

The City of Calgary

Water Supply Agreement with the Town of Strathmore

May 4, 2016

Alberta Utilities Commission
Decision 21356-D01-2016
The City of Calgary
Water Supply Agreement with the Town of Strathmore
Proceeding 21356

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The City of Calgary **Decision 21356-D01-2016**
Water Supply Agreement with the Town of Strathmore **Proceeding 21356**

1 Introduction and background

1. On February 22, 2016, The City of Calgary filed an application with the Alberta Utilities Commission requesting approval of a potable water supply agreement between Calgary and the Town of Strathmore, pursuant to Section 30(1) of the *Municipal Government Act*. The water supply agreement, attached as Appendix 2 to this decision, contemplates Calgary providing potable water servicing to Strathmore for a term of 20 years, expiring December 22, 2035.

2. The Commission issued notice of the application on the Commission's website on February 24, 2016, and advertised in the Calgary Sun and Calgary Herald on March 1, 2016, and in the Strathmore Standard and Strathmore Times on March 2 and March 4, 2016, respectively. Interested parties were to register any concerns or support with respect to the application by March 15, 2016.

3. The Commission received a statement of intent to participate (SIP) from the Tsuut'ina Nation, Mr. Gordon Case, Ms. Susan Nelson and Ms. Maureen Bell, counsel for Water Rights Inc., on behalf of an undisclosed client. Ms. Bell requested confidential treatment of her client's identity

4. In a March 21, 2016 ruling, the Commission denied Ms. Bell's request for confidential treatment of her client's identity and determined that a SIP from Ms. Bell's client would only be considered if their identity was disclosed. Ms. Bell's client was granted the opportunity to file a SIP. On April 4, 2016, Ms. Bell's clients, Mr. Bruce McAllister and Rocky View 2020, filed their SIPs.

5. In order to assess whether parties that filed SIPs would receive standing, and thereby be permitted to participate in the proceeding, the Commission requested that the Tsuut'ina Nation, Ms. Nelson, Mr. Case and Ms. Bell's client describe how they would be directly and adversely affected if the agreement were approved. The Commission received responses on April 4, 2016.

6. The Commission afforded Calgary the opportunity to comment on the requests for standing, and Calgary filed its comments on April 11, 2016.

7. On April 13, 2016, the Tsuut'ina Nation filed a letter with the Commission indicating they were withdrawing their SIP.

8. In an April 13, 2016 ruling, the Commission denied standing to Mr. Case, Ms. Nelson, Mr. McAllister and Rocky View 2020. The Commission indicated that no further process was required to deal with this application, and that it would proceed to issuing its decision. The Commission considers that the close of record for this proceeding was April 13, 2016.

9. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. 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 The application

10. Calgary provides potable water servicing to Strathmore, and has done so since 2009 in accordance with several servicing agreements entered into between Calgary and Strathmore. These agreements have all expired and as a result Calgary and Strathmore have entered into the water supply agreement. Because the term of the water supply agreement is greater than five years, it must be approved by the Commission, pursuant to Section 30(1) of the *Municipal Government Act*.

11. Calgary advised that the water supply agreement was negotiated over the course of two years, and during the negotiations, Strathmore was represented by their own administration, their own outside legal counsel and their own engineering consultants.

12. Calgary made the following declarations about the water supply agreement:

a) The supply of potable water committed to under the Water Supply Agreement is necessary and proper for the public convenience and properly conserves the public interest.

b) The provision of potable water to Strathmore, under the provisions of the Water Supply Agreement is reasonable for the residents of The City by recovering the full costs of service, and benefits the customers of Strathmore by providing for cost effective and secure source of potable water.

c) The City discussed the Water Supply Agreement with The City's Council and the Calgary City Council understands the reasons for the same and is in agreement with them.

d) Strathmore discussed the Water Supply Agreement with the Council of Strathmore and Strathmore Council understands the reason for the same and is in agreement with them.[1]

3 Commission findings

13. Under Section 30(1) of the *Municipal Government Act*:

> 30(1) If a council proposes to make an agreement to supply water, steam or fuel to a public utility for a period that, with rights of renewal, could exceed 5 years, the agreement must be approved by the Alberta Utilities Commission before it is made.

[1] Exhibit 21356-X0001, page 2.

14. The Commission has reviewed the water supply agreement and has no material concerns with it. Based on its review and considering the declarations made by Calgary as quoted above, the Commission finds that the water supply agreement between Calgary and Strathmore is necessary and proper for public convenience and properly conserves the public interest. The Commission therefore approves the water supply agreement filed in Proceeding 21356, subject to the terms and conditions contained in the water supply agreement, for a term of 20 years, expiring December 22, 2035.

Dated on May 4, 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
The City of Calgary

Alberta Utilities Commission

Commission panel
N. Jamieson, Commission Member

Commission staff
J. Graham (Commission counsel)
C. Malayney
C. Burt
D. Mitchell

Appendix 2 – Water supply agreement

(return to text)



Appendix 2 - Water supply agreement

(consists of 68 pages)

MASTER SERVICING AGREEMENT

BETWEEN:

THE TOWN OF STRATHMORE, a municipal corporation
in the Province of Alberta (hereinafter called the "**Customer**")

-and-

THE CITY OF CALGARY, a municipal corporation
in the Province of Alberta (hereinafter called "**The City**")

MASTER SERVICING AGREEMENT

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THIS AGREEMENT dated as of the ___ day of _____, 20__.

MASTER SERVICING AGREEMENT

BETWEEN:

THE TOWN OF STRATHMORE
, a municipal corporation
in the Province of Alberta (hereinafter called the "**Customer**")

-and-

THE CITY OF CALGARY, a municipal corporation
in the Province of Alberta ("**The City**")

WHEREAS The City, pursuant to s. 54 of the Municipal Government Act, is empowered to supply Potable Water to another municipality;

AND WHEREAS the Customer is responsible for distributing Potable Water to its residents and desires to have an adequate supply of Potable Water for that purpose;

AND WHEREAS The City agrees to provide Potable Water to the Customer via the works of The City;

AND WHEREAS City Council must approve all new Potable Water Servicing outside City limits;

AND WHEREAS on June 16, 2014 and October 27, 2014, City Council passed resolutions which authorized the City's administration to enter into a new Master Servicing Agreement with the Customer for the supply of Potable Water;

AND WHEREAS on July 22, 2015 the municipal Council for the Customer passed a resolution which authorizes the Customer's administration to enter into a new Master Servicing Agreement with the City for the supply of Potable Water;

AND WHEREAS the City and the Customer intend to enter into a long term commitment for the supply of Potable Water of up to Twenty (20) years, and the City in principle is committed to providing for the current and future growth Servicing needs of the Customer, subject to the terms, covenant and conditions contained within this Agreement;

AND WHEREAS the City of Chestermere is partially serviced with Potable Water from The City via the East Calgary Regional Water Line which is owned and operated by the Town of Strathmore. There are separate agreements between the Town of Strathmore and the City of Chestermere for the operation and maintenance of that line.

NOW THEREFORE, IN CONSIDERATION OF the hereinbefore recited premises and mutual covenants of the Parties hereto, **THIS AGREEMENT WITNESSETH THAT THE PARTIES HERETO COVENANT AND AGREE AS FOLLOWS:**

ARTICLE 1
INTERPRETATION

1.1 Definitions. In this Agreement, unless the context otherwise requires, the terms set out below shall have the following meanings:

(a) "**Agreement**" means this Master Servicing Agreement together with the Schedules attached hereto and made a part hereof, all as amended, supplemented or modified from time to time in accordance with the provisions hereof.

(b) "**Applicable Law**" means, in relation to any Person, transaction or event contemplated by this Agreement, all applicable provisions of laws, statutes, rules, regulations, by-laws, official directives and orders of and the terms of all judgments, orders and decrees issued by any Authorized Body by which such Person is bound or having application to the transaction or event in question.

(c) "**AUC**" or the "**Alberta Utilities Commission**" as created by the *Alberta Utilities Commission Act*, SA 2007, C. A-17.2, and the regulations established under the Act, as amended from time to time, and includes any successor entity having all or any part of the jurisdictions and authorities of the AUC.

(d) "**Arbitration Act**" means the *Arbitration Act*, R.S.A. 2000, c. A-43.

(e) "**Authorized Body**" means, in relation to any Person, transaction or event, any:

(i) federal, provincial, municipal or local governmental body (whether administrative, legislative, executive or otherwise, but excluding any Change of Law by either of the Parties themselves);

(ii) agency, authority, commission, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government;

(iii) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions; and

(iv) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing;

in each case having jurisdiction over such Person, transaction or event.

(f) "**Business Day**" means any day that is not a Saturday, Sunday or statutory holiday recognized by Canada or the Province of Alberta.

(g) "**Change of Law**" means

(i) the enactment or issuance by an Authorized Body of any law, license or permit,

(ii) the amendment repeal or withdrawal of any law, license or permit, or

(iii) any change that comes into effect after the effective date of this Agreement, and which has material impact on a Party's obligations hereunder.

For the purposes of this definition, law means all applicable federal or provincial statutes, regulations rules, codes or permits, but excludes municipal bylaws, rules, codes or permits. For the purposes of this definition Authorized Body excludes the City of Calgary or any municipal authority.

(h) "**City Council**" means the duly elected Council of The City of Calgary.

(i) "**City Imposed Rate**" means the rates assigned by City Council, as set out in the *Water Utility Bylaw,* subject always to the rate principles contained within Schedule "E".

(j) "**City Required Approvals**" means any and all approvals required by The City under Applicable Law to give effect to this Agreement including the approval pursuant to Section 66(1) of the *Environmental Protection and Enhancement Act* (Alberta).

(k) "**Claim**" means a claim or cause of action in contract or in tort, under any Applicable Law or otherwise.

(l) "**Contract Year**" means a 12 month period during the Term hereof beginning on January 1 and ending on December 31.

(m) **"COSS"** means:

(i) in respect of the establishment of the City Imposed Rate during the first Four (4) years of the Term, that certain cost of service study dated July 31, 2014, prepared by FCS Group; and

(ii) in respect of the establishment of the City Imposed Rate during any period following the first Four (4) years of the Term, that certain cost of service study that is based upon a consultative review by the Parties from time to time providing service in accordance with the provisions of Schedule "E".

(n) "**Cross Connection**" means any temporary, permanent or potential water connection that allows or may allow the flowing back or reversal of the normal direction of flow in the Waterworks System.

(o) "**Customer Required Approvals**" means any and all approvals required by the Customer under Applicable Law to give effect to this Agreement including the approval pursuant to Section 66(1) of the *Environmental Protection and Enhancement Act (Alberta).*

(p) "**Default Interest Rate**" means the rate of interest, expressed as an annual rate of interest, quoted from time to time by Royal Bank of Canada, main branch, Calgary, Alberta as the rate then in effect for determining interest rates on Canadian dollar commercial loans to its most credit worthy customers in Canada, plus two (2%) percent.

(q) "**Director**" means The City employee appointed to the position of Director, Water Resources, or the individual designated to act in the Director's place.

(r) **"Dispute Resolution Procedure"** means the procedure established under Article 14 for resolving disputes arising under this Agreement.

(s) "**Effective Date**" means the date of January 1, 2015.

(t) "**Emergency**" means an unforeseen combination of circumstances that calls for immediate action without time for full deliberation, including, but not limited to, events that cause harm or the risk of harm to property and/or the health, safety or welfare of persons.

(u) "**Emergency Management Plan**" means that certain plan contemplated within Schedule "F", as amended from time to time by the Parties by agreement in writing.

(v) "**Environment**" means the components of the earth and includes ambient air, land, surface and sub-surface strata, groundwater, surface Potable Water, all layers of the atmosphere, all organic and inorganic matter and living organisms, and the interacting natural systems that include such components.

