



Strathcona County

**Water Franchise Agreement and
Long-Term Water Supply Agreement
with Properties of Northern Bear Inc.**

April 15, 2016

Alberta Utilities Commission

Decision 20780-D01-2016

Strathcona County

Water Franchise Agreement and Long-Term Water Supply Agreement with
Properties of Northern Bear Inc.

Proceeding 20780

Application 20780-A001

Application 20780-A002

April 15, 2016

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Strathcona County
Water Franchise Agreement and Long-Term Water Supply
Agreement with Properties of Northern Bear Inc.

Decision 20780-D01-2016
Proceeding 20780
Application 20780-A001 and
Application 20780-A002

1 Introduction

1. On August 27, 2015, Strathcona County (Strathcona) filed two applications with the Alberta Utilities Commission related to water services in an area within Strathcona, southeast of Sherwood Park (proposed franchise area). The first application requested approval under Section 30(1) of the *Municipal Government Act* to enter into a long-term water supply agreement with Properties of Northern Bear Inc. (Northern Bear) for a term of 20 years, effective July 23, 2015, and expiring on July 22, 2035. The second application requested approval under Section 45 of the *Municipal Government Act* to grant a water franchise agreement to Northern Bear for a term of 20 years.

2. The Commission issued notice of both applications on the Commission's website on September 2, 2015, and in the Sherwood Park News on September 8, 2015. Interested parties were to register any concerns with, or support for, the applications by September 25, 2015. With regard to the long-term water supply agreement, the Commission received no submissions. With regard to the water franchise agreement, the Commission received submissions from several residents expressing concerns relating to water rates and billing, health and safety, and operator certification.

3. On October 1, 2015, the Commission advised interested parties that both applications would be considered together under Proceeding 20780.

4. By letter dated October 8, 2015, the Commission indicated that further process for review of the applications was necessary, and established a process schedule which included an initial round of information requests (IRs) and responses, and submissions as to further process. While Strathcona requested that no further process steps be scheduled, the West Bear Haven Board of Directors (WBH) requested an additional round of IRs, followed by argument and reply argument. The Commission determined that the additional process steps proposed by WBH were warranted.

5. The ultimate schedule for this proceeding was as follows:

Process step	Date
Round 1 IRs to Strathcona and Northern Bear	November 6, 2015
Round 1 IR responses from Strathcona and Northern Bear	November 27, 2015
Submissions on the requirement for further process	December 4, 2015
Round 2 IRs to Strathcona and Northern Bear	January 15, 2016
Round 2 IR responses from Strathcona and Northern Bear	February 12, 2016
Submission of written argument	February 26, 2016
Submission of written reply argument	March 11, 2016

6. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding, including IR responses, argument and reply argument. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

2 Background

7. Strathcona submitted that the development in the proposed franchise area was originally conceived pursuant to a master development agreement, executed between Strathcona and Amber Equities Inc. on March 24, 1993. As conceived, the development would eventually include up to 250 homes as a residential development and a golf course. Due to its location (i.e., significantly distant from any existing or future planned municipal services), the subdivision was developed and approved on the basis of private roads and core services.¹

8. Strathcona explained that the subdivision approval reflected this servicing scheme and structure, and that subsequent subdivisions and development were required to follow the requirements of the subdivision approval, including development agreements governing the construction of services. Pursuant to development agreements between the original and subsequent developers and Strathcona, the developers installed water servicing based on the 250 homes and private water service concept.²

9. Northern Bear submitted that it is a private utility created for the purpose of owning and operating the system or works required to service the customers located within the proposed franchise area.³ Northern Bear has provided water to residents within the franchise area since 2000. While Northern Bear provided its own operator for its first 10 years of operation, Strathcona is currently the contract operator.⁴

¹ Exhibit 20780-X0027, STRNB-AUC-2015NOV06-001.

² Exhibit 20780-X0027, STRNB-AUC-2015NOV06-001.

³ Exhibit 20780-X0001, Cover letter enclosing application.

⁴ Exhibit 20780-X0027, STRNB-AUC-2015NOV06-008(c).

10. Strathcona submitted that, as of November 12, 2015, there are 42 customers being served within the proposed franchise area.⁵

3 Water supply agreement

11. The Commission has considered the long-term water supply agreement, which is attached as [Appendix 2](#) to this decision and involves the sale and delivery of water from Strathcona to Northern Bear. Strathcona submitted that Northern Bear is in turn supplying water to residents within the proposed franchise area. Currently, the term of the long-term water supply agreement is five years, effective July 23, 2015. If the Commission approves the long-term water supply agreement, the term of the agreement will be 20 years, expiring July 22, 2035.

12. In its application, Strathcona submitted:

- (a) the contract granted under the proposed Agreement is necessary and proper for the public convenience and properly conserves the public interest;
- (b) Strathcona recognizes that conservation of water resources is an important goal; and
- (c) having regard to the availability of any other source in the area, and to any other Circumstances, the sale and delivery of the water is to the general benefit of the areas directly or indirectly affected by the proposed Agreement.⁶

13. Additionally, Strathcona argued that the long-term water supply agreement would benefit residents in the proposed franchise area by allocating the fixed costs of water infrastructure and operations over a larger customer base, and by providing for the delivery of water.⁷

14. The Commission is of the view that the long-term water supply agreement is necessary and proper for the public convenience and properly conserves the public interest. Therefore, under Section 30(1) of the *Municipal Government Act*, the Commission hereby approves the long-term water supply agreement filed in Proceeding 20780, subject to the terms and conditions contained in the long-term water supply agreement.

4 Franchise agreement

15. The franchise agreement provides Northern Bear with the exclusive right to supply water services within the proposed franchise area for a period of 20 years, effective upon receiving approval from the Commission and Strathcona Council.⁸

16. The franchise area consists of the lands legally described as follows:

- 1. Plan 992 3071, Block 1, Lots 2 and 4;
- 2. Plan 092 9892, Block 1, Lots 18 and 19;
- 3. Plan 092 9861, Block 1, Lots 20 and 21;
- 4. All those land contained within CDE 012 5764, being West Bear Haven;
- 5. All those lands contained within CDE 092 9928; and

⁵ Exhibit 20780-X0027, STRNB-AUC-2015NOV06-002.

⁶ Exhibit 20780-X0001.1, Cover letter enclosing long-term water supply agreement.

⁷ Exhibit 20780-X0049, Strathcona argument.

⁸ Exhibit 20780-X0003, Water franchise agreement.

6. All those lands contained within Plan 012 5748, Block 1, Lot 8, being the Treated Water Reservoir Site and Pumphouse forming a part of the Facilities⁹
17. The franchise fee payable by Northern Bear to Strathcona will be established by Strathcona from time to time by bylaw, but not more than once annually. The franchise fee was initially set at 0.0 per cent with the maximum amount set at 10 per cent of gross utility accounts (including consumption rate/commodity charge, the fixed rate and any surcharge).¹⁰
18. During the proceeding, Northern Bear indicated that it was committed to submitting a rate application to the Commission regardless of whether the franchise agreement was approved by the Commission.¹¹

Commission findings

19. The Commission has legislative authority to approve franchise agreements under Section 45 of the *Municipal Government Act*:

Granting rights to provide utility service

45(1) A council may, by agreement, grant a right, exclusive or otherwise, to a person to provide a utility service in all or part of the municipality, for not more than 20 years.

(2) The agreement may grant a right, exclusive or otherwise, to use the municipality's property, including property under the direction, control and management of the municipality, for the construction, operation and extension of a public utility in the municipality for not more than 20 years.

(3) Before the agreement is made, amended or renewed, the agreement, amendment or renewal must

(a) be advertised, and

(b) be approved by the Alberta Utilities Commission.

(4) Subsection (3)(b) does not apply to an agreement to provide a utility service between a council and a regional services commission.

(5) Subsection (3) does not apply to an agreement to provide a utility service between a council and a subsidiary of the municipality within the meaning of section 1(3) of the *Electric Utilities Act*.

20. Section 106 of the *Public Utilities Act* authorizes the Commission to approve franchise agreements:

Municipal franchises

106(1) No privilege or franchise granted to an owner of a public utility by a municipality within Alberta is valid until approved by the Commission.

(2) Approval may be given when, after hearing the parties interested, or with the consent of the parties, the Commission determines that the privilege or franchise is necessary and proper for the public convenience and properly conserves the public interests.

⁹ Exhibit 20780-X0005, Water utility franchise bylaw 7-2015.

¹⁰ Exhibit 20780-X0001.1, Cover letter enclosing long-term supply agreement.

