

THIS AGREEMENT made effective as of the ___ day of _____, 2017.

BETWEEN:

COUNTY OF ST. PAUL NO. 19, a municipal corporation under the laws of the Alberta, (hereinafter referred to as the “**County**”)

OF THE FIRST PART

- and -

HIGHWAY 28/63 REGIONAL WATER SERVICES COMMISSION, a regional services commission created under the laws of the Alberta, (hereinafter referred to as the “**Commission**”)

OF THE SECOND PART

CAPITAL PROJECT & GRANT FUNDING AGREEMENT

WHEREAS:

- A. The Commission shall be responsible for the conduct of the Project as owner, and the owner of the assets comprising the Project once constructed;
- B. The County has agreed to make available to the Commission the Funding for the Project by way of payment to the Contractors, including the Commission’s Engineer, on behalf of the Commission, which is covered as part of the Grant to be provided to the County by the Government of Canada and the Province through the Grant Agreements;
- C. The Funding must be used by the Commission for the construction of the Project, and has engaged the Contractors under the Project Agreements with respect to the supply of goods, services and labour required to conduct and complete the Project;
- D. The County and the Commission will be responsible to account to the Government of Canada and the Province for the proper and ultimate use of the Funding; and
- E. The Commission will provide all relevant records to the County for their accounting to the Government of Canada and the Province.

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements herein contained, the Parties hereto agree as follows:

1. DEFINITIONS

- 1.1 In this Agreement capitalized words shall have the following meanings:

- (a) "Agreement" means this agreement including the recitals and attached schedules;
- (b) "Approved Plans and Specifications" means those plans and specifications prepared by the Commission's Engineer, and approved by the Commission prior to commencement of construction of the Project;
- (c) "Approved Construction Budget" means the construction budget prepared by the Commission's Engineer, and approved by the Commission and the County prior to commencement of construction of the Project;
- (d) "Commission's Engineer" means Associated Engineering, or such other qualified engineer or engineering firm as the Commission and the County may agree upon, acting reasonably;
- (e) "Contractors" means the contractors engaged by the Commission under the Project Agreements including the Commission's Engineer;
- (f) "Dispute Resolution Procedure" means that dispute resolution procedure contained within Schedule "B";
- (g) "Effective Date" means the effective date stated at the top of the first page of this Agreement;
- (h) "Eligible Expenditures" means those costs of the Project defined as Eligible Expenditures within the Grant Agreements;
- (i) "Funding" means the total maximum amount of **\$3,000,000.00 (being the amount equal to the portion of the Grant applicable to the construction and installation of the Project)**, to be paid by the County for the purposes specifically provided for within this Agreement;
- (j) "Grant" means the total of \$9,500,000.00, in respect of the Mallaig Regional Water Supply project (which included, without restriction, the Project), to be provided to the County under the Grant Agreements;
- (k) "Grant Agreements" means, collectively, those grant funding agreements between the County and the Province including, without restriction:
 - (i) the Memorandum of Agreement dated March 2, 2017, between the Province and the County; and
 - (ii) any and all amendments, or additions to the foregoing agreement, which may be entered into from time to time between the Province and the County;
- (l) "Project" means the design, construction and commissioning of:

**booster, pumps and interim pumps at the Edwand booster station
owned and operated by the Commission**

as more particularly described within the Grant Agreements and the Project Agreements;

(m) "Project Agreements" means all those contracts respecting the provision of all labour and materials for the conduct and completion of the Project including, without restriction:

(i) _____ Agreement
dated _____, 20__, between the Commission and
_____;

(ii) _____ Agreement
dated _____, 20__, between the Commission and
_____;

(iii) _____ Agreement
dated _____, 20__, between the Commission and
_____;

together with such further and other agreements that the Commission may enter into in respect of the conduct and completion of the Project as contemplated or permitted under this Agreement; and

(n) "Province" means the Province of Alberta, as represented by Alberta Transportation.