(w) "**Force Majeure**" means any cause not reasonably within the control of any Party to this Agreement including, without limitation:

(i) Acts of God;

(ii) Strikes, lockouts or other industrial disturbances generally affecting an industry, or a significant sector of that industry, required for the provision of Potable Water to, and the acceptance of Wastewater from, the Customer as contemplated within this Agreement, and excluding such strikes, lockouts or disturbances within the City's labour forces alone; or

(iii) Acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, storms, subsidence, floods, high waters, washouts, orders or acts of civil or military authorities, and civil disturbances;

but excluding any such events to the extent caused by:

(i) Lack of financial resources of the Party claiming the Force Majeure;

(ii) Negligent act or omission or wilful misconduct of the Party claiming a Force Majeure; or

(iii) Default of the performance of any obligation of the Party claiming a Force Majeure under this Agreement, Applicable Laws or regulatory requirements.

(x) "**L/m**" means litres per minute.

(y) "**Liabilities**" means any and all liabilities and obligations, whether under common law, in equity, under Applicable Law or otherwise; whether tortious, contractual, vicarious, statutory or otherwise; whether absolute or contingent; and whether based on fault, strict liability or otherwise.

"**Licenses**" means the documents issued to the City by the Province granting entitlement to withdraw raw water, to be used in the production of Potable Water, from the Bow River or Elbow River or both. The specific licences are:

(i) licence no. 08834 issued to the City by the Province of Alberta ("**Licence 08834**");

(ii) licence no. 14568 issued to the City by the Province of Alberta ("**Licence 14568**"); and

(iii) licence no. 08835 issued to the City by the Province of Alberta ("**Licence 08835**");

all as may be amended, renewed or replaced from time to time.

(z) "**Losses**" means, in respect of a Person and in relation to a matter, any and all losses, damages, costs, expenses, charges (including all penalties, assessments and fines) which such Person suffers, sustains, pays or incurs in connection with such matter and includes reasonable costs of legal counsel (on a solicitor and client basis) and other professional advisors and consultants and reasonable costs of investigating and defending Claims arising from the matter, regardless of whether such Claims are sustained and also includes taxes other than income taxes on any settlement payment or damage award received by such Person in respect of such matter.

(aa) "**Maximum Annual Flow**" means the maximum volume of Potable Water drawn 365 days in ML between January 1 and December 31 of each year, as further described in Schedule "D".

(bb) "**Maximum Daily Flow**" means the maximum volume of Potable Water drawn, over a twenty-four (24) hour period from midnight to midnight at any point throughout the year in MLD, as further described in Schedule "D".

(cc) "**Maximum Instantaneous Flow**" means the maximum flow of Potable Water drawn, in litres per minute, at any given time, as further described in Schedule "D". At no point is this to exceed the design capacity of the accepting pipe.

(dd) "**ML**" means megalitres or million litres.

(ee) "**MLD**" means ML per day.

(ff) "**Municipal Government Act**" means the *Municipal Government Act*, R.S.A. 2000, c. M-26.

(gg) "**OIML**" means The International Organization of Legal Metrology

(hh) "**Outage**" means:

(i) a shut off or decrease in flow of Potable Water to the Customer at the Potable Water Delivery Point, whether planned or unplanned and for any reason whatsoever, which exceeds or may reasonably be expected to exceed four (4) hours and results in a flow of Water below the then current Servicing needs/demand of the Customer; or

(ii) "**Parties**" means The City and the Customer and "**Party**" means either of them.

(jj) "**Payment Date**" has the meaning attributed to it in Section 8.2.

(kk) "**Person**" means an individual, partnership, body corporate, unincorporated association, unincorporated syndicate, unincorporated organization, trustee, executor, administrator or other legal representative, Authorized Body or other legal entity, as the case may be, and includes a Party.

(ll) "**Pipeline Right of Way**" means all easements, rights of ways, licences, crossing agreements and other similar agreements that are required to allow, for each Party, respectively, to construct, operate, repair, maintain, replace, inspect or otherwise access their respectively owned and operated portions of the Regional Water Transmission Line(s).

(mm) "**Potable Water**" means Potable Water that is supplied by a Waterworks System and is used for drinking, cooking, dishwashing or other domestic purposes which requires Potable Water that is suitable for human consumption and which, at a minimum, meets criteria set forth in Section 6(1) of the *Potable Water Regulation*, AR 277/2003, as amended or replaced from time to time, and the criteria set forth at Section 4.2(c).

(nn) "**Potable Water Delivery Point**" means the point where The City owned Regional Water Transmission Line(s) connects to the Customer owned Regional Water Transmission Line(s), as more particularly described in Schedule "B".

(oo) "**Regional Customers**" means the collective users of wholesale Potable Water services, as the case may be, provided by the City which are located outside of the City of Calgary including, without restriction, the Customer (individually or collectively).

(pp) "**Regional Water Meter Design Guidelines**" means The City's guidelines for design of Water Meters for the Customer, as approved from time to time by the Director with consultation with the Customer, which guidelines shall be consistent with generally accepted industry practice.

(qq) "**Regional Water Transmission Line**" means the pipeline that carries Potable Water from the City to the Regional Customers and any additions, alterations, replacements or expansions made thereto from time to time.

(rr) "**Representatives**" means a Party's directors or officials, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents and those of its Affiliates and the agents and advisors of such Persons.

(ss) "**Service Area**" means the area contained within the municipal boundaries of the Customer, as amended from time to time, which as of the date of this Agreement is shown within Schedule "A".

(tt) "**Servicing**" means the Potable Water, as provided to the Customer by The City.

(uu) "**Term**" means the term of this agreement, as set forth within Section 2.1 of this Agreement.

(vv) "**Third Party**" means a person other than the Parties and their respective Representatives.

(ww) "**Water Meter**" means a City owned revenue class metering device as is suitable, according to the Director, for billing and measurement of Potable Water delivered by The City to the Customer's Regional Water Transmission Lines at the Potable Water Delivery Point.

(xx) "**Water Meter Accuracy Limit**" means the standard for accuracy that a new or in service Water Meter achieves. Water meters on Regional Water Transmission Lines are to meet OIML R49 Class 2 accuracy.

(yy) "**Water Meter Station**" means the structure, piping valves, electrical, data communication systems and all associated facilities designed and intended to house a Water Meter, excluding the actual meter.

(zz) "**Water Resources**" means The City's Water Resources Business Unit.

(aaa) "**Water Shortage**" means times when potable water availability is reduced due to drought, operational maintenance or emergency.

(bbb) "***Water Utility Bylaw***" means *Potable Water Utility Bylaw Number 40M2006*, being a bylaw of The City to regulate Potable Water as revised, amended or replaced from time to time.

(ccc) "**Waterworks System**" has the meaning attributed to it in the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, as amended from time to time.

1.2 Schedules. The following Schedules are attached hereto and shall form part of this Agreement:

Schedule "A" Service Area

Schedule "B" Potable Water Infrastructure

Schedule "C" Meter Locations

Schedule "D" Water Flow Rates

Schedule "E" Rate Principles

Schedule "F" Emergency Notification, Service Interruption & Emergency Management Plan

1.3 Interpretation. In this Agreement, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) reference to any Person includes any successor or assignee of such Person that is permitted under this Agreement;

(c) reference to a Person in a particular capacity excludes such Person in any other capacity;

(d) reference to any gender includes all genders;

(e) a grammatical variation of a defined term has a corresponding meaning;

(f) reference to any agreement, document or instrument means such agreement, document or instrument as amended, restated or modified and in effect from time to time in accordance with the terms thereof;

(g) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or re-enactment of such section or other provision;

(h) references to an Article, Section or Schedule by number or letter or both refer to this Agreement;

(i) "Agreement", "this Agreement", "herein", "hereby", "hereunder", "hereof", "hereto" and words of similar import are references to the whole of this Agreement and not, unless a particular Section or Article thereof is referred to, to any particular Section or Article;

(j) "including" means including without limiting the generality of any description preceding or succeeding such term and, for purposes hereof, the rule of *ejusdem generis* shall not

be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned;

(k) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding";

(l) any reference to dollars means Canadian dollars;

(m) at the option of the payor, all payments made pursuant hereto may be made by cheque, certified cheque or bank draft to the relevant Party's address for service or by wire transfer or electronic funds transfer to such account with a Canadian chartered bank as may be designated in writing from time to time by the relevant Party;

(n) a reference to time or date is a reference to the time or date in effect in Alberta, taking into account the *Daylight Saving Time Act* (Alberta);

(o) a reference to a day is a reference to a period of time commencing at midnight and ending the following midnight;

(p) a reference to a month is a reference to a calendar month; and

(q) where any payment or calculation is to be made, or any other action is to be taken, on or as of a day that is not a Business Day, that payment or calculation is to be made, or that other action is to be taken, as applicable, on or as of the next following Business Day.

1.4 **Headings**. The division of this Agreement and the recitals, table of contents and headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

1.5 **No Drafting Presumption**. This Agreement was negotiated by the Parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof or thereof.

ARTICLE 2
TERM, TERMINATION and RENEWALS

2.1 **Term**. This Agreement is effective upon the Effective Date and, subject to earlier termination in accordance with Section 2.2 and renewal in accordance with Section 2.4, shall continue for a period of five (5) years. If the AUC approves this Agreement in accordance with the requirements of Section 30 of the Municipal Government Act, the term shall automatically be amended to be a total of twenty (20) years from the date of execution.

2.2 **Termination of Agreement**. The City's supply of Potable Water and Customer's obligations in relation to this Agreement will terminate upon:

(a) the expiration of one hundred and eighty (180) days from the date of delivery by the Customer to the City of a written termination notice, at any time prior to the City

committing to the long term growth of volumes and flow rates for the supply of Potable Water, within Schedule "D" as contemplated in Section 4.1(g) for the full balance of the Term of this Agreement;

(b) the expiration of five (5) years from the date of delivery by one Party to the other of a written termination notice, or such other period as the Parties may otherwise agree upon;

(c) the mutual written agreement of the Parties at any time;

(d) or such period prescribed by a decision or enactment of an Authorized Body which prohibits:

the Customer's ability to use, or The City's ability to provide, Potable Water as contemplated within this Agreement, provided that any applicable appeal or review periods in respect of such decision or enactment have expired, and provided that the operation of the provisions of Article 12 and 14 have failed to resolve the impasse created.

2.3 **Survival**. Except as otherwise provided, the termination or expiry of this Agreement shall not release any Party from any liability, which arose or accrued hereunder prior to or on such termination or expiry. Notwithstanding the expiration or termination of this Agreement, the provisions of Section, 3.5, Article 11 and Article 12 shall survive for such period as necessary to give effect thereto.

2.4 **Renewals.** Except as otherwise provided, subject to the extension of the Term to a total of twenty (20) years in accordance with Section 2.1 the Parties agree to meet five (5) years in advance of the expiry of the Term or any renewal thereof to negotiate a renewal of this Agreement.

ARTICLE 3
CUSTOMER AND CITY REQUIRED APPROVALS

3.1 **Customer Required Approval.** The Customer shall be responsible at its sole cost and expense for obtaining any and all necessary Customer Required Approvals required for the Servicing to be provided to the Customer.

3.2 **City Required Approval.** The City shall be responsible at its sole cost and expense for obtaining any and all necessary City Required Approvals required for the Servicing to be provided to the Customer.

