

# **WATER SUPPLY AGREEMENT**

**HIGHWAY 28/63 WATER SERVICES COMMISSION**

and

**COUNTY OF ST. PAUL No. 19**



**B R O W N L E E**  
**L L P**  
Attorneys & Solicitors

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 the "Customer")

**WATER SUPPLY AGREEMENT**

WHEREAS:

- A. The Commission receives Water from the Capital Region Northeast Water Services Commission under the CRNWSC Agreement;
- B. The Customer wishes to purchase Water from the Commission and the Commission wishes to sell and deliver Water to the Customer on terms and conditions consistent with the CRNWSC Agreement;
- C. The Commission and the Customer recognize that conservation of water resources is an important goal.

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

**1. Definitions**

In this Agreement, the following words will have the described meaning unless expressly stated otherwise:

- (a) "Agreed Variance" means the standard for accuracy for the Meter being tested and calibrated under this Agreement, which is agreed to be 5%;
- (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) "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 judgment, having regard to all of the relevant circumstances;
- (d) "Capital Contribution Fee" means the sum to be paid in full by the Customer to the Commission, representing the cost of servicing the Customer, being the aggregate of:
  - (i) a proportionate share of the capital costs of constructing or acquiring the Commission System, being **\$866,255.00** calculated as follows:

$$\text{Capital Contribution} = \text{Commission System Cost} \times \text{Customer Share}$$

wherein:

*Customer Maximum Flow* - means 6.54 L/s being the maximum flow of Water committed to the Customer

*Commission System Total Flow* - means 28.84 L/s

*Customer Share* - means 22.68%, being the proportionate share of Customer Maximum Flow compared to the Commission System Total Flow

*Commission System Cost* - \$3,820,000, being the total capital cost expenditure incurred to construct the Commission System

*Capital Contribution* - \$866,255.00, being the Customer's share of the total capital costs expenditure incurred to construct the Commission System, based upon a flow commitment to the Customer of 6.54 L/s

- (ii) cost of construction and installation of the connections between the Commission System and the Customer System including, without restriction, the cost of the installation of the Meter and all connecting works, valves and related facilities required at the Commission Meter Station in order to service the Customer at the Point of Delivery;
  - (iii) engineering costs incurred by the Commission in order to provide for the servicing of the Customer including, without restriction, the costs of reviewing, preparing, revising and approving all proposals and plans for connection between the Commission System and the Customer System, and attendance at all meetings in relation thereto;
  - (iv) legal costs incurred by the Commission in order to provide for the servicing of the Customer including, without restriction, the costs of preparing, negotiating and executing this Agreement, and attendance at all meetings in relation thereto;
- (e) **"Commission Meter Station"** means the metering appurtenances, control and/or pump facilities owned and operated by the Commission, within the pumphouse/meter station building owned and operated by Smoky Lake County located within the hamlet of Spedden upon the lands legally described as follows:

PLAN 9321699  
BLOCK 1  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 0.585 HECTARES (1.45 ACRES) MORE OR LESS

- (f) **"Commission System"** means the water transmission system consisting of the Watermains, metering facilities, pumps, and associated piping, connections, equipment and works owned and/or operated by the Commission extending up to but excluding the Point of Delivery, as more particularly shown within **Schedule "B"**;
- (g) **"Control Valve"** means the control flow, FIT and pressure sustaining valve to be installed after the Meter within the Commission Meter Station, as more particularly shown within **Schedule "B"**;
- (h) **"CRNWSC Agreement"** means the current water supply agreement between the Commission and the Capital Regional Northeast Water Services Commission dated October 13, 2013, as amended or replaced from time to time;
- (i) **"Cross Connection"** means any physical connection to a Watermain whereby any source of raw water or non-potable water supply becomes connected with the Watermain;
- (j) **"Customer System"** means the particular the particular distribution system consisting of the reservoir, Watermains, metering facilities, and associated piping, connections, equipment and works extending from and after the Point of Delivery and throughout the Customer Service Area, as depicted within **Schedule "B"**;
- (k) **"Customer Service Area"** means that area contained within the corporate boundaries of the Customer;
- (l) **"Force Majeure"** means any cause not reasonably within the relevant party's control and will include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, storms, floods, high waters, washouts, inclement weather, orders or acts of civil or military authorities, civil disturbances, or any other causes, whether of the kind herein enumerated or otherwise, not within the reasonable control of the party and which, by the exercise of due

diligence, the party is unable to overcome, provided that lack of funds shall not be a cause beyond control;

- (m) **"Interest"** means the amount calculated on a sum owing under this Agreement, being 2% per month (equivalent to 24% annually), calculated from and including the date upon which the sum became due and owing, to but excluding the date of unconditional payment;
- (n) **"Meter"** means the consumption measuring device used to measure the delivery of Water to the Customer at the Commission Meter Station;
- (o) **"Point of Delivery"** means the outlet valve of the Meter located within the Commission Meter Station;
- (p) **"Rate"** means the price for Water determined from time to time according to the provisions of the attached **Schedule "C"**;
- (q) **"Rural Connection"** means a direct connection to any Watermain by a Water consumer of the Commission, in the case of a Watermain forming part of the Commission System, or a Water consumer of the Customer, in the case of a Watermain forming part of the Customer System and located between the Commission Meter Station and the Customer's reservoir located at Ashmont, and for demonstration purposes a typical Rural Connection by the Customer providing within the drawing contained within **Schedule "E"**;
- (r) **"Service Policies"** means those policies of general application established from time to time by the Commission governing the manner in which Water services is provided by the Commission to all of its customers including, without restriction, policies respecting or governing:
  - (i) Rate setting principles, procedures and practice;
  - (ii) billing and collection;
  - (iii) connections to the Commission System; and
  - (iv) system expansion and upgrades;
- (s) **"Term"** means the term of this Agreement being a period of **Twenty Five (25) years** commencing on the date hereof and expiring on \_\_\_\_\_, 20\_\_\_\_;
- (t) **"Water"** means treated water which has been supplied to the Commission under the CRNWSC Agreement; and
- (u) **"Watermain"** means a water pipeline under pressure used to supply or deliver Water.