2. EFFECTIVE DATE AND TERM

2.1 The term of this Agreement commences upon the Effective Date and expires upon the termination or expiration of the Grant Agreements, or the full performance and satisfaction of all obligations of the County under the Grant Agreements.

2.2 Notwithstanding the foregoing, the Parties irrevocably agree and covenant that the obligation of the County to provide the Funding to or to the credit of the Commission, is **and will always remain** subject to the following terms, covenants and conditions, each and every one of which must be satisfied on a continuing basis during the term of this Agreement, being:

- (a) that the Commission ensures that it adheres to all terms, covenants and conditions pertaining to the use of the Funding as contained within this Agreement and the Grant Agreements;
- (b) that the entirety of the Funding provided by the County are expended on the Project;
- (c) that the Project has not been abandoned;

- (d) that all license, easements or rights of way within or upon which the Project is located are in good standing;
- (e) that subject to the making of timely payments to Contractors under this Agreement, the Commission is in good standing with the Contractors it retains in relation to the Project, and thereafter remains in good standing; and
- (f) that the Commission remains registered and in good standing as a regional services commission in the Province of Alberta.

2.3 Without limiting the applicability of Section 2.1 hereof, and for greater clarity, the Commission agrees that the County will not be required to advance any or all of the Funding to or to the credit of the Commission unless and until all of the conditions of Section 2.1 are met to the County's satisfaction, acting reasonably. The Commission agrees that it is not entitled to nor will it take any steps or actions to obtain any or all of the Funding unless all of the requirements of Section 2.1 have been complied with.

3. DESIGN & CONSTRUCTION

3.1 The Commission shall conduct and manage of the Project in compliance with the Grant Agreements and the Project Agreements including, without restriction, the responsibility to:

- (a) acquire all necessary permits, licenses, authorities, property easements and lands required to allow the construction of the Project;
- (b) meet the design and construction standards acceptable to the Province under the Grant Agreements;
- (c) comply with the Approved Plans and Specifications, and the Approved Construction Budget, subject to change orders and cost overruns approved or otherwise authorised under this Agreement;
- (d) procure the services of all Contractors by way of invitation to tender, and award to the lowest compliant bidder subject always to the reporting requirements contained within the Grant Agreements in the event that any tender other than the lowest compliant tender is selected;
- (e) ensure that any construction on a Day Labour Basis, as approved by the Commission and the County prior to commencement of the work;
- (f) supervise and manage the Contractors under the Project Agreements;
- (g) administer the Project Agreements, in particular ensuring all accounting of invoices from Contractors for the preparation of progress claims, so as to allow for payments of the Funding by the County on account of the invoices issued by the Contractors;

- (h) receive, handle and respond to any and all change orders and/or out of scope costs;
- (i) comply with all applicable laws and regulations including environmental laws and obligation to consult and, where appropriate, accommodate Aboriginal grounds (also referred to as Indigenous Peoples) in the performance of the Project work; and
- (j) comply with all requirements of the the Canadian Free Trade Agreement (CFTA) and the New West Partnership Trade Agreement (NWPTA).

3.2 Notwithstanding anything contained within this Agreement, the County and the Commission hereby acknowledge, covenant and agree as follows:

- (a) expenditures of the Funding are specifically restricted to Eligible Expenditures which are contemplated within the Project Agreements;
- (b) change orders and/or out of scope costs resulting in costs to the Project qualifying as Eligible Expenditures in excess of \$3,000,000.00 must be approved in writing:
 - (i) by the County, before the County is responsible for payment of any such excess costs under this Agreement; and
 - (ii) by the Government of Canada and the Province and under the Grant Agreements, before coverage for any such cost overruns under the Grant Agreements can be assured;
- (c) no contract may be executed by the Commission for or on behalf of the County, as agent, representative or otherwise.

