bodily injury, death or property damage;
 - (iv) include coverage for third party property damage and bodily injury (including accident benefits) arising out of the use of such automobiles in the performance of Operation and Maintenance;
- (b) Excess liability insurance with limits not less than four million dollars (\$4,000,000.00) dollars for each occurrence to the extent coverage includes automobile liability outlined above;
 - (c) Workers Compensation coverage for all employees engaged in the performance of Operation and Maintenance in accordance with the statutory requirements of Alberta; and
 - (d) Employers liability insurance, when applicable, with limits not less than five million dollars (\$5,000,000.00) covering employees engaged in Operation and Maintenance who are not covered by Workers Compensation in accordance with the statutory requirements in Alberta.

3. Environmental Liability

The Utility shall provide insurance for sudden and accidental pollution in an amount not less than Ten Million (\$10,000,000.00) Dollars on an occurrence basis, or such lower amount as the County may accept from time to time, for pollution arising from the negligence of the Utility (to the extent not covered by Comprehensive General Liability).

4. General Terms

All policies of insurance required under this Schedule will:

- (a) name the County as an additional named insured as the interest may appear;
- (b) be on terms and conditions which would be obtained by prudent owners and operators of projects of similar scope and magnitude as the Facilities and, in addition to the required inclusions or permitted exclusions for each policy specifically described in this Schedule, include such other inclusions and exclusions as such prudent owner or operator would require or permit;
- (c) provide 60 days' notice of termination, cancellation or material change to all named insureds, and additional named insureds;
- (d) contain a waiver of any subrogation rights which the insurers may have against any of the County or the County Indemnified Parties, whether or not the damage is caused by any of their respective acts, omissions or negligence whether or not the damage is caused by any of their respective acts, omissions or negligence;
- (e) be issued by such reputable and duly qualified insurers rated A.M. Best A- or better, and if a rating from A.M. Best is not available an equivalent rating issued by a rating agency as may be agreed between the parties, and if such agreement cannot be reached, determined pursuant to the Dispute Resolution Procedure;
- (f) be non-contributing with and apply only as primary and not excess to any other insurance available to the County or the County Indemnified Parties;

- (g) not be invalidated by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies; and
- (h) contain an undertaking by the insurers to notify the insureds, additional named insureds, additional insureds and loss payables in writing not less than 60 days before any material change, cancellation or termination.

5. Evidence of Insurance

Upon the issue of and upon every renewal of a policy of insurance, and otherwise upon request by the County, the Utility will deliver to the requesting party a certified copy of the policy of insurance or bond coverage, or other satisfactory evidence of adequate insurance. No review or approval of any certificate or policy by either the County or the Utility derogates from or diminishes the County's or the Utility's respective rights under this Agreement.

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SCHEDULE D-2**CONDUCT OF THIRD PARTY CLAIMS**

The following provisions will apply to the conduct of Claims made by a Third Party against a Party having, or claiming to have, the benefit of an indemnity under this Agreement:

1. The Party having, or claiming to have, the benefit of the indemnity is referred to as the “Beneficiary” and the Party from whom the indemnity is sought is referred to as the “Indemnifier”.
2. Subject to the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement, the following provisions shall apply to all such Claims:
 - (a) If the Beneficiary receives any notice, demand, letter or other document concerning any Claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Agreement, the Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) days of receipt thereof.
 - (b) Subject to Sections 2(d), 2(e) and 2(f), on the giving of a notice by the Beneficiary pursuant to Section 16(a), if it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not less than all) of the liability arising out of the Claim, the Indemnifier will be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defense, dispute, compromise, or appeal of the Claim and of any incidental negotiations. The Beneficiary will give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim.
 - (c) In defending any Claim described in Section 2(b) in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such Claim and, if it is determined that the Beneficiary is entitled to indemnification by the Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity from the indemnifier.
 - (d) With respect to any Claim conducted by the Indemnifier pursuant to Section 2(b):
 - (i) the Indemnifier will keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier will not pay, compromise or settle such Claim without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use all reasonable efforts to have the Indemnified Party named as a beneficiary under any release given by the Persons bringing the Claim to which these provisions relate.
 - (e) The Beneficiary may take conduct of any defense, dispute, compromise or appeal of the Claim and of any incidental negotiations if:
 - (i) the Indemnifier is not entitled to take conduct of the Claim in accordance with Section 2(b);

- (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant Claim within twenty (20) Business Days of the notice from the Beneficiary under Section 16(a) or notifies the Beneficiary that it does not intend to take conduct of the Claim; or
- (iii) the Indemnifier fails to comply in any material respect with the provisions of Section 2(d) above.

In the case of Section 2(e)(iii), the Beneficiary may pay or settle any Claim on such terms as it thinks fit (provided such settlement is in monetary terms only) and without prejudice to its rights and remedies under this Agreement. Otherwise the Beneficiary will not pay or settle such Claims without the prior consent of the Indemnifier, such consent not to be unreasonably withheld or delayed.