¹¹ Exhibit 20780-X0045, STRNB-AUC-2016JAN15-002(a).

(3) The Commission may, in so approving, impose any conditions as to construction, equipment, maintenance, service or operation that the public convenience and interests reasonably require.

21. Public utilities and their owners are governed by the *Public Utilities Act*. A public utility, in Section 1(i)(iv) means “a system, works, plant, equipment or service for the production, transmission, delivery or furnishing of water, heat, light or power supplied by means other than electricity, either directly or indirectly to or for the public.” Section 1 of the act specifies who is considered an owner of a public utility:

1(h) “owner of a public utility” means

- (i) a person owning, operating, managing or controlling a public utility and whose business and operations are subject to the legislative authority of Alberta, and the lessees, trustees, liquidators of the public utility or any receivers of the public utility appointed by any court, but
- (ii) does not include
 - (A) a municipality that has not voluntarily come under this Act in the manner provided in this Act, or
 - (B) a regional services commission;

22. Section 78(a) of the *Public Utilities Act* states that Part 2 of the act applies “to all public utilities owned or operated by or under the control of a company or corporation that is subject to the legislative authority of Alberta or that has, by virtue of an agreement with a municipality, submitted to the jurisdiction and control of the Commission.” Section 106 is included in Part 2 of the act.

23. According to the franchise agreement, Northern Bear is a corporation incorporated under the laws of the Province of Alberta.¹² In an IR response, Strathcona reported that Northern Bear was of the view that it is an owner of a public utility under the *Public Utilities Act*:

Properties of Northern Bear Inc. has stated that it is of the view that it is the owner of a public utility pursuant to the *Public Utilities Act*. Properties of Northern Bear Inc. felt initially they were bound by the development agreement to build a water system. The situation has evolved to where we are today, as a result of the initial developer segregating the utility assets from the initial development, such that there was a separate legal identity acting as the water purveyor. The current water purveyor, Properties of Northern Bear Inc., is now working with the County to establish a Franchise Agreement. Strathcona County has outlined to Properties of Northern [sic] Bear Inc. the requirement to have their rates approved by AUC.¹³

24. Residents in the proposed franchise area are being furnished with water by a system, works, plant, equipment and service provided by Northern Bear. Northern Bear owns the public utility which is providing water to residents. Accordingly, the Commission finds that Northern Bear is the owner of a public utility, as the term is defined in the *Public Utilities Act*. Thus the Commission has jurisdiction to approve this franchise agreement.

¹² Exhibit 20780-X0003.

¹³ Exhibit 20780-X0027, STRNB-AUC-2015NOV06-006.

25. Based on the statutory framework, the Commission considers that in order to approve the franchise agreement it must consider the following issues

1. Has the proposed franchise agreement been duly advertised?
2. Is the franchise agreement for not more than 20 years?
3. Is the franchise necessary and proper for the public convenience?
4. Does the franchise properly conserve the public interest?

26. The Commission issued notice of both applications on the Commission's website on September 2, 2015, and in the Sherwood Park News on September 8, 2015. Additionally, Strathcona provided a copy of the advertisement that it published in the Sherwood Park News on February 27, 2015, and March 6, 2015.¹⁴ The Commission finds that the advertising provided by the Commission and Strathcona is sufficient to meet the test of the franchise agreement being duly advertised.

27. The Commission finds that the term of the franchise agreement is for a maximum of 20 years and, accordingly, falls within the specified time frame.

28. Under subsection 106(2) of the *Public Utilities Act*, the franchise must be necessary and proper for the public convenience and properly conserve the public interest. In determining whether or not the franchise is necessary and proper for the public convenience, the Commission may assess whether the franchise is fitting and suited to the public need. In considering whether the franchise agreement is in the public interest, the Commission may consider whether the public is likely to be harmed or placed at a reasonably foreseeable risk of harm if the Commission approves the franchise agreement.

29. Strathcona explained that its authority is limited without the franchise agreement in place and submitted that Northern Bear's responsibilities in relation to the supply of reasonable access to a safe and reliable supply of drinking water is currently found in development agreements. In Strathcona's view, approval of the franchise agreement would provide Strathcona with extensive authority to intervene in order to take remedial action if Northern Bear failed to perform its obligations under the agreement. As evidence, Strathcona referred to the right to perform provisions of the franchise agreement (specifically Section 11.4) and its IR responses in STRNB-AUC-2016JAN15-001 and STRNB-AUC-2016JAN15-005.

30. Strathcona indicated that the franchise agreement establishes operational and maintenance requirements that will govern Northern Bear should the franchise agreement be approved. As an example, Strathcona referred to the obligations set out in Schedule C-2 of the franchise agreement. Strathcona noted that the franchise agreement imposes requirements relating to compliance with regulatory requirements, quality management, adoption of an emergency response plan, adoption of a communications plan to ensure prompt response to customer concerns, the establishment of a customer complaints file and the requirement for Northern Bear to report customer complaints to Strathcona.

¹⁴ Exhibit 20780-X0005.

31. Strathcona pointed out that Northern Bear has a record of providing safe and reliable water service since 2000, and submitted that the water system is currently being operated in compliance with the provincial “Code of Practice” for water systems. Strathcona cautioned that if residents within the franchise area began to acquire alternative means of water supply, this may compromise the safety, security and sustainability of the utility service provided by Northern Bear.

32. In contrast, WBH suggested that the Commission deny the request to approve the franchise agreement, and that other alternatives to the current water utility operation be assessed by parties and the Commission, such as a co-operative or the use of cisterns. WBH contended that it was not confident that safe, reliable and continuous service at a fair and reasonable rate was guaranteed.

33. WBH argued that a reserve fund is necessary for the delivery of safe and reliable water, and expressed its view that there was a great deal of confusion regarding the state of the reserve fund, citing the following three IR responses:

No reserve fund has been established because the rate was not sufficient to establish one.¹⁵

...

As per 2014 financials you can see that the return on investment is 0% as money is left in account for a reserve fund in case of repairs needed.¹⁶

...

Properties of Northern Bear Inc. advises that there is currently no reserve fund in place. Properties of Northern Bear Inc. plans to meet with the Condo Association to discuss this matter. If no reserve is established, Properties of Northern Bear Inc. will simply capitalize costs and incorporate into rate base. Again, there is no capitalization policy at this time.¹⁷

34. WBH submitted that Strathcona did not provide assurance of safe, reliable and continuous service for customers in the franchise area on the record of this proceeding, and requested that the Commission require a remediation plan to be implemented immediately to ensure that customers were not without an essential service in the event that Northern Bear defaulted on its obligations.¹⁸

35. WBH also questioned the reasonableness of Northern Bear’s current water utility rates, citing the cost per cubic metre (m3) differential between the variable rate charged to Northern Bear for water by Strathcona (\$2.67/m3) and the variable rate charged by Northern Bear to its customers (\$13.50/m3). WBH recommended that the Commission require Northern Bear to have its financial statements audited and reviewed prior to the filing of a rate application.

36. In relation to capital investment fees, WBH noted that under the franchise agreement, Strathcona would charge Northern Bear \$10,000 per annum. Given that only 68 of the 250 potential units are developed, WBH considered that it would be unfair and unreasonable to pass this amount onto the small customer base. WBH also viewed the 250 units as an inflated number.

¹⁵ Exhibit 20780-X0048, SC-WBH-2016JAN15-003(a)

¹⁶ Exhibit 20780-X0048, SC-WBH-2016JAN15-001(h)

¹⁷ Exhibit 20780-X0035, WBH-PNB-2015NOV6-001(b)

¹⁸ Exhibit 20780-X0050, argument of WBH, page 2.

37. While Northern Bear does not charge late fees to customers,¹⁹ WBH disagreed with Northern Bear's current practice which requires bills to be paid on receipt, disconnects customers without notice if bills were not paid, and charges a \$300 fee for reconnection and a \$500 deposit.²⁰ In addition, WBH considered it unreasonable of Northern Bear to impose policies, such as practices relating to late fees, without formal approval of rates and terms and conditions of service by the Commission. WBH requested that the Commission disallow any policies not previously approved by the Commission pending approval of Northern Bear's forthcoming rate application.

38. In Strathcona's view, the intervener's concerns largely related to water rate issues, which are matters properly addressed in a rate proceeding. Strathcona noted that Northern Bear has committed to submitting a rate application to the Commission in the near future.

39. In reply argument, Strathcona indicated that the franchise agreement requires Northern Bear to adopt an emergency response plan and imposes quality management requirements, and that the franchise agreement provides Strathcona with its only means of authority to take remedial action if Northern Bear fails to provide safe and reliable utility service.