## 2. Supply and Purchase

During the Term and pursuant to the provisions contained in this Agreement:

- (a) the obligations of the Commission and the Customer are subject to the provisions of the CRNWSC Agreement, which shall apply to this Agreement mutatis mutandis and, if the CRNWSC Agreement is amended or replaced this Agreement shall be automatically amended as far as reasonably necessary or practicable in order to remain in compliance therewith;
- (b) this Agreement and the obligations of the Commission to supply Water is at all times specifically subject to and conditional upon:
  - (i) the continued existence of the CRNWSC Agreement, or replacements thereof, and the continued receipt of sufficient flow of Water under that Agreement, or replacements to such source of Water; and

- (ii) the payment or performance of the Customer's obligations under this Agreement including, without restriction, the payment of all components of the Capital Contribution Fee as and when required under this Agreement (which Capital Contribution Fee is payable concurrent with execution and delivery of this Agreement, and thereafter forthwith upon invoicing), and the completion and acceptance of the Customer's work contemplated within Section 4 of this Agreement;
- (c) the Commission will observe and perform the Commission's obligations under the CRNWSC Agreement, and use Best Efforts to ensure renewals or replacements of the CRNWSC Agreement so as to allow for a supply of Water to the Commission and the Customer;
- (d) the Commission will use Best Efforts to:
  - (i) make Water available to the Customer at the Point of Delivery in the manner, at the rate of delivery, and at the operating pressure contemplated within **Schedule "A"** attached to this Agreement;
  - (ii) make the Water available to the Customer at the Point of Delivery in substantially the same quality as the Commission received the same pursuant to the CRNWSC Agreement; and
  - (iii) avoid situations where it is unable to supply the Customer the quantity of the Water specified in Section 2(b)(i);all as further contemplated or described within **Schedule "A"** attached to this Agreement;
- (e) Water purchased from the Commission by the Customer shall normally be determined as the volume of Water measured at the transmission line Meter located at the Commission Meter Station. The Meter shall be read on the last work day of each month for the determination of monthly billing;
- (f) the Customer will pay the Commission for all Water metered as set forth above at the then current Rates established from time to time by the Commission for all of its customers of the same customer class, which may include fixed charges forming part of the Commission's Rates, the product of the applicable Rate and the volume measured by the applicable Meter, and surcharges forming part of the Rates;
- (g) the Commission shall deliver a monthly invoice to the Customer specifying amounts of Water metered and total amount invoiced for the relevant month;
- (h) the Customer shall pay the Commission all amounts due within thirty (30) days of receipt of such invoice. If any invoice is not paid within such thirty (30) days of receipt as aforesaid, any unpaid amount will attract interest at that rate established by the Commission from time to time and applicable to all customers of the Commission;
- (i) each party will furnish to the other party such information in its possession or control reasonably required for the proper performance of the respective obligations of the party and shall provide such cooperation as is reasonable in order for the other party to be able to perform its obligations under this Agreement;
- (j) the Customer will use Best Efforts management approach in ensuring and maintaining a chlorine residual within and throughout the Customer System downstream from the Point of Delivery;
- (k) the Customer and the Commission are individually responsible for obtaining, at their sole expense, all necessary consents, permits, approvals or orders from any level of government, board, tribunal 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 Customer and the Commission will cooperate with each other and will provide reasonable assistance to each other, when requested;

- (l) neither the Customer nor the Commission will allow or permit any Cross Connection;
- (m) in the event that, and to the extent that, the Customer or the Commission has or does in the future permit Rural Connections to the Watermains forming part of the Customer System or the Commission System, respectively, the Customer or the Commission, as the case may be, shall:
  - (i) be responsible for all operational compliances respecting the Rural Connection including, without restriction, any and all testing and treatment of Water supplied through the Rural Connection, and compliance with any and all permits, approvals, orders, directives, codes or other regulatory requirements respecting the conveyance and delivery of Water as they relate to the Rural Connection(s);
  - (ii) be responsible for ensuring and maintaining a chlorine residual within and throughout the Rural Connection to the consumer in accordance with all applicable permits, approvals, orders, directives, codes or other regulatory requirements;
  - (iii) be responsible for the impacts upon the water pressure downstream of the Rural Connection;
  - (iv) be responsible for impact to Water quality downstream of the Rural Connection;
  - (v) be responsible for any cross contamination caused by the Rural Connection;
  - (vi) be responsible for lack of Water testing before delivery to the Consumer through the Rural Connection;
  - (vii) be responsible for the impacts of growths occurring within the Rural Connection and beyond, including within the consumer's cistern and system; and
  - (viii) indemnify and save the other party harmless from any and all claims, liabilities and damages resulting from the presence of the Rural Connection (including, without restriction, such claims, liabilities or damages resulting from or relating to any of the foregoing) in accordance with Section 7 of this Agreement;
- (n) the Customer and the Commission specifically agree that in the event of a Force Majeure, the Customer 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 customers of the Commission; and
- (o) the Customer shall ensure that Water supplied and sold by the Customer 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; or
  - (iv) intensive agricultural uses such as farming, livestock or feedlot operations; and
  - (v) irrigation purposes;

subject always to the Commission's Service Policies.

### **3. Commission Ownership, Metering and Supply:**

- (a) The Commission owns:
  - (i) all Watermains, metering facilities, associated piping and connections up to the Point of Delivery, comprising the Commission System;
  - (ii) the Meter at the Commission Meter Station.
- (b) The Customer shall at all times provide the Commission with unrestricted access to the above-noted equipment and all other property of the Commission located on the Customer property from time to time for the purposes of allowing the Commission to perform all of its obligations or exercise its rights hereunder.
- (c) Once per year, the Commission will regularly test its Meters for accuracy at its sole expense. The Customer may require a copy of the test results that were conducted by an independent contractor.
- (d) If at any time the Commission Meter Station or the 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 has not registered accurately within the Agreed Variance, the Commission Meter Station 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 estimating the volume based upon deliveries under similar conditions during a period of time when the Commission Meter Station and/or Meter were working accurately;
  - (ii) by correcting the error, if the percentage of the error is ascertainable by calibration, test or mathematical calculation; or
  - (iii) by using any check measuring equipment if installed and if accurately registering within the Agreed Variance.
- (e) The Customer may require the Commission to conduct a test on its Meter(s) that is not the annual test contemplated in Section 3(c) above. If such test result indicates that the accuracy of the tested Meter exceeds the Agreed Variance, the Customer shall pay the costs for such tests and the Commission shall, at its sole expense, repair the Meter in order that the Meter falls within the Agreed Variance.