- (f) The Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any Claim, or of any incidental negotiations, to which Section 2(e) above applies. On receipt of such notice the Indemnifier will promptly take all steps necessary to transfer the conduct of such Claim to the Beneficiary, and will provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purpose of considering and resisting such Claim. If the Beneficiary gives any notice pursuant to this Section 2(f), the Indemnifier will not thereby be released from its obligation to indemnify the Beneficiary pursuant to this Article.
- (g) If the Indemnifier pays to the Beneficiary an amount in respect of any indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim under the indemnity, the Beneficiary will forthwith repay to the Indemnifier the lesser of:
 - (i) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering such sum; and
 - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity;

provided that there will be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier will be repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any Direct Loss sustained by the Beneficiary.
- (h) Any person taking any of the steps contemplated by this Section shall comply with the requirements of every insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.
- (i) To the extent that an Indemnifier has fulfilled its indemnity obligations pursuant to this Section, the Indemnifier shall be subrogated to all rights and claims of the Beneficiary who the Indemnifier has indemnified, and shall be entitled to exercise all remedies available to such Indemnifier.
- (j) In response to any Claim of infringement or alleged infringement of the Intellectual Property rights of any Person, the Utility may satisfy its indemnity obligations hereunder by replacing the infringing or allegedly infringing part of the Facilities comprising each portion of the Facilities provided that:
 - (i) the replacement is performed without additional cost to the County; and

- (ii) the replacement has at least equal quality performance capabilities when used in conjunction with the Facilities comprising each portion of the Facilities.

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SCHEDULE E-1**FINANCIAL OPERATIONS**

The following provisions will apply to the conduct of financial operations of the Utility in relation to the Facilities and the Services under this Agreement:

1. Setting of Rates and Charges

Rates and charges charged to a customer for the right to receive Services (including connection fees) by or through all or any portion of the Facilities shall be established as follows:

- (a) subject always to subsection (c), rates and charges will be calculated:
 - (i) on a cost of service basis utilizing the principles set out in the American Water Works Association (AWWA) manuals of practice, dealing with water rates and charges, as revised, updated or replaced from time to time;
 - (ii) on a basis that accounts for developer paid for additions to the Facilities, and additions paid for by the applicable customer(s), accounted for as no cost capital in accordance with principles and criteria applied from time to time by the Alberta Utilities Commission, or its successor tribunal or authority;
- (b) the Utility shall apply the principles and practices to be applied pursuant to the terms of this Agreement as approved by the Alberta Utilities Commission, subject to amendment from time to time by negotiated amendment between the parties and approved by the Alberta Utilities Commission or as a result of a decision or order of the Alberta Utilities Commission, or its successor tribunal or authority; and
- (c) subject always to, and in accordance within, approvals of the Alberta Utilities Commission, or its successor tribunal or authority, as and where its authority and jurisdiction applies.

The Parties agree that the County may apply for intervener status with the Alberta Utilities Commission or otherwise directly or indirectly make written or oral submissions to the Alberta Utilities Commission, respecting any application for approval of rates and charges and any changes or increases thereto. In all applications to or appearances before the Alberta Utilities Commission the Utility will seek approval for rates and charges based upon the foregoing principles and parameters.

2. Utility's Responsibility for Costs of Operation and Maintenance

Notwithstanding the setting or approval of rates and charges by the Alberta Utilities Commission, and the typical or actual process and approach applied by the Alberta Utilities Commission to cost of service and cost recoveries, the Utility acknowledges and agrees that nothing contained within this Schedule shall be interpreted as a limit to, or restriction upon the obligations and liabilities of the Utility under this Agreement including, without restricting the foregoing, the Utility's obligations to remedy any default on the part of the Utility under this Agreement (it being acknowledged by the Utility that the costs and expenses incurred by the Utility in remedying such default may not be a cost and expense that the Utility can recover from the rates and charges made to customers).

3. Financial Condition to New Services or Expansions or Both

The obligations of the Utility to provide the Services within areas of the Franchise Area not already serviced by the Utility shall in each case be subject to the following respective conditions:

- (a) **Individual Services** – provision of services to individual customers shall be subject to execution of the then current customer service contract, and payment of rates, fees and charges respecting such requested Services;
- (b) **Expansion of Facilities** – with respect to Stages of any new subdivisions approved by the County, the Utility's obligations shall be subject to either:
 - (i) **Expansion of Facilities by Developer** – in respect of the construction of new additions to the Facilities by a developer of subdivisions within the Franchise Area to service the Stage, upon the occurrence of:
 - (A) the Utility approving the plans and specifications for all new additions to the Facilities necessary to provide the Services to each new Stage subdivision, concurrently with approval by the County as contemplated under the applicable Development Agreement;
 - (B) the new additions to the Facilities being completed in accordance with the approved plans and specifications;
 - (C) acceptance of the Facilities by the County under the applicable Development Agreement by issuance of construction completion certificates as contemplated thereunder; and
 - (D) the new additions to the Facilities being transferred to the Utility at no cost as contemplated under the applicable Development Agreement; and
 - (ii) **Connection Fee / Cost Contribution** – subject always to subsection (i) above, in respect of the construction of pre-existing Facilities by the Utility for and on behalf of any developers of any Lands, upon the Utility receiving payment of a connection fee or cost contribution or both determined in accordance with Section 1 above;
- (c) **Utility Funded Expansions** – with respect to those portions, if any, of the Franchise Area in respect to which the Utility proposes to provide Services through expansion of the Facilities other than as provided for in paragraphs (a) and (b) above, the Utility's obligations shall be subject to:
 - (i) **Agreement** – the Utility entering into terms of service and agreements to pay rates, tolls or charges for such Services, as may be mandated or otherwise approved from time to time by the Alberta Utilities Commission; and
 - (ii) **Connection Fee / Cost Contribution** – subject always to subsection (i) above, the Utility receiving payment of a connection fee or cost contribution or both determined in accordance with Section 1 above.