3.3 Any change orders for the construction of the Project arising under the processes set out in the Project Agreements, shall be dealt with as follows:

- (a) if such a change order results in a change to or deviations from the Approved Plans and Specifications so as to either:
 - (i) not meet the design and construction standards acceptable to the Province under the Grant Agreements; or
 - (ii) cause a material impact upon the functionality, capacity or operational longevity of the Project;

the Commission shall provide information regarding such change order to the County for approval, which shall have 10 Business Days to respond and approve or disapprove of the change;

- (b) subject to the foregoing, if such a change order results in a cumulative (i.e. all change orders to date) increase in Project costs so as to not exceed the Approved Construction Budget, including any contingency amounts built into that budget, the Commission:
 - (i) shall provide notice in writing to the County of the change order and impact upon the Approved Construction Budget; and
 - (ii) may enter into such change order without the requirement for review or approval by the County;
- (c) if such a change order results in a cumulative (i.e. all change orders to date) increase in Project costs so as to exceed the Approved Construction Budget, including any contingency amounts built into that budget, the Commission shall not enter into such change order unless and until the Commission has:
 - (i) provided notice in writing to the County of the change order and impact upon the Approved Construction Budget, a reasonable amount of time prior to accepting or entering into such change order so as to allow the County to review, understand, and determine the necessity of, the proposed change order; and
 - (ii) provided the County with a complete record of change orders and construction cost impacts to date, together with such additional information as the County may reasonably require in order seek additional approval for funding of the additional costs as Eligible Expenses;
- (d) the Commission shall maintain, and shall provide to the County from time to time upon request, a complete record of all change orders and construction cost impacts, together with such additional information as the County may reasonably require from time to time in order comply with the Grant Agreements;
- (e) for clarity, when determining the proposed increase in cost compared to the Approved Construction Budget pursuant to a change order, the additional costs associated with all change orders applicable to the Project that have been approved to date shall be included and shall count towards the calculation of the remaining construction costs contingency provided for within the Approved Construction Budget.

3.4 In the event that the Parties disagree upon the approval or disapproval of a change order, a construction budget, or plans and specifications for the Project as contemplated within this Agreement, either party may refer the matter to be resolved through the Dispute Resolution Procedure.

4. FUNDING

4.1 Subject to compliance with the terms of this Agreement, the County will pay all Eligible Expenses incurred in respect of the Project in advance of the receipt of the corresponding Grant funds under the Grant Agreements.

- 4.2 For clarification, and without altering, amending or in any way limiting any of the foregoing, the payments to the Contractors by the County shall occur as follows:
- (a) upon and subject to presentation of progress claim report from the Commission's Engineer, providing such information as reasonably required by the County in order to ensure compliance with the Grant Agreements;
 - (b) unless otherwise agreed upon by the Commission and the County, the County shall attend to payment of the progress claims directly to the Contractors in the amounts of the corresponding Eligible Expenditures shown within the progress claim report;
 - (c) the County shall provide the Commission with copies of all payments and correspondence related thereto, concurrently with processing payments to Contractors;
 - (d) the Commission hereby assigns to the County the right to apply for and obtain rebates for all GST paid by the County to the Contractors under this Agreement; and
 - (e) the County is hereby authorized and directed to submit all applications and documentation to Canada Revenue Agency respecting the rebate of GST paid by the County to the Contractors, as agent for the Commission and the County under this Agreement.

5. COVENANTS OF THE COMMISSION

- 5.1 Without in any way restricting the requirements of the Grant Agreements, during the term of this Agreement the Commission covenants and agrees with the County as follows:
- (a) the Funding shall be used solely for the purposes of Eligible Expenditures in the course of the construction of the Project, and for no other use or purpose whatsoever;
 - (b) all contracts or sub contracts necessary for completion of the Project shall be in compliance with recognized construction practices and all applicable legislation, and otherwise satisfactory to the Province under the terms of the Grant Agreements;
 - (c) a representative of the County, as well as a representative of the Government of Canada and the Province, or any one of them, shall be entitled to access to:
 - (iii) the Project site;
 - (iv) any engineering drawings or documents pertaining to the Project;
 - (v) any books of accounts relating to expenditures related to the Project;