3.3 **Efforts to Satisfy Approvals**. The Customer and the City shall use commercially reasonable efforts to cause the Customer Required Approvals and the City Required Approvals, respectively, to be obtained in satisfaction of the requirements set forth within Sections 3.1 and 3.2, respectively. Each Party shall provide such expertise, information and co-operation to the other Party as they may reasonably request in connection with the satisfaction of such obligations. For greater clarification the Customer's or The City's use of commercially reasonable efforts to satisfy the obligations set forth in Sections 3.1 and 3.2 respectively shall not extend beyond exhaustion of all available appeals by the Customer or The City, as the case may be, to any

statutory regulatory appeals process under Applicable Law of a refusal by an Authorized Body to grant an approval required by the Customer or The City, as the case may be, or the imposition of conditions of approval by an Authorized Body to an approval required by the Customer or The City, as the case may be, that are unsatisfactory to the applicable Party acting reasonably.

3.4 **Failure to Obtain Approvals.** If any Customer Required Approval or City Required Approval required pursuant to Sections 3.1 or 3.2, respectively, has not been obtained, on or before the date(s) required therefore under the Applicable Law, the respective Party who has failed to obtain the required approval may terminate the provision of the affected portion of the Servicing in accordance with Section 2.2 by written notice to the other; provided that, notwithstanding anything to the contrary express or implied herein, a Party shall not be entitled to exercise any right of termination pursuant to this Section 3.4 if the condition not met is due to the failure of that Party to perform or observe in any material respect any of the covenants and obligations to be performed by that Party in Article 3.

3.5 **Effect of Termination.** If this Agreement or the provision of Servicing is terminated by a Party as permitted under Section 3.4 and such termination results from the failure of the other Party to perform or observe in any material respect any of the covenants and obligations to be performed by such other Party in Section 3.4, notwithstanding anything herein to the contrary, such other Party shall not be released from such failure and any and all Losses, Liabilities and Claims suffered, sustained, paid or incurred by the terminating Party as a result thereof.

ARTICLE 4
POTABLE WATER SUPPLY

4.1 **Pressure & Flow Rates.** The following conditions apply to Customer pressure and flow rates:

(a) The City shall make Potable Water available at the Potable Water Delivery Point in the volumes and flow rates identified in Schedule "D" throughout the Term, regardless of the actual amounts supplied hereunder. Subject to the application of the penalties contemplated within Section 4.2(b), the Customer will not exceed the volumes and flow rates identified in Schedule "D".

(b) Subject to Article 9, in the event the Customer exceeds the flow rates identified in Schedule "D", the penalties for flows exceeding the flow rates identified in Schedule "D" may be added to bills as follows, at the discretion of the Director:

(i) upon the Customer exceeding the Maximum Instantaneous Flow of Potable Water delivered for a sustained period of greater than 15 minutes (excluding instances of transient flow rates as the result of pump start-ups), a Maximum Instantaneous Flow penalty of up to $2 per capita per day based on the most recent census, to a maximum of $100,000.00 as determined by the Director, acting reasonably, and payable for each twenty four (24) hour period within which the Maximum Instantaneous Flow is exceeded.

(ii) Maximum Daily Flow penalty:

(A) shall apply upon the Customer exceeding the Maximum Daily Flow of Potable Water delivered by greater than 5%, a penalty equal to up to

1.25 times the fixed rate component of the City's water rate applicable to the number of days within such billing period that the flow exceeding the Maximum Daily Flow by such 5%;

(B) shall apply upon the Customer exceeding the Maximum Daily Flow of Potable Water delivered by greater than 10%, a penalty equal to up to 1.5 times the fixed rate component of the City's water rate applicable to the number of days within such billing period that the flow exceeding the Maximum Daily Flow by such 10%; and

(C) when applicable, shall be calculated as follows:

Penalty = [# days exceeding / 365] x [Volume Exceeded in m^3] x [Fixed unit rate in $\$/m^3$ based on Max Day Capacity] x [penalty of 1.25 or 1.5]

provided always that any Maximum Daily Flow penalty calculated as aforesaid shall be reduced by the amount of Maximum Instantaneous Flow penalty assessed and paid by the Customer during the same period of calculation of the Maximum Daily Flow penalty.

(iii) Maximum Annual Flow penalty:

(A) shall apply upon the Customer exceeding the Maximum Annual Flow by greater than 5%, a penalty equal to up to 1.25 times the fixed rate component of the City's water rate applicable to the Contract Year in which the Maximum Annual Flow is exceeded;

(B) shall apply upon the Customer exceeding the Maximum Annual Flow by greater than 10%, a penalty equal to up to 1.5 times the fixed rate component of the City's water rate applicable to the Contract Year in which the Maximum Annual Flow is exceeded; and

(C) when applicable, shall be calculated as follows

Penalty = [Volume Exceeded in m^3] x [1/365] x [Fixed unit rate in $\$/m^3$ based on Max Day Capacity] x [penalty of 1.25 or 1.5]

provided always that any Maximum Annual Flow penalty calculated as aforesaid shall be reduced by the amount of Maximum Daily Flow penalty assessed and paid by the Customer during the same period of calculation of the Maximum Annual Flow penalty.

(c) Notwithstanding the foregoing, the requirement for payment of the above-noted penalties shall not apply, and will be waived in full, where the exceedance of the Maximum Instantaneous Flow, Maximum Daily Flow, or the Maximum Annual Flow results from the occurrence of an Emergency.

(d) Without prejudice to the foregoing, Customers may at any time apply to the Director for an exemption for special circumstances, but the decision to waive any penalties will be at the discretion of the Director.

(e) When and where penalties apply, the Customer is subject to the penalties even if no system damage occurs.

(f) Penalties will be billed to the Customer by way of an invoice from Water Resources. Payment options will be negotiated at the discretion of the Director.

(g) Changes to the Potable Water flow rates for each four (4) year window identified in Schedule "D" will be subject to review and revision as mutually agreed upon by the Parties in the third year of the prior window. Such changes will be part of the mutual planning exercises, as set out in Section 5.2. City Administration's recommendation to City Council for changes to Potable Water volumes and flow rates will be:

(i) subject to the Customer first providing updated population and flow rate estimates for each of the years within the subject four (4) year window;

(ii) set in accordance with The City's Water Resources' long range infrastructure planning criteria incorporating the Customer's updated population estimates, development planning and conservation efforts;

(iii) presented for review by the Customer not later than six (6) months prior to the expiration of the then current four (4) year window, or within sixty (60) days of the Customer providing its updated population estimates as required above, whichever is later; and

(iv) reflected within Schedule "D", which will be amended as required, upon mutual agreement of the Parties;

(h) Volumes and flow rates, as indicated in Schedule "D", are only guaranteed up to the Potable Water Delivery Point.

(i) Water pressure at the Potable Water Delivery Point shall be the pressure available in The City of Calgary's Waterworks System. Requirements for booster pumping facilities beyond the Potable Water Delivery Point shall be at the cost of the Customer.

(j) The Maximum Instantaneous Flow shall not exceed the design capacity of the applicable Regional Water Transmission Line(s).

(k) The City shall provide Maximum Day Flow only. The Customer will be responsible for meeting the peak hour demands, fire flow demands and specific pressure requirements within the Customer's Waterworks System.

(l) In the absence of sufficient information outlining specific flows for each specific Regional Customer, the City will split the penalties equally between the appropriate

Regional Customers who share a Regional Water Transmission Line unless the Regional Customers can prove otherwise, all at the discretion of the Director.

4.2 Potable Water Quality.

(a) The quality supplied by The City to the Customer at the Potable Water Delivery Point shall be that quality available in The City of Calgary's Waterworks System, and in compliance with all Applicable Law.

(b) The Customer shall ensure that chlorine residuals meet the applicable human health standards for Potable Water within the Customer's Waterworks system.

(c) Except in the case of an Emergency resulting from the occurrence of an event of Force Majeure, the Potable Water quality at the Potable Water Delivery Point will meet requirements of all Applicable Law including all Provincial and Federal regulatory standards. In the event that any Potable Water does not meet such quality specifications, The City must immediately take all reasonable steps to diligently rectify any Potable Water quality deficiencies.

(d) Upon the occurrence of an Emergency including, without restriction, the occurrence of an event or cause resulting in the Potable Water quality at the Potable Water Delivery Point falling below the above-noted required standards, the City shall:

(i) immediately notify the Customer of:

(A) the nature, extent, cause, and anticipated duration of the Emergency and the below standard quality of Potable Water;

(B) the response by The City required in order to accommodate the below standard quality of Potable Water; and

(C) the remedial plan of action being taken by The City to resolve and remedy the below standard quality of Potable Water including, without restriction, the remedial actions contemplated within the Emergency Management Plan;

in accordance with the notifications provisions contained within Schedule "F";

(ii) immediately commence and diligently perform the remedial actions required to remedy the below standard quality of Potable Water including, without restriction, those remedial actions contemplated within the Emergency Management Plan;

(iii) report to the Customer as to the status of the remedial actions and the performance of the Emergency Management Plan, and the status of the below standard quality of Potable Water, as often as is reasonably required by the nature and extent of the issues until the below standard quality of Potable Water has been fully remedied.

4.3 **Delivery Point.** Except with the approval of the Director, the Potable Water shall be supplied to the Customer at the Potable Water Delivery Points that are set forth in Schedule "B". New connections will require amendments to Schedule "B".

4.4 **City Exclusive Provider**. Except with the approval of the Director, The City shall be the exclusive provider of Potable Water to the Customer within the Service Area. Such exclusivity shall exclude the following:

(a) Existing and new private water well(s), cistern(s), and surface water systems within the Service Area will be allowed, as long as they are not tied into the Customer's Waterworks System;

(b) Truck-fill operations within the Service Area made available to water haul service providers;

(c) Water re-use and similar strategies implemented by the Customer which do not contravene the terms, conditions or requirements of the Licences;

(d) Potable Water service obtained by the Customer by any other means or source which is necessary to satisfy demand for Potable Water services in excess of the Potable Water flow rates contained within Schedule "D";

(e) Temporary Servicing not requiring piped connection which may be obtained by the Customer from within or outside the Service Area during an Emergency, Outage, or Water Shortage; and

(f) Temporary Servicing requiring piped connection which may be obtained by the Customer from within or outside the Service Area during an Emergency, Outage, or Water Shortage, with the approval of the Director (which shall not be unreasonable withheld or delayed), but must disconnect that Servicing once the Emergency is over.

Save and except for as an indirect result of the operation of private water haul operators as noted above, unless agreed to by the Director the Customer shall not supply Potable Water to any Person outside of the Service Area.

4.5 **No Interconnection with the Waterworks System.** Except with the approval of the Director, the Customer shall not allow any connection of the Potable Water provided by the City to any other Potable Water source.

4.6 **Controlling Cross Connections.** Where Cross Connection control devices or air gaps are not installed in the Regional Water Transmission Line or the Customer's primary reservoir:

(a) The Customer shall not permit a Cross Connection in the Customer's system that has not been approved by the Director.

(b) Where the Director believes that a Cross Connection exists in contravention of subsection (a), the Director may carry out an inspection:

(i) upon reasonable notice to the Customer, or

(ii) without notice where the Director reasonably believes that an immediate threat of contamination to The City's Waterworks System exists.

4.7 **Cross Connection Control Device.** The Director may require, at customer's expense, the installation of a Cross Connection Control Device on any Regional Water Transmission Line, at a location approved by the Director, acting reasonably. For the purposes of this Article, "**Testable Cross Connection Control Devices**" means Double Check Valve Type Assemblies, Reduced Pressure Principle Type Assemblies, and Pressure Vacuum Breaker Assemblies. Testable Cross Connection Control Devices shall only be tested by Persons approved by the Director.

4.8 **Cross Connection Control Device Customer Testing Obligations.** The Customer, at its own expense, shall have any Testable Cross Connection Control Devices tested:

(a) at the time of installation, relocation, or overhaul of a new Testable Cross Connection Control Device;

(b) annually; and

(c) as required by the Director, acting reasonably.