The County reserves the right to deal with the Utility for and on behalf of any developer, as part of the exercise of the County's concurrent subdivision authority or development approval authority or both jurisdiction and discretions under the *Municipal Government Act*.

4. New Additions/Connections to Facilities

Subject always to Section 1 above, it is agreed that the Utility and the County shall consult and cooperate with each other and the affected developers or owners of Lands in each case respecting the requirements for servicing new Stages or individual lots within the Franchise Area, and co-operate in good faith so as to jointly establish:

- (a) in respect of the developers of Stages:

- (i) designs and specifications for new extensions or additions to the Facilities, which are to be constructed and installed by the developers as conditions of their approval or permits, to facilitate connection to the Facilities and the provision of Services;
 - (ii) the connection fee or cost contribution or both to be paid by the developers as conditions of their approval or permits to allow for connection to the Facilities and the provision of Services;
- (b) in respect of the owners of individual lots within the Franchise Area:
- (i) designs and specifications for upgrades to existing services, which are to be constructed and installed by or on behalf of owners of the lots within the Franchise Area to facilitate connection to the Facilities and the provision of Services;
 - (ii) the connection fee or cost contribution or both to be paid by the owners of lots within the Franchise Area to allow for connection to the Facilities and the provision of Services;

it being understood and agreed that rates and charges remain subject to the ultimate approvals set forth within Section 1 above.

5. Dispute / Determination

In the event that the participants are unable to reach agreement as to any the forgoing requirements respecting new extensions or additions to the Facilities within Section 3(c) or Section 4 above so as to facilitate the provision of Services to any new subdivision or development or both or portions of the Franchise Area:

- (a) the County may apply to the Alberta Utilities Commission for such order or direction as the Alberta Utilities Commission may deem necessary or warranted; or
- (b) in the absence of such application, the dispute preventing the completion of all arrangements necessary to facilitate the provision of Services to the new subdivision or development or both may be determined by Dispute Resolution Procedure.

6. Financial Records and Tracking

The Utility shall maintain such adequate records of all costs incurred in its operation and the delivery of the Services as may be required by, or may be reasonably necessary to satisfy the requirements of, the Alberta Utilities Commission for the purposes of establishing costs of service and all rates and charges to be imposed by the Utility, and as is required in connection for purposes of Schedule E-2 (Transfer and Transition Procedures). Without restricting the foregoing, the Utility shall maintain records of:

- (a) any and all contributions, connection fees, capital contributions, or other consideration or payment made to the Utility by any developer or owner of any Lands;
- (b) the cost of any and all contributions of new additions to the Facilities provided to the Utility by any developer or owner,
- (c) the cost of any and all contributions of new additions to the Facilities by the County or any other party for, on behalf of, or at the direction of the County;
- (d) the Net Book Value of all portions of the Facilities including new extensions, additions or upgrades to the Facilities performed by the Utility at the Utility's cost;

in each case calculated and maintained in accordance with generally accepted accounting principles and, in priority thereto, any principles generally or specifically accepted and applied by the Alberta Utilities Commission, or its successor tribunal or authority, for the purposes of tracking No-Cost Capital, costs of service, and return on investment.

7. Alberta Utilities Commission Jurisdiction

The foregoing is in addition to any and all obligations owed from time to time by the Utility to the Alberta Utilities Commission, or its successor tribunal or authority, and shall not derogate from, limit, restrict, replace or in any manner displace, the lawful jurisdiction, discretion, requirements or direction of the Alberta Utilities Commission.

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SCHEDULE E-2**TRANSFER AND TRANSITION PROCEDURES****A. TRANSFER PROCEDURES****1. Determination of Purchase Price Payable by County**

Unless otherwise agreed to by the Parties in writing, the purchase price payable by the County to the Utility upon any transfer of the Facilities to the County shall be determined in accordance with Section 47 of the *Municipal Government Act*, as amended or replaced from time to time. Notwithstanding the forgoing, no value shall be applied to any water supply agreement between the County (as supplier) and the Utility (as customer), wastewater receipt and treatment agreement or arrangement between the County (as treatment and disposal service provider) and the Utility (as customer), nor any rights of way, easements or surface leases respecting all or any of the Facilities.

2. Dispute / Determination

- (a) In the event of a dispute respecting the settlement of the purchase price for the Facilities payable by the County or the terms under which the Facilities will be transferred which has not been resolved through the negotiation and mediation procedures of Schedule F-2 (Dispute Resolution Procedure) (provided that the arbitration procedure of Schedule F-2 shall not apply to such dispute, subject to paragraph (b) below), the matters in dispute shall be determined by the Alberta Utilities Commission, or its successor tribunal or authority, in accordance with Section 47(4) of the *Municipal Government Act*, as amended or replaced from time to time. The order or written direction of the Alberta Utilities Commission shall be final and binding upon the Parties as to the matter in dispute and falling within the above-noted jurisdiction the Alberta Utilities Commission.
- (b) In the event of a dispute respecting the settlement of the purchase price for the Facilities payable by the County or the terms under which the Facilities will be transferred which the Alberta Utilities Commission has refused to determine, such dispute shall be submitted for resolution pursuant to the arbitration procedure of Schedule F-2 (Dispute Resolution Procedure), it being agreed by the Parties that the arbitral decision shall be final and binding upon the Parties as to such matters in dispute.