- (vi) any such other Project related documents or records as determined necessary by the Government of Canada or the Province under the Grant Agreements in performing an audit of the Project;
- (d) the Commission shall provide all documentation and/or written reports in a form and content as may be reasonably required by the County from time to time in order to satisfy the requirements of the Grant Agreement; and
- (e) the Commission shall maintain all records relating to the Project for a period of Six (6) years following the date that the Grant Agreements terminate or otherwise are fully performed;
- (f) Commission shall ensure that every contractor or subcontractor involved in the construction of the Project shall maintain Workers' Compensation coverage in accordance with the requirements of the *Workers' Compensation Act*, R.S.A. 2000, W-15, as amended from time to time, if required. The Commission shall provide evidence of compliance with the *Workers' Compensation Act* as may be requested by the Province.

6. BREACH AND REMEDIES

6.1 The Commission or the County, as the case may be, shall be deemed to be in default under this Agreement upon the occurrence of one or more of the following events:

- (a) the Commission or the County, as the case may be, breaches any agreement, term or covenant as contained in this Agreement, provided that:
 - (i) in respect of those events of default under this Agreement which are reasonably capable of being rectified within thirty (30) days of the receipt of the notice of default from the other party, if the defaulting party fails to rectify the breach to the reasonable satisfaction of the other party, acting reasonably, within such thirty (30) day period;
 - (ii) in respect of those events of default under this Agreement which are not reasonably capable of being rectified within thirty (30) days of the receipt of the default notice, if the defaulting party fails to commence rectification of the default to the reasonable satisfaction of the other party, acting reasonably, within such thirty (30) day period, or thereafter fails to continuously and diligently pursue rectification of the default to the reasonable satisfaction of the other party, acting reasonably;
- (b) the actions or omissions of the Commission or the County, as the case may be, under this Agreement results in a breach or default under the Grant Agreements resulting in a notice of default from the Province to the County, and the defaulting party fails to rectify the act or omission causing or contributing to the Province's notice of default to the satisfaction of the Province within any rectification period contemplated under the Grant Agreements or otherwise permitted by the Province; or
- (c) in respect of the Commission:

- (i) an order being made or an effective resolution being passed for the winding up of the corporation or a petition being filed for the winding up of the Commission; or
- (ii) the Commission is declared or adjudged bankrupt, or the filing or presenting of a petition in bankruptcy against the corporation; or
- (iii) the Commission makes a proposal under the *Bankruptcy and Insolvency Act* or any successor legislation, or makes a general assignment for the benefit of creditors, or takes the benefit of any legislation in force for protection against creditors; or
- (iv) a receiver or receiver-manager is appointed in respect of the corporation or the property of the corporation,

6.2 Upon the occurrence of an event of default on the part of the County, as defined above, in addition to any other rights or remedies available to the Commission, the Commission may:

- (a) suspend construction of or progress on the Project under this Agreement; or
- (b) without any obligation to do so, take such action as is reasonably necessary in the reasonable opinion of the Commission to perform such obligations and otherwise rectify the County default (in which event, the County shall be responsible for the payment of all reasonable costs incurred by the Commission); or
- (c) terminate this Agreement, without prejudice to any or all rights, obligations, causes of action or claims which may exist under this Agreement.

6.3 Upon the occurrence of an event of default on the part of the Commission, as defined above, in addition to any other rights or remedies available to the County, the County may:

- (a) suspend payment of progress claims under this Agreement; or
- (b) without any obligation to do so, take such action as is reasonably necessary in the reasonable opinion of the County to perform such obligations and otherwise rectify the Commission default (in which event, the Commission shall be responsible for the payment of all reasonable costs incurred by the County); or
- (c) terminate this Agreement, without prejudice to any or all rights, obligations, causes of action or claims which may exist under this Agreement.

7. INSURANCE

7.1 The Commission shall ensure that proof of insurance coverage in a form and amount as required under the Project Agreements is provided and maintained by the Contractors. This insurance coverage shall be maintained throughout the construction and installation

of the Project by the respective Contractor and the Commission shall, upon request by the County or the Province, shall provide proof of such insurance.