40. Additionally, in Strathcona's view, the Commission approval of the franchise agreement would not prevent residents from forming a co-operative. However, the co-operative would have to either negotiate the purchase of the water utility system from Northern Bear, or build a parallel water system. Further, Strathcona submitted that a truck-filled cistern system was not viable as it would result in increased costs and result in reduced reliability.

41. In reply argument, WBH emphasized that the franchise agreement should not be approved based on the following:

WBH believes it is inappropriate for County [Strathcona] to suggest deferring the rate concerns until after the franchise agreement is approved. WBH believes the franchise agreement should not be approved on the basis of the rates issue alone. Granting a 20 year monopoly to a utility who has been charging unapproved rates is definitely an issue for customers. As PNB [Northern Bear] was aware of the need to apply for rates but chose not to, the County should also be concerned with the credibility of PNB.²¹

42. The Commission is concerned with the viability of the utility. Northern Bear indicated in an IR response that at one point it was "basically running as a non-profit"²² and subsequently adjusted its rates, which it submitted were "... a lot less than we [Northern Bear] are allowed to."²³ While such matters are best addressed in a rate application, these matters raise a concern for the Commission, as to whether or not Northern Bear has sufficient expertise to effectively manage the rate regulatory aspects of operating a water utility and the financial stability to maintain safe and reliable service.

¹⁹ Exhibit 20780-X0048, SC-WBH-2016JAN15-009 (c).

²⁰ Exhibit 20780-X0048, SC-WBH-2016JAN15-009(b) citing Exhibit 20708-X0044, Policies of Properties of Northern Bear.

²¹ Exhibit 20780-X0052, WBH reply argument.

²² Exhibit 20780-X0048, SC-WBH-2016JAN15-002(b).

²³ Exhibit 20780-X0045, STRNB-AUC-2016JAN15-001(a)

43. WBH raised a number of concerns relating to exclusivity, rates, and terms and conditions of service. If the Commission approved a 20-year exclusive right for Northern Bear to provide water service to the proposed franchise area, and Northern Bear then defaulted on its obligations to supply safe and reliable water service to customers, the Commission is unclear as to the timing or steps that would be taken to restore water service. The Commission is concerned that this would likely place residents at a reasonably foreseeable risk of harm.

44. Additionally, during the course of this proceeding, WBH identified two potential alternative options for provision of service, and requested additional time to consider these options.

45. In view of the above, the Commission considers that approving the franchise agreement, which would grant a 20-year exclusive right to Northern Bear to provide water services to the proposed franchise area, would not be in the public interest at this time. On this basis the Commission denies the franchise agreement between Strathcona and Northern Bear.

46. The Commission is prepared to consider a franchise agreement between Strathcona and Northern Bear in the future, once Northern Bear has submitted and received approval for its rates and terms and conditions of service.

5 Order

47. It is hereby ordered that:

- (1) The long-term water supply agreement as shown in Appendix 2 of this decision is approved.
- (2) The application requesting approval under Section 45 of the *Municipal Government Act* to grant a water franchise agreement to Northern Bear for a term of 20 years is denied at this time.

Dated on April 15, 2016.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Strathcona County (Strathcona) Brownlee LLP
D. Deleeuw
B. Wellock
C. Row
R. Yoneda
B. Makowecki
J. Boothby
B. Steele
R. Dulat
West Bear Haven Board of Directors (WBH)

Alberta Utilities Commission
Commission panel N. Jamieson, Commission Member
Commission staff J. Graham (Commission counsel) K. Kellgren (Commission counsel) C. Burt N. Nagy C. Geddes C. Malayney

Appendix 2 – Long-term water supply agreement

[\(return to text\)](#)



Appendix 2 -
Long-term water supp
(consists of 42 pages)



WATER SUPPLY AGREEMENT

STRATHCONA COUNTY

and

PROPERTIES OF NORTHERN BEAR INC.



25/06/2015,E1571468.DOC3-EBRT 7119247

THIS AGREEMENT made effective as of the 23 day of July, 2015.

BETWEEN:

STRATHCONA COUNTY
(hereinafter referred to as the "County")

and

PROPERTIES OF NORTHERN BEAR INC.
(hereinafter referred to as the "Corporation")

WATER SUPPLY AGREEMENT

WHEREAS:

- A. The County receives Water under the EPCOR Agreement;
- B. The County receives Water from EPCOR Water Services Inc. under the EPCOR Agreement;
- C. The Corporation wishes to purchase Water from the County and the County wishes to sell and deliver Water to the Corporation on terms and conditions consistent with the EPCOR Agreement and the Corporation Supply Agreement;
- D. The County and the Corporation recognize that conservation of water resources is an important goal.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of 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 as specified in the latest edition of the American Water Works Association C-700 Series Standards, as amended or replaced from time to time;
- (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) "Corporation Distribution System" means the particular distributions 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 Franchise Area, as depicted within the Franchise Agreement;
- (e) "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;
- (f) "County Transmission Line" means the particular transmission line consisting of the Watermains, metering facilities, and associated piping, connections, equipment and works extending up to but excluding the Point of Delivery, and extending throughout the County and outside of the Franchise Area;

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- (g) "EPCOR Agreement" means the current water supply agreement between the County and EPCOR Inc. that was executed by the County and AQUALTA Inc. and is attached hereto as Schedule "E";
- (h) "Excess Capacity" means capacity of the County Transmission Line allocated to either the County or the Corporation as contemplated within Schedule "A" attached to this Agreement, and which from time to time is not being utilized or is otherwise not required by the respective party;
- (i) "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, lightning, 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;
- (j) "Franchise Agreement" means that certain agreement dated July 23, 2015, between the County and the Corporation, pursuant to which the Corporation was granted an exclusive right to service the Franchise Area with Water;
- (k) "Franchise Area" means the area set forth within the Franchise Agreement within which the Corporation is permitted to supply Water;
- (l) "Meter" means any and all consumption measuring device(s);
- (m) "Meter Chamber" means the physical structure which houses a Meter including all necessary valves, pressure and flow controls, associated equipment and pipes, but excluding any Meter;
- (n) "Northern Bear Reservoir & Pumphouse" means the metering, control and/or pump station owned and operated by the Corporation and located at:

PLAN 012 5748
BLOCK 1
LOT 8
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME
- (o) "Point of Delivery" means the inlet of the Northern Bear Reservoir & Pumphouse;
- (p) "Rate" means the price for Water determined from time to time according to the provisions of the attached Schedule "C";
- (q) "Service Policies" means those policies of general application, including County bylaws, established from time to time by the County governing the manner in which Water services is provided by the County including, without restriction, policies respecting or governing:
- (i) Rate setting principles, procedures and practice;
 - (ii) billing and collection;
 - (iii) connections to the County Transmission Line; and
 - (iv) system expansion and upgrades;
- (r) "Strategic Planning & Consultation Committee" means that committee contemplated and established under Section 9 of this Agreement;

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- (s) "Term" means the term of this Agreement being:
- (i) a period of Five (5) years commencing on the date hereof and expiring on July 23, 2020; or
 - (ii) upon and subject to approval of this Agreement by the Alberta Utilities Corporation as contemplated within Section 30 of the Municipal Government Act R.S.A 2000 c. M-26, period of up to Twenty (20) years commencing on the effective date of the Franchise Agreement;
- (t) "Water" means treated water which has been supplied to the County under the EPCOR Agreement; and
- (u) "Watermain" means a water pipe line 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 County and Corporation are subject to the provisions of the EPCOR Agreement, which shall apply to this Agreement mutatis mutandis and, if the EPCOR 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 County to supply Water is at all times specifically subject to and conditional upon the continued existence of the EPCOR Agreement, or replacements thereof, and the continued receipt of sufficient flow of Water under that Agreement, or replacements to such source of Water;
- (c) the County will use Best Efforts to:
 - (i) make Water available to the Corporation 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 Corporation at the Point of Delivery in substantially the same quality as the County received the same pursuant to the EPCOR Agreement; and
 - (iii) avoid situations where it is unable to supply the Corporation the quantity of the Water specified in Section 2(b)(i);all as further contemplated or described within Schedule "A" attached to this Agreement;
- (d) Water purchased from the County by the Corporation shall be determined as the volume of Water measured at the transmission line Meter located at the Northern Bear Reservoir & Pumphouse. The Meter shall be read on the last work day of each month for the determination of monthly billing;
- (e) Corporation will pay the County for all Water metered as set forth above in an amount equal to the product of the Rate and the volume measured by the applicable Meter;
- (f) the County shall deliver a monthly invoice to the Corporation specifying amounts of Water metered and total amount invoiced for the relevant month;
- (g) the Corporation shall pay the County all amounts due within twenty-one (21) days of receipt of such invoice. If any invoice is not paid within such twenty-one (21) days of receipt as aforesaid, any unpaid amount will attract interest at that rate established by the County from time to time and applicable to all customers of the County;

