

Draft

THIS AGREEMENT made effective as of the _____ day of _____, 2012.

WATER SUPPLY AGREEMENT

ELK POINT/ ST. PAUL REGIONAL WATER SERVICES COMMISSION
(the "Commission")

- and -

COUNTY OF ST PAUL No. 19

(the "Member")

Introduction:

WHEREAS the Member desires to enter into an agreement with the Commission for the supply of Water in order to permit the Member to provide water service to its customers.

AND WHEREAS the Member wishes to purchase Water from the Commission and the Commission wishes to sell and deliver Water to the Member.

AND WHEREAS the Member and the Commission recognize that conservation of water resources is an important goal.

In consideration of the mutual and other promises described in this Agreement, the Commission and the Member covenant and agree as follows:

1. Definitions

In this Agreement, each of the following words shall have the meaning for that word described below unless expressly stated otherwise:

- (a) **Agreed Variance** means the standard for accuracy for the Meter being tested as specified in the latest edition of the American Water Works Association 700 Series Standards;
- (b) **Agreement** means this Water Supply Agreement including the Introduction clauses, all attached Schedules and all documents produced or delivered according to the terms of this Agreement;
- (c) **Annual Quantity** means for each calendar year the quantity of Water for that year determined according to the provisions of Part 1 of the attached Schedule "A";
- (d) **Best Efforts** means, in relation to the performance of an obligation, efforts that are sensible and practical, and involve the exercise of reasoned and sound judgement having regard to all of the relevant circumstances;
- (e) **Bylaw 2** means the Bylaw of the Commission that sets out the establishment and operation of the Commission.

- (f) **Cross Connection** means any physical connection to the Commission's or the Member's Watermains whereby Water may become contaminated;
- (g) **Customer's Boundaries** means:
 - (i) the legal municipal boundary of those members of the Member that are urban municipalities;
 - (ii) the boundary of that area of those members of the Member that are rural municipalitiesas the case may be, as shown in the attached Schedule "B";
- (h) **Delivery Pressures** means for each calendar year the Minimum Pressure and the Normal Pressure Range for that year;
- (i) **Effective Date** means the date hereof;
- (j) **Equipment** means all necessary valves, pressure and flow controls, associated equipment and pipes with respect to a Meter Chamber. Equipment does not include the Meter;
- (k) **Maximum Daily Quantity** means for each day during a calendar year the maximum quantity of Water for that day determined according to the provisions of Part 2 of the attached Schedule "A";
- (l) **Members** mean those members set out Alberta Regulation No.
- (m) **Meter** means the consumption measuring device owned by the Commission which is located in a Meter Chamber;
- (n) **Meter Chamber** means the physical structure (including the Equipment) which houses the Meter and where the Commission measures the quantity of Water delivered to the Member. A Meter Chamber shall be located at each Point of Delivery;
- (o) **Minimum Pressure** means for each calendar year the minimum pressure for delivery of Water at the Point of Delivery for that year determined according to the provisions of the attached Schedule "C";
- (p) **M³** means cubic meters;
- (q) **Normal Pressure Range** means for each calendar year the normal pressure range for delivery of Water at the Point of Delivery for that year determined according to the provisions of the attached Schedule "C";
- (r) **Points of Delivery** means the places described in the attached Schedule "D" where Water is sold and delivered to the Member by the Commission;
- (s) **Rate** means the price for Water established from time to time according to the provisions of the attached Schedule "E";
- (t) **Schedules** means those Schedules attached hereto which form part of this Agreement including:

- (i) Schedule "A" - Annual Quantity and Maximum Daily Quantity
 - (ii) Schedule "B" - The Member's Boundaries
 - (iii) Schedule "C" - Delivery Pressure
 - (iv) Schedule "D" - Points of Delivery and Meter Chambers
 - (v) Schedule "E" - How the Rate is Determined
 - (vi) Schedule "F" - Dispute Resolution Process
- (u) **Water** means treated potable water which is safe for human consumption;
- (v) **Watermain** means a water pipe line under pressure used to supply or deliver Water.