4.9 **Cross Connection Control Device Tester Requirements.** Test reports referred to in Section 4.8 shall be submitted to The City via a pre-approved means within thirty (30) days of each test, where the tester:

(a) discovers that the Testable Cross Connection Control Device is in good working order; or

(b) discovers that the Testable Cross Connection Control Device is not in good working order but repairs or replaces and re-tests the Testable Cross Connection Control Device immediately.

An approved tester must submit this report within two (2) Business Days of every test of a Testable Cross Connection Control Device where the tester discovers that a Testable Cross Connection Control Device is not in good working order and where the tester does not repair or replace that Testable Cross Connection Control Device immediately.

Where a Testable Cross Connection Control Device fails a test referred to in Section 4.8 and the Customer does not have it replaced immediately by the authorized tester, the Customer shall have the Testable Cross Connection Control Device repaired or replaced and re-tested within five (5) Business Days of the submission of the report.

As a condition of Servicing, the Director may issue an order to the Customer requiring the installation, testing or repair of a Cross Connection Control Device and that order may specify a date and time by which the Customer must comply with the terms of the order.

4.10 **Customer Costs.** The Customer is responsible for all treatment, testing and chlorinating costs beyond the Potable Water Delivery Point.

4.11 Water Shortage, Outage and Conservation. The Customer shall:

(a) encourage voluntary Potable Water usage restrictions when the same are declared by the Director in respect of The City and/or other Regional Customers;

(b) impose compulsory restrictions when the Director declares applicable Potable Water usage restrictions in The City and/or in respect of other Regional Customers as a result of the occurrence of a Water Shortage or Outage; and

(c) encourage the use of industry best practices for water conservation.

Potable Water flow rate reductions, and corresponding compulsory restrictions, will be applied in proportionately fair measures to all of The City's customers based firstly upon proportionate capacity committed to the Customer and other customers of the City's Waterworks System. The method of implementation of such measures will be at the Customer's discretion.

In the event that during periods of Water Shortage or Outage resulting in compulsory restrictions of Potable Water a leak is detected in the Customer's Regional Water Transmission Line, The City has the right to limit the flow rates until it is repaired, if the repair is reasonably determined by the Parties to be operationally feasible.

4.12 Notice and Response. Upon the occurrence of an Emergency, Outage or Water Shortage resulting in the Potable Water quantity available to the Customer falling below the flow rates set forth within Schedule "D", the City shall:

(a) immediately notify the Customer of:

(i) the nature, extent, cause, and anticipated duration of the Emergency, Outage or Water Shortage and the reduced flow rate of Potable Water;

(ii) the reactions by the Customer and The City required in order to accommodate the reduced flow rate of Potable Water; and

(iii) the remedial plan of action being taken by The City to resolve and remedy the reduced flow rate of Potable Water including, without restriction, the remedial actions contemplated within the Emergency Management Plan;

all in accordance with the notifications provisions contained within Schedule "F";

(b) immediately commence and diligently perform the remedial actions required to remedy the reduced flow rate of Potable Water including, without restriction, the remedial actions contemplated within the Emergency Management Plan;

(c) report to the Customer as to the status of the remedial actions and the performance of the Emergency Management Plan, and the status of the reduced flow rate of Potable Water, as often as is reasonably required by the nature and extent of the issues until the reduced flow rate of Potable Water has been fully remedied.

ARTICLE 5
OPERATION OF INFRASTRUCTURE

5.1 New Customer Owned Infrastructure. The Customer shall be responsible for the design and construction of new Regional Water Lines that are required to serve and benefit the Service Area beyond the Potable Water Delivery Point. In addition the Customer shall, for items required to service the Service Area,

(a) provide to The City, at no cost, all as-built drawings for Regional Water Lines, including pipeline, chambers, meters, booster pumping facilities, to be utilized by The City for the purposes of this Agreement;

(b) provide to The City, at no cost, GIS information as available, along with Data Licensing Agreements all in a format that is acceptable to the Director; and

(c) not install pumping equipment, valves or other devices which may have a negative impact on The City's Waterworks Systems, such as but not limited to damaging hydraulic transients, except with the prior written approval of the Director.

(d) provide to The City, at no cost, information as required for the financial booking of assets donated to The City. This may include but not be limited to an itemized list of contract costs, quantities, dimensions and materials as determined by the Director.

A separate construction/development agreement is to be executed with reference to this Agreement for new Water infrastructure built by the Customer within The City. The agreement shall outline what standards and specifications are to be used, and ensure that all plans are submitted to and approved by The City prior to construction.

5.2 Joint Infrastructure Planning. The City and the Customer shall meet annually at a minimum, with further meetings as required by either Party, to discuss planning topics including but not limited to water conservation strategies, Potable Water quality, population, business, industry, community growth and operational issues. Other attendees may be invited as necessary, with the consent of both Parties.

The City and the Customer shall share all applicable master planning reports and other pertinent information, to the extent publicly available or not otherwise subject to third party disclosure restrictions, as they relate to short and long term Potable Water infrastructure planning.

Both parties recognize the importance of sharing information related to projected growth and development, water conservation, and infrastructure master plans to inform their respective infrastructure and capital planning processes. The City and the customer shall establish a system wherein this information is shared for the mutual benefit of both parties. This information shall consider long term planning horizons and the parties shall agree on the long term capacity requirements of the customer that will be incorporated into The City's Water Resources' long range infrastructure planning criteria. These long term capacity requirements will inform the amount of water allocation that Council will reserve for the customer under The Licenses, as per Section 4.1(g) changes to Schedule "D" are to be updated and approved by Council in advance of each four year business cycle and agreed upon by the parties.

The Customer shall notify The City of the connection of new large customers within the Service Area whose daily Potable Water flows exceed one (1) MLD.

Mutually agreed amendments to this agreement and updated contact lists for emergencies may be required as a result of these meetings.

5.3 **New City Owned Infrastructure.** All newly constructed infrastructure that is to be City owned, including pipes, valves, meters, chambers, electronic components (including those intended for data transfer and communication) are to meet City specifications, where applicable, and be designed to the satisfaction of the Director, acting reasonably.

5.4 **Ownership.** The ownership boundaries of the water infrastructure is determined by the location of the Potable Water Delivery Point(s) as further described in Schedule "B".

5.5 **Rights of Way and Access.** The following provisions shall apply to the Regional Water Transmission Lines::

(a) when the Customer owns Regional Water Transmission Lines that are located on or within City owned lands, the Regional Water shall be located within a Pipeline Right of Way registered in the name of the Customer, or where the Regional Water is located within a right of way that is not owned by the Customer, a "municipal consent and access" agreement must be in place, to the satisfaction of the Director.

(b) access to Customer owned Potable Water infrastructure located on City owned land shall be granted to the Customer, subject to reasonable notice; and

(c) Access to City owned Potable Water infrastructure located on Customer owned land, shall be granted to the City, subject to reasonable notice.

5.6 **Customer Operational Covenants.** The Customer shall own and operate Customer-owned Regional Water Lines and booster pumping facilities as would a reasonably prudent operator and carry out all operations in a proper and efficient manner and in accordance with all applicable Customer Required Approvals, City Required Approvals, all Applicable Law and all terms and conditions of this Agreement.

Without limiting the generality of the foregoing, the Customer shall, at its sole cost and expense, maintain and keep the Customer-owned Regional Water in a good, safe, reliable and efficient operating condition and promptly make or cause to be made all necessary repairs and replacements to such Regional Water Transmission Lines, including any repairs or replacements required as a result of ordinary wear and tear. Further, the Customer shall, where applicable, maintain all Customer Required Approvals in good standing.

5.7 **City Operational Covenants.** The City shall own and operate such City owned Regional Water Transmission Lines and booster pumping facilities as would a reasonably prudent operator and carry out all operations in a proper and efficient manner and in accordance with all Applicable Laws and all terms and conditions of this Agreement. Without limiting the generality of the foregoing, The City shall

(a) maintain and keep The City owned Regional Water Transmission Lines in good, safe, reliable and efficient operating condition. Without limiting the generality of the foregoing, The City shall promptly make or cause to be made all necessary repairs and replacements to such Regional Water Transmission Lines, including any repairs or replacements required as a result of ordinary wear and tear;

(b) The City will endeavour to ensure that The City Waterworks System is operated, designed and constructed in such a manner so as to provide for redundancies to mitigate against potential disruptions in servicing;

(c) in the event of any service disruptions, The City shall respond on an immediate basis and use best efforts to remedy the situation in a timely fashion;

(d) maintain all City Required Approvals in good standing and comply with all such City Required Approvals and all Applicable Law;

(e) in the event of an Outage of which The City has prior knowledge:

(i) serve notice thereof to the Customer at least fourteen business (14) days prior to the Outage if it relates to planned maintenance or drought management measures; and

(ii) serve prompt written notice thereof to the Customer if the Outage is not related to planned maintenance or drought management measures;

(f) each notice required to be provided by The City to the Customer pursuant to Section 5.7(c) shall be in accordance with the notification requirements contained within Schedule "F" including, without restriction, provide, in reasonable detail, the estimated duration of the Outage and the anticipated impact on the delivery of the Servicing;

(g) perform and comply with the Emergency Management Plan.

5.8 Measurement of Potable Water. The following provisions shall apply to the measurement of Potable Water:

(a) For all new and replacement Water Meters at the Potable Water Delivery Point, The City shall supply and calibrate the Water Meters to meet OIML R49 Class 2 accuracy. The Customer shall accommodate such a Water Meter in the design of its Waterworks System. The design of new or replacement Water Meter and Water Meter Station shall be in accordance with The City's Regional Water Meter Design Guidelines. The City shall advise the Customer of any changes to the City's Regional Water Design Guidelines prior to the design and construction of new Water Meter Stations.

(b) The Potable Water shall be measured in units of cubic meters (m^3). Water Meter locations are outlined in Schedule "C".

(c) For The City-owned Water Meter Stations, the Customer can install telemetry within the Water Meter for the use of the Customer, as per The City's specifications.

(d) The Water Meters shall be read and monitored by The City, unless other arrangements have been made with the Customer, provided that the Customer shall be entitled to reasonable access to all data therefrom.

(e) The Water Meters shall be calibrated annually by their respective owners where the type of meter allows for such calibration.

(f) Notwithstanding Section 5.8(e), either of the Parties may at any time notify the other that it desires a test of the Water Meters and the Parties shall cooperate to secure a prompt verification of the accuracy of such equipment. Whichever of the Parties that requests a test of the Meters pursuant to this Section 5.8(f) shall bear the cost of the test. Should existing in-service Water Meters be found to be in error by more than the Water Meter Accuracy Limit, as applicable, the cost of Water Meters repairs shall be paid by The City.

(g) If, upon testing pursuant to Section 6.8(e) or 6.8(f), the Water Meters are found to be in error by not more than the Water Meter Accuracy Limit, as applicable, previous recordings of such equipment shall be considered accurate in computing deliveries of Potable Water Servicing hereunder, as applicable, but such equipment shall be promptly adjusted to record correctly. If, upon testing and any recalibration, the Water Meters shall be found to be inaccurate by more than the Water Meter Accuracy Limit, as applicable, then such equipment shall be promptly adjusted, repaired or replaced to record properly and any previous recordings by such equipment shall be corrected to zero error and a single adjustment shall be made between the Parties in respect of any amounts payable between the Parties as a result of such error. If practical, such adjustment shall be made in the next monthly invoice. If no reliable information exists as to when the Water Meters became inaccurate, the Parties shall assume for correction purposes hereunder that such inaccuracy began at a point in time midway between the testing date and the last previous date on which the Water Meter, as applicable, was tested and found to be accurate.

(h) All future constructed Water Meter Stations located on a Regional Water Transmission Line, including the associated Regional Water Transmission Line upstream of the Water Meter Station, are to be donated to The City by the Customer at no cost to The City. The Customer is responsible for meter installation; The City is responsible for meter costs. Water Meter Station relocation costs are the responsibility of The City, except for in the event the relocation is requested by the Customer.