**4. Customer Ownership, Metering and Supply:**

- (a) In addition to the design, construction, installation and commissioning of all portions of the Customer System, the Customer shall be responsible for design, supply, construction, installation and approval of the Control Valve (including, without restriction, the approval of the completion of such work by the Commission prior to turn-over to form part of the Commission System) within the Commission Meter Station.
- (b) The Customer owns the Customer System, consisting of the Watermain from and after the Point of Delivery to the boundary between Smoky Lake County and County of St. Paul, together with all reservoirs, Watermains, metering facilities, outlet/inlet valves, associated piping and connections from and after the Point of Delivery and contained within the Customer Service Area.
- (c) The Customer shall be responsible for the operations and maintenance of the Customer System including design, new construction, customer billing, customer service, water quality compliance and all regulatory compliance as required in respect of the operation of the Customer System.
- (d) The Customer shall at all times provide the Commission with unrestricted access to the above-noted equipment and all other property of the Customer located on Commission property from time to time

for the purposes of allowing the Commission to perform all of its obligations or exercise its rights hereunder.

**5. Repairs, Maintenance and Replacements**

- (a) Each party may interrupt or curtail Water service for periods of time as it may reasonably require for the purpose of effecting any repairs, maintenance, replacement, upgrading or other work relating to its water supply system providing service under this Agreement provided that
  - (i) such party has given the other party at least forty-eight (48) hours prior notice, or in the event of unforeseen circumstances, such party gives notice of such interruption or curtailment as soon as is reasonably possible; and
  - (ii) such party acts reasonably in using Best Efforts to restore services as soon as reasonably possible;
- (b) Each party will use Best Efforts to coordinate the repairs, maintenance, replacement, upgrading and other work referred to in the immediately preceding paragraph with the other party so as to minimize to the extent reasonable the inconvenience to each party arising from such interruptions and curtailments;
- (c) During periods of interruption or curtailment provided for in Section 5(a), above, the supplying party may reduce the level, quality or quantity of service provided to the other party under this Agreement, provided that the supplying party shall treat all of its customers affected by the interruption or curtailment, including the other party, fairly, equitably and without preference, consistent with any physical and/or operating constraints then in effect. Each party 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.
- (d) Any resale of Water by the Customer shall be subject to the Commission's Service Policies. Without restricting the foregoing, unless otherwise agreed to by the Commission the Customer shall ensure that its Water consumers are subject to the terms of this Agreement including, without restriction, the Service Policies.

**6. Force Majeure**

- (a) Neither party hereto shall be liable to the other for any failure of or delay in the performance of its obligations hereunder nor be deemed to be in breach of this Agreement, if such failure or delay has arisen from Force Majeure.
- (b) Where either party is prevented from carrying out its respective obligations hereunder due to Force Majeure, such party shall, as soon as possible, give notice of the occurrence of such Force Majeure to the other party and of the obligations, the performance of which is thereby delayed or prevented and the party giving the notice shall thereupon be excused from the performance of such obligation for the period of time directly attributable to such prevention or delay.
- (c) During the period of Force Majeure, 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 Customer, 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;

**7. Liability, Damages and Mutual Indemnity**

- (a) Unless the cause is proven to be due directly to the negligence of either party, their employees or agents, the parties will have no liability to each other 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 either party's water system or an emergency situation regarding any part of either of the party's water system; and
  - (iii) any accident to or failure of any part of either party's water system;
- (b) Notwithstanding any other provision of this Agreement, neither the Commission nor the Customer will 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 full indemnity basis, and claims suffered or incurred by the indemnified party, its agents or employees, in each case to the extent caused by:
  - (i) the indemnifying party's the performance or non-performance of this Agreement;
  - (ii) any act or failure to act of the indemnifying party, its agents and employees, in respect of which indemnifying party, its agents or employees, are liable or otherwise responsible in law; or
  - (iii) the existence and/or operation of any Rural Connection(s) to the indemnifying party's system.

## 8. Mediation and Remedies

- (a) If a dispute arises between the Customer and the Commission 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. The dispute resolution process is described in greater detail in the attached **Schedule "D"**.
- (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;
- (c) Subject to Section 6 and 8(b), if a party fails to perform its obligations hereunder, then the other party will have all available legal and equitable remedies.

## 9. Planning and Consultation

- (a) The Customer and the Commission wish to create and develop a process of planning and consultation. As a first step, the parties agree to appoint representatives with direct operational knowledge of the operation of the respective systems, together with alternates if available, for the purposes of carrying out the planning and consultation contemplated between the parties within this Agreement;

- (b) The timing and procedures of the planning and consultation meetings of representatives of the parties will be established from time to time by the parties. However
  - (i) the representatives of the parties will meet not less than once per year;
  - (ii) the purpose of the meeting of the representatives is generally to enhance communication between the Commission and the Customer, to analyze and improve the operation of this Agreement and to engage in a process of strategic planning regarding such issues as the supply and delivery of water, water conservation, capital expenditures, and rates and rate increases,
  - (iii) the purpose of the meeting of the representatives of the parties specifically includes dealing with the forecasting and commitment of the total volume of Water required by the Customer, as contemplated within **Schedule "A"** attached to this Agreement; and
  - (iv) the meetings of the representatives of the parties will also act as a forum where either the Customer or the Commission may discuss concerns about the purchase, supply and delivery of Water.

#### **10. Water Shortage**

In the case of a water shortage, the Commission may impose conservation restrictions on the Customer's water supply within the Customer Service Area. The Commission shall provide notice of the imposition of the conservation restriction as soon as reasonably possible. The Commission shall treat each and every one of the Commission's customers, including the Customer, fairly, equitably and without preference, consistent with any operating constraints then in effect.

#### **11. 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 of its obligations under Section 2 of this Agreement or fails to perform any other 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.

## 12. Notice of Default

- (a) If a party claims that there has been a Payment Default or Performance Default committed by or affecting the other 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 12(b)(iv) and 12(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 12(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.

## 13. 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 12(c), subject to Section 8 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 Commission 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.

**14. Remedies Cumulative**

A Non-defaulting Party may, at its discretion, exercise the remedies referenced in Section 13 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.