B. TERMINATION AND TRANSITIONAL PROCEDURES**1. Continuing Performance**

The County and the Utility shall continue to perform their respective obligations under this Agreement (including this Schedule), notwithstanding the giving of any notice of default or notice of termination, until the Termination Date.

2. Transfer of Assets, Contracts, etc.

No later than the Termination Date:

- (a) if prior to the Service Commencement Date:
 - (i) in so far as title to any such assets or rights is in the name of the Utility and any transfer will be necessary to fully and effectively transfer property, the Utility will transfer to, and there will vest in, the County (or such other Person as may be appointed or designated by the County) free from all financial encumbrances, except encumbrances in respect of leases which the County or such New Utility has agreed, acting reasonably, to assume:

- (A) such part of the Facilities as has been constructed on or has become affixed to the Public Properties; and
- (B) all construction materials on-hand to be affixed to the Public Properties or otherwise used in the Facilities;
- (ii) if the County so elects, the Utility will cause any agreement with a Contract Operator to be novated or assigned to the County, subject to:
 - (A) assumption by the County of all liabilities and obligations under any Project Contract to be so novated or assigned;
 - (B) consent of the Contract Operator to any such novation or assignment;
- (b) the Utility will deliver to the County (to the extent not already delivered to the County):
 - (i) all existing designs, plans and other documents produced in connection with the Facilities and in the control of the Utility (provided that the Utility may retain one copy of all such materials);
 - (ii) one complete set of existing “as built drawings” showing all alterations made to the Facilities since the commencement of operation of the Facilities; and
 - (iii) one complete set of existing up to date maintenance, operation and training manuals for the Facilities,
 subject to reasonable generally applicable third party licensing terms;
- (c) the Utility will use commercially reasonable efforts to ensure that the benefit of existing Intellectual Property and all warranties in respect of mechanical and electrical plant and equipment, used or made available by the Utility under this Agreement and included in the Facilities but not previously assigned or licensed to the County are assigned, licensed or otherwise transferred to the County;
- (d) to the extent held by the Utility and permitted by Law, the Utility will assign to the County (or such other Person as may be appointed or designated by the County) all Operating Permits;
- (e) the Utility will deliver to the County all records required to be kept by the Utility under this Agreement (the Utility having the right to retain copies thereof) unless such documents are:
 - (i) required by Law to be retained by the Utility or a Contract Operator or Sub-Contractor, in which case complete copies will be delivered to the County; or
 - (ii) privileged from production pending resolution of any outstanding Dispute, in which case such records will be delivered forthwith upon resolution of such Dispute, provided that any records that are necessary for the performance of the Work or the Operation and Maintenance will be delivered to the County no later than the Termination Date;
- (f) to the extent not previously delivered to the County, the Utility will deliver to the County's Representative:
 - (i) all keys, access codes or other devices required to operate the Facilities;

- (ii) any Intellectual Property required to be delivered by the Utility pursuant to Schedule F-1 (Intellectual Property); and
- (g) the Utility shall, at its sole cost, terminate and fully compensate all of the Utility's employees utilized in respect of the Facilities as of the Termination Date, or otherwise reallocate such employees to other projects.

3. Provision in Subcontracts

The Utility will ensure that provision is made in all applicable agreements with any Contract Operator or Sub-Contracts to ensure that the County will be in a position to exercise its rights, and the Utility will be in a position to comply with its obligations, under this Schedule without additional payment or compensation by the County to any Person except as expressly provided for herein.

4. Transitional Arrangements

The Utility will:

- (a) on request by the County and on payment of the Utility's reasonable costs (including both reasonable out-of-pocket expenses and reasonable internal costs) by the County, for a period not to exceed three (3) months after the Termination Date, co-operate fully with the County and any successor providing to the County services in the nature of any of the Operation and Maintenance or any part of the Operation and Maintenance, in order to achieve a smooth transfer of the manner in which the County obtains services in the nature of the Operation and Maintenance and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the County and members of the public;
- (b) as soon as practicable following the Termination Date remove from the Public Properties all property not acquired by the County pursuant to Section 1 of this Schedule (or not otherwise belonging to the County) and if it has not done so within sixty (60) days after any notice from the County requiring it to do so the County may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds, less all costs incurred, to the credit of the Utility; and
- (c) as soon as practicable after the Termination Date vacate the Public Properties and will leave the Public Properties and the Facilities in a fully operational, safe, clean and orderly condition.

SCHEDULE F-1**INTELLECTUAL PROPERTY****1. Defined Terms**

In this Schedule, in addition to the terms defined elsewhere in the Agreement:

- (a) “Off The Shelf Software” means software generally available through commercial suppliers on standard terms and conditions; and
- (b) “use”, in respect of Intellectual Property, will include acts of copying, executing, processing and translating the material in question and incorporating such material with other materials, solely for the purposes of Operation and Maintenance and the term “right to use” will be construed accordingly.