(i) The Customer shall construct, at its own expense, a secure all-weather access road, to provide access to the Water Meters and Water Meter Stations.

(j) The City will retain ownership of Water Meters and Water Meter Stations, and will be responsible for their repair and maintenance.

(k) Either Party shall have the right to be present whenever the other Party materially cleans, changes, repairs, inspects, tests, calibrates or adjusts any portion of the Water Meters. Prior to taking any such action, the Party maintaining the meter shall give timely notice.

5.9 Potable Water Testing.

(a) The City shall remain responsible for any and all Potable Water quality measurements and analyses within The City's Waterworks System, including the costs thereof necessary for it to comply with the Licences and The City Required Approvals.

(b) The City agrees to provide the Customer with the results of Potable Water quality measurements and analyses performed on a monthly basis.

5.10 Access and Interference

No Party shall

(a) uncover, prevent access to, open into, break, alter, remove, damage, destroy, interfere or tamper with, or allow the uncovering, prevention of access, opening into, breaking, altering, removing, damaging, destroying interfering or tampering with any pipe, pipe connection, valve, monitoring point, metering device, or other appurtenance forming part of the Waterworks System of which they are not owners; or

(b) attach any device to any water pipe which may create noise, a pressure surge, backflow or contamination of the Waterworks System.

A Party who contravenes the requirements of this Section 5.10, and such contravention results in damage or harm to the other Party's Water, must compensate the other Party for the actual cost of repair or replacement of any part, or parts, of the Waterworks System that the Party damaged or harmed.

ARTICLE 6
POINT OF DELIVERY AND RISK

6.1 Potable Water.

(a) The City shall deliver Potable Water to the Regional Customers at the Potable Water Delivery Point for use within their respective Service Area only.

(b) As between the Parties, The City shall be, or shall be deemed to be, in exclusive control and possession of the Potable Water supplied hereunder until such Potable Water is delivered at the Potable Water Delivery Point, at which time, Regional Customers shall be deemed to be in exclusive control and possession of the Potable Water as further described in Schedule "B".

ARTICLE 7
CITY IMPOSED RATES and FEES

7.1 Volume Based Billing. Through the Term, The City shall charge the Customer for the volume of Potable Water delivered to the Customer plus applicable fixed charges.

7.2 **Potable Water City Imposed Rate**. The City Imposed Rate *Water Utility Bylaw* for each of the first four (4) years of the Term, and each four (4) year window thereafter, subject to annual review and potential amendment of the *Water Utility* Bylaw by City Council, in each case subject to and in accordance with the rate principles contained within Schedule "E", and evidenced within the *Water Utility Bylaw*.

City Council shall set The City Imposed Rates, and fees outlined in the *Water Utility Bylaw* for the Customer, on a cost recovery basis.

No reduction in City Imposed Rates will be made in the monthly charge for Potable Water because of any interruption in the provision of the respective Servicing for portions of the monthly billing period. Notwithstanding the foregoing, the Customer shall not be responsible for payment of the City Imposed Rate and resulting fees for any monthly billing periods for which there is an interruption of Servicing for that entire period. In the event there is an interruption of service for a period of greater than 15 consecutive days, then the Customer may not be responsible for The City fixed charge on a pro-rated basis applied against the next month's billing period, all at the discretion of the Director.

City Imposed Rates and fees will be calculated in accordance with the rate methodology outlined in Schedule "E".

7.3 **Rate Setting Date**. The City will endeavour to establish, reaffirm, review and, if applicable, amend the City Imposed Rates on or before November 30 in each Contract Year of the Term, to be effective for the forthcoming Contract Year. The establishment of City Imposed Rates is subject to City Council approval subject to and in accordance with the rate principles contained within Schedule "E", and evidenced within the *Water Utility Bylaw*. Without prejudice to the foregoing or Section 7.2, the City will endeavour in any event to provide the Customer with the proposed City Imposed Rate, and any possible or proposed changes thereto, which are to be recommended by City administration to City Council, not later than September 15 of each year of the Term to allow the Customer to coordinate budgeting and rate setting.

7.4 **Right to Audit.** The Customer, or its appointed agents, shall have the right at its sole cost to audit any and all The City's records respecting the establishment, calculation, charging, and collection of all City Imposed Rates including, without restriction, all such records regarding the rate principles contained within Schedule "E".

ARTICLE 8
ACCOUNTING PROCEDURES

8.1 **Statements.**

(a) The City's billing provider shall prepare and deliver:

(i) a monthly statement to the Customer, which statement shall include:

(A) the monthly volume of Potable Water utilized by the Customer as measured/metered in accordance with the provisions of this Agreement set out in 6.8;

(B) the amount payable upon application of the City Imposed Rate upon the above-noted monthly volumes;

(ii) periodic or other statement, as applicable, respecting imposition of any penalty, providing reasonable detail of the particulars of the penalty including, without restriction, the date(s) and time(s) of the exceedance of any Maximum Instantaneous Flow, Maximum Daily Flow or Maximum Annual Flow;

(the "**Statements**").

(b) If by the date on which The City prepares a monthly Statement as contemplated above, The City has not received all of the required information, or if a component of the Water Meters has failed, The City shall prepare the Statement using its best estimate (acting reasonably and based upon prior month and historical month usage and/or data) of such information as per Section 5.8, and any adjustments subsequently required in respect thereof shall be made in accordance with Section 8.6.

8.2 Payment. Subject to Section 8.4, the Customer shall remit full payment in respect of a Statement no later than:

(a) thirty (30) Calendar Days, for monthly payments only, after the receipt of such Statement; or

(b) thirty (30) Calendar Days, for all other payments only, after the receipt of such Statement and all additional information reasonably required to verify the basis of the statement;

(the "**Payment Date**").

In the event that a credit is owed to the Customer, The City shall credit the amount to the Customer account in respect of such Statement no later than the Payment Date.

8.3 Default of Payment. In the event of a default of payment by the Customer of the City Imposed Rates or any amount due and payable to The City for anything done pursuant to this Agreement, other than in the case of a disputed Statements under Section 8.4 and the provisions thereof, the Director may, if such default is not cured by the Customer within thirty (30) days following receipt by the Customer of a written notice from The City advising of such default, enforce the collection of such City Imposed Rates or payments by discontinuing services being supplied to the Customer, or by action in any Court of competent jurisdiction, or both.

8.4 Disputed Statements. If the Customer, in good faith, disputes a Statement or any portion thereof, the Customer shall provide written notice to The City setting out the portions of the Statement that are in dispute including a brief explanation of the dispute, and may withhold payment of the portion of the Statement that is the subject of such dispute. If it is subsequently determined or agreed that an adjustment to a Statement is appropriate, The City will promptly (and, in any event, within ten (10) Business Days) prepare and deliver a revised Statement to Customer. Any amount owing to either The City or Customer, as applicable, as a result of that revised Statement shall be payable within twenty (20) Business Days of the revised Statement being issued. If a Statement dispute has not been resolved between the Parties within ten (10)

Business Days after receipt of written notice delivered by Customer, the dispute may be submitted by either Party to be resolved by the Dispute Resolution Procedure.

8.5 **Closest Business Day**. If any day upon which data, information or payment that is required to be provided pursuant to this Agreement is not a Business Day, it shall instead be due by the first Business Day following such day.

8.6 **Adjustments**. Notwithstanding Section 8.3, if at any time after the issuance of any Statement rendered pursuant to Section 8.1 it is determined that any of the information therein contained is incorrect, incomplete or otherwise requires adjustment, The City shall calculate the appropriate dollar adjustment and include it, whether in favour of The City or Customer, in the next Statement to be rendered by it pursuant to Section 8.1.

8.7 **Interest on Overdue Amounts**. If the Customer fails to pay when due any amount payable by it under or in respect of the Agreement, other than in the case of a disputed Statement under Section 8.4 and the provisions thereof, and such unpaid amount is not the subject of a bona fide dispute between the Parties, the unpaid amount shall accrue interest at the Default Interest Rate from and after the date of the notice referred to in Section 8.3 until the date on which the said amount is paid in full. The obligation to pay interest at the Default Interest Rate is to apply until all amounts plus accrued interest have been paid before and after any judgement. In addition, the Customer's obligation to pay interest pursuant to this Section 8.7 shall not be construed as limiting any other rights or remedies which The City may have, whether under this Agreement, at law, in equity or otherwise, as a result of the Customer's failure to pay any amount when due.

ARTICLE 9
EMERGENCY MANAGEMENT AND LIABILITY

9.1 **City Emergency Actions.** Notwithstanding anything contained in this Agreement, in the case of an Emergency directly impacting the City Waterworks System, The City may, acting reasonably:

(a) shut off the Potable Water Supply;

(b) decrease the total volume of the Potable Water Supply;

(c) decrease the total Potable Water flow rate;

provided always that such actions will only be undertaken for the period of time that is reasonably required to mitigate the Emergency. The Parties shall use reasonable efforts to comply with the Emergency Management Plan and ensure the Emergency event is resolved as soon as possible.

9.2 **Customer Emergency Actions**. Notwithstanding anything elsewhere contained in this Agreement, in the case of an Emergency, the Customer may, acting reasonably take the necessary actions to mitigate the Emergency situation.

9.3 **Emergency Management Plan**. In the event of an Emergency, the Parties shall implement the protocols outlined in the attached Emergency Management Plan.

9.4 **Emergency Notification.** In the event either Party experiences an Emergency, prior to taking the above noted actions, the Party shall immediately provide verbal notice, including reasonable details of the Emergency, to the other Party. Written confirmation, along with further particulars of the Emergency, if any, shall be provided within five (5) Business Days of the Emergency. Further Emergency notification information is set out in the attached Schedule "F".

9.5 **Emergency Flow.** In the event of flow restrictions to the Potable Water Servicing, the applicable Regional Customers shall share in the flow restrictions in proportionately fair measures where appropriate. City users and other Regional Customers will not be given preferential treatment.

Penalties as described in Sections 4.1 will be waived by the Director in the event of a Customer Emergency.

9.6 **Shared Resources.** In the event of an Emergency which impacts the Servicing, the Parties hereby agree to share resources and repair crews until the Emergency has been remedied. Save and except for in such cases where the Emergency is caused by the default or other non-performance of an obligation by the assisting party, the assisting party shall be entitled to recover its reasonable costs from the assisted party, and such amount shall be due and payable within thirty (30) days of receipt by the assisted party of an invoice detailing such costs.

9.7 **Emergency Remedies.** In the event of any Emergency that is attributable to a particular Party, without restricting the responsibilities under Article 11 of this Agreement, such Party will take all steps to remedy and correct such Emergency.

9.8 **Emergency Planning Meetings.** The Customer shall participate in ongoing joint Emergency planning meetings as scheduled and organized by The City. Unless otherwise agreed to by the Parties, such emergency response planning meeting shall occur no less often than annually. At these annual meetings the Parties will discuss issues relating to Emergency planning and will include local emergencies, major and minor, which are listed within, but not limited to, Tables 2 and 3 of Schedule "F".

9.9 **Joint Emergency Communication.** The City and the Customer shall maintain and share emergency contact information and joint emergency communication protocols. Emergency contacts shall be available for response 24 hours a day, 7 days a week in accordance with Schedule "F", and may be updated by either Party in accordance with Section 15.1.