**15. Renewal or Extension of Term**

- (a) Any renewals or extension of this Agreement shall be subject to the parties mutually agreeing to such renewals or extension.
- (b) Failing an agreement to extend this Agreement under subsection (a) above, this Agreement shall expire on the last day of the Term or renewal term, as the case may be, and shall be of no further force and effect save and except for those provisions which are deemed to survive expiration or termination of this Agreement.
- (c) Upon a renewal or extension of this Agreement, unless otherwise agreed to all other terms and conditions within this Agreement shall remain in full force and effect.

**16. General**

(a) 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:

- (i) 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
- (ii) 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:
  - (A) upon transmission with answer back confirmation if received within the normal working hours of the Business Day; or
  - (B) at the commencement of the next ensuing Business Day following transmission with answer back confirmation thereof; or
- (iii) 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;

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](mailto:collikka@smokylakecounty.ab.ca)
- (ii) if to the Customer 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](mailto:skitz@county.stpaul.ab.ca)

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

(b) Governing Law

This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Alberta.

(c) Time of Essence

Time shall be of the essence of this Agreement.

(d) Preamble and Schedules

The parties hereby confirm and ratify the matters contained and referred to in the Preamble to this Agreement and agree that same and the various schedule(s) hereto are expressly incorporated into and form part of this Agreement:

- Schedule "A" - Additional Supply Terms and Conditions
- Schedule "B" - Commission System, Customer System & Point of Delivery
- Schedule "C" - Rates
- Schedule "D" - Dispute Resolution Process
- Schedule "E" - Typical Rural Connection

(e) Headings

The headings, captions, section numbers, subsection numbers, article numbers and indices appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, construct or enlarge the scope or meaning of this Agreement or any provisions hereof.

(f) Relationship between Parties

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein nor any act of the parties hereto shall be deemed to create any relationship between the parties hereto other than an independent service agreement between the two parties at arm's length.

(g) No Authority

Except as may from time to time be expressly stated in writing by the one party, the other party has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the other party, nor to bind the other party in any manner whatsoever.

(h) Agreement Entire Relationship

This Agreement constitutes the entire agreement between the parties hereto and the parties acknowledge and agree that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement save as expressly set out in this Agreement.

(i) Further Assurances

Each of the parties do hereby agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

(j) Amendments

This Agreement may not be altered or amended in any of its provisions, except where any such changes are reduced to writing and executed by the parties.

(k) Waiver

No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

(l) Counterparts

This Agreement may be executed in several counterparts each of which when so executed shall be deemed to be an original, and such counterparts shall constitute the one and same instrument and notwithstanding their date of execution shall be deemed to bear date as of the date first above written.

(m) Statutory Reference

Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto and promulgated thereunder with all amendments made thereto and in force from time to time and any final judicial decisions interpreting the same, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.

(n) Unenforceability

If any term, covenant or condition of this Agreement or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

(o) Survival

The parties acknowledge and agree that the provisions of this Agreement, which, by their context, are meant to survive the termination or expiry of the Term, shall survive the termination or expiry of the Term and shall not be merged therein or therewith.

(p) Remedies Generally

Mention in this Agreement of any particular remedy of a party in respect of a default by the other party does not preclude the first party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No remedy shall be exclusive or dependent upon any other remedy, but a party may from time to time exercise any one of more of such remedies generally or in combination, such remedies being cumulative and not alternative.

(q) Payment of Monies

The parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds and that any tender of monies or documents hereunder may be made upon the solicitors acting for the party upon whom the tender is desired and it shall be sufficient that a negotiable bank draft is tendered instead of cash.

(r) GST Exclusive

All amounts payable by one party to the other hereunder will be exclusive of any goods and services tax ("GST") and the party providing payment will, in addition the amounts payable hereunder, pay to the other party all amounts of GST applicable thereon. The Commission's GST number is \_\_\_\_\_ RT0001 and the Customer's GST number is 106989379 RT0001.

(s) Singular, Plural and Gender

Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires and the provisions hereof.

(t) Binding Effect

This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.

(u) Assignment

Neither party shall assign its interest in this Agreement, or any part hereof, in any manner whatsoever without having first received written consent from the other party which consent may be not be arbitrarily withheld.

(v) Requests for Consent

Each party shall provide any decision with regard to a request for consent in a timely manner.

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

## SCHEDULE "A"

### ADDITIONAL SUPPLY TERMS AND CONDITIONS

#### A. Capacity Commitment/Entitlement

Subject to Part B of this Schedule, throughout the Term the Commission shall provide Water to the Point of Delivery in the following manner:

1. **Maximum Flow** – the Commission will make available to the Customer up to 6.54L/s, maximum daily demand (MDD).
2. **Maximum Annual Volume** – the Commission will make available to the Customer up to a maximum of 114,534 m<sup>3</sup> annually.
3. **Forecasted Capacity** – notwithstanding the forgoing, the capacity utilized and service level received by the Customer through the Commission System is subject to the forecasting and service level process, as contemplated within Part B of this Schedule below.

#### B. Forecasting, Service Levels and Excess Capacity

Notwithstanding the reserved flow amounts and corresponding capacity entitlement and availability, Water service available and provided to the Customer for any year of the Term will be determined or predetermined, as the case may be, as follows:

1. On or before August 30 in each year of this Agreement, or such other date as the Commission may require from all of its customers, the Customer will provide to the Commission:
  - a. a written forecast of the quantity of Water which the Customer reasonably expects to require in order to supply the demand of the Customer's residents and consumers within the Customer Service Area through the Point of Delivery during each of the next **Five (5) years** running from the commencement of the Term or, if agreed to, calendar years, using reasonable and prudent estimates of growth and demands and good industry practices; and
  - b. any relevant engineering reports, studies and assessments and other technical information supporting the forecasts, including the Customer's projections on population growth and expansion of services within the portions of the Customer Service Area actually serviced through the arrangements contemplated under this Agreement.
2. On or before March 31 of each year, or such other date as the Commission may require from all of its customers, the representatives of the parties will meet to review the forecasts and other related matters affecting planning and operations, and will work together in good faith to reach agreement on the quantity and flow of Water through the Commission System and the Point of Delivery ("Annual Flow") for each of the years covered by the most recent forecasts.
3. If the Customer and the Commission cannot reach agreement on the Annual Flow forecast for any Term year or calendar year pursuant to Section 2 of Part B of this Schedule, the Annual Flow will be the greater of the quantity as last agreed upon by the Customer and the Commission for that year.
4. Each of the Commission and the Customer will 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 Flow of Water for each year. The Customer and the Commission will use its Best Efforts in the preparation of each forecast to ensure to the extent reasonably possible that it is not over-estimating or otherwise improperly assessing its projected Water service needs. The Customer and the Commission will each exercise sound engineering judgment and, where appropriate, consult with the Commission or the Customer, respectively, when reviewing the technical aspects of the Customer's or the Commission's forecast.