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- (h) 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;
- (i) the Corporation will use Best Efforts management approach in ensuring and maintaining a chlorine residual within and throughout the Corporation Distribution System downstream from the Point of Delivery;
- (j) the Corporation and the County are individually responsible for obtaining, at their sole expense, all necessary consents, 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 Corporation and the County will cooperate with each other and will provide reasonable assistance to each other, when requested;
- (k) neither the Corporation nor the County will allow or permit any Cross Connection;
- (l) the Corporation and the County specifically agree that in the event of a Force Majeure, the recipient of Water pursuant to this Agreement, as the case may be, will be entitled to receive a proportionate share of supply of available Water in the same manner as all customers of the provider; and
- (m) the Corporation shall ensure that Water supplied and sold by the Corporation is utilized solely for domestic consumption purposes, and in particular shall not be used for irrigation purposes in any manner whatsoever;
- (n) the Corporation shall ensure that all Water supplied by the Corporation to consumers shall comply with all standards and requirements under all applicable laws, regulations, and provincial guidelines, as well as those standards and requirements contained within the County's Service Policies;

all of which shall be subject always to the County's Service Policies.

3. County Ownership, Metering and Supply:

- (a) The County owns:
 - (i) all Watermains, metering facilities, associated piping and connections up to the inlet valve of the Northern Bear Reservoir & Pumphouse, comprising the County Transmission Line;
 - (ii) the Meter at the Northern Bear Reservoir & Pumphouse.
- (b) The Corporation shall at all times provide the County with unrestricted access to the above-noted equipment and all other property of the County located on Corporation property from time to time for the purposes of allowing the County to perform all of its obligations or exercise its rights hereunder.
- (c) Once per year, the County will test its Meters for accuracy at its sole expense. The Corporation may require a copy of the test results that were conducted by an independent contractor.
- (d) If at any time a Meter Chamber or a Meter is out of service or is being repaired so that the measurement of the volume of Water being delivered is not being recorded accurately within the Agreed Variance, or if a test determines that a Meter has not registered accurately within the Agreed Variance, the Meter Chamber or Meter shall be repaired or adjusted as soon as practical, the measurement shall be corrected for a period definitely known or agreed upon, or if not known or agreed upon for one-half of the period since the last Meter test, and the measurements shall be determined or adjusted, as the case may be, to correct for the degree of inaccuracy using the best available data in the following priority:

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- (i) by estimating the volume based upon deliveries under similar conditions during a period of time when the Meter Chamber and 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 Corporation may require the County 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 County shall pay the costs for such tests and shall, at its sole expense, repair the Meter in order that the Meter falls within the Agreed Variance. If such test results indicate that the accuracy of the tested Meter is within the Agreed Variance, the Corporation shall pay the costs for such test.

4. Corporation Ownership, Metering and Supply:

- (a) The Corporation owns the Corporation Distribution System, consisting of the reservoir, Watermains, metering facilities, inlet valve, associated piping and connections from and after the Point of Delivery.
- (b) The Corporation shall be responsible for the operations and maintenance of the Corporation Distribution 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 Corporation Distribution System.
- (c) The Corporation shall at all times provide the County with unrestricted access to the above-noted equipment and all other property of the Corporation located on County property from time to time for the purposes of allowing the County 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 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.

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- (d) Any resale of Water by the Corporation shall be subject to the County's Service Policies. Without restricting the foregoing, unless otherwise agreed to by the County the Corporation shall ensure that all customers 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 County may impose reasonable restrictions on the delivery of Water, provided that the County shall treat all of its customers affected by the Force Majeure, including the Corporation, 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 County nor the Corporation 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 basis, and claims suffered or incurred by the indemnified party, its agents or employees which are in any way connected with the performance or nonperformance of this agreement and which are caused either directly or indirectly or contributed to in whole or in part by any act or failure to act of the indemnifying party, its agents and employees, in respect of which indemnifying party, its agents or employees are liable or otherwise

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responsible in law, provided that such indemnity shall be limited to an amount in proportion to which the indemnifying party, its agents and employees are at fault or otherwise held responsible in law.

8. Mediation and Remedies

- (a) If a dispute arises between the Corporation and the County 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 Corporation, 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 mediation 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. Strategic Planning and Consultation

- (a) The Corporation and the County wish to create and develop a process of planning and consultation. As a first step, the parties agree to establishment of the Strategic Planning & Consultation Committee. Initially, the Strategic Planning & Consultation Committee will be composed of a minimum of:
 - (i) one Corporation representative, and
 - (ii) one representative from the County;
- (b) The rules and procedures of the Strategic Planning & Consultation Committee will be established from time to time by it. However
 - (i) the Strategic Planning & Consultation Committee will meet not less than once per year;
 - (ii) the mandate of the Strategic Planning & Consultation Committee is generally to enhance communication between the County and the Corporation, 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, and
 - (iii) the mandate of the Strategic Planning & Consultation Committee is to specifically deal with the forecasting and commitment of the total volume of Water required by the Corporation, as contemplated within Schedule "A" attached to this Agreement; and
 - (iv) the Strategic Planning & Consultation Committee will also act as a forum where either the Corporation or the County may discuss concerns about the purchase, supply and delivery of Water.

In order to accomplish this general and specific mandate, the Strategic Planning & Consultation Committee may delegate tasks to sub-committees. The sub-committees may be composed of people who are not members of the Strategic Planning & Consultation Committee. The Strategic Planning & Consultation Committee shall work in a coordinated manner with the complementary committee contemplated within the Corporation Supply Agreement.

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10. Water Shortage

In the case of a water shortage, the County may impose conservation restrictions on the Corporation's water supply within the Franchise Area. The County shall provide notice of the imposition of the conservation restriction as soon as reasonably possible. The County shall treat each and every one of the County's customers, including the Corporation, 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 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

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- (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 latter 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 County 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, and where applicable subject to the approval of the Alberta Utilities Corporation pursuant to Section 30 of the *Municipal Government Act* R.S.A 2000 c. M-26.

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- (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 County
2001 Sherwood Drive
Sherwood Park, Alberta
T8A 3W7
Attention: Associate Commissioner, I.P.S.
Telephone No.: (780) 464-8050
- (ii) if to the Corporation
c/o 1958 Glenmore Avenue
Sherwood Park, Alberta
T8A 0X5
Attention: Wilf Weinkauff
Telephone No.: (780) 886-2327

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

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(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" - Transmission Lines, Corporation Distribution System & Point of Delivery
Schedule "C" - Rate
Schedule "D" - Mediation Process
Schedule "E" - EPCOR Agreement

(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.

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(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

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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 County's GST number is 122617160 RT0001 and the Corporation's GST number is 825582455 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 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.

STRATHCONA COUNTY

Per: 

MAYOR

Per: 

Director Legislative and Legal

PROPERTIES OF NORTHERN BEAR INC.

Per: 

Wilf Weinkauff
Director/Officer

SCHEDULE "A"

ADDITIONAL SUPPLY TERMS AND CONDITIONS

A. Capacity Commitment/Entitlement

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

1. **Capacity/Flow** – the County will make available to the Corporation up to 30.0 L/s peak day allocation.
2. **Forecasted Capacity** – notwithstanding the forgoing, the capacity utilized and service level received by the Corporation through the County Transmission Line is subject to the forecasting and service level process, as contemplated within Part B of this Schedule below.
3. **Operating Pressure** – subject to the 5 year forecast not exceeding the design capacity of the County Transmission Line, the County will exercise its Best Efforts to provide water pressure to the Point of Delivery as depicted on the following chart:

Minimum Pressure*	Normal Pressure	Maximum Pressure
*150 kPa	180 to 220 kPa	250kPa

** - This is a best efforts objective only, County will not be in default of the contract if operationally the pressure drops below this setting through circumstances beyond the control and/or operational responsibility of the County.*

4. **Peak Operation** – the Corporation will manage their customer demand within the allocated capacity, and the County will manage their flow, in a cooperative fashion not to exceed this peak day allocation.