ARTICLE 10
REPRESENTATIONS AND WARRANTIES

10.1 **Representations of The City.** The City represents and warrants to and in favour of the Customer that:

(a) all Licenses and operating approvals are held by The City and are valid, subsisting and in good standing;

(b) The City is not aware of any impediment to divert and utilize a sufficient amount of water allocation under the Licences, so as to provide the Potable Water contemplated under this Agreement;

(c) The City is not aware of any default or breach of the License or any other operating approvals require to perform the City's obligations under this Agreement; and

(d) The City is not aware of any pending or threatened proceeding to revoke or limit such Licenses or other operating approvals, or of any circumstance that may reasonably result in such a revocation or limitation thereof.

Based upon the current regulatory regime, and the proposed Servicing arrangement and commitments under this Agreement, The City is not aware of any further regulatory approvals required to provide Servicing to the Customer.

ARTICLE 11
LIABILITY, INDEMNIFICATION and INSURANCE

11.1 **Release of The City by the Customer**. The Customer shall release and forever discharge The City and its Representatives (the "**Indemnified City Parties**") of and from any and all Losses, Liabilities and Claims of any and every kind or nature whatsoever at law or in equity or under any statute which the Customer ever had, now has, or can, shall or may have against the Indemnified City Parties for and by reason of any matter, cause or thing whatsoever existing with respect to the installation, operation, addition, modification, replacement and/or maintenance of The City's Waterworks System or any essential part thereof, including The City owned Water Meters, and the Regional Water Transmission Line(s), except to the extent that such Losses, Liabilities or Claims arise as a result of the negligence, wilful misconduct or default under this Agreement on the part of any of the Indemnified City Parties.

11.2 **Release of the Customer by The City**. The City shall release and forever discharge the Customer and its Representatives (the "**Indemnified Customer Parties**") of and from any and all Losses, Liabilities and Claims of any and every kind or nature whatsoever at law or in equity or under any statute which The City ever had, now has, or can, shall or may have against the Indemnified Customer Parties for and by reason of any matter, cause or thing whatsoever existing with respect to the installation, operation, addition, modification, replacement and/or maintenance of The Customer's Waterworks System or any essential part thereof, including The Customer owned Regional Water Transmission Lines), except to the extent that such Losses, Liabilities or Claims arise as a result of the negligence, wilful misconduct or default under this Agreement on the part of any of the Indemnified Customer Parties.

11.3 **Indemnification of The City by the Customer.** Subject to Section 528 of the Municipal Government Act, the Customer hereby indemnifies and saves harmless the Indemnified City Parties from and against any and all Losses, Liabilities and Claims which may now or hereafter be suffered or incurred by any of the Indemnified City Parties to the extent caused by the negligence, wilful misconduct or default of the performance or exercise of any obligations or responsibilities on behalf of the Customer pursuant to this Agreement, except to the extent such Losses, Liabilities or Claims arise:

(a) as a result of the negligence, willful misconduct or default under this Agreement on the part of any of the Indemnified City Parties; or

(b) in connection with a bona fide action by the Customer against any of the Indemnified City Parties.

11.4 Indemnification of the Customer by The City. Subject to Section 528 of the Municipal Government Act, The City hereby indemnifies and saves harmless the Indemnified Customer Parties from and against any and all Losses, Liabilities and Claims which may now or hereafter be suffered or incurred by any of the Indemnified Customer Parties to the extent caused by the negligence, wilful misconduct or default of the performance or exercise of any obligations or responsibilities of the performance or exercise of any obligations or responsibilities on behalf of The City pursuant to this Agreement, except to the extent such Losses, Liabilities or Claims arise:

(a) as a result of the negligence, willful misconduct or default under the Agreement on the part of any of the Indemnified Customer Parties; or

(b) in connection with a bona fide action by The City against any of the Indemnified Customer Parties.

11.5 Standard of Care. The Parties acknowledge and agree that the provisions of this Agreement do not modify the standard of care owed by either The City or the Customer to any person at law.

11.6 Survival of Indemnities. The obligation of the Customer to indemnify the Indemnified City Parties, and The City to indemnify the Indemnified Customer Parties, shall survive the expiry or termination of this Agreement.

11.7 Customer Insurance. During the Term of this Agreement, the Customer shall, at its own expense, maintain or cause to be maintained insurance policies in a form and substance and with an insurer all reasonably satisfactory to The City including:

(a) by way of primary, and umbrella and/or excess, liability policies, with an annual aggregate limit of not less than ten million ($10,000,000.00) dollars for any one occurrence for death, bodily injury and property damage, and such policy must include:

(i) The City as an additional insured;

(ii) a cross liability clause; and

(iii) a sufficiently broad form of contractual liability coverage; and

(b) any other insurance in amounts that a prudent person acting reasonably would deem appropriate given the scope of the Servicing, with associated risks, described in this Agreement.

11.8 City Insurance. During the Term of this Agreement, The City shall, at its own expense, maintain or cause to be maintained insurance policies in a form and substance and with an insurer all reasonably satisfactory to the Customer including:

(a) by way of primary, and umbrella and/or excess, liability policies, with an annual aggregate limit of not less than ten million ($10,000,000.00) dollars for any one occurrence for death, bodily injury and property damage, and such policy must include:

(i) the Customer as an additional insured;

(ii) a cross liability clause; and

(iii) a sufficiently broad form of contractual liability coverage; and

(b) any other insurance in amounts that a prudent person acting reasonably would deem appropriate given the scope of the activities undertaken by The City, with associated risks, described in this Agreement.

11.9 Notice. Insurance policies required under this Agreement must include a provision that the insurance policy must not be cancelled or materially altered without at least thirty (30) days' written notice to The City or the Customer, as applicable.

11.10 Liability. The City's insurance requirements mentioned above will not be construed to, and will in no manner limit or restrict the liability of the Customer. The Customer's insurance requirements will not be construed to, and will in no manner limit or restrict the liability of The City.

11.11 Deductible Payments. Each Party shall be solely responsible for the payment of every deductible amount provided in any policy of insurance furnished by that particular Party pursuant to this Agreement.

11.12 Proof of Insurance. The Customer shall furnish to The City prior to commencing any work or operation under this Agreement, documentation satisfactory to The City evidencing such insurance and also furnish evidence satisfactory to The City of the renewal or continuation of such insurance within ten (10) Business Days of any expiry dates thereof. The City shall furnish to the Customer, from time to time upon request by the Customer, documentation satisfactory to the Customer evidencing such insurance and any renewals or continuation of such insurance.

ARTICLE 12
FORCE MAJEURE

12.1 Effect of Invoking Force Majeure.

(a) If, by reason of an event of Force Majeure,

(i) The City is unable to supply or transport all or any part of the Potable Water required under this Agreement to the Potable Water Delivery Point; or

(ii) the Customer is unable to comply with any of its obligations hereunder,

then, subject to compliance with subsections (b) and (c), and where applicable the Emergency Management Plan, the Party affected by such event of Force Majeure shall be excused and relieved from performing or complying with such obligations that have been affected by Force Majeure (other than payment obligations, except where specifically indicated otherwise) for so long as the event of Force Majeure continues and shall not be liable for any Losses incurred by the other Party in respect of or relating to the event of Force Majeure for the duration of such event.

(b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party notice as soon as reasonably possible, written or oral (but if oral, promptly confirmed in writing) of the effect of the Force Majeure and reasonably full particulars of the cause thereof, provided that such notice shall be given within ten (10) Business Days of the commencement of the event or circumstances constituting Force Majeure. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such ten (10) Business Day period, the Party invoking Force Majeure shall be allowed a further 10 Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars to the other Party.

(c) The Party invoking Force Majeure shall use reasonable efforts to remedy the situation and remove or otherwise accommodate or account for, so far as possible and with reasonable dispatch, the Force Majeure. In the event that additional efforts, in excess of those which are reasonably required to act prudently or otherwise comply with this agreement, which could be taken that would reduce the duration of the event of Force Majeure at an increased cost, the Party invoking Force Majeure shall provide information on additional efforts that could be undertaken and the associated cost. If so requested by the non-invoking Party, the invoking Party shall undertake these additional efforts and the non-invoking Party shall reimburse the incremental increase in costs incurred to take any steps beyond what was reasonable to rectify the event of Force Majeure.

(d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within ten (10) Business Days of the termination of the event or circumstance constituting Force Majeure.

(e) Nothing in this Section shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure.

(f) An event of Force Majeure shall not extend the Term.

(g) Each Party shall resume its obligations as soon as the event of Force Majeure has ceased.

12.2 Exclusions. A Party shall not be entitled to invoke Force Majeure under this Article, nor shall it be relieved of its obligations hereunder in any of the following circumstances:

(a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure while not acting in accordance with prudent industry practices applicable to owners and operators of facilities similar in size and operational characteristics;

(b) if and to the extent the Party seeking to invoke Force Majeure has failed to use reasonable efforts to prevent or remedy the event of Force Majeure and remove, so far

as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);

(c) if and to the extent that The City is seeking to invoke Force Majeure because it is able to sell any of the Potable Water amounts to be delivered to the Customer under this Agreement on more advantageous terms to a Third Party purchaser;

(d) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by an Authorized Body, such arrest or restraint was the result of a breach by such Party of Applicable Law;

(e) if the Force Majeure was caused by a lack of funds or other financial cause; or

(f) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 12.1(b) or 12.1(d).

ARTICLE 13
ASSIGNMENT

13.1 Assignment.

A Party shall not assign, novate or otherwise transfer any of its rights or obligations under this Agreement, in whole or in part, for the duration of the Agreement without the prior written consent of the other Party.

ARTICLE 14
DISPUTE RESOLUTION

14.1 Dispute or Failure to Agree. Where there is a non-City Imposed Rate dispute between the Parties or where this Agreement requires the Parties to come to an agreement with respect to any matter, with the exception of City Imposed Rates, the failure of the Parties to come to such agreement within the time specified, or if no time is specified within a reasonable period, such dispute or failure to agree shall be resolved in accordance with the provisions of this Article 14. All information disclosed for the purposes of dispute resolution shall be treated as privileged, confidential and without prejudice. Neither Party shall take any action or pursue any other available remedy until reasonable effort has been made to resolve the matter in accordance with this clause. Notwithstanding the foregoing, either Party may take such legal or regulatory action as may be necessary to preserve a legal or regulatory right of remedy that would be available if the Parties fail to resolve the dispute.

Nothing contained within this Agreement or this Article 14 shall in any manner whatsoever limit or restrict, or purport to limit or restrict, the jurisdiction, powers or authority of the AUC, nor limit, prevent, or in any manner whatsoever restrict the ability of either Party to seek a determination, decision, or remedy from the AUC pursuant to its statutory jurisdiction and authority, without requiring compliance with the Dispute Resolution Procedure or the provisions of this Article 14.

14.2 Submission to Senior Management and Mediation. In the event of a dispute relating to this Agreement arising which the Parties are unable to resolve through good faith negotiations and discussions, the matter shall be promptly referred to a member of senior management of each of the Parties for resolution, who shall negotiate in good faith to resolve the issue. If the dispute cannot be resolved by senior management within twenty (20) Business Days after the time it was referred to them, then it shall be submitted to mediation, with a mediator selected by agreement of the Parties. The place of mediation will be Calgary, Alberta, and any costs associated with the resolution of any dispute will be shared equally among the Parties. If such mediation does not resolve the dispute within 40 Business Days of referral or such further time as the Parties may agree, then such dispute shall be referred to arbitration in accordance with Section 14.3.