2. Third Party Intellectual Property

The Utility will not use in the performance of this Agreement or incorporate into the Facilities comprising each portion of the Facilities any Intellectual Property which is subject to the rights of, or claims that, to the knowledge of the Utility, have been made by, any Person that conflict with the use of such Intellectual Property for the purposes of the Facilities comprising each portion of the Facilities unless the Utility has entered into agreements with such Person licensing to the Utility the right to use such Intellectual Property or the Utility is actively defending against such claim in good faith.

3. Intellectual Property Licenses

Except for Off The Shelf Software, the Utility will ensure that all licenses for the use of Facilities Intellectual Property which the Utility obtains from any Person and incorporates in the Facilities comprising each portion of the Facilities will:

- (a) be non-exclusive;
- (b) be on payment terms no less favourable than those offered to similar licensees in the usual distribution practices of such third party licensor or, in the case of Intellectual Property licensed from an Affiliate of the Utility, on commercially reasonable terms; and
- (c) subject to the terms of each license, permit the use of the Facilities Intellectual Property for the purpose of Operation and Maintenance.

4. Facilities Data and Facilities Intellectual Property Rights

Subject to Section 5 of this Schedule, the Utility will:

- (a) use commercially reasonable efforts to ensure that any third party license agreements respecting Confidential Information, Facilities Data, Facilities Intellectual Property (other than Off The Shelf Software) and ownership rights of the Utility, if any, will be fully transferable to the County or its nominees without transfer cost, solely and to the extent necessary for the County to complete the Operation and Maintenance or carry out Operation and Maintenance after the Termination Date;
- (b) use commercially reasonable efforts to obtain all necessary licenses, permissions and consents, and take all requisite actions, to permit the Utility to transfer its rights in any Confidential Information, Facilities Data and Facilities Intellectual Property (other than Off The Shelf Software) to the County as required by this Agreement, solely for the purposes of the County carrying out Operation and Maintenance;

- (c) with respect to third party licenses to be transferred to the County pursuant to this Agreement, use commercially reasonable efforts to ensure that there are no restrictions under third party license agreements on the County's ability to use the transferred rights in respect of Confidential Information, Facilities Data and any Facilities Intellectual Property (other than Off The Shelf Software) for the purposes of carrying out Operation and Maintenance after the Termination Date, subject to:
 - (i) payment by the County after the Termination Date of any reasonable maintenance, support or similar ongoing fees consistent with those which the Utility was required to pay to the licensor prior to the Termination Date; and
 - (ii) commercially reasonable industry standard licensing restrictions such as confidentiality and restrictions on re-sale;
- (d) on the Termination Date, to the extent it has any rights under, and to the extent such rights are assignable, transfer, or cause the transfer of, its rights under any third party license agreements and its rights as owner of such Confidential Information, Facilities Data and Facilities Intellectual Property (other than Off The Shelf Software), to the County or its nominee to the extent necessary for the County to carry out the Operation and Maintenance; and
- (e) at the County's request, to the extent the Utility Has Knowledge, identify all Off The Shelf Software which is included in the Facilities Intellectual Property.

5. Utility's Proprietary Information

The Utility is not obliged to transfer to the County rights in respect of:

- (a) Confidential Information or Intellectual Property that is proprietary to the Utility, a Contract Operator or Subcontractor that is not required for Operation and Maintenance; or
- (b) software which is generally used for the design and planning of projects similar to the Facilities comprising each portion of the Facilities including, without restriction, software for computer aided drafting and project management.

6. Infringement

The Utility will:

- (a) to the extent reasonably possible, avoid infringing the Intellectual Property rights of any Person during the performance of the Operation and Maintenance or otherwise in connection with the Facilities; and
- (b) promptly use reasonable commercial efforts to resolve any Claim of infringement made in respect of any Facilities Intellectual Property.

7. Limitation on Acceptance by the County

The County's Acceptance of any aspect of the Facilities comprising a Project, including the design of the Facilities, the Equipment or any materials which the Utility supplies to the Facilities, will not be construed to relieve the Utility of any obligation under this Agreement.

SCHEDULE F-2**DISPUTE RESOLUTION PROCEDURE****1. Definitions**

In this Schedule, in addition to terms defined elsewhere in the Agreement, the following words and phrases have the following meanings:

- (a) “Approved Arbitrators” means a list of pre-approved arbitrators agreed upon by the Parties, and revised or updated or both no less often than annually (for clarification, Approved Arbitrators may include reference to a group of practitioners, or a firm or corporation engaged in the business of providing Arbitration services);
- (b) “Approved Mediators” means a list of pre-approved mediators agreed upon by the Parties, and revised or updated or both no less often than annually (for clarification, Approved Mediators may include reference to a group of practitioners, or a firm or corporation engaged in the business of providing Mediation services);
- (c) “Arbitrator” means the person appointed to act as such to resolve any Dispute;
- (d) “Arbitration” means a process whereby each of the Parties, with or without legal counsel, agrees to jointly engage and meet with an Arbitrator who will render a binding decision in respect of any Disputes;
- (e) “Disclosed Information” means the information disclosed by a Party for the purpose of settlement, negotiation, Mediation or Arbitration;
- (f) “Mediation” means a process whereby a Representative of each Party, with or without legal counsel, agrees to jointly engage the services and meet with a Mediator to participate in a mediation, conciliation or similar dispute resolution process;
- (g) “Mediator” means the person appointed to facilitate the resolution of a Dispute between the Parties;
- (h) “Representative” means an individual who has no direct operational responsibility for the matters comprising the Dispute, who holds a senior position with a Party and who has full authority to settle a Dispute (and, for greater certainty, shall not be either the County’s Representative or the Utility’s Representative under the Agreement).

