

THIS AGREEMENT made effective as of the ___ day of _____, 2016.

BETWEEN:

HIGHWAY 28/63 WATER SERVICES COMMISSION
(hereinafter referred to as the "Commission")

and

COUNTY OF ST. PAUL NO. 19
(hereinafter referred to as "St. Paul")

and

SMOKY LAKE COUNTY
(hereinafter referred to as "Smoky Lake")

WATER SUPPLY AMENDING AGREEMENT & CONSENT

WHEREAS:

- A. The Commission and the County entered into a Water Supply Agreement dated _____, 2016 (the "Water Supply Agreement"), respecting the supply of Water from the Commission to St. Paul;
- B. Pursuant to the Water Supply Agreement, St. Paul is restricted to the resale of Water supplied by the Commission to consumers and property located within the Customer Service Area defined within the Water Supply Agreement, consisting of the corporate boundaries of St. Paul;
- C. The owners (the "Permitted Smoky Lake Consumers") of those certain properties described within **Schedule "A"** attached to this Agreement and located within the corporate boundaries of Smoky Lake (the "Permitted Smoky Lake Properties") have requested to be serviced by St. Paul through the system or works of St. Paul which are located within the corporate boundaries of Smoky Lake;
- D. Pursuant to Section 54 of the *Municipal Government Act* RSA 2000, c. M-26 (the "MGA"), St. Paul is not permitted to provide services within the boundaries of Smoky Lake without the agreement of Smoky Lake;
- E. The Commission is agreeable to the amendment of the Customer Service Area defined within the Water Supply Agreement so as to allow for the proposed servicing of the Permitted Smoky Lake Consumers by St. Paul;
- F. Smoky Lake is agreeable to permitting St. Paul to provide Water services to the Permitted Smoky Lake Consumers, subject to the terms of this Agreement and the Water Supply Agreement, as amended;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual agreements contained within this Agreement, the parties hereby agree as follows:

1. Definitions

Save and except for as specifically defined within this Agreement, all capitalized terms used shall have the same meaning as provided within the Water Supply Agreement.

2. Amendment

Notwithstanding the terms of the Water Supply Agreement:

- (a) the definition of Customer Service Area within Section 1(k) of the Water Supply Agreement is hereby amended to include the Permitted Smoky Lake Properties;

- (b) for clarity, the connections of the St. Paul system and works to the Permitted Smoky Lake Properties shall constitute a Rural Connection under the Water Supply Agreement; and
- (c) St. Paul shall be responsible for the connections to the Permitted Smoky Lake Properties in the same manner as outlined within Section 2(m) of the Water Supply Agreement.

3. Consent and Agreement

Notwithstanding the provisions of Section 54 of the MGA, Smoky Lake hereby consents and agrees to the servicing and supply of Water by St. Paul to the Permitted Smoky Lake Properties, the corresponding Permitted Smoky Lake Consumers, and their successors in title, concurrently with and throughout the term of the Water Supply Agreement, subject to the provisions of this Agreement.

4. St. Paul Service

St. Paul covenants and agrees in favour of Smoky Lake that St. Paul shall:

- (a) use Best Efforts to make Water available to the Permitted Smoky Lake Properties, the corresponding Permitted Smoky Lake Consumers, and their successors in title, at the respective connection points to the St. Paul system or works:
 - (i) at the rate of delivery, and at the operating pressure, consistent with St. Paul's other Rural Connections, subject always to the capabilities and condition of the Rural Connection connecting and servicing the Permitted Smoky Lake Properties; and
 - (ii) at substantially the same quality as the Water is received by St. Paul from the Commission under Water Supply Agreement;
- (b) provide the Water services contemplated under this Agreement to the Permitted Smoky Lake Properties, the corresponding Permitted Smoky Lake Consumers, and their successors in title:
 - (i) upon terms of service (including, without restriction, terms permitting interruption of service) substantially similar to the terms of service provided by St. Paul to consumers located within the corporate boundaries of St. Paul which are serviced pursuant to a Rural Connection;
 - (ii) subject to fees, tolls and charges substantially similar to the fees, tolls and charges imposed by St. Paul to consumers located within the corporate boundaries of St. Paul which are serviced pursuant to a Rural Connection; and
 - (iii) in a non-prejudicial and non-preferential manner so as to ensure that in the event of a Water shortage for other Force Majeure impacting the supply of Water to St. Paul, all Water consumers serviced by St. Paul including, without restriction, the Permitted Smoky Lake Consumers and their successor in title will be entitled (unless otherwise physically prevented due to the Force Majeure or impacts thereof) to receive a proportionate share of supply of available Water in the same manner as all other Water consumers serviced by St. Paul through a Rural Connection;

subject always to the directions or decisions of the Alberta Utilities Commission, or its successor, directly or indirectly respecting any of the foregoing;
- (c) be responsible for obtaining all necessary consents, permits, approvals or orders from any level of government, board, tribunal or other regulatory authority, and otherwise complying with all laws and the requirements of the Water Supply Agreement, which are required in order to provide the connections to the Permitted Smoky Lake Properties, to provide the proposed Water service contemplated under this Agreement, or to perform and satisfy its obligations related thereto;