2. General Terms

- (a) This Agreement may not be assigned without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- (b) This Agreement is for the benefit of and binds the parties and their respective successors and permitted assigns.
- (c) Any term of this Agreement which is determined to be void, unenforceable or illegal shall be severed from this Agreement. The remaining terms shall be effective and enforceable.
- (d) The headings are for reference only and shall not be used to interpret or construe this Agreement.
- (e) Time is of the essence for every part of this Agreement.
- (f) Any notice, consent or communication required by this Agreement must be in writing and shall be delivered by hand or by courier to the following addresses or shall be telecopied to the following telecopier numbers, as the case may be:
 - (i) To the Commission at:
Elk Point Regional Water Services Commission
Box 993, Elk Point
TOA 1A0

Attention: Commission Manager
Telecopier / Fax No.: (780)-724- 2762
 - (i) To the Member at:
County of St Paul
5015- 49 Ave
St Paul, Alta, TOA 3A4
Attention: CAO
Telecopier / Fax No.(780)- 645- 3104

- (g) This Agreement shall be governed by and construed according to the laws in force in the Province of Alberta and Bylaws of the Commission.
- (h) All changes of gender and number shall be made where required.
- (i) The term of this Agreement is twenty-five (25) years commencing from the Effective Date. This Agreement may only be renewed by further written agreement between the parties.
- (j) This Agreement is the only agreement between the parties in relation to the subject matter hereof, and supercedes and replaces all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. This Agreement may only be amended or modified by a further written agreement of the parties.
- (k) The Commission shall provide potable water to the member at the Point of Delivery. The Member shall be responsible for all treatment required for the Water received from the Commission after the Point of Delivery that may be required to insure that the Water is safe for human consumption.

3. Purpose

- (a) The Commission agrees to sell and deliver Water to the Member according to the terms of this Agreement.
- (b) The Member agrees to buy and accept delivery of Water from the Commission according to the terms of this Agreement.
- (c) The Member, during the term of this Agreement, shall obtain all of its water requirements from a Commission water source.
- (d) The Member shall provide the Commission with such information as the Commission may reasonably request from time to time in respect of the Member's actual consumption of water.
- (e) The Member shall be entitled to a maximum annual allocation of water of 60,225 cubic meters and the Commission shall undertake to provide capacity within the system to supply the volume of water annually requested. In fulfilling this obligation, the Commission shall use Best Efforts to:
 - (i) make Water available to the Member each year as required by the Member to a maximum amount equal to the Annual Quantity for that year;
 - (ii) subject to paragraph 3(d), above, make Water available to the Member each day as required by the Member up to a maximum amount equal to the Maximum Daily Quantity for that day;
 - (iii) deliver Water to the Points of Delivery at all times during each year at a pressure equal to at least the Minimum Pressure for that year, and for the majority of the time during such year at a pressure falling within the Normal Pressure Range for that year; and
 - (iv) avoid situations where it is unable to supply to the Member the quantity of Water required by the Member.

- (f) The Member and the Commission shall work cooperatively and each of them shall use Best Efforts to manage and control the Peak Hour Draw Rate so as to optimize the operation of the water supply system providing water to the Member under this Agreement.
- (g) The Member shall pay for all Water measured by the Commission at the Points of Delivery. The Points of Delivery shall be the rural points of delivery identified in Schedule "D". The cumulative total of all the points of delivery shall be the volume of water measured.
- (h) The Member shall pay for all Water at the Rate established by the Commission and in effect from time to time in accordance with the attached Schedule "E".
- (i) The Member shall pay for all Water by monthly payments based upon billings prepared by the Commission. The Commission shall provide monthly billings to the Member at least thirty (30) days in advance of the due date for payment. If the Member fails to pay by the due date, then the Member must pay the late payment charge specified in the monthly billing.
- (j) The Member shall use or resell any or all of the Water bought from the Commission for the purpose of distributing the Water:
 - (i) to customers located within the Member Boundaries; and
 - (ii) to customers located outside of the Member's Boundaries, that may be authorized by the Commission.
 - (iii) the Member shall not resell any Water bought from the Commission for the purpose of the supply of Water for injection into any geological subsurface structure or formation.
- (k) The Member and the Commission are individually responsible for obtaining, at their sole expense, all necessary consents, approvals or orders from any level of government, board, tribunal, the Member or other regulatory authority which is or are required in order for each of them to enter into this Agreement or to perform and satisfy their respective obligations described herein. The Member and the Commission shall cooperate with each other and shall provide reasonable assistance to each other, when requested.
- (l) The Member and the Commission shall not allow or permit any Cross Connections.

4. Rates

- (a) Annually, by October 31st, the Commission shall forward to the Member, the rate to be charged for water supplied by the Commission under this Agreement to become effective on January 1st of the following year.
- (b) The rate to be charged shall be calculated in accordance with the provisions of Schedule "E" of this Agreement.