2. Principles of Dispute Resolution

The County and the Utility acknowledge and agree that:

- (a) in any business relationship a difference of opinion or interpretation or a divergence of interest may arise;
- (b) the County and the Utility are committed to resolving any disputes in a non-adversarial, informal and cost efficient manner;
- (c) the following process shall apply in respect of Disputes which are either referred to, or are required by the terms of this Agreement to be resolved in accordance with, the Dispute Resolution Procedure; and

- (d) the Parties shall make all reasonable efforts to resolve all Disputes by negotiation and agree to provide, without prejudice, open and timely disclosure of relevant facts, information and documents to facilitate these negotiations as further contemplated within this Schedule.

3. Dispute Process

In the event of any Dispute, the Parties agree that they shall undertake a process to promote the resolution of a Dispute in the following order:

- (a) first, by negotiation;
- (b) second, by way of Mediation; and
- (c) third, if agreed to mutually by the parties, by Arbitration.

Negotiation, Mediation or Arbitration shall refer to, take into account, and apply the intentions and principles stated by the Parties within the Agreement.

4. Negotiation

A Party shall give written notice (“Dispute Notice”) to the other Party of a Dispute and outline in reasonable detail the relevant information concerning the Dispute. Within seven (7) days following receipt of the Dispute Notice, the Parties shall each appoint a Representative, who shall meet and attempt to resolve the Dispute through discussion and negotiation. If the Dispute is not resolved within thirty (30) days of the appointment of a Representative by each Party, the negotiation shall be deemed to have failed.

5. Mediation:

- (a) If the Representatives cannot resolve the Dispute through negotiation within such thirty (30) day period, then the Dispute shall be referred to Mediation.
- (b) In such event, either Party shall be entitled to provide the other Party with a written notice (“Mediation Notice”) specifying:
 - (i) the subject matters remaining in Dispute, and the details of the matters in Dispute that are to be mediated; and
 - (ii) the nomination of an individual from the list of Approved Mediators to act as the Mediator.
- (c) The Parties shall, within thirty (30) days of the Mediation Notice, jointly nominate or agree upon a Mediator from the list of Approved Mediators (unless the Approved Mediators are unwilling or unable to accept the appointment, in which case the Parties may nominate or agree upon a Mediator from outside of the list of Approve Mediators).
- (d) Where a Mediator is appointed, the Parties shall submit in writing their Dispute to the Mediator, and afford to the Mediator access to all records, documents and information the Mediator may reasonably request. The Parties shall meet with the Mediator at such reasonable times as may be required and shall, through the intervention of the Mediator, negotiate in good faith to resolve their dispute. All proceedings involving a Mediator are agreed to be without prejudice, and the cost of the Mediator shall be shared equally between the Parties.
- (e) In the event that
 - (i) the Parties do not agree on the appointment of a Mediator with thirty (30) days of the Mediation Notice;

- (ii) the Mediation is not completed within thirty (30) days after the appointment of the Mediator; or
- (iii) the Dispute has not been resolved within sixty (60) days from the date of receipt of the Dispute Notice;

either Party may by notice to the other withdraw from the Mediation process and in such event the Dispute shall be deemed to have failed to be resolved by Mediation.

6. Arbitration:

- (a) If Mediation fails to resolve the Dispute, the Dispute shall be submitted to binding Arbitration. Either of the Parties may provide the other Party with written notice (“Arbitration Notice”) specifying:
 - (i) the subject matters remaining in Dispute and the details of the matters in Dispute that are to be arbitrated; and
 - (ii) the nomination of an individual from the list of Approved Arbitrators to act as the Arbitrator.

Within fourteen (14) days following receipt of the Arbitration Notice, the other Party shall, by written notice, advise as to which matters stated in the Arbitration Notice it accepts and with which matters it disagrees and shall also advise whether it agrees with the resolution of the disputed items by Arbitration, and whether it agrees with the Arbitrator selected by the initiating Party or provide the name of one Arbitrator selected by that other Party. Should the Parties fail to agree to resolve any disputed items by Arbitration, this Dispute Resolution Process shall come to an end.