- (d) indemnify and save Smoky Lake harmless from any and all claims, liabilities and damages resulting from the servicing of the Permitted Smoky Lake Properties, the corresponding Permitted Smoky Lake Consumers, and their successors in title; and
- (e) ensure that Water supplied and sold by St. Paul is utilized solely for domestic consumption purposes, being generally Water for drinking, cooking, cleaning, washing, hygiene, sanitation, maintenance and watering of the serviced property a consumer, or other similar such domestic purposes which may be collateral to the operation of a commercial development or enterprise, and in particular shall not be used in any manner whatsoever for the purposes of providing a supply of Water for:
 - (i) producing commercial products or in the processes of a commercial production facility;
 - (ii) providing commercial services such as truckfill and/or water hauling (save and except for domestic consumption purposes, as contemplated herein), or a commercial car or truck wash;
 - (iii) the operation of industrial processes;
 - (iv) intensive agricultural uses such as farming, livestock or feedlot operations; or
 - (v) irrigation purposes.

5. Mediation and Remedies

If a dispute arises between all or any of the parties regarding the interpretation, application, operation or breach of this Agreement or any part of it and the dispute is not within the jurisdiction of the Alberta Utilities Commission, the Municipal Government Board, or any of their successor entities, then the dispute must be submitted to mediation before either party may take any additional action or step or pursue any available remedy other than to preserve the right to pursue such remedy. In this regard:

- (a) the dispute resolution process applied shall be that which is described in greater detail in the Schedule "D" to the Water Supply Agreement, which is hereby incorporated by reference so as to apply to St. Paul and Smoky Lake, with all applicable and/or required amendments;
- (b) notwithstanding the mediation process, the parties will continue to perform their obligations described in this Agreement (except to the extent the performance is rendered unreasonable as a result of the pending or ongoing mediation) until such time as the mediation process is complete; and
- (c) subject to Section 6 and 5(b), if a party fails to perform its obligations hereunder, then the other party will have all available legal and equitable remedies.

6. Performance by Either Party

A party shall be deemed to be in default hereunder if any of the following events occur (each of the following events to be referred to as an "**Event of Default**", the party in default to be referred to as the "**Defaulting Party**" and the party not in default to be referred to as the "**Non-defaulting Party**");

- (a) a party fails to make a payment as required by any provision of this Agreement including failure to pay an indemnity amount required to be paid pursuant to the terms of this Agreement (a "**Payment Default**");
- (b) a party fails to perform any material obligation imposed upon such party under this Agreement (which, for greater certainty, shall not include obligations resulting in a Payment Default if not performed) (each such event being a "**Performance Default**"); or
- (c) a party experiences any of the following events (an "**Insolvency Default**"):
 - (i) the party institutes voluntary liquidation, dissolution or winding-up procedures;

- (ii) the party takes any voluntary proceedings under any bankruptcy or insolvency legislation to be adjudicated a bankrupt or for any other relief;
- (iii) the party makes a compromise with or an assignment for the benefit of creditors;
- (iv) a receiver/receiver manager is appointed with regard to the party or to any material part of the party's property;
- (v) a court adjudges the party to be bankrupt or makes an order requiring the liquidation, dissolution or winding up of the party; or
- (vi) if the corporate existence of the party is otherwise terminated.

7. Notice of Default

- (a) If a party claims that there has been a Payment Default or Performance Default committed by or affecting another party, the party making the claim shall give to the party alleged to be in default a notice (hereinafter referred to as the "Notice of Default"). The Notice of Default shall specify and provide particulars of the alleged Event of Default.
- (b) In the event the alleged Event of Default is capable of being remedied, the party alleged to be in default shall:
 - (i) have no cure period in respect of an Insolvency Default;
 - (ii) have a cure period of Thirty (30) days after receipt of the Notice of Default with respect to a Payment Default;
 - (iii) subject to Sections 7(b)(iv) and 7(c), have a cure period of Thirty (30) days after receipt of the Notice of Default with respect to a Performance Default; or
 - (iv) if a Performance Default is such that it cannot be reasonably remedied within Thirty (30) days after receipt of the Notice of Default, have a reasonable period of time to cure the Performance Default provided that the Defaulting Party promptly commences and diligently continues thereafter to remedy the Event of Default.
- (c) If before the expiry of the later of the cure period (if any) referred to in Section 7(b) or the time to cure specified in the Notice of Default the Defaulting Party cures the Event of Default, the Default Notice shall be inoperative and the Defaulting Party shall lose no rights hereunder.

