

**MCCAC TAME BUILDINGS INITIATIVE  
IMPLEMENTATION FUNDING AGREEMENT**

**THIS AGREEMENT** (the “**Agreement**”) dated the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**BETWEEN:** **ALBERTA URBAN MUNICIPALITIES ASSOCIATION**, a society  
duly created under the laws of Alberta  
  
(the “AUMA”)

**AND:** \*\*, a municipal corporation, duly incorporated according to the laws of Alberta

(the “**Municipality**”)

**WHEREAS:**

- A. Her Majesty the Queen in right of the Province of Alberta (the “**Government of Alberta**”), as represented by the Minister of the Environment, and the AUMA entered into an agreement, dated November 25, 2009 (the “**MCCAC Agreement**”), whereby the Government of Alberta agreed to provide the AUMA with a grant (the “**Grant**”) to create a project called the Municipal Climate Change Action Centre (the “**MCCAC**”), to facilitate energy efficiency and the reduction in greenhouse gas emissions by municipalities;
- B. Based on the terms of the MCCAC Agreement, the unused balance of the Grant for the MCCAC as of April 30, 2013 (or such later date as may be agreed upon) is to be returned by the AUMA to the Government of Alberta;
- C. In the course of its mandate, the MCCAC has developed the “Taking Action to Manage Energy” TAME Buildings Initiative Program (the “**TAME Buildings Initiative**”) to encourage municipalities to obtain detailed energy efficiency assessments with the objective that municipalities will implement the energy efficiency recommendations provided in said assessments and adopt a more strategic focus towards energy management;
- D. The AUMA, through the MCCAC, has implemented the TAME Buildings Initiative which contemplates, among other things, the provision of funding initiatives to each participating municipality within the Province of Alberta; and
- E. The Municipality is agreeable to being a participating municipality for the purposes of the TAME Buildings Initiative that deals with compensation for certain energy efficiency implementation costs, as further detailed herein;

**NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:**

## 1. DEFINITIONS AND SCHEDULES

- 1.1. In this Agreement, the following terms shall have the following meanings:

- a. **“Agreement”** means this MCCAC TAME Buildings Initiative Implementation Funding Agreement and any Schedules hereto;
- b. **“AMSC”** means the Alberta Municipal Services Corporation;
- c. **“AUMA”** means the Alberta Urban Municipalities Association;
- d. **“Bonus Funding Agreement”** means a separate agreement with the AUMA entitled the **“MCCAC TAME Buildings Initiative Bonus Funding Agreement”** which provides funding incentives if, among other things, the energy efficiency improvements result in a reduction in greenhouse gas emissions;
- e. **“Consultant”** means a duly qualified energy auditing consultant that has sufficient expertise and experience to issue detailed energy assessments in the form specified by MCCAC;
- f. **“Contribution Maximum”** has the meaning set forth in provision 1 of Schedule 3.3;
- g. **“Detailed Energy Assessment”** means a comprehensive energy assessment performed by a Consultant which provides a detailed assessment of the energy efficiency of the particular building in question and which follows the MCCAC Template;
- h. **“EOI Form”** is the expression of interest form created by the MCCAC, as amended from time to time by the MCCAC;
- i. **“Government of Alberta”** has the meaning set forth in recital A. above;
- j. **“Grant”** has the meaning set forth in recital A. above;
- k. **“Implementation Contribution”** means the amount, as set forth in Schedule 3.3, that the AUMA will pay to the Municipality for implementation of one or more of the energy efficiency recommendations set forth in the Detailed Energy Assessment report performed by a Consultant in relation to one of the Municipality’s buildings;
- l. **“MCCAC”** has the meaning set forth in recital A. above;
- m. **“MCCAC Template”** means the model or guide either established or recommended by the MCCAC, as it may be amended from time to time, to be used and completed by the Consultants in the course of completing the Detailed Energy Assessment for a Municipality, to better ensure a standardized level of quality;
- n. **“Municipality”** means the contracting party defined as “Municipality” on page 1 hereof;
- o. **“TAME Buildings Initiative”** has the meaning set forth in recital C. above;
- p. **“Term”** has the meaning set forth in Section 5.1 hereof.