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 Corporation for any year of the Term will be determined or predetermined, as the case may be, as follows:

1. The Corporation and the County will each prepare their own five year forecast for water demand and submit this forecast to the Strategic Planning & Consultation Committee for the purposes of allowing the capacity allocation to be reviewed and operating strategies or capital upgrades planned, accepted and implemented.
2. On or before October 31 in each year of this Agreement, the Corporation will provide to the County:
 - a. a written forecast of the quantity of Water which the Corporation reasonably expects to require in order to supply the demand of the Corporation's members and customers within the Franchise 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. engineering reports, studies and assessments and other technical information supporting the forecasts, including the Corporation's projections on population growth and expansion of services within the portions of the Franchise Area actually serviced through the arrangements contemplated under this Agreement.
3. On or before March 31 of each year, the Strategic Planning & Consultation Committee 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 County Transmission Line and the Point of Delivery ("Annual Flow") for each of the years covered by the most recent forecasts.

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4. If the Corporation and the County cannot reach agreement on the Annual Flow forecast for any Term year or calendar year pursuant to Section 3 of Part B of this Schedule, the Annual Flow will be the greater of:
 - a. the quantity as last agreed upon by the Corporation and the County for that year, or
 - b. the maximum quantity recorded or reported in any year prior to the period in which an agreement as to forecast volumes for following years has not been reached.
5. Each of the County and the Corporation 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 Corporation and the County 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 Corporation and the County will each exercise sound engineering judgment and, where appropriate, consult with the County or the Corporation, respectively, when reviewing the technical aspects of the Corporation's or the County's forecast.
6. Subject to the terms of this Schedule, if the forecasted Water demand of the Corporation exceeds the capacity allocation of the Corporation as set forth above (as amended from time to time), the County may accept the potential demand requested subject always to the establishment of appropriate arrangements to access or otherwise provided additional capacity within the County Transmission Line and related system. Without in any manner restricting the discretion of the County, the County shall not agree upon any such requested, unless and until:
 - a. the County has obtained all written assurances satisfactory to the County of the availability of the required capacity in accordance with all applicable Service Policies;
 - b. all necessary internal County approvals respecting the proposed additional demand and capacity have been obtained; and
 - c. any and all impacts to the County, the County Transmission Line, and the services provided by the County arising from the proposed additional capacity (including, without restriction, agreement upon any capital expansions, upgrades, or other modifications to the County Transmission Line or the County's operations necessary to accommodate the proposed acquisition or disposal of allocated capacity) have been addressed and agreed upon by the affected parties.

C. 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 Corporation, the County 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 Corporation and the County 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"

TRANSMISSION LINES, CORPORATION DISTRIBUTION SYSTEM & POINT OF DELIVERY



Water enters through the pipe on the West wall, goes upward and bends around pipe to the corner, then flows East through the County meter.

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SCHEDULE "C"

RATES

How the Rate is Determined

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

1. **County and EWSI Rates and Principles** – in a manner consistent with the manner, basis and rate setting principles applied by EPCOR Water Services Inc. ("EWSI"), under the EPCOR Agreement; and
2. **Cost of Service Basis** – notwithstanding the foregoing, on a cost of service basis utilizing the principles set out in the American Water Works Association ("AWWA") manuals of practice dealing with water rates and charges, as revised and updated from time to time, and in accordance with the findings and directives of the Alberta Energy and Utilities Board, now the Alberta Utilities Corporation, through Board and/or Commission Decisions related to EWSI or the County including, without restriction, E95070 and Amending Orders E95072 and U96026;
3. **Amendment** – principles and practices to be applied to determine Rates 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 Corporation, or a successor tribunal or authority;
4. **Current Rate** - as of the date of this Agreement, the current Rate shall be comprised of the following:
 - a. **Fixed Component** - of \$40.00 per registered lot or condominium unit within the Franchise Area; and
 - b. **Variable Component** – of \$2.330/m³ of Water measured at the Meter located within the Northern Bear Reservoir & Pumphouse.
5. **Rate Setting by Council** – subject to the foregoing, the Rates shall be established by Council pursuant to the County's fees and charges bylaw;

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

SCHEDULE "D"

MEDIATION PROCESS

The Corporation and the County acknowledge that in any business relationship a difference of opinion or interpretation or a divergence of interest may arise. The Corporation and the County are committed to resolving any disputes in a non-adversarial, informal and cost efficient manner. Therefore, the Corporation and the County 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 that the Edmonton, Alberta office of KPMG LLP (or its successor organization) select a mediator whose qualifications are appropriate for the dispute to be mediated (the Mediator). The Mediator may not be a partner or employee of KPMG LLP;
 - (b) Within seven 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 Corporation and the County. 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 Corporation or the County 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 Corporation and the County;
 - (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.

SCHEDULE "E"

EPCOR AGREEMENT

30-98

WATER SUPPLY AGREEMENT

STRATHCONA COUNTY ("Customer")

- and -

AQUALTA INC. ("Aqualta")

Introduction:

1. Aqualta currently manages the distribution, treatment and transmission assets of the City of Edmonton Water Department used to provide water service to customers, including regional customers. Aqualta is in the process of acquiring ownership of the assets of the City of Edmonton Water Department.
2. Customer wishes to purchase Water from Aqualta and Aqualta wishes to sell and deliver Water to Customer.
3. Customer and Aqualta recognize that conservation of water resources is an important goal.

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

1. Definitions

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

- (a) **Agreed Variance** means the standard for accuracy for the Meter being tested as specified in the latest edition of the American Water Works Association 700 Series Standards;
- (b) **Agreement** means this Water Supply Agreement including the Introduction clauses, all attached Schedules and all documents produced or delivered according to the terms of this Agreement;
- (c) **Annual Quantity** means for each calendar year the quantity of Water for that year determined according to the provisions of Part 1 of the attached Schedule "A";
- (d) **Aqualta's Representative** means any Vice-President of Aqualta;
- (e) **Cross Connection** means any physical connection to Aqualta's or Customer's Watermains whereby Water may become contaminated;
- (f) **Customer's Boundaries** means the legal boundary of the county or municipality if

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Customer is a county or municipality or, alternatively, the legal boundaries of all of the member municipalities if Customer is a water commission, all as shown or described in the attached Schedule "B";

- (g) **Delivery Pressures** means for each calendar year the Minimum Pressure and the Normal Pressure Range for that year;
- (h) **Equipment** means all necessary valves, pressure and flow controls, associated equipment and pipes with respect to a Meter Chamber. Equipment does not include the Meter;
- (i) **Maximum Daily Quantity** means for each day during a calendar year the maximum quantity of Water for that day determined according to the provisions of Part 2 of the attached Schedule "A";
- (j) **Meter** means the consumption measuring device owned by Aqualta which is located in a Meter Chamber;
- (k) **Meter Chamber** means the physical structure (including the Equipment) which houses the Meter and where Aqualta measures the quantity of Water delivered to Customer. A Meter Chamber is located at each Point of Delivery;
- (l) **Minimum Pressure** means for each calendar year the minimum pressure for delivery of Water at the Point of Delivery for that year determined according to the provisions of the attached Schedule "C";
- (m) **ML** means one million (1,000,000) liters;
- (n) **Normal Pressure Range** means for each calendar year the normal pressure range for delivery of Water at the Point of Delivery for that year determined according to the provisions of the attached Schedule "C";
- (o) **Peak Hour Draw Rate** means the greatest quantity of Water delivered to Customer in a single hour;
- (p) **Points of Delivery** means the places described in the attached Schedule "D" where Water is sold and delivered to Customer by Aqualta;
- (q) **Rate** means the price for Water established from time to time according to the provisions of the attached Schedule "E";
- (r) **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;

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- (s) Water means water which has been treated and is safe for human consumption;
- (t) Watermain means a water pipe line under pressure used to supply or deliver Water.

2. General Terms

- (a) This Agreement may not be assigned without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided however that prior to Aqualta assigning this Agreement:
 - (i) Aqualta shall consult with Customer in respect of any proposed assignment in order to obtain Customer's views and comments in respect of the assignment;
 - (ii) notwithstanding the provisions of paragraph 8(a) of this Agreement, if Customer advised Aqualta in writing during the consultation provided for in paragraph 2(a)(i), above, that Customer was opposed to the proposed assignment and Aqualta assigns the Agreement to a third party, Customer may terminate this Agreement on four (4) years written notice to Aqualta and the third party provided that such notice is received by Aqualta and the third party within six (6) months of Aqualta providing written notice to Customer that Aqualta will be assigning this Agreement to a third party, the written notice from Aqualta to Customer to be provided to Customer prior to Aqualta entering into an agreement to assign this Agreement to the third party; and
 - (iii) nothing in (i) and (ii), above, shall restrict or otherwise limit Aqualta's right to deal with its assets and rights in a manner in which Aqualta determines to be in its best business interest;

provided further that nothing in this paragraph 2(a) shall require Aqualta to obtain Customer's consent to any assignment that occurs in relation to a reorganization of Aqualta's corporate structure, business or affairs involving one or more subsidiaries or affiliates of Aqualta, the City of Edmonton or of any corporation owned by the City of Edmonton.