5. Subject to the terms of this Schedule, if the forecasted Water demand of the Customer exceeds the maximum flow committed to the Customer as set forth in Part A above (as amended from time to time), the Commission may accept the potential demand requested subject always to the establishment of appropriate arrangements to access or otherwise provided additional capacity within the Commission System and related system. Without in any manner restricting the discretion of the Commission, the Commission shall not agree upon any such request, unless and until:
  - a. the Commission has obtained all written assurances satisfactory to the Commission of the availability of the required capacity in accordance with all applicable Service Policies;
  - b. all necessary internal Commission approvals respecting the proposed additional demand and capacity have been obtained; and
  - c. any and all impacts to the Commission, the Commission System, and the services provided by the Commission arising from the proposed additional capacity (including, without restriction, agreement upon any capital expansions, upgrades, or other modifications to the Commission System or the Commission's operations necessary to accommodate the proposed acquisition or disposal of allocated capacity) have been addressed and agreed upon by the affected parties.
6. Notwithstanding the maximum flow and maximum annual volume committed within Part A above, the Commission's responsibility to provide Water up to those maximum figures is subject to the construction and installation of required (necessary) system upgrade on an as needed basis to allow the Commission System to meet the maximum flow and maximum annual volume required for the Customer's needs over and above 2.61 L/s and 45,803 m<sup>3</sup> annually. The Customer shall be responsible for the proportionate share, (based upon Water demand causing the need for the upgrade, and/or based upon other benefit received from the upgrade, to be computed at that time based upon sound and generally accepted engineering principles) of the capital costs of such required (necessary) system upgrade, to the extent that it is required in order to provide Water to the Customer over and above 2.61 L/s and 45,803 m<sup>3</sup> annually.
7. In the event of the occurrence a system upgrade contemplated within paragraph 6 above resulting in the Customer paying its proportionate share of the capital costs of a system upgrade, upon the occurrence of:
  - a. installation and servicing of any new Commission customers or connections to the system; or
  - b. changes to the servicing or connections by any existing Commission customers and/or connections;

so as to confer a benefit upon such new or altered Commission customers or connections which are derived from the system upgrade, prior to or as a condition of such new or altered servicing or connections the Commission shall require payment of a proportionate share (based upon Water demand flowing through or serviced by the system upgrade, and/or based upon other benefit received from the upgrade, to be computed at that time based upon sound and generally accepted engineering principles) of the capital costs of such system upgrade as a reimbursement to the Customer and any other Commission customers who contributed to the such capital costs (shared proportionately, and calculated in the same manner as its or their respective contributions to such capital costs).
8. The Customer and the Commission will share instrument signals in the Commission Meter Station:
  - a. the Commission must provide the Customer with the instrument signal from FIT 120;
  - b. FIT-120 totalizer pulse will not be shared with the Customer;
  - c. the Customer must provide the Commission with the instrument signal from PIT 131; and
  - d. signals shall be shared to the other party by an analog signal splitter that is installed within the respective instrument owner's programmable logical controller (PLC).

**C. Joint Additional Capacity and Planning**

The potential for capital expansions or upgrades on any shared cost basis, whether to accommodate existing services or to expand the service areas and/or capacities of the Customer, the Commission or both, will be:

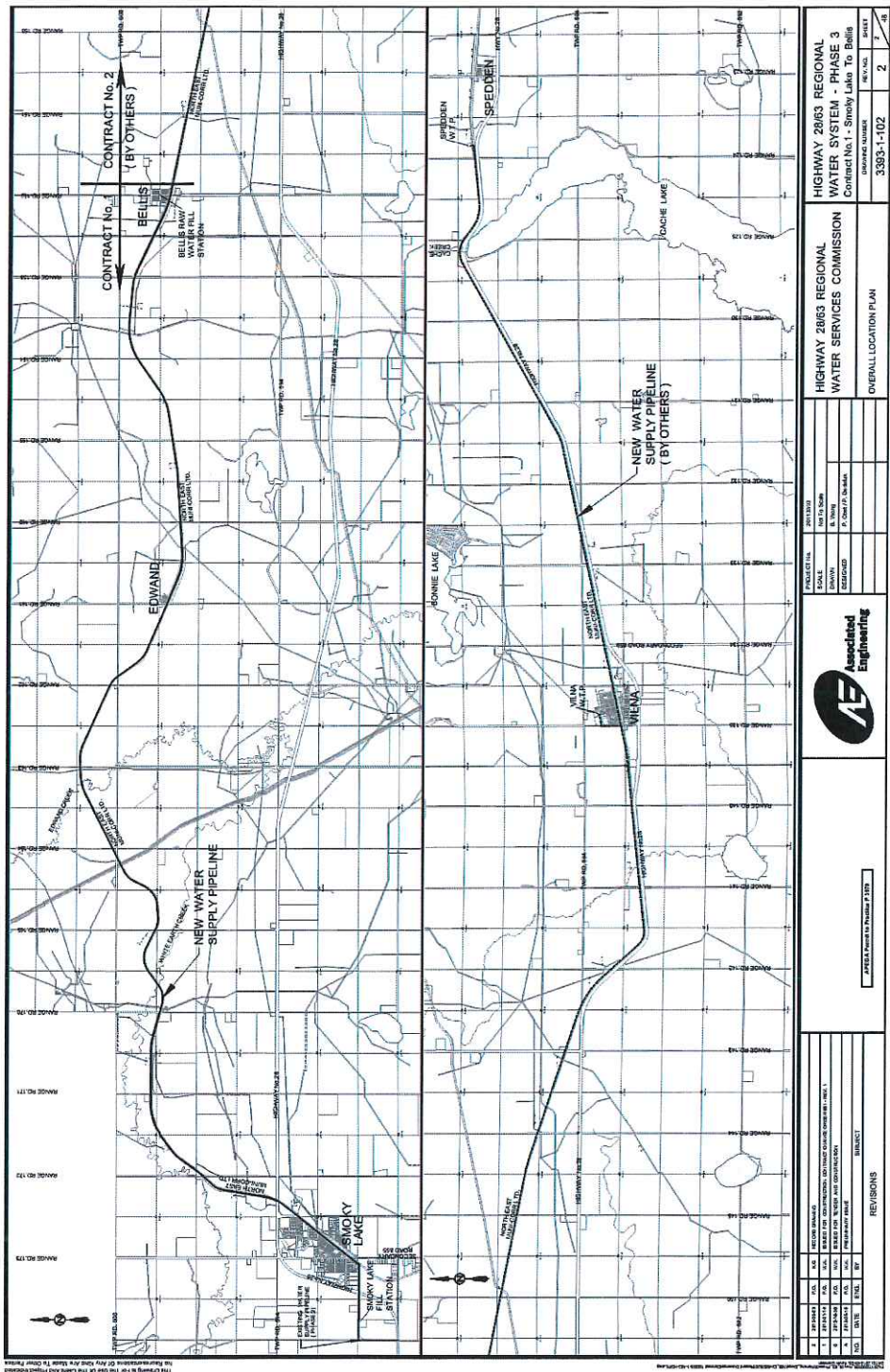
- a. proposed and presented by the parties on a timely basis so as to be considered and, if agreed upon, implemented in time to provide capacity requirements as and when required; and
- b. considered by the parties and negotiated in good faith with a view to providing a mutually agreeable solution for the provision of service on a long term basis for the benefit of both parties.