14.3 Submission to Arbitration. All disputes, except for disputes regarding City Imposed Rates, with respect to matters arising under this Agreement shall, after the provisions of Section 14.2 have been followed, be forwarded to and resolved by binding arbitration in accordance with the Arbitration Act. Each arbitration shall be carried out as follows:

(a) The board of arbitrators (the "**Board**") shall be comprised of three (3) arbitrators. Each Party shall appoint one (1) arbitrator within ten (10) Business Days after the matter has been referred to arbitration. If either Party shall fail to appoint an arbitrator within ten (10) Business Days, then upon application by the Party that has appointed an arbitrator, the second arbitrator shall be appointed by any Justice of the Court of Queen's Bench of Alberta. The two (2) arbitrators thus appointed shall appoint a third arbitrator within the ten (10) Business Days of the appointment of the second arbitrator. If the two arbitrators are unable to agree on the third arbitrator within such ten (10) day period, then upon application by either Party, the third arbitrator shall be appointed by any Justice of the Court of Queen's Bench of Alberta. Each arbitrator shall possess the requisite education, training and technical expertise with respect to the matter submitted to arbitration hereunder;

(b) Following the appointment of the Board under subsection (a), the Board shall proceed promptly to determine the matters in issue and shall render its decision within thirty (30) Business Days from the date of final submissions of the Parties to the Board, or such further time as the Parties may agree;

(c) The Parties hereby consent to the arbitration being conducted in Calgary, Alberta, or any other place mutually agreed upon, no later than fifteen (15) days following the appointment of the Board, at which time the Parties shall present such evidence and witnesses as they may choose, with or without counsel;

(d) The Board shall have the discretion to shorten or lengthen time frames for actions to be taken by either Party pursuant to this Agreement with respect to any matter which is the subject of arbitration before the Board;

(e) Each Party shall bear its own costs and shall share the costs associated with carrying out the arbitration equally, provided that the Board shall have the discretion to allocate costs in any manner that it deems appropriate;

(f) Except as expressly provided in this Agreement, any majority decision by the Board shall be final, binding and non-appealable. Any such decision may be filed in any court of competent jurisdiction and may be enforced by either Party as a final judgment in such court. There shall be no grounds for appeal of any arbitration award hereunder;

(g) It shall be a condition of the appointment of any arbitrator that such arbitrator shall maintain in strict confidence all documents, transcripts of the proceedings and all other information disclosed by or on behalf of the Parties and shall not use the same or allow the same to be used for any purpose that is not directly related to such arbitration and, at the request of either Party that provided any documents or other printed materials, shall return all originals and any copies of such documents and printed materials to such Party. Each arbitrator shall be responsible for ensuring that its officers, employees, representatives and consultants comply with the obligation of confidentiality set forth in this Section 14.3;

(h) The Board may make rulings with respect to the production of documents, the ability of the Parties to call witnesses or any other procedural matter;

(i) Either Party may refer a question of law to a court of competent jurisdiction for final and binding determination notwithstanding that it may be part of a dispute before the Board;

(j) Nothing in this Agreement is intended to, nor will it, prevent a Party from seeking injunctive or equitable relief at any time as may be available under law or in equity in order to enforce the provisions of this Article 14 or any agreement resulting from this Article 14;

(k) All information disclosed for the purposes of dispute resolution pursuant to this Dispute Resolution Procedure shall be treated as privileged, confidential and without prejudice; and

(l) In the event that the foregoing provisions conflict with the rules and processes set forth in the Arbitration Act, the provisions of the Arbitration Act shall prevail.

The parties agree to use their reasonable best efforts to establish a list of approved and accepted arbitrators, so as to facilitate the foregoing process, timelines, and deadlines for arbitration.

ARTICLE 15
GENERAL

15.1 Notice. Any notice, communication or request to be given to a Party shall be in writing by registered mail, postage prepaid, or by personal delivery or by fax addressed to such Party at the following address:

To The City:

The City of Calgary
Water Resources
625 - 25th Avenue SE
Calgary, Alberta T2G 4K8
Attention: Director, Water Resources
Fax: **403-268-8263**
E-mail: rob.spackman@calgary.ca

With a copy mailed to:

The City of Calgary
Water Resources
P.O. Box 2100, Station "M"
Calgary, Alberta T2P 2M5
Attention: The Director, Water Resources

To Customer:

Town of Strathmore
680 Westchester Road
Strathmore, Alberta T1P 1J1
Attention: Chief Administrative Officer
Dwight Standford CAO
Email: **Dwight@strathmore.ca**
infrastructure@strathmore.ca
Phone: **403-934-3133**

With a copy to:

EPCOR
100 Slater Way
Strathmore, Alberta, T1P 1V1
Attention: Site Manager
Davey Robertson
Email: **dtrobertson@epcor.ca**
Phone: **403-934-9440**

or at such other address as either Party may from time to time advise the other in writing by notice. Any such notice, communication or request whenever mailed shall be deemed to have been received on the 4th Business Day next following the date it is so mailed, or if by fax, the Business Day next following the date of transmission. If sent by electronic mail, notice shall be deemed to have been delivered on the next Business Day following sending and receipt of confirmation of the receipt by the recipient e-mail service. If normal mail, fax or e-mail service is interrupted by strikes, slowdown or other cause, then any of the said services which have not been so interrupted shall be utilized, or the notice, communication or request shall be personally delivered to ensure prompt receipt.

15.2 **Waiver**. Any Party may waive any breach by any other Party of any of the provisions contained in this Agreement, or any default by the other in the observance or performance of any covenant or condition required to be observed or performed by the other under the terms of this Agreement, provided that no such waiver shall be binding upon such Party unless given in writing by such Party, nor shall any such waiver extend to or be taken to affect any subsequent breach or default or to affect the rights of the waiving Party.

15.3 **Time**. Time shall in all respects be of the essence of this Agreement.

15.4 **Further Assurances**. The Parties each covenant and agree that each of them shall and will, upon reasonable request of the other Party, make, do, execute or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices and assurances whatsoever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

15.5 **Severability**. If any covenant or term of this Agreement or the application thereto to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, other than the term or covenant or portion thereof which is invalid or unenforceable, shall not be affected thereby and each covenant or term of this Agreement shall be valid and in force to the extent permitted by law.

15.6 **Governing Law**. This Agreement shall be interpreted in accordance with and subject to the laws of the Province of Alberta and the federal laws applicable therein.

15.7 **Enurement**. This Agreement shall enure to the benefit of the Parties and their respective successors.

15.8 **Entire Agreement**. This Agreement, together with the agreements and documents herein referred to, constitute the entire agreement among the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, among the Parties with respect to the subject matter hereof.

15.9 Counterparts. This Agreement may be executed in counterparts and delivered by one Party to the other by facsimile, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. If this Agreement is delivered by facsimile, the Party so delivering this Agreement shall within a reasonable time after such delivery, deliver an original executed copy to the other.

Balance of page intentionally left blank. Execution pages to follow.

IN WITNESS WHEREOF this Agreement has been executed by the Parties as of the date first above written.