5. Metering and Supply

- (a) The Meter Chambers shall be constructed by the Commission. The location of each Meter Chamber is described in Schedule "D".

- (b) The Commission shall care for, keep safe, maintain, repair and replace all Meter Chambers.
- (c) The Meter Chambers are the Commission's property and all Meters are the Commission's property.
- (d) The Commission and the Member may agree to additional Points of Delivery and if they do, then Schedule "D" shall be amended.
- (e) Any additional Points of Delivery and required Meter Chambers shall be constructed by the Member at its expense and shall be the Commission property, provided that all Meters shall be purchased and installed by the Commission at its expense and shall be the Commission's property.
- (f) Any upgrades or modifications to existing or future Meter Chambers (including the Equipment):
 - (i) required solely for the Member, shall be completed at the Member's expense, and;
 - (ii) required solely for the Commission, shall be completed at the Commission's expense.
- (g) The Commission shall care for, maintain, repair and replace the Meters.
- (h) Once a year, the Commission may test all Meters for accuracy. The Commission shall pay for these tests.
- (i) After notifying the Commission in writing, the Member may request the Commission to have a Meter tested for accuracy.
- (j) If at any time a Meter Chamber or a Meter is out of service or is being repaired so that the measurement of the volume of Water being delivered is not being recorded accurately within the Agreed Variance, or if a test determines that a Meter is not registering accurately within the Agreed Variance, the Meter Chamber or Meter shall be repaired or adjusted as soon as practical, the measurement shall be corrected for a period definitely known or agreed upon, or if not known or agreed upon for one-half of the period since the last Meter test, and the measurements shall be determined or adjusted, as the case may be, to correct for the degree of inaccuracy using the best available data in the following priority:
 - (i) by using any check measuring equipment if installed and if accurately registering within the Agreed Variance;
 - (ii) by correcting the error, if the percentage of the error is ascertainable by calibration, test or mathematical calculation; or
 - (iii) by estimating the volume based upon deliveries under similar conditions during a period of time when the Meter Chamber and Meter were working accurately.

Where a test (other than an annual test) indicates that the accuracy of a Meter exceeds the Agreed Variance, the Commission shall pay for the test. Where a test (other than an annual test) does not indicate that the accuracy of a Meter exceeds the Agreed Variance, the Member shall pay for the test.

- (k) The Member shall allow the Commission reasonable access to all Meter Chambers at

reasonable times for the purposes of performing its obligations to care for, maintain, repair, replace and test the Meters.

6. Repairs, Maintenance and Replacements

- (a) The Commission may interrupt or curtail Water service for period of time as it may reasonably require for the purpose of effecting any repairs, maintenance, replacement, upgrading or other work related to the water supply system providing service under this Agreement provided that:
 - (i) the Commission has given the Member at least forty-eight (48) hours prior notice or, in the event of unforeseen circumstances, the Commission gives notice of such interruption or curtailment as soon as is reasonably possibly possible; and
 - (ii) the Commission acts reasonably in using best efforts to restore services as soon as reasonably possible.
- (b) The Commission shall use Best Efforts to coordinate the repairs, maintenance, replacement, upgrading and other work referred to in paragraph 6(a), above, with the Member so as to minimize to the extent reasonable the inconvenience to the Member of interruptions and curtailments.
- (c) During periods of interruption or curtailment provided for in paragraph 5(a), above, the Commission may reduce the level, quality or quantity of service provided to the Member under this Agreement, provided that the Commission shall treat all of its member affected by the interruption or curtailment, including the Member, fairly, equitably, and without preference, consistent with any operating constraints then in effect. The Commission and the Member shall use Best Efforts to keep each other apprised of and up-to-date in respect of the relevant circumstances during each interruption or curtailment.

7. Force Majeure

The Commission shall not be liable for any failure of or delay in performance of its obligations hereunder or be deemed to be in breach of this Agreement if such failure or delay arise from "force majeure".

- (a) For the purposes of this Agreement, "force majeure" shall mean any cause not reasonably within the Commission's control and shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, storms, floods, high waters, washouts, inclement weather, orders or acts of evil or military authorities, civil disturbances, or any other causes, whether of the kind herein enumerated or otherwise, not within the reasonable control of the Commission and which, by the exercise of due diligence, the Commission is unable to overcome, provided that lack of funds shall not be a cause beyond control.
- (b) The Commission shall give the Member prompt notice of such circumstances and shall take all reasonable steps to remove such disability. The Commission shall not be entitled to the benefit of this force majeure clause to the extent the failure to provide Water was caused by the Commission having failed to remedy the force majeure condition where it was reasonably able to do so and to resume the supply of water with reasonable dispatch.