- 7.2. The Commission shall ensure that the Project insurance shall name the County and the Commission as additional insureds, as and where applicable and/or possible.
- 7.3. All insurance required pursuant to this Agreement shall be endorsed to provide the additional insureds required above with an endeavor to provide 30 days advance written notice of material change or cancellation.
- 7.4. Upon the receipt of any insurance proceeds by the Commission, the Commission agrees that such insurance proceeds are provided to the Commission for the benefit of or the County or/and the Province, as the case may be. Upon a request of the County or the Province, the Commission shall provide such insurance proceeds to the County or the Province.

8. INDEMNITY

- 8.1 The Commission hereby fully indemnifies and holds harmless the County from and against:

- (a) all losses, claims, actions, causes of actions, demand for damages, and suits, of any and every kind and nature whatsoever, at law or in equity suffered or alleged against the County; and
- (b) and costs including full solicitor and his own client costs on a full indemnity basis, plus GST and disbursements incurred by the County to defend against such claims or actions from third parties, to enforce the provisions of this Agreement against the Commission, or to rectify any breach of default on the part of the Commission under this Agreement;

as a result of the failure of the Commission to perform all obligations and requirements set forth within this Agreement. This indemnity shall survive the expiration or termination of this Agreement for any cause.

- 8.2 The County hereby fully indemnifies and holds harmless the Commission from and against:

- (a) all losses, claims, actions, causes of actions, demand for damages, and suits, of any and every kind and nature whatsoever, at law or in equity suffered or alleged against the Commission; and
- (b) and costs including full solicitor and his own client costs on a full indemnity basis, plus GST and disbursements incurred by the Commission to defend against such claims or actions from third parties, to enforce the provisions of this Agreement against the County, or to rectify any breach of default on the part of the County under this Agreement;

as a result of the failure of the County to perform all obligations and requirements set forth within this Agreement. This indemnity shall survive the expiration or termination of this Agreement for any cause.

9. INJUNCTIVE RELIEF

9.1 The Commission and the County each understands, acknowledges, covenants and agrees that its full and proper compliance with terms and conditions of this Agreement is necessary to protect the reputation of the County or the Commission, as the case may be, and the continuing eligibility for the Grant, and that in the event of a breach or a threatened breach by the Commission or the County of any of the provisions of this Agreement, the County or the Commission, as the case may be, in addition to and not in limitation of any other rights, remedies or damages available to it at law or in equity, shall be entitled to an injunction in order to prevent or to restrain any such breach or threatened breach by the other party, or by any of its agents, representatives, employees or advisors and any and all persons directly or indirectly acting for or on behalf of the other party. The Commission and the County each further covenant and agree that the other party is entitled to recover all of the costs expended in relation to those steps, including but not limited to the full solicitor and his own client costs on a full indemnity basis, plus GST and disbursements incurred in any action either party may take in that regard.

10. ADDITIONAL TERMS AND CONDITIONS

10.1 The Parties agree that the additional terms and conditions attached as Schedule "A" to this Agreement form part of this Agreement and are binding upon them.

10.2 All of the Schedules and Recitals to this Agreement form part of this Agreement.

IN WITNESS WHEREOF the Parties have made this Agreement effective as of the Effective Date.

COUNTY OF ST. PAUL NO. 19

HIGHWAY 28/63 REGIONAL WATER SERVICES COMMISSION

Per: _____
Name:
Position:

Per: _____
Name:
Position:

Per: _____
Name:
Position

Per: _____
Name:
Position:

SCHEDULE "A"**Additional Terms***1. Non-Merger*

This Agreement or any modification, partial or complete discharge, dealing, act or omission by or on the part of the County or any action commenced or order obtained in relation to all or any of the foregoing shall not operate or be deemed to operate so as to suspend, merge, affect or in any way prejudice any of the rights of the County hereunder, or be deemed to operate as the release, discharge or in any way suspend this Agreement.