- (b) This Agreement is for the benefit of and binds the parties and their respective successors and permitted assigns.
- (c) Any term of this Agreement which is determined to be void, unenforceable or illegal will be severed from this Agreement. The remaining terms will be effective and enforceable.
- (d) The headings are for reference only and will not be used to interpret or construe this Agreement.

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- (e) Time is of the essence for every part of this Agreement.
- (f) Any notice, consent or communication required by this Agreement must be in writing and will be delivered by hand or by courier to the following addresses or will be telecopied to the following telecopier numbers, as the case may be:

To Customer at:

2001 Sherwood Drive
Sherwood Park, AB
T8A 3W7
Attention: Associate Commissioner, Operations
Telecopier No.: (403) 464-8050

To Aqualta at:

18th Floor Capitol Square
10065 Jasper Avenue
Edmonton, Alberta
T5J 3B1
Attention: Vice President, Aqualta
Telecopier No.: (403) 412 - 3192

- (g) This Agreement will be governed by and construed according to the laws in force in the Province of Alberta.
- (h) All changes of gender and number will be made where required.
- (i) The Effective Date of this Agreement is upon execution.
- (j) The term of this Agreement is 20 years commencing from the Effective Date. This Agreement may only be renewed by further written agreement between the parties.
- (k) This Agreement is the only agreement between the parties in relation to the subject matter hereof, and supercedes and replaces all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. This Agreement may only be amended or modified by a further written agreement of the parties.
- (l) Aqualta represents and warrants to Customer that it is the duly authorized agent of the City of Edmonton for the purposes of operating, maintaining and managing the distribution, treatment and transmission assets owned by the City of Edmonton used

to supply water to customers, including Customer, and that the covenants contained in this Agreement are binding and enforceable obligations of Aqualta and the City of Edmonton, and that upon the transfer of such assets to Aqualta the covenants contained in this Agreement would continue to be binding and enforceable obligations of Aqualta.

3. Purpose

- (a) Aqualta agrees to sell and deliver Water to Customer according to the terms of this Agreement.
- (b) Customer agrees to buy and accept delivery of Water from Aqualta according to the terms of this Agreement.
- (c) During the term of this Agreement Customer will obtain all of its Water requirements from Aqualta provided that if Aqualta is at any time unable to supply the quantity of Water required by Customer, then Customer must purchase from Aqualta the maximum amount of Water which Aqualta is able to supply and, after giving prior notice to Aqualta, Customer may use an alternate source of supply to supplement its needs, but only until such time as Aqualta is able to supply additional quantities of Water.
- (d) Notwithstanding paragraph 3(c), if Customer and Aqualta reach agreement on a quantity of Water to be the Annual Quantity for a year which is less than the quantity forecast by Customer for that year in accordance with Schedule "A", Customer may provide Aqualta with notice that Customer believes its actual consumption of Water will exceed the quantity agreed on as the Annual Quantity for that year by the quantity set forth in the notice (the "additional quantity") and that Customer therefore objects to the adequacy of the Annual Quantity for that year, provided that such notice is given at the time such agreement is reached, and in that event:
 - (i) Customer may obtain Water for such year from another source, to the extent that Customer's actual consumption of Water exceeds the Annual Quantity for such year, up to the additional quantity of Water for such year (such quantity obtained by Customer being referred to as the "actual additional quantity"); and
 - (ii) Customer may continue in each year thereafter to obtain from that other source of Water a quantity of Water up to the actual additional quantity, and Customer's obligation to obtain all of its water from Aqualta as provided for in paragraph 3(c) in each year thereafter shall be reduced by an amount equal to the actual additional quantity.

Customer will provide Aqualta with such information as Aqualta may reasonably

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request from time to time in respect of Customer's actual consumption of Water.

- (e) (i) Aqualta will use best efforts to:
 - (1) make Water available to Customer each year as required by Customer up to a maximum amount equal to the Annual Quantity for that year;
 - (2) subject to paragraph 3(e)(i)(1), above, make Water available to Customer each day as required by Customer up to a maximum amount equal to the Maximum Daily Quantity for that day;
 - (3) deliver Water to the Points of Delivery at all times during each year at a pressure equal to at least the Minimum Pressure for that year, and for the majority of the time during such year at a pressure falling within the Normal Pressure Range for that year; and
 - (4) avoid situations where it is unable to supply to Customer the quantity of Water required by Customer.
- (ii) Customer and Aqualta will work cooperatively and each of them will use best efforts to manage and control the Peak Hour Draw Rate so as to optimize the operation of the water supply system providing water to Customer under this Agreement.
- (f) Customer will pay for all Water measured by Aqualta at the Points of Delivery.
- (g) Customer will pay for all Water at the Rate established and in effect from time to time in accordance with the attached Schedule E.
- (h) Customer will pay for all Water by monthly payments based upon billings prepared by Aqualta. Aqualta will provide monthly billings to Customer at least 21 days in advance of the due date for payment. If Customer fails to pay by the due date, then Customer must pay the late payment charge specified in the monthly billing.
- (i) Subject to paragraph 3(m), Customer may buy untreated water from sources other than Aqualta.
- (j) Customer will use or resell any or all of the Water bought from Aqualta for the sole purpose of distributing that Water:
 - (i) within Customer's Boundaries; and
 - (ii) outside of Customer's Boundaries, but only to the parties identified in the attached Schedule "F".

- (k) Customer and Aqualta are individually responsible for obtaining, at their sole expense, all necessary consents, approvals or orders from any level of government, board, tribunal, commission 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. Customer and Aqualta will cooperate with each other and will provide reasonable assistance to each other, when requested.
- (l) Customer and Aqualta will not allow or permit any Cross Connections.
- (m) In the event that Aqualta purchases Water from Customer where the Water being purchased has been previously sold to Customer by Aqualta pursuant to the terms of this Water Supply Agreement or Aqualta receives transportation service from Customer through Customer's facilities, the rate applicable to the purchase and sale of such Water or the transportation service, as the case may be, shall be determined in a manner consistent with Schedule "E" to this Agreement.

4. Metering and Supply

- (a) The Meter Chambers have been constructed by Customer at its expense. The location of each Meter Chamber is described in Schedule "D".
- (b) Customer will care for, keep safe, maintain, repair and replace all Meter Chambers.
- (c) The Meter Chambers are Customer's property and all Meters are Aqualta's property.
- (d) Aqualta and Customer may agree to additional Points of Delivery and if they do, then Schedule "D" will be amended.
- (e) Any additional Points of Delivery and required Meter Chambers will be constructed by Customer at its expense and will be Customer's property, provided that all Meters will be purchased and installed by Aqualta at its expense and will be Aqualta's property.
- (f) Any upgrades or modifications to existing or future Meter Chambers (including the Equipment):
 - (i) required solely for Customer, will be completed at Customer's expense, and
 - (ii) required solely for Aqualta, will be completed at Aqualta's expense.
- (g) Aqualta will care for, maintain, repair and replace the Meters.
- (h) Once a year, Aqualta will test all Meters for accuracy. Aqualta will pay for these

tests.

- (i) After notifying Aqualta in writing, Customer may require Aqualta to have a Meter tested for accuracy.
- (j) If at any time a Meter Chamber or a Meter is out of service or is being repaired so that the measurement of the volume of Water being delivered is not being recorded accurately within the Agreed Variance, or if a test determines that a Meter is not registering accurately within the Agreed Variance, the Meter Chamber or Meter shall be repaired or adjusted as soon as practical, the measurement shall be corrected for a period definitely known or agreed upon, or if not known or agreed upon for one-half of the period since the last Meter test, and the measurements shall be determined or adjusted, as the case may be, to correct for the degree of inaccuracy using the best available data in the following priority:
 - (i) by using any check measuring equipment if installed and if accurately registering within the Agreed Variance.
 - (ii) by correcting the error, if the percentage of the error is ascertainable by calibration, test or mathematical calculation; or
 - (iii) by estimating the volume based upon deliveries under similar conditions during a period of time when the Meter Chamber and Meter were working accurately.

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

- (k) Customer will allow Aqualta reasonable access to all Meter Chambers at reasonable times for the purposes of performing its obligations to care for, maintain, repair, replace and test the Meters.