- (c) The Commission may impose reasonable restrictions on the delivery of Water, provided that the Commission shall treat all of its customers affected by the force majeure, including the Member, fairly, equitably and without preference, consistent with any operating constraints then in effect.
- (d) The parties agree that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the particular party involved therein and such party may make settlement thereof in such time and on such terms and conditions as it may deem to be advisable and no delay in making such settlement shall deprive such party of the benefits of this section.
- (e) A force majeure event shall merely suspend contractual obligations, and not bring this Agreement or any portion thereof to an end.

8. Liability, Damages and Mutual Indemnity

- (a) Unless the cause is proven to be due directly to the negligence of the Commission, its employee's or agents, the Commission shall have no liability to the Member whatsoever for any damage, loss, cost or expense resulting from, arising out of or associated with:
 - (i) a break of any Watermain, service pipe or collapse of any ditch or trench.
 - (ii) the interference or suspension of the supply of Water due to maintenance work to, repair work to or replacement work for the Commission's water system or an emergency situation regarding any part of the Commission's water system, and
 - (iii) any accident to or failure of any part of the Commission's water system;
- (b) Notwithstanding any other provision of this Agreement, neither the Member nor the Commission shall be liable to the other for:
 - (i) any losses or costs arising from third party claims or causes of action, including claims or causes of action of the other's customers; or
 - (ii) any indirect, consequential or punitive damages, including loss of profits or revenues or other similar damages.
- (c) Each party (the "indemnifying party") agrees to indemnify and save harmless the other party (the "indemnified party"), its agents and employees from and against any and all damage, injury, loss, costs, causes of action, including legal costs on solicitor and own client basis, and claims suffered or incurred by the indemnified party, its agents or employees which are in any way connected with the performance or nonperformance of this Agreement and which are caused either directly or indirectly or contributed to in whole or in part by any act or failure to act of the indemnifying party, its agents and employees, in respect of which indemnifying party, its agents or employees is liable or otherwise responsible in law, provided that such indemnity shall be limited to an amount in proportion to which the indemnifying party, its agents and employees are at fault or otherwise held responsible in law.

9. Arbitration and Remedies

- (a) If a dispute arises between the Member and the Commission regarding the interpretation, application, operation or breach of this Agreement or any part of it the dispute must be submitted to the dispute resolution process described in the attached Schedule "F" before either party may take any other action or step or pursue any available remedy in relation

to the dispute regardless of whether such action, steps or remedy involves the courts, the Alberta Energy and Utilities Board or any successor tribunal or entity, provided however that either party may file a complaint or other document required to be filed with the courts, Board or any successor tribunal or entity and take any other action or step prior to submitting any dispute to the dispute resolution process if such filing, action or step is necessary to preserve its right to pursue the dispute in the event that the dispute resolution process is unsuccessful in resolving the dispute.

Notwithstanding that the dispute resolution process is involved, the parties shall continue to perform their obligations described in this Agreement until such time as the dispute resolution process is complete.

- (b) Subject to paragraph 8(a), if a party breaches this Agreement, then the other party shall have all available legal, equitable and other remedies.

In witness whereof the parties have signed this Agreement to be effective from and after the Effective Date notwithstanding the actual date(s) of execution.

**ELK POINT / ST PAUL REGIONAL WATER
SERVICES COMMISSION**

Per: _____

Per: _____

COUNTY OF ST PAUL No 19

Per: _____

Per: _____

SCHEDULE "A"

ANNUAL QUANTITY

PART I

1. The Annual Quantity of Water for a calendar year shall be determined or redetermined, as the case may be, as follows:
 - (a) Prior to October 31st in each year of this Agreement commencing October 31, 2012 , the Member shall provide to the Commission:
 - (i) a request for water for the next calendar year which the Member proposes as the Annual Quantity of Water, together with a forecast of volumes anticipated to be required for the second through fifth ensuing calendar years (the "forecast"); and
 - (ii) engineering and other information supporting the forecast, including without restriction information regarding the Member's forecast population, business and industrial growth.
 - (b) If the Commission does not agree that the quantity requested by the Member as the Annual Quantity of Water or any other forecasted volumes are reasonable, the Member and the Commission shall work together in good faith to reach agreement on the Annual Quantity of Water or other forecasted volumes.
2. For greater certainty, each of the Commission and the Member shall act reasonably in preparing and reviewing each forecast, and in all discussions and negotiations in relation to each forecast and the establishment of an Annual Quantity of Water. The Member shall use best efforts in the preparation of each forecast to ensure to the extent reasonably possible that it is not over-estimating or otherwise inflating its Water needs. The Commission shall exercise sound engineering judgement and, where appropriate, consult with the Member when reviewing the technical aspects of the Member's forecast.