1.2. The Schedule to this Agreement is as follows and shall form an integral part of this Agreement:

<b>Schedule 3.3</b>	Implementation Contribution
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**2. EXPRESSION OF INTEREST (EOI) FORM AND CONSULTANT FOR THE DETAILED ENERGY ASSESSMENT**

- 2.1. In order to initiate any potential for funding through the TAME Buildings Initiative, and prior to obtaining the Detailed Energy Assessment in relation to a particular building, the Municipality must duly complete, and submit to the MCCAC, an EOI Form in relation to the building. For greater clarity, a separate EOI Form is required for each separate building.
- 2.2. The Detailed Energy Assessment must have been completed by a duly qualified Consultant. The AUMA recommends, but does not require, that the Municipality contact the AMSC for an appropriate Consultant to perform the Detailed Energy Assessment. Regardless of which Consultant conducts or conducted the Detailed Energy Assessment, such Consultant will not be under the AUMA's care and control and accordingly, the AUMA is not, and shall not be, responsible in any way for any acts or omissions of the Consultant and the AUMA hereby disclaims any responsibility or liability in relation thereto.
- 2.3. The Municipality acknowledges its understanding that it does not have to have used the Consultant recommended by the AUMA or AMSC and if the Municipality used a different Consultant, the Municipality agrees that it shall have used appropriate due diligence in choosing a competent and reputable one that otherwise meets the requirements of a Consultant as defined herein.
- 2.4. The Municipality agrees that any agreements or arrangements between the Municipality and the Consultant in relation to the Detailed Energy Assessment or otherwise shall be at the Municipality's sole risk and the Municipality shall be solely responsible to pay all amounts owing to the Consultant in relation to the Detailed Energy Assessment or otherwise.

**3. DETAILED ENERGY ASSESSMENT**

- 3.1. The Municipality agrees or, where applicable, confirms, that upon completion of the Detailed Energy Assessment by the Consultant in relation to one of its buildings:
  - a. It shall direct (or has directed) the Consultant to provide a copy of the completed Detailed Energy Assessment to the MCCAC; and
  - b. It shall carefully review (or has carefully reviewed) all of the energy improvement and energy management recommendations contained therein; and
  - c. It shall meet (or has met) with representatives of the MCCAC to for the purposes of establishing an implementation plan of some or all of the energy efficiency recommendations contained therein.
- 3.2. Upon finalization of the Municipality's implementation plan, the Municipality shall provide (or has provided) a copy thereof to the MCCAC and shall take such steps as it is able, having regard to the Municipality's monetary and other resources, to implement any or all of the changes detailed in the implementation plan, in accordance with the time lines established in the plan.
- 3.3. The AUMA agrees to reimburse the Municipality, subject to section 6.1 hereof, partial compensation for certain costs associated with the implementation of the energy efficient recommendations, in an amount equal to the Implementation Contribution, provided that:

- a. the work to the building for which the Municipality is seeking contribution is completed within eighteen (18) months of the date of this Agreement;
- b. the Municipality provides to the AUMA the following documentation at least sixty (60) days prior to the expiry of the Term:
  - i. Invoices detailing the nature of the work done as well as the cost of such work;
  - ii. Confirmation of payment by the Municipality of (i) the Detailed Energy Assessment to the Consultant, and (ii) the invoices provided pursuant to subsection 3.3a. above;

and provided that the AUMA is satisfied that the nature of the work done was consistent with the energy efficiency recommendations detailed in the Detailed Energy Assessment. For greater clarity, the Municipality may receive the Implementation Contribution for additional buildings that it obtains a Detailed Energy Assessment on, subject to compliance with the terms hereof and the Contribution Maximum set forth in Schedule 3.3.

- 3.4. The payment referred to in section 3.3 above shall be payable by the AUMA within sixty (60) days of satisfaction by the Municipality of the requirements in section 3.3 above. For greater clarity, the Municipality remains fully liable to the persons with whom it has contracted for the purposes of effecting the energy efficient recommendations, with the Implementation Contribution being payable from the AUMA to the Municipality only.

#### **4. POST-IMPLEMENTATION EVALUATION AND PROGRESS REPORTS**

- 4.1. In the event certain energy efficiency recommendations are implemented by the Municipality pursuant to the Detailed Energy Assessment and an Implementation Contribution is received, the Municipality agrees to participate in evaluation measures set up by the MCCAC or its designate, to review and assess, among other things, energy consumption (savings) and emissions reductions in relation to the applicable building, by way of completion of a progress report which shall include a completed EOI Form and any other relevant documentation.
- 4.2. The evaluation and progress reports referred to in section 4.1 shall be provided on a quarterly basis following the completion of the improvements for which the Implementation Contribution was received or at such other times as designated by the MCCAC, acting reasonably. These reports shall be provided by the Municipality for at least eighteen (18) months thereafter.
- 4.3. Without limitation to the above, the AUMA confirms that there may be additional funding incentives available to the Municipality if the energy efficiency improvements result in a reduction in green house gas emissions, provided the Municipality enters into, and meets the requirements of, the "Bonus Funding Agreement."

#### **5. TERM OF AGREEMENT**

- 5.1. The term of this Agreement shall commence on the date hereof and shall end on April 13, 2013, which coincides with the date the remainder of the Grant has to be returned by AUMA to the Government of Alberta, or such earlier date in the event the entire amount of the Grant has been distributed by the AUMA (the "Term"). In the event the Government of Alberta is agreeable to extending the Term of the MCCAC Agreement further, then upon written direction of the

AUMA, in its sole discretion, the herein Term shall be extended to the date set forth in the applicable written notice.