5. Repairs, Maintenance and Replacements

- (a) Aqualta 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 related to the water supply system providing service under this Agreement provided that (i) Aqualta has given Customer at least forty-eight (48) hours prior notice or, in the event of unforeseen circumstances, Aqualta gives notice of such interruption or curtailment as soon as is reasonably possible and (ii) Aqualta acts reasonably in using best efforts to restore services as soon as reasonably possible.

- (b) Aqualta will use best efforts to coordinate the repairs, maintenance, replacement, upgrading and other work referred to in paragraph 5(a), above, with Customer so as to minimize to the extent reasonable the inconvenience to Customer of interruptions and curtailments.
- (c) During periods of interruption or curtailment provided for in paragraph 5(a), above, Aqualta may reduce the level, quality or quantity of service provided to Customer under this Agreement, provided that Aqualta shall treat all of its customers affected by the interruption or curtailment, including Customer, fairly, equitably and without preference, consistent with any operating constraints then in effect. Aqualta and Customer 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.

6. Force Majeure

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

- (a) For the purposes of this Agreement, "force majeure" shall mean any cause not reasonably within Aqualta'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, lightning, 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 Aqualta and which, by the exercise of due diligence, Aqualta is unable to overcome, provided that lack of funds shall not be a cause beyond control.
- (b) Aqualta shall give Customer prompt notice of such circumstances and shall take all reasonable steps to remove such disability. Aqualta shall not be entitled to the benefit of this force majeure clause to the extent the failure to provide Water was caused by Aqualta having failed to remedy the force majeure condition where it was reasonably able to do so and to resume the supply of water with reasonable dispatch.
- (c) Aqualta may impose reasonable restrictions on the delivery of Water, provided that Aqualta shall treat all of its customers affected by the force majeure, including 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

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and conditions as it may deem to be advisable and no delay in making such settlement shall deprive such party of the benefits of this section.

- (e) A force majeure event will merely suspend contractual obligations, and not bring this Agreement or any portion thereof to an end.

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

- (a) Unless the cause is proven to be due directly to the negligence of Aqualta, its employee's or agents, Aqualta will have no liability to Customer 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 Aqualta's water system or an emergency situation regarding any part of Aqualta's water system, and
 - (iii) any accident to or failure of any part of Aqualta's water system;
- (b) Notwithstanding any other provision of this Agreement, neither Customer nor Aqualta 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 for (ii) any indirect, consequential or punitive damages, including loss of profits or revenues or other similar damages.
- (c) Each party (the "indemnifying party") agrees to indemnify and save harmless the other party (the "indemnified party"), its agents and employees from and against any and all damage, injury, loss, costs, causes of action, including legal costs on solicitor and own client basis, and claims suffered or incurred by the indemnified party, its agents or employees which are in any way connected with the performance or nonperformance of this agreement and which are caused either directly or indirectly or contributed to in whole or in part by any act or failure to act of the indemnifying party, its agents and employees, in respect of which indemnifying party, its agents or employees is liable or otherwise responsible in law, provided that such indemnity shall be limited to an amount in proportion to which the indemnifying party, its agents and employees are at fault or otherwise held responsible in law.

8. **Termination, Arbitration and Remedies**

- (a) Either party may terminate this Agreement before the expiry of the original term or any renewed term by giving five (5) years prior written notice of termination.
- (b) If a dispute arises between Customer and Aqualta regarding the interpretation,

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application, operation or breach of this Agreement or any part of it the dispute must be submitted to the dispute resolution process described in the attached Schedule "G" before either party may take any other action or step or pursue any available remedy in relation to the dispute regardless of whether such action, steps or remedy involves the courts, the Alberta Energy and Utilities Board or any successor tribunal or entity, provided however that either party may file a complaint or other document required to be filed with the courts, Board or any successor tribunal or entity and take any other action or step prior to submitting any dispute to the dispute resolution process if such filing, action or step is necessary to preserve its right to pursue the dispute in the event that the dispute resolution process is unsuccessful in resolving the dispute.

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

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

9. **Strategic Planning and Consultation**

- (a) Customer and Aqualta will create and develop a process of planning and consultation. As a first step, the parties agree to the establishment of a joint steering committee (the "Joint Steering Committee"). Initially, the Joint Steering Committee will be composed of:
 - (i) one Customer's representative;
 - (ii) a representative from each of Aqualta's other regional water customers who have signed agreements with Aqualta similar to this Agreement; and
 - (iii) two Aqualta representatives.
- (b) The rules and procedures of the Joint Steering Committee will be established from time to time by it. However:
 - (i) the Joint Steering Committee will meet not less than twice per year;
 - (ii) the role of the chair for each meeting will be rotated among all committee members;
 - (iii) the location of each meeting will be rotated among all committee members.
- (c) The mandate of the Joint Steering Committee is to:

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- (i) enhance communications between and among Aqualta and its regional water customers;
- (ii) analyze and improve operations under this Agreement;
- (iii) 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 or decreases; and
- (iv) provide a forum for the discussion of issues respecting Annual Quantity determinations under Part 1 of the attached Schedule "A", the Delivery Pressures determinations under the attached Schedule "C" and any other concerns respecting the purchase, supply and delivery of water;

provided however that it shall not be necessary for Aqualta or Customer to take any dispute to the Joint Steering Committee prior to submitting the dispute to the dispute resolution process in accordance with section 8(b) of this Agreement. In order to carry out its mandate, the Joint Steering Committee may delegate tasks to sub-committees. The sub-committees may be composed of people who are not members of the Joint Steering Committee.

In witness whereof the parties have signed this Agreement to be effective from and after the Effective Date.

AQUALTA INC.

Per: A. J. Davis

Per: D. A. [Signature]

Date: Nov 24/98

STRATHCONA COUNTY

Per: [Signature]

Per: [Signature]

Date: October 13, 1998

SCHEDULE "A"

PART 1

Annual Quantity

1. Subject to section 2 of this Schedule, Customer and Aqualta agree that the Annual Quantity of Water for the each of the following years shall be the quantity set forth opposite that year:

1998.....	9603 ML
1999.....	9772 ML
2000.....	9928 ML
2001.....	10086 ML
2002.....	10244 ML

2. The Annual Quantity of Water for a calendar year will be determined or redetermined, as the case may be, as follows.
- (a) Prior to November 30th in each year of this Agreement commencing November 30, 1998, Customer will provide to Aqualta:
 - (i) a written forecast of the quantity of Water which Customer reasonably expects to purchase from Aqualta during each of the next five calendar years and which Customer proposes as the Annual Quantity of Water for each of those years (the "forecast"); and
 - (ii) engineering and other information supporting the forecast, including without restriction information regarding Customer's forecast population, business and industrial growth.
 - (b) Prior to July 31st of the following year Customer and Aqualta will meet to review Customer's forecast and review planning issues and Aqualta will give Customer notice as to whether Aqualta agrees with the quantity of Water proposed by Customer as the Annual Quantity of Water for a calendar year as set forth in the forecast.
 - (c) If Aqualta agrees with the quantity proposed by Customer as the Annual Quantity of Water for each calendar years as set forth in a forecast, those quantities will become the Annual Quantity of Water for each of those calendar years.
 - (d) If Aqualta does not agree with the quantity proposed by Customer as the Annual Quantity of Water for any calendar year as set forth in a forecast, Customer and

Aqualta will work together in good faith to reach agreement on the quantity that will be the Annual Quantity of Water for each of the years covered by the forecast.