SCHEDULE "A"

Maximum Daily Quantity

PART 2

The Maximum Daily Quantity for each day shall be equal to the quantity (expressed in M³) determined as follows:

$$\text{Maximum Daily Quantity} = 2 \text{ AQ} / 365$$

Where AQ equals the Annual Quantity for the calendar year in which that day falls.

SCHEDULE "B"

The Member's Boundaries

The Member's Boundaries for the purposes of this Agreement shall be the established corporate boundaries of the Member as may be adjusted from time to time.

SCHEDULE "C"

Delivery Pressures

To be determined when technical aspects of Regional Pump Station is completed.

SCHEDULE "D"

Points of Delivery and Meter Chamber

Points of Delivery will be those indicated on the attached map

SCHEDULE "E"

Rates and Sales Calculation

1. How the Rate is Determined

As provided in Clauses 7.9 and 7.9.1 of the Commission Bylaw No. 1, the rate to the Member shall be a rate common to all Members and shall be calculated by dividing the estimated costs of the system by the total volume of water requested by the Members and anticipated to be sold to the customers.

The estimated costs of the system shall be calculated 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 and updated from time to time, and in accordance with the findings and directives of the Alberta Energy and Utilities Board and may include:

- (i) operations of the Board and Manager;
- (ii) operations of the pipeline system;
- (iii) purchase of water;
- (iv) repayment of debt obligations;
- (v) non cash expenditures; and
- (vi) return on equity and investments;
- (vii) allocations for present or future capital expenditures

Principles and practices to be applied to determine Rates may be changed from time to time by way of negotiated agreement between the Members or as a result of a decision or order of the Alberta Energy and Utilities Board, or a successor tribunal or authority.

2. Minimum Payment to the Commission

Under this agreement the Member shall pay to the Commission the product of the actual volume of water purchased by the Member in a year times the rate set out by the Commission. Notwithstanding this, where the actual volume of water purchased is less than 90% of the Annual Quantity, the Member shall be responsible for a minimum payment to the Commission of 90% of the Annual Quantity times the rate set by the Commission.

SCHEDULE "F"

Dispute Resolution Process

The Member and the Commission acknowledge that in any business relationship a difference of opinion or interpretation or a divergence of interest may arise. The Member and the Commission are committed to resolving any disputes in a non-adversarial, informal, and cost efficient manner. Therefore the Member and the Commission agree as follows:

1. The Member and the Commission shall attempt to resolve any dispute through direct negotiation.
2. Failing successful negotiation they shall resort to mediation as follows:
 - (a) Either party may be written notice to the other, request that the parties select a mediator. The parties shall endeavor to select a mediator agreeable to both from a list of suitable mediators maintained by the Alberta Arbitration and Mediation Society.
 - (b) Within 7 days of his or her selection, the Mediator shall designate a time for a meeting among the Mediator and a representative of each the Member and the Commission. Each representative must have authority to agree to a resolution of the dispute.
 - (c) Subject to paragraph 8(b) of the Agreement, for a 45 day period of time from the written notice requesting the selection of a mediator, neither the Member nor the Commission shall take any action or step or pursue any available remedy other than to use its best efforts to participate in the mediation process.
 - (d) The cost and expense of the Mediator and the mediation process shall be paid for equally by the Member and the Commission.
 - (e) The mediation process, including all discussions, proposals and written materials made or prepared, shall be strictly confidential and cannot be used or referred to in any subsequent action, step or proceedings.
 - (f) The Mediator cannot be called by either party as a witness in any subsequent action, step or proceeding.
3. Notwithstanding Clause 2 (c), either party may take such legal or regulatory action as may be necessary to preserve the right to any legal or regulatory remedy should a resolution of the dispute under the process in Section 2 of this Schedule be unsuccessful.