The Customer and the Commission shall meet as soon as reasonably possible after the receipt of request, or notice of the need to meet, and discuss the accommodation of additional capacity.

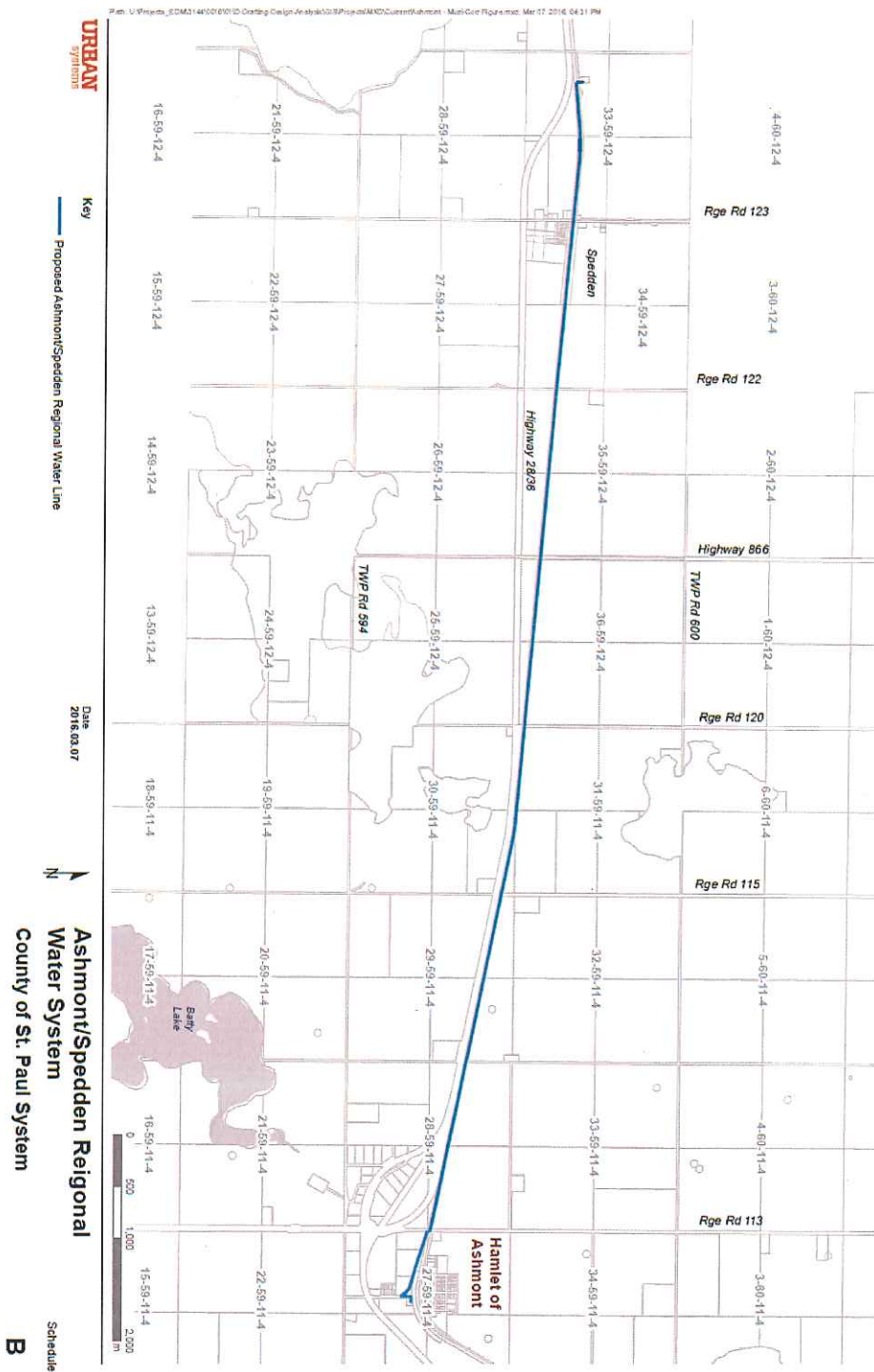
SCHEDULE "B"