**6. CONDITIONS OF PAYMENT AND DISCLAIMER OF LIABILITY**

- 6.1. Notwithstanding anything contained herein, all funding and payment obligations of the AUMA contained herein are subject to, and conditional upon, there being a sufficient amount of the Grant available for such distribution and payment. The Municipality acknowledges its understanding that there are limited funds available which may affect its compensation entitlements and that time is of the essence in light of the finite period for distribution and utilization of the Grant by the AUMA.
- 6.2. Notwithstanding anything contained herein, the AUMA hereby expressly disclaims liability to the Municipality except as specifically contracted for herein and for greater clarity, the AUMA cannot guarantee the reliability or comprehensiveness of any information provided by MCCAC or the AUMA in relation to energy efficiency and management pursuant to the terms of this Agreement or otherwise. The AUMA believes its information to be accurate and reliable but cautions that there is always new technology and information concerning energy efficiency. Accordingly, the AUMA is providing all information as general information only with no warranty or representation as to its comprehensiveness or accuracy. It is not intended to be, nor shall it be used as, a substitute for specific advice from qualified professionals.

**7. GENERAL PROVISIONS**

- 7.1. Notices. Any notice, demand or request required or permitted to be given hereunder shall be in writing and shall be deemed effective one (1) Business Day after having been faxed, or four (4) Business Days after having been mailed by prepaid, registered or certified mail, return receipt requested, to the following addresses:

AUMA:	c/o MCCAC	Municipality:	_____
	_____		_____
	_____		_____

- 7.2. MCCAC Not A Separate Entity. For clarity, all references and entitlements to, and obligations of, the MCCAC herein are the entitlements and obligations of AUMA, since the MCCAC is not a separate legal entity. However, the MCCAC is specifically referred to herein in light of its specific operational mandate and for clarity to the Municipality as to the point of contact.
- 7.3. Independent Contractors. It is expressly agreed between the parties hereto that the AUMA and the Municipality are contracting as separate entities and neither are agents or legal representatives of any other for any purpose whatsoever nor shall either one of them represent itself as having any power to any way bind or obligate the other party or to assume or create any expressed or implied obligation or responsibility on behalf of the other party.
- 7.4. Currency. All dollar amounts in this Agreement are expressed in Canadian funds.
- 7.5. Time of Essence. Time shall be of the essence of this Agreement.
- 7.6. Entire Agreement. This Agreement contains the entire understanding and agreement of the parties with respect to the subject matter contained herein and supersedes all prior representations, understandings and agreements, written or oral.

- 7.7. Counterparts. This Agreement may be executed in counterparts and a facsimile or portable document format signature shall be deemed an original, and all counterparts shall be construed together as one agreement.
- 7.8. Successors and Permitted Assigns. This Agreement shall not be assignable by any party without the prior written consent of the other parties. This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and, where the context so permits, their respective successors (including any successor by reason of the amalgamation of any party) and permitted assigns.
- 7.9. Severability. Each provision of this Agreement is hereby declared to be separate, severable and distinct. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the remainder of this Agreement shall not be affected thereby and shall be applied and construed as if such invalid, illegal or unenforceable provision had been omitted unless such provision or provisions are so material that its or their invalidity, illegality or unenforceability would materially change the transactions contemplated hereby so as to make them unreasonable and contrary to the intentions of the parties.
- 7.10. Amendments and Waivers. No amendment or waiver of any provision of this Agreement shall be binding on either party unless consented to in writing by such party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver unless otherwise provided.
- 7.11. Governing Law. This Agreement shall be governed by the laws of the Province of Alberta and the laws of Canada applicable therein.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date hereinabove written.

**ALBERTA URBAN MUNICIPALITIES  
ASSOCIATION**

***\*\* [INSERT NAME OF MUNICIPALITY]***

Per : \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

Per : \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 3.3**  
**IMPLEMENTATION CONTRIBUTION**

1. Except as provided in provision 2 below, the AUMA agrees to pay up to an aggregate maximum of TEN THOUSAND (\$10,000.00) DOLLARS (the “**Contribution Maximum**”) for implementation of some or all of the energy efficiency improvements set forth in a Detailed Energy Assessment received by the Municipality in relation to a particular building, subject to compliance with the other requirements and restrictions contained in this Agreement.
2. In the event the Municipality obtains three or more Detailed Energy Assessments (in relation to 3 or more buildings), and implements energy efficient improvements in relation to three or more buildings, the aggregate Contribution Maximum shall be increased from TEN THOUSAND (\$10,000.00) DOLLARS to TWENTY THOUSAND (\$20,000.00) DOLLARS. However, in such circumstances, the maximum amount payable by the AUMA in relation to one building shall remain at TEN THOUSAND (\$10,000.00) DOLLARS.