2. Non-Waiver

Nothing contained in or arising in relation to this Agreement shall in any way obligate, bind or require the County to enforce all or any of its rights under this Agreement and any lack of action on the part of the County to enforce its rights under this Agreement shall not operate as a waiver of the Commission's obligations under this Agreement. The waiver by either Party hereto of a breach or violation of any term or provision of this Agreement by the other Party hereto shall not operate or be construed as a waiver of any subsequent breach or violation.

3. Notices

Any notice, payment, communication or document (hereinafter collectively referred to as "Notice") required or permitted to be given under this Agreement shall be in writing and shall be deemed to have properly been given by one Party to the other when delivered by hand, mailed by first class certified or registered mail, postage prepaid, or transmitted by telecopier. Any Notice delivered by hand shall be deemed to be received by the other Party on the Business Day of delivery, any Notice mailed as provided for above shall be deemed to have been received by the other Party on the third (3rd) Business Day following the date of mailing, while any Notice transmitted by telecopier (fax) shall be deemed to have been received by the other Party on the date of transmission, if that date is a Business Day, otherwise it shall be deemed to have been received on the Business Day following the date of transmission.

Any Notice required or permitted to be given under this Agreement shall be sent to the following addresses or telecopier (fax) numbers:

If the County: 5015 – 49 Avenue
 St. Paul, Alberta
 T0A 3A4
 Attention: CAO
 Fax: 780-645-3104
 E-Mail: skitz@county.stpaul.ca

If to the Commission: c/o PO Box 310
 Smoky Lake, Alberta
 T0A 3C0
 Attention: Manager
 Fax: 780-656-3768

E-Mail: collikka@smokylakecounty.ab.ca

4. *Non-Assignment*

The Commission agrees that it has no right to assign, nor shall it assign, in whole or in part, any of its rights or obligations arising pursuant to this Agreement.

5. *Enurement & Survival*

The provisions of this Agreement shall enure to the benefit of the Parties hereto and shall be binding upon them, their legal representatives, heirs, and their successors and permitted assigns. The obligations to indemnify contained within this Agreement shall survive the expiration of the Term and the termination of this Agreement for any reason whatsoever.

6. *Whole Agreement*

This Agreement constitutes the entire agreement between the Parties hereto and supersedes any and all prior written or oral agreements or understandings.

7. *Amendment*

No amendment, alteration, modification or waiver of any provision hereof shall be valid unless in writing and signed by both Parties hereto.

8. *Severance*

The invalidity of any one or more words, phrases, sentences, paragraphs, clauses or sections contained in this Agreement shall not affect the enforceability of the remaining portion(s) of this Agreement or any part thereof, all of which are inserted conditionally on their being valid in law, and, in the event that any one or more of the words, phrases, sentences, paragraphs, clauses or sections contained in this Agreement shall be declared invalid by a court of competent jurisdiction, this Agreement shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, paragraph or paragraphs, clause or clauses, or section or sections had not been inserted into this Agreement.

9. *Further Assurances*

The Parties hereto shall respectively do all acts and things and execute all documents in a reasonable period of time which are reasonably required to give effect to this Agreement.

10. *Time of the Essence*

Time shall be of the essence of this Agreement.

11. *Applicable Law and Jurisdiction*

This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Alberta and the Parties hereto expressly attorn to the jurisdiction of the Courts of the Province of Alberta.

12. Electronic Signature

This Agreement shall be valid and binding upon a Party if signed by that Party by means of the electronic or scanned copy of the signature of that Party without the use of the corporate seal of that Party.

13. Counterpart Execution

This Agreement may be validly executed in counterpart.

14. Independent Advice

Each Party agrees that it has obtained independent legal advice in respect to the preparation review and execution of this Agreement, that it understands its meaning content and intent and did so prior to execution thereof by that Party, and that each Party has made this Agreement freely voluntarily and without duress.

15. Legally Binding

Each Party warrants to the other that it is legally competent to enter into this Agreement, and that both the execution of this Agreement and the performance of this Agreement by each of the Parties has been properly authorized by that Party.