COMMISSION SYSTEM, CUSTOMER SYSTEM & POINT OF DELIVERY

A. COMMISSION SYSTEM



{16/05/2016,B2041825.DOC;1}

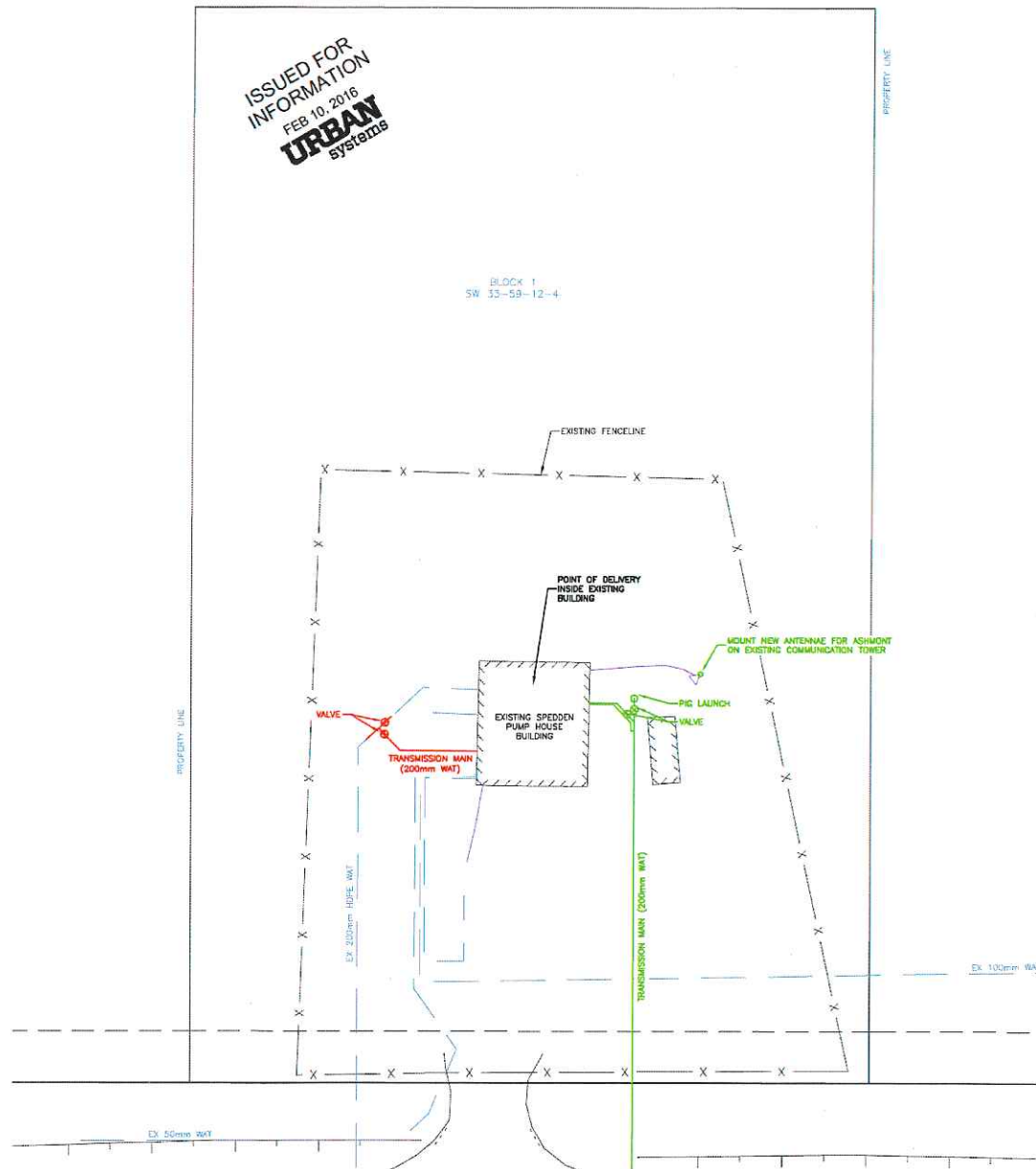


# C. POINT OF DELIVERY

## SPEDDEN SITE PLAN NEW EQUIPMENT OWNERSHIP

ISSUED FOR  
INFORMATION  
FEB 10, 2016  
**URBAN**  
systems

BLOCK 1  
SW 33-53-12-4



**URBAN**  
systems  
urbansystems.ca

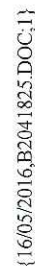
### LEGEND

- OWNED AND MAINTAINED BY HIGHWAY 28/63 WSC
- OWNED AND MAINTAINED BY COUNTY OF ST. PAUL



Client/Project		
ASHMONT/SPEDDEN REGIONAL WATER SYSTEM		
Scale	Date	Figure
nts	2016-02-01	X
3144.0016.01		Title
SPEDDEN SITE PLAN NEW EQUIPMENT OWNERSHIP		

## © Brownlee LLP



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INFORMATION  
APR 21, 2016  
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systems

**SPEDDEN PUMPHOUSE  
NEW EQUIPMENT OWNERSHIP**

## SCHEDULE "C"

### RATES

Rates will be calculated and charged on the basis of the following principles:

1. **Wholesale CRNWSC Rates and Principles** – all Rates are firstly based upon the rates and rate setting principles applied by the Capital Region Northeast Water Services Commission, under the CRNWSC Agreement. The CRNWSC Agreement and upstream supply arrangements contemplate:
  - a. **Cost of Service Basis** – 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, now the Alberta Utilities Commission, through Board and/or Commission Decisions related to EWSI or the Commission including, without restriction, E95070 and Amending Orders E95072 and U96026; and
  - b. **Amendment** – principles and practices to be applied to determine rates under the CRNWSC Agreement may change from time to time by way of negotiated agreement between the parties, as a result of changes to the foregoing references for principles and rate setting practices, or as a result of a decision or order of the Alberta Utilities Commission, or a successor tribunal or authority;
2. **Current Rate** – based on the forgoing, as of the date of this Agreement the current Rate shall be comprised of the following:
  - a. **Basic Rate Component** – of \$2.108/m<sup>3</sup> of Water measured at the Meter located within the Commission Meter Station, consisting of an upstream cost of water of \$1.388/m<sup>3</sup>, plus \$0.72/m<sup>3</sup> representing Commission operating costs;
  - b. **Administration Charge** – being a proportionate share of administration costs incurred by the Commission, based upon an equal share of such costs for each customer of the Commission. As of the date of this Agreement, the administration charge applicable to the Customer shall be 1/6<sup>th</sup> of the administration costs, is to be billed annually after the fiscal year, and based upon budgeted administration costs for 2016 will be \$23,269.17 (subject to proportionate adjustment for partial years); and
  - c. **Surcharge Rate Component** – as established by the Commission from time to time for the volume water supplied over the maximum daily, monthly or annual volume (derived from the maximum flow provided in Part A of Schedule "A") committed to under this Agreement.