3. Unless and until Customer and Aqualta reach agreement on a different quantity as the Annual Quantity of Water for a calendar year pursuant to section 2 of this Schedule:
 - (a) in the case of a calendar year set forth in section 1 of this Schedule (a "Scheduled Year"):
 - (i) if Customer and Aqualta have not agreed pursuant to section 2 on a quantity to be the Annual Quantity for that Scheduled Year different than the quantity set forth in section 1, the Annual Quantity will be the quantity set forth opposite that Scheduled Year in section 1; or
 - (ii) if Customer and Aqualta have agreed pursuant to section 2 on a quantity to be the Annual Quantity for that Scheduled Year different than the quantity set forth in section 1, the Annual Quantity will be the quantity last agreed on by Customer and Aqualta for that Scheduled Year;
 - (b) in the case of a calendar year occurring after the last Scheduled Year (a "Non-Scheduled Year"):
 - (i) if Customer and Aqualta have not agreed pursuant to section 2 on a quantity to be the Annual Quantity for that Non-Scheduled Year, the Annual Quantity will be the quantity set forth opposite 2002 in section 1 of this Schedule;
 - (ii) if Customer and Aqualta have agreed pursuant to section 2 on a quantity to be the Annual Quantity for that Non-Scheduled Year, the Annual Quantity will be the quantity last agreed on by Customer and Aqualta for that Scheduled Year;
 - (iii) if Customer and Aqualta have agreed pursuant to section 2 on a quantity to be the Annual Quantity for a Non-Scheduled Year but have not agreed on the quantity to be the Annual Quantity for the Non-Scheduled Year in question, the Annual Quantity for the Non-Scheduled Year in question will be the quantity for the last Non-Scheduled Year for which they reached agreement unless and until Customer and Aqualta reach agreement on a different quantity for the Non-Scheduled Year in question pursuant to section 2.
4. For greater certainty, each of Aqualta and Customer shall act reasonably in preparing and reviewing each forecast, and in all discussions and negotiations in relation to each forecast and the establishment of an Annual Quantity of Water for each year. Customer shall use best efforts in the preparation of each forecast to ensure to the extent reasonably possible that it is not over-estimating or otherwise inflating its Water needs. Aqualta shall exercise sound engineering judgment and, where appropriate, consult with Customer when reviewing the

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technical aspects of Customer's forecast. The parties expressly and explicitly acknowledge and agree that it would be reasonable for Aqualta to refuse to agree to the quantity proposed by Customer for any bona fide reason, including any bona fide economic, legal, regulatory, technical or engineering reason, but that it would be unreasonable and improper for Aqualta to refuse to agree to a quantity proposed by Customer primarily for the purpose of limiting or otherwise controlling the growth of residential, commercial or industrial development with Customer's Boundaries.

PART 2

Maximum Daily Quantity

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

$$\text{Daily Quantity} = (\text{AQ} / 365) * 1.8$$

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

Schedule B

CUSTOMER'S BOUNDARIES

- Strathcona County

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Schedule C

DELIVERY PRESSURES

1. Subject to section 2 of this Schedule, Customer and Aqualta agree that the Delivery Pressures for Water at the Points of Delivery for each of the following years shall be as set forth opposite that year in respect of each such Point of Delivery:

Point of Delivery: Meter Vault located at 3390 – 92 Avenue NW

Year	Minimum Pressure – kPa	Normal Pressure Range-kPa
1998	349	379 - 438
1999	349	379 - 438
2000	349	379 - 438
2001	349	379 - 438
2002	349	379 - 438

Point of Delivery: Meter Vault located at 4701 - 101 Avenue NW

Year	Minimum Pressure - kPa	Normal Pressure Range-kPa
1998	388	407 - 466
1999	388	407 - 466
2000	388	407 - 466
2001	388	407 - 466
2002	388	407 - 466

2. The Delivery Pressures of Water for a calendar year will be determined or redetermined, as the case may be, as follows.
- (a) Prior to November 30th in each year of this Agreement commencing November 30, 1998, Customer will provide to Aqualta such engineering and other information, including without restriction information regarding Customer's forecast population, business and industrial growth, as Aqualta may reasonably request and Aqualta will utilize that information and such other relevant information as Aqualta may have to prepare a written forecast of the pressures for each of the next five calendar years which Aqualta proposes as the Delivery Pressures of Water for each of those years

(the "forecast");

(b) Prior to July 31st of the following year Customer and Aqualta will meet to review the forecast and Customer will give Aqualta notice as to whether Customer agrees with the pressures proposed by Aqualta as the Delivery Pressures of Water for each calendar year as set forth in the forecast.

(c) If Customer agrees with pressures proposed by Aqualta as the Delivery Pressures of Water for each calendar year as set forth in a forecast, those pressures will become the Delivery Pressures of Water for each of those calendar years.

(d) If Customer does not agree with the pressures proposed by Aqualta as the Delivery Pressures of Water for any calendar year as set forth in a forecast, Customer and Aqualta will work together in good faith to reach agreement on the pressures that will be the Delivery Pressures of Water for each of the years covered by the forecast.

3. Unless and until Customer and Aqualta reach agreement on different pressures as the Delivery Pressures of Water for a calendar year pursuant to section 2 of this Schedule:

(a) in the case of a calendar year set forth in section 1 of this Schedule (a "Scheduled Year"):

(i) if Customer and Aqualta have not agreed pursuant to section 2 on pressures to be the Delivery Pressures for that Scheduled Contract Year different than the pressures set forth in section 1, the Delivery Pressures will be the pressures set forth opposite that Scheduled Year in section 1; or

(ii) if Customer and Aqualta have agreed pursuant to section 2 on the pressures to be the Delivery Pressures for that Scheduled Year different than the pressures set forth in section 1, the Delivery Pressures will be the pressures last agreed on by Customer and Aqualta for that Scheduled Year;

(b) in the case of a calendar year occurring after the last Scheduled Year (a "Non-Scheduled Year"):

(i) if Customer and Aqualta have not agreed pursuant to section 2 on the pressures to be the Delivery Pressures for that Non-Schedule Year, the Delivery Pressures will be the pressure set forth opposite 2002 in section 1 of this Schedule;

(ii) if Customer and Aqualta have agreed pursuant to section 2 on the pressures to be the Delivery Pressures for that Non-Scheduled Year, the pressures will be the last agreed on by Customer and Aqualta for that Scheduled Year;

(iii) if Customer and Aqualta have agreed pursuant to section 2 on the pressures

to be the Delivery Pressures for a Non-Scheduled Year but have not agreed on the pressures to be the Delivery Pressures for the Non-Scheduled Year in question, the Delivery Pressures for the Non-Scheduled Year in question will be the pressures for the last Non-Scheduled Year for which they reached agreement unless and until Customer and Aqualta reach agreement on different pressures for the Non-Scheduled Year in question pursuant to section 2.

4. For greater certainty, each of Aqualta and Customer shall act reasonably in providing information, in preparing and reviewing each forecast and in all discussions and negotiations in relation to each forecast and the establishment of Delivery Pressures for each year. Customer shall use best efforts to provide accurate and reliable engineering and other information to Aqualta. Aqualta shall use best efforts to prepare a reasonable forecast that takes all relevant considerations into account. Aqualta shall exercise sound engineering judgment and, where appropriate, consult with Customer when reviewing the engineering and other information provided by Customer. The parties expressly and explicitly acknowledge and agree that it would be reasonable for Aqualta to refuse to propose or agree to Delivery Pressures for any bona fide reason, including any bona fide economic, legal, regulatory, technical or engineering reason, but that it would be unreasonable and improper for Aqualta to refuse to propose or agree to Delivery Pressures primarily for the purpose of limiting or otherwise controlling the growth of residential, commercial or industrial development with Customer's Boundaries.

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Schedule D

POINTS OF DELIVERY AND METER CHAMBERS

- Meter Vault located at approximately 3390 – 92 Avenue NW.
- Meter Vault located at approximately 4701 – 101 Avenue NW.

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Schedule E

HOW THE RATE IS DETERMINED

Rates will be calculated on a cost of service basis utilizing the principles set out in the American Water Works Association (AWWA) manuals of practice dealing with water rates and charges, as revised and updated from time to time, and in accordance with the findings and directives of the Alberta Energy and Utilities Board through Board Decision E95070 and Amending Orders E95072 and U96026.

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

Notwithstanding anything contained in this Schedule or in the Agreement (to which this Schedule is attached), the principles and practices used to determine Rates may be changed as a result of negotiated agreement between Aqualta and Customer or as a result of either party exercising its rights under the applicable legislation in effect at that time.

Schedule F

**PARTIES TO WHOM CUSTOMER
MAY RESELL AQUALTA'S WATER
OUTSIDE OF CUSTOMER'S BOUNDARIES**

- Capital Region Northeast Water Services Commission.
- Highway 14 Water Commission
- Josephburg Water Co-op

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Schedule G

DISPUTE RESOLUTION PROCESS

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

1. Customer and Aqualta will attempt to resolve any dispute through direct negotiation.
2. Failing successful negotiation they will resort to mediation as follows.
 - (a) Either party may by written notice to the other request that the Edmonton, Alberta office of a nationally recognized Chartered Accounting firm select a mediator whose qualifications are appropriate for the dispute to be mediated (the Mediator). The Mediator may not be a partner or employee of the accounting firm.
 - (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 Customer and Aqualta. Each representative must have authority to agree to a resolution of the dispute.
 - (c) Subject to paragraph 8(b) of the Agreement, for a 45 day period of time from the written notice requesting the selection of a mediator, neither Customer nor Aqualta 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 Customer and Aqualta.
 - (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 proceeding.