- (b) Subject to agreement of the Parties to resolve any disputed items by Arbitration as contemplated above the Parties shall, within thirty (30) days of the Arbitration Notice, jointly nominate or agree upon an Arbitrator from the list of Approved Arbitrators (unless the Approved Arbitrators are unwilling or unable to accept the appointment, in which case the Parties may nominate or agree upon an Arbitrator from outside of the list of Approved Arbitrators).
- (c) Should the Parties fail to agree on a single arbitrator within the fourteen (14) day period referred to above, then either Party may apply to a Justice of the Court of Queen’s Bench of Alberta to have the arbitrator appointed.
- (d) The terms of reference for Arbitration shall be those areas of dispute referred to in the Arbitration Notice, and the receiving Party’s response thereto.
- (e) The Arbitrator shall conduct the Arbitration in accordance with the commercial arbitration rules (the “Rules”) established from time to time by the ADR Institute of Canada Inc., unless the Parties agree to modify the same pursuant to any arbitration agreement. The Arbitration Act (Alberta) shall apply to all Arbitrations but if there is a conflict between the Rules and the provisions of the Act, the Rules shall prevail. Notwithstanding the foregoing, any such Arbitration shall be conducted in the English language.
- (f) The Arbitrator shall proceed to hear and render a written decision concerning any Dispute within:
 - (i) forty-five (45) days, if the subject matter of the Dispute is less than \$50,000.00; or

- (ii) one hundred and twenty (120) days, if the subject matter of the Dispute is greater than \$50,000.00.
- (g) The Arbitrator has the right to award solicitor-client costs against the unsuccessful Party and to award interest but does not have the right to award punitive, consequential or other exemplary damages.
- (h) The Arbitrator's decision is final and binding but is subject to appeal or review by any court of proper jurisdiction only with respect to an allegation of fraud.
- (i) Judgment upon any award (an "Award") rendered in any such Arbitration may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the Award and an enforcement order, as the laws of such jurisdiction may require or allow.
- (j) The Parties acknowledge and agree that, where a Dispute involves a Claim for injunctive relief, a Party may refer such matter to Arbitration in accordance with this Schedule or apply to the appropriate court for relief.

7. Participation

The Parties and their Representatives will participate in good faith in the negotiation, Mediation and, if applicable, Arbitration processes and provide such assistance and Disclosed Information as may be reasonably necessary.

8. Location

The place for Mediation and Arbitration shall be within the Hamlet of Sherwood Park, or such other location as the Parties may agree.

9. Selection of Mediator and Arbitrator

Without restricting any of the foregoing, if the Parties are unable to agree upon the appointment of a single Mediator or Arbitrator within the list of Approved Mediators or Approved Arbitrators, respectively, within ten (10) days after receipt of the Mediation Notice or Arbitration Notice, as the case may be, either of the Parties may request that a single Mediator or Arbitrator, as the case may be, of suitable training, experience and independence, and who in respect of the subject matter of the Dispute has a reasonable practical understanding, be recommended for appointment by the executive director or other individual fulfilling that role for the ADR Institute of Canada, Inc. The executive director shall be requested to make this determination within five (5) days of receipt of the request.

10. Costs

Subject to clause 6(g) of this Schedule, in the case of an Arbitration the Parties shall bear their respective costs incurred in connection with the negotiation, Mediation and, if applicable, Arbitration except that the Parties shall equally share the fees and expenses of the Mediator and Arbitrator and the cost of the facilities required for Mediation and Arbitration.

11. Disclosed Information

All Disclosed Information shall be treated as confidential and neither its delivery nor disclosure shall represent any waiver of privilege by a Party disclosing such Disclosed Information. Subject only to the rules of discovery, each Party agrees not to disclose the Disclosed Information to any other Person or for any other purpose. Such Disclosed Information cannot be used in any subsequent proceedings without the consent of the Party who has made the disclosure. The Parties agree that any Representative, Mediator and, if applicable, Arbitrator shall not be subpoenaed or otherwise compelled as a witness in any proceedings for the purpose of testifying with respect to the nature or substance of any dispute resolution process that may arise in relation to any matter that is a subject of this

Agreement. Nothing in this Dispute Resolution Procedure shall require a Party to disclose information that is subject to confidentiality provisions with third parties.

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SCHEDULE F-3**RECORDS, REPORTS AND REQUIREMENTS FOR FOIPP****1. Definitions**

In this Schedule:

- (a) “Record” means record as that term is defined in the Freedom of Information and Protection of Privacy Act, RSA 2000, c.F-25 (“FOIPP Act”) including, without restriction, those documents and information described within Section 2 of this Schedule; and
- (b) “Personal Information” means personal information as that term is defined in the FOIPP Act as amended from time to time.

2. Project Records

The Utility will keep and maintain the following and make all such records available to the County for inspection and audit in accordance with Section 3 of this Schedule:

- (a) this Agreement and its Schedules, including all amendments thereto;
- (b) the as-built records and other construction documentation described in this Agreement;
- (c) licences and similar documentation relating to Facilities Intellectual Property;
- (d) records relating to the appointment and replacement of the Utility’s Representative for a period of 6 years;
- (e) data relevant to the design of the Facilities;
- (f) documents relating to material Operating Permits, including applications, consents, refusals and appeals, for a period of 6 years after the Operating Permit expiry or, if earlier, the expiration or termination of this Agreement;
- (g) notices, reports, results and certificates relating to completion of Operation and Maintenance activities including certificates, letters of assurance and other documents produced in accordance with the construction approval process contemplated within this Agreement;
- (h) all operation and maintenance manuals for the Facilities comprising each portion of the Facilities;
- (i) all documents relating to Force Majeure and the consequences thereof for a period of 6 years after the event occurred, or in the case of a Disputed matter, for a period of 6 years after determination;
- (j) all formal notices, reports or submissions made to or received from the County’s Representative for a period of 6 years;
- (k) all documents related to referrals to the Dispute Resolution Procedure for a period of 6 years after a determination has been made in respect thereto;
- (l) all records required by Law (including in relation to health and safety matters) for such period as the Law requires and if no such period, 6 years;
- (m) all documents relating to insurance and insurance claims for a period of 6 years after the relevant claim is settled;

- (n) automatically or manually recorded incidents involving damage to or failures of the Facilities comprising each portion of the Facilities affecting performance of the Facilities, including date and time of occurrence and response taken for a period of 3 years;
- (o) the transfer of all or any portions of the Facilities; and
- (p) periodic inspection reports of the Facilities or portions thereof.