Unless the cost of servicing the Customer and/or any other customer of the Commission is shown to be sufficiently different to justify a different rate or customer class in accordance with the principles contemplated within this Schedule, the rates applicable to and payable by the Customer shall be the same as those applicable to all of the Commission's other customers;
3. **Upstream Surcharges** – in addition to the forgoing, the Commission may impose surcharges by passing along surcharges imposed by upstream suppliers of the Commission (including, without restriction, the CRNWSC), only to the extent that the upstream surcharge was caused by the actions and/or water demands of the Customer and in a manner proportionate to any other causes of the imposition of the upstream surcharge;
4. **Rate Setting by Commission** – subject to the foregoing, the Rates shall be established by the Board of Directors for the Commission;

subject always to the Service Policies established, amended and replaced from time to time by the Commission.

## SCHEDULE "D"

### DISPUTE RESOLUTION PROCESS

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

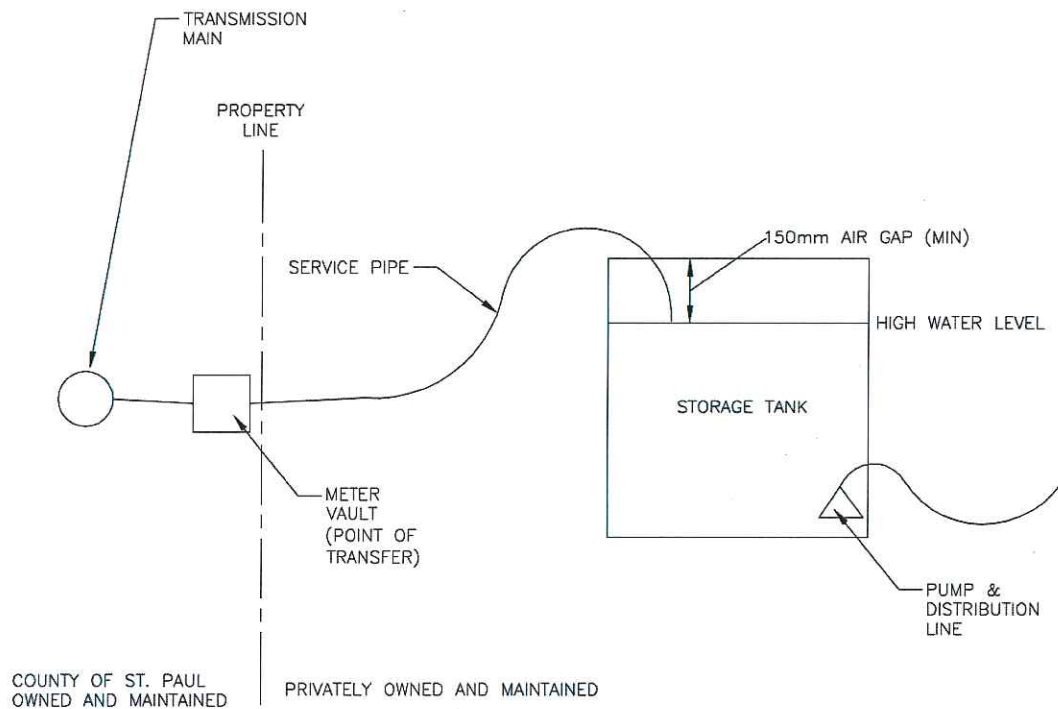
1. They will attempt to resolve any dispute through direct negotiations; and
2. Failing successful negotiation they will resort to mediation as follows:
  - (a) Either party may by written notice to the other request the selection of a mediator whose qualifications are appropriate for the dispute to be mediated (the Mediator);
  - (b) Within 7 days of his or her selection, the Mediator will designate a time for a meeting among the Mediator and a representative of each of the Customer and the Commission. Each representative must have authority to agree to a resolution of the dispute;
  - (c) For a 45 day period of time from the written notice requesting the selection of a mediator, neither the Customer or the Commission will 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 will be paid for equally by the Customer and the Commission;
  - (e) The mediation process, including all discussions, proposals and written materials made or prepared, will 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 proceedings;
  - (g) After the expiry of the forty-five (45) day period referred to in 2(c) hereof, either party may pursue such remedies that it determines necessary, in its sole discretion.
3. In the event that a Mediator is not agreed upon and appointed by the parties, or in the event that the Mediator is unable to resolve the dispute or disagreement as contemplated above, either party may refer the matter to be resolved by:
  - (a) **AUC** – review and decision by the Alberta Utilities Commission, in respect of any disputes or disagreement that falls within the jurisdiction or authorities of the Alberta Utilities Commission; and
  - (b) **Arbitration** – review and decision by an arbitrator, in respect of any disputes or disagreement that falls outside the jurisdiction or authorities of the Alberta Utilities Commission;

in each case by delivering written notice to the other party to that effect. Referral to the Alberta Utilities Commission shall follow the procedures of the Alberta Utilities Commission, as established or amended from time to time. Arbitration hereunder shall be by a reference to an independent person to be selected jointly by the parties, and his/her decision shall be final and binding. In the event that the parties shall fail to agree on an arbitrator within 7 days of either parties' arbitration notice pursuant to the above, then an arbitrator shall be selected in accordance with the practice and procedures of the Alberta Arbitration and Mediation Society. Failing the selection of the arbitrator within 14 days of either parties' arbitration notice above, the provisions of the *Arbitration Act*, RSA 2000, c. A-43, as amended or replaced from time to time, shall apply and an application shall be made to a Justice of the Court of Queen's Bench of Alberta to select the arbitrator.

# SCHEDULE "E"

## TYPICAL RURAL CONNECTION

### TYPICAL LATERAL CONNECTION DETAIL



#### NOTES:

1. THIS DETAIL IS BASED ON THE COUNTY OF ST. PAUL'S MINIMUM ENGINEERING DESIGN STANDARDS, SECTION 7.3
2. METER VAULT IS TO INCLUDE FLOW METER, BACKFLOW PREVENTER AND PRESSURE REDUCING VALVE (IF REQUIRED).
3. METER VAULT IS TO BE INSTALLED WITHIN COUNTY OF ST. PAUL RIGHT-OF-WAY. THE METER VAULT REPRESENTS THE POINT OF TRANSFER BETWEEN THE COUNTY OF ST. PAUL AND PRIVATE WATER SYSTEMS.

ISSUED FOR  
INFORMATION  
FEB 10, 2016  
**URBAN**  
systems

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Client/Project			
ASHMONT/SPEDDEN REGIONAL WATER SYSTEM			
Scale	Date	Figure	
nts	2016-02-03	X	
3144.0016.01		Title	

**TYPICAL LATERAL CONNECTION DETAIL**