8. Remedies

Upon the occurrence of an Insolvency Default, or in the event that a Notice of Default has been given and the party alleged to be in default does not cure or remedy the Event of Default in the manner contemplated by Section 7(c), subject to Section 5 of this Agreement the Non-defaulting Party shall have the following rights and remedies:

- (a) in the case of a Payment Default, to charge the Defaulting Party Interest with respect to the unpaid amount until it is paid, calculated daily, regardless of whether the Non-defaulting Party has notified the Defaulting Party in advance of its intention to charge Interest with respect to the unpaid amount; and/or
- (b) in the case of a Performance Default, the Non-defaulting Party may but shall not be obligated to, either directly or indirectly by engaging a third party or otherwise, as the case may be, do all such things in order to rectify such Event of Default at the sole cost and expense of the Defaulting Party; and/or
- (c) in the case of any Event of Default, the Non-defaulting Party may:

- (i) suspend performance of its obligations under this Agreement, including the right to suspend any payment owing pursuant to this Agreement; and/or
- (ii) set-off against the unpaid amount any sums due or accruing to the Defaulting Party by the Non-defaulting Party in accordance with this Agreement or the Water Supply Agreement; and/or
- (iii) maintain an action or actions for the unpaid amount and Interest thereon on a continuing basis as the amounts become payable but are not paid by the Defaulting Party, as if the obligation to pay those amounts and the Interest thereon was a liquidated demand due and payable on the date the amounts were due to be paid, without any right or resort of the Defaulting Party to set-off or counter-claim; and/or
- (iv) terminate this Agreement.

9. Remedies Cumulative

A Non-defaulting Party may, at its discretion, exercise the remedies referenced in Section 8 applicable to it in the alternative, concurrently or cumulatively, except where inconsistent with the express provisions contained in this Agreement and provided that in the case of a Payment Default the concurrent or cumulative exercise of remedies shall not result in duplication or a recovery on the part of the Non-defaulting Party based on an amount (excluding Interest) in excess of the Payment Default. No delay or omission by a Non-defaulting Party in exercising its rights or remedies hereunder shall operate as a waiver of those rights or remedies or of any other right or remedy and no single or partial exercise thereof shall preclude any other or future exercise thereof or the exercise of any other right or remedy.

10. Notices

Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing. Notice shall be served by one of the following means:

- (a) personally, by delivering it to the party on whom it is to be served at the address set out herein, provided such delivery shall be during normal business hours. Personally delivered Notice shall be deemed received when actually delivered as aforesaid and addressed as specified in this subsection (a) below; or
- (b) by telecopier or by any other like method by which a written or recorded message may be sent, directed to the party on whom it is to be served at that address set out herein. Notice so served shall be deemed received on the earlier of:
 - (i) upon transmission with answer back confirmation if received within the normal working hours of the Business Day; or
 - (ii) at the commencement of the next ensuing Business Day following transmission with answer back confirmation thereof; or
- (c) by mailing via first class registered post, postage prepaid, to the party on whom it is served. Notice so served shall be deemed to be received three (3) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received;
- (d) except as herein otherwise provided. Notice required to be given pursuant to this Agreement shall be deemed to have been received by the addressee on the date received when served by hand or courier, or seven (7) days after the same has been mailed in a prepaid envelope by single registered mail to:
 - (i) if to the Commission: PO Box 310
Smoky Lake, AB

T0A 3C0
Attention: Manager
Phone: 780-656-3730
Fax: 780-656-3768
Email: collikka@smokylakecounty.ab.ca

(ii) if to St. Paul

5015 - 49 Avenue
St. Paul, AB
T0A 3A4
Attention: Chief Administrative Officer
Phone: 780-645-3301
Fax: 780-645-3104
Email: skitz@county.stpaul.ab.ca

(iii) if to Smoky Lake

PO Box 310
Smoky Lake, Alberta
T0A 3C0
Attention: Chief Administrative Officer

Phone: 780-656-3730
Fax: 780-656-3768
Email: collikka@smokylakecounty.ab.ca

or to such other address as each party may from time to time direct in writing.

11. Assignment

No party may assign its interest in this Agreement, or any part hereof, in any manner whatsoever without having first received written consent from the other parties, which consent may be not be arbitrarily withheld.

IN WITNESS WHEREOF the parties hereunto have hereunto executed this Agreement all effective as of the date and year first set forth above, notwithstanding the actual date or dates of execution hereof.

**HIGHWAY 28/63 WATER SERVICES
COMMISSION**

Per: _____

Commission Manager

Per: _____

Board Chair

COUNTY OF ST. PAUL No. 19

Per: _____

Reeve

Per: _____

Chief Administrative Officer

SMOKY LAKE COUNTY

Per: _____

Reeve

Per: _____

Chief Administrative Officer

SCHEDULE "A"

The Permitted Smoky Lake County Properties

- 1) NW-23-59-12-W4
- 2) Spedden: Lots 5 and 6, Block 1, Plan 1955CL