3. Access by the County

Subject to applicable Laws including the Personal Information Protection Act, SA 2003, cP-6.5, (“PIPA”), and obligations of confidentiality owed with respect to third party information, the Utility shall provide to the County:

- (a) access to any and all Records related to the Agreement and the Operation and Maintenance for inspection, at the Utility’s expense; and
- (b) access to any and all Records related to the Agreement and the Operation and Maintenance for copying, at the County’s expense,

during normal business hours upon reasonable notice, and in any event within 15 days of notification by the County.

4. Ownership and Control

Subject to applicable Laws, including PIPA, and obligations of confidentiality owed with respect to third party information, all Records (including all Personal Information) related to this Agreement and created, compiled, collected, maintained, or obtained by the Utility while performing the services identified in this Agreement are subject to the control of the County irrespective of custody. The Utility understands that except for a limited number of exemptions, FOIPP applies to all records in the custody or under the control of a public body.

5. Retained Format

Wherever practical, the Utility will retain and maintain original hard copy records in hard copy form and electronically collected data in electronic form. True hard or electronic copies of the original hard copy records may be kept by the Utility if it is not practicable to retain original records. Any drawings required to be made or supplied pursuant to this Agreement will be of a size appropriate to show the detail to be depicted clearly and will be available in both hard and electronic copy. Where, by prior agreement with the Utility, the County has agreed to accept microfilm, microfiche or other storage media (which must include secure back up facilities), the Utility will make or supply, or have made or supplied, drawings and other documents in the agreed form.

6. Term of Retention

Subject to Section 9 of this Schedule, the Utility will retain and maintain all Records referred to in this Schedule for the period specified in Section 2, and where not specified for the duration of this Agreement or as required or permitted by applicable Laws, all in sufficient detail, in appropriate categories and generally in such a manner to enable each party to comply with its obligations and exercise its rights under this Agreement.

7. Transfer

Upon the expiration or earlier termination of this Agreement, subject to applicable Laws, including PIPA, and obligations of confidentiality owed with respect to third party information, the Utility will at the County’s cost deliver to the County all Records that pursuant to this Schedule are then retained by the Utility (or, if those records are required by statute to remain with the Utility, a Contract Operator or a Sub Contractor, copies thereof) in the manner and at the location as the County, acting reasonably, may determine. The Utility shall provide the County with a written confirmation that it has provided all Records to the County. The Utility may retain a copy of all Records for its internal purposes or as required by Law.

8. Disposal

The Utility will not dispose of any Records prior to the expiry period for retaining such Records without the prior consent of the County. The Utility will notify the County if it determines that Records stored pursuant to this Schedule are no longer reasonably required. Unless the County agrees to take delivery of any Records which the Utility, acting reasonably, determines may be destroyed, the County will not unreasonably withhold its consent to a request by the Utility to destroy specific Records.

9. Personal Information

The Utility shall keep all Personal Information transferred to it by the County or collected or compiled by the Utility pursuant to this Agreement.

10. Freedom of Information and Protection of Privacy

- (a) The Utility acknowledges and agrees that, subject to section 3.2, the FOIPP Act applies to all Records and Personal Information relating to, or obtained, generated, compiled, collected or provided under or pursuant to this Agreement.
- (b) The Utility recognizes the responsibility of the County in relation to the FOIPP Act and shall not handle any Records or Personal Information except in accordance with the County's duty under the FOIPP Act.
- (c) The Utility is responsible for ensuring complete compliance of any of those Persons for whom the Utility is responsible at law (including any of its employees, Subcontractors or agents) with all terms and conditions related to the FOIPP Act, including protection of privacy. In the event that the Utility becomes aware of a breach of any of those terms or conditions it shall notify the County immediately in writing.
- (d) The Utility must ensure that each Person for whom it is responsible at Law and who may be involved in the handling of any Records or Personal Information is aware of the requirements of the FOIPP Act in discharge of the Agreement.

11. Private Sector Privacy Legislation

The County acknowledges that the Utility is subject to PIPA or other applicable private sector privacy legislation or both and, as a result, is subject to the provisions of such legislation with respect to "personal information" (as that term is or similar terms are defined in such legislation), including that the Utility may be subject to restrictions relating to disclosure of personal information, including to the County, as well as requirements relating to access, correction, retention and security of personal information.

12. Collection

No Personal Information may be collected by the Utility, its employees or agents unless such collection is necessary for the Utility to perform its obligations under this Agreement. No Personal Information may be collected except in compliance with applicable Laws. The Utility must collect Personal Information in accordance with applicable Laws.

13. Use

The Utility shall not use, either directly or indirectly, any Personal Information except for the express purpose of performing its obligations in the Agreement or as otherwise permitted by applicable Laws.

14. Survival

The provisions of this Schedule shall survive the expiration or termination of the Agreement.

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