SCHEDULE "B"**Dispute Resolution Procedure**

1. **Definitions** - In this Schedule, the following words and phrases have the following meanings:

- (a) **"Arbitrator"** means the person appointed to act as such to resolve any Dispute;
- (b) **"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;
- (c) **"Dispute"** means any disagreement or controversy between the Parties concerning any matter arising out of this Agreement;
- (d) **"Disclosed Information"** means the information disclosed by a Party for the purpose of settlement, negotiation, Mediation or Arbitration;
- (e) **"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;
- (f) **"Mediator"** means the person appointed to facilitate the resolution of a Dispute between the Parties;
- (g) **"Party"** means a party to the Agreement to which this Dispute Resolution Procedure is attached, and **"Parties"** means more than one of them; and
- (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.

2. **Continued Performance**

Notwithstanding the initiation or on-going conduct of any portion of the Dispute process contemplated within this Schedule, unless otherwise agreed to by the Parties each Party shall be obligated to continue to perform their obligations under this Agreement including, without restriction, continued conduct of the Project and payment of amounts contemplated under this Agreement.

3. **Dispute Process** - In the event of any Dispute, the Parties agree that prior to commencing litigation, 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, by arbitration, if mutually agreed to in writing at the time of the Dispute, by the Parties.

Negotiation, Mediation or Arbitration shall refer to, take into account, and apply the intentions and principles stated by the parties within Agreement to which this Schedule is attached.

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 receipt of the Dispute Notice, the negotiation shall be deemed to have failed.
5. **Mediation** - If the Representatives cannot resolve the Dispute within such thirty (30) day period, then the Dispute shall be referred to Mediation. Any one of the Parties shall provide the other Party with written notice ("Mediation Notice") specifying the subject matters remaining in Dispute, and the details of the matters in Dispute that are to be mediated. If the Mediation is not completed within sixty (60) days from the date of receipt of the Dispute Notice, the Dispute shall be deemed to have terminated and failed to be resolved by Mediation.
6. **Arbitration**
 - (a) If the Mediation fails to resolve the Dispute and if both Parties so agree in writing, at the time of the dispute, the Dispute shall be submitted to binding Arbitration. One of the Parties may provide the other Party with written notice ("Arbitration Notice") specifying the subject matters remaining in Dispute and the details of the matters in Dispute that are to be arbitrated. If the other Party agrees to proceed to Arbitration, such Dispute shall proceed to Arbitration. A failure to respond to the Arbitration Notice shall be deemed to constitute a refusal to proceed with Arbitration;
 - (b) 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;

- (c) 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.
 - (d) 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.
 - (e) 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.
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 and notwithstanding that litigation may have commenced as contemplated in this Schedule.
 8. **Location** - The place for Mediation and Arbitration shall be agreed upon by the Parties.
 9. **Selection of Mediator and Arbitrator** - If the Parties are unable to agree upon the appointment of a single Mediator or Arbitrator within ten (10) days after receipt of the Mediation Notice or Arbitration Notice, 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 appointed 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(d) 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.

12. **Litigation and Limitations Act** - No Party shall commence litigation concerning the Dispute until the negotiation and Mediation processes have concluded. The Parties agree that during the time any Dispute is subject to the negotiation and Mediation processes, the limitation periods set forth in the Limitations Act (Alberta) shall be stayed. The limitation periods shall be reinstated once the Mediation terminates or is deemed terminated so that each of the Parties shall have the respective rights and remedies that were available to them before the commencement of these processes. Any Party may commence litigation on any date, if necessary, to preserve its legal rights and remedies if the commencement of litigation after that date would otherwise be banned by any applicable limitation period or if the commencement of litigation is otherwise necessary to prevent irreparable harm to that Party.
13. **Confidentiality** - The Parties agree that there is a real risk that substantial damage to a Party's commercial interests may result if Disclosed Information or Confidential Information is obtained by third parties because a Dispute becomes the subject matter of litigation. The Parties agree not to contest or oppose, directly or indirectly, an application by a Party to the court, that the court's file relating to such litigation, including this Agreement and supporting financial information, be sealed upon commencement of the litigation.