APPROVED	
AS TO CONTENT	
Water Resources	LS
AS TO FORM SOLICITORS	DEH

THE CITY OF CALGARY

Per: _____

Name: ROB PRITCHARD

Title: General Manager

Per: _____

Name: Susan P. Gray
City Clerk

Title: _____

DEC 22 2015

TOWN OF STRATHMORE

Per: _____

Name: Dwight Stanford

Title: Chief Administrative Officer

Per: _____

Name: Michael Ell

Title: Mayor

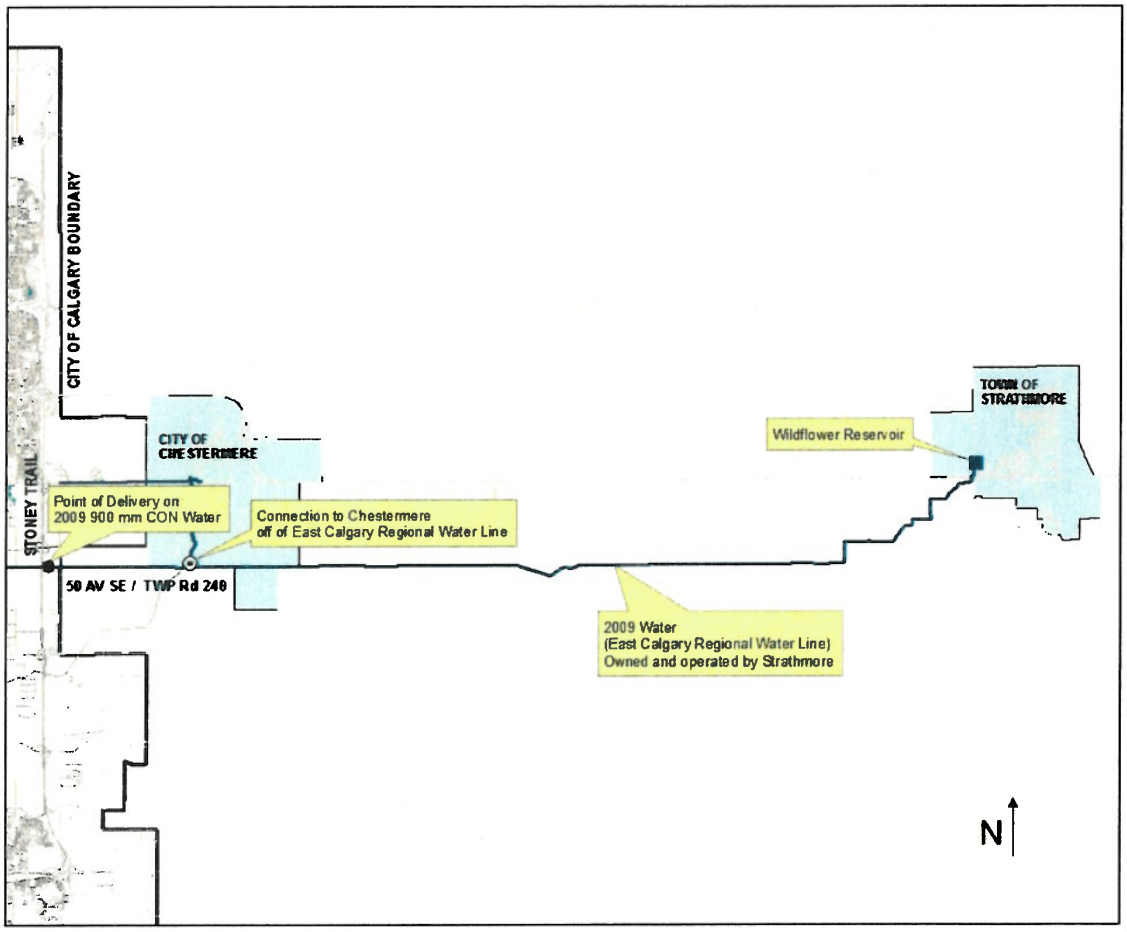


SCHEDULE "A"
SERVICE AREA

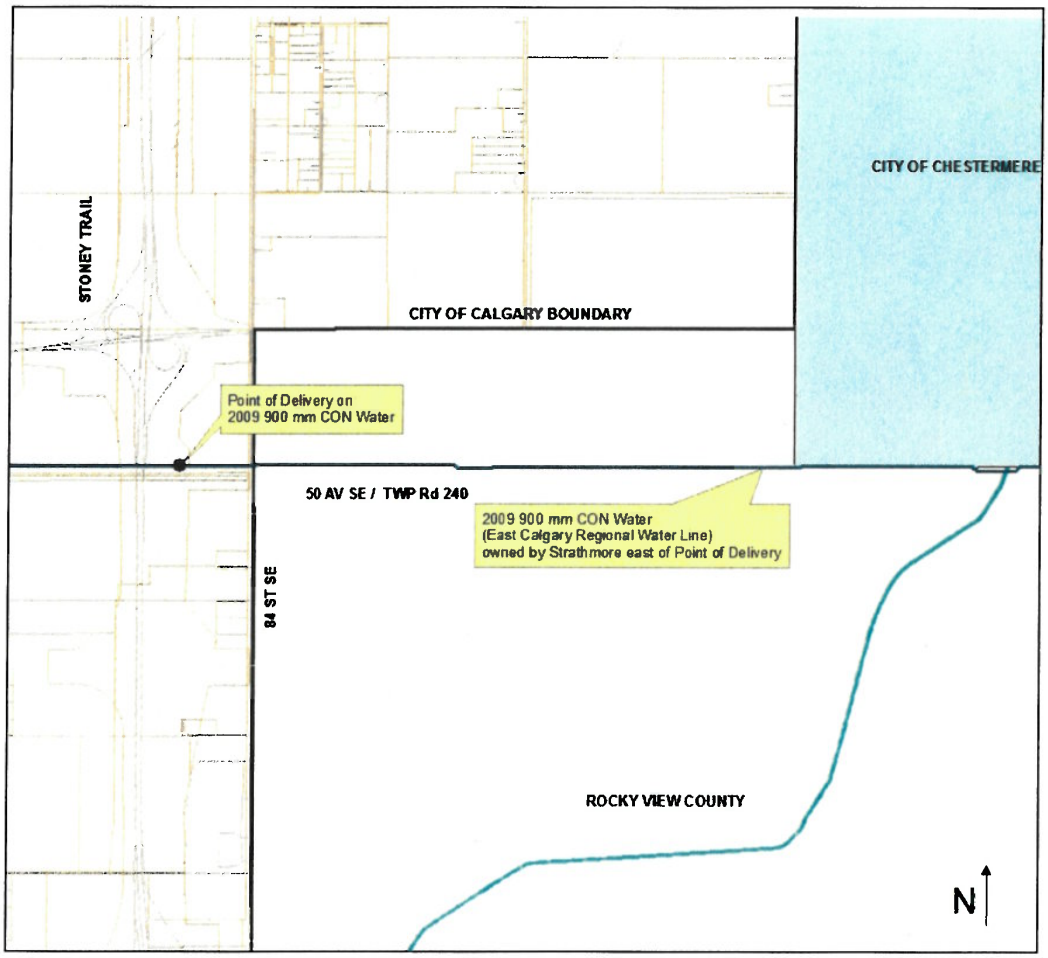

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SCHEDULE "B"

POTABLE WATER INFRASTRUCTURE



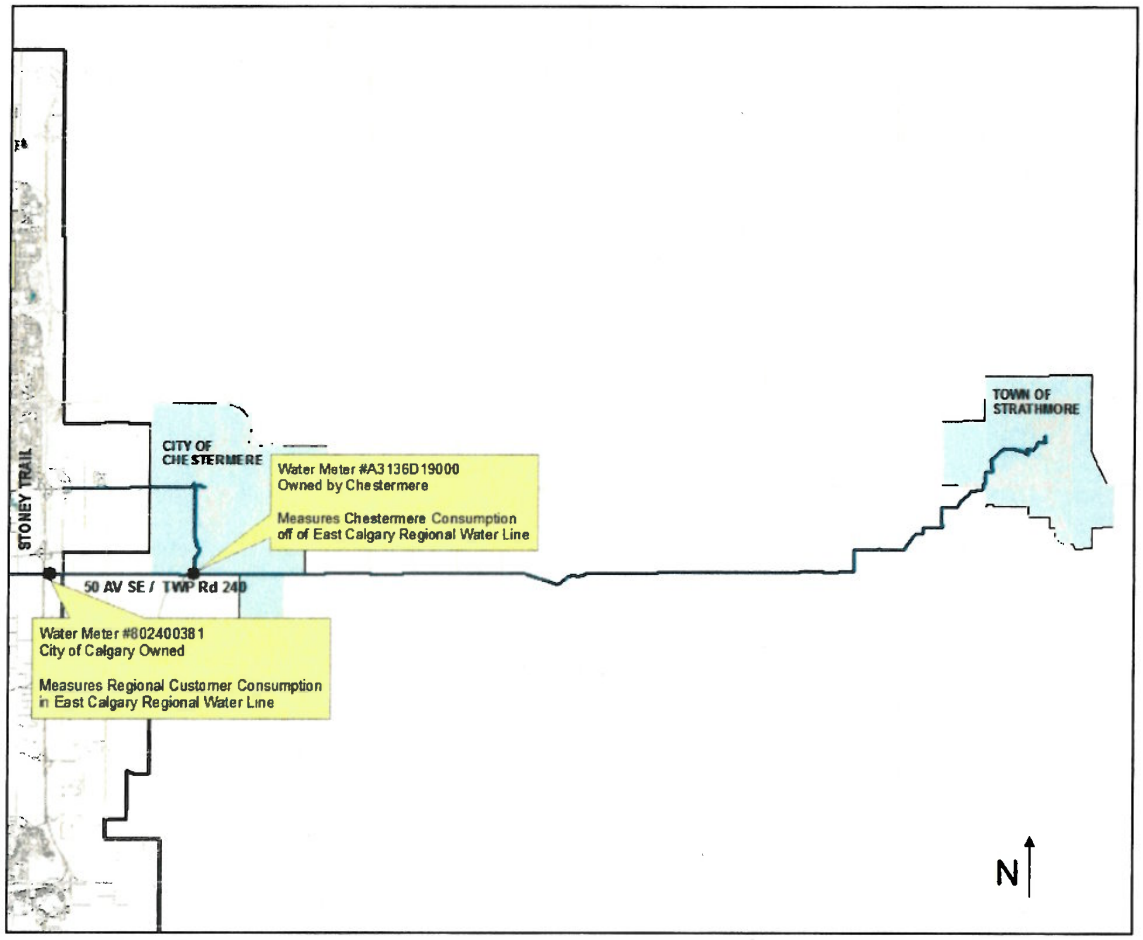
● = Potable Water Delivery Point



● = Potable Water Delivery Point

SCHEDULE "C"

METER LOCATIONS



● = Meter Location

Water consumption and billing for the Town of Strathmore is the calculated by taking the totalized Regional Customer volume recorded in City of Calgary Meter #802400381 and subtracting City of Chestermere Meter #A3136D19000.

SCHEDULE "D"

WATER FLOW RATES

POTABLE WATER SERVICING FLOWS	Year				
	2015 - 2018	2019 - 2022	2023 - 2026	2027 - 2030	2031 - 2034
2009 900 mm CON Water (East Calgary Regional Water Line)					
Water is received through East Calgary Regional Water Line owned by Town of Strathmore. Chestermere also receives water through the East Calgary Regional Water Line. Capacity requirements downstream of the Point of Delivery are subject to side agreements between the Town of Strathmore and the City of Chestermere.					
TOTAL					
Maximum Instantaneous (L/min)	6,388	7,411	8,575	9,909	11,434
Maximum Daily (ML/d)	8.4	9.7	11.2	13.0	15.0
Maximum Annual (ML)	1,695.8	1,967	2,276	2,631	3,035

Strathmore holds its own water license sufficient to 2220 ML per year.

The water flow rates for 2019 and beyond are projections only, and subject to revision by agreement. As per Section 4.1(g), the flow rates for 2019 and beyond may be revised as mutually agreed upon based on infrastructure capacity, municipal planning documents and cost of service studies.

SCHEDULE "E"

RATE PRINCIPLES

1. PRINCIPLES:

Usage rates and fees for Water Services are to be determined during Business Plans & Budgeting Cycles by The City of Calgary on the basis of the following guiding principles as approved by Calgary City Council by bylaw and subject to Part 2 of the *Public Utilities Act*, and the requirement that rates charged or proposed to be charged to the Customer by The City are just and reasonable:

(i) Follow industry best practice Cost of Service methodology
(ii) Align to City of Calgary Guiding Principles for Utility Rates
    - Financial Sustainability
        - Deliver sufficient and predictable revenue
        - Rate Stability
        - Adaptability
    - Fairness and Equity to Customers
        - User Pay philosophy
        - Customer Equity
        - Accessible and Simple
    - Water Resource Management
        - Conservation
        - Watershed protection
(iii) Cost of Service Basis

Costs of providing service to be distributed in a fair and equitable manner, in proportion to the benefit derived by each customer class. The Cost of Service will apply allocation approaches to all City system assets, including system expansions, and no assets shall be specifically allocated solely to the Regional Customersexcept where such assets only provide service to, and only serves to benefit the Regional Customers.

A separate Cost of Service will be performed for Potable Water Servicing, applying a consistent approach and methodologies, such that Customers only receiving one of these services shall not be assigned costs related to providing the other service.

Allocation of operating, maintenance and administration costs shall be based on the relative use and/or benefit of the underlying system received by the Regional Customers versus all other customers.

2. STANDARDS:

City of Calgary rates and cost setting process for Water must meet the following standards:

(i) Alberta Utilities Commission regulatory standards in particular Part 2 of the *Public Utilities Act,* and the requirement that rates charged or proposed to be charged to the Customer by The City are just and reasonable
(ii) Industry standard water utility service practices
    - Environmental considerations
    - Reliability
    - Safety
(iii) AWWA M1 Manual
(iv) Applicable laws

(v) Applicable regulatory requirements
(vi) The most current Guidelines for Municipal Water Works, and Storm Drainage Systems published by Alberta Environment.

In the event of a conflict between any of the aforesaid standards and practices, the standard or practice which promotes or provides the greatest safety and/or security or service and is in compliance with applicable laws will apply.

3. COSS PROCESS & ENGAGEMENT:

The City of Calgary will endeavour to engage the Customer during rate and cost setting processes with open and transparent communication under the following scope:

(i) Make information available to stakeholders on the Cost of Service principles and purpose, including providing complete copies of relevant studies of the City's Cost of Service applicable to Potable Water Servicing;
(ii) Collect feedback to inform and improve decision making for the purposes of determining the Cost of Service and/or engaging in a Cost of Service study;
(iii) Work collaboratively and cooperatively with the Customer and its consultants in order to establish a COSS complying with the principles set forth within this schedule to further guide rate setting by; and
(iv) Work collaboratively and cooperatively with the Customer and its consultants in order to apply the principles and methodology of any study.

4. AMENDMENTS:

Principles and practices to determine usage rates and fees may change from time to time by way of amendments to this schedule, or by the findings or directives of the Alberta Utilities Commission pursuant to its decisions or orders.

5. Disputes:

Notwithstanding any of the foregoing, the parties agree that in the event of a dispute as to whether any rate charged or proposed to be charged to the Customer by The City is just and reasonable, the Customer may bring the matter before the Alberta Utilities Commission for resolution and Part 2 of the Public Utilities Act shall apply to the resolution of the dispute with all modifications deemed necessary by the Alberta Utilities Commission for that purpose.

SCHEDULE "F"

EMERGENCY NOTIFICATION, SERVICE INTERRUPTION & EMERGENCY MANAGEMENT PLAN

1. DEFINITIONS

"Local Emergency" means those Emergencies identified within Table 1, together with any other Emergencies which cause or have the potential of causing a Major Impact and which is limited to the Customer;

"Local Emergency Contact" means the respective contact for the Parties identified within Table 2, as amended from time to time;

"Major Emergency" means those Emergencies identified within Table 3, together with any other Emergencies which cause or have the potential of causing a Major Impact to multiple Regional Customers;

"Major Emergency Contact" means the respective contact for the Parties identified within Table 4, as amended from time to time;

"Major Impact" means the occurrence of event constituting or resulting in an Outage with respect to either Potable Water Servicing.

"Responsible Party" means the Party responsible for providing a response to an Emergency within Table 1 and Table 3 contained within this Schedule

2. LOCAL EMERGENCY

For the local emergencies identified in Table 1, the appropriate response protocol has been identified.

TABLE 1: LOCAL EMERGENCY RESPONSE PROTOCOL

#	Scenario	Potential Impacts	Response
1	Failure of customer owned regional water transmission line	a) reduced or no water supply to Regional Customers, possibly including Chestermere b) voluntary or mandatory water restrictions for regional customer. c) release of hazardous substance to environment (land or river)	a) at discretion of customer b) at discretion of customer c) at discretion of customer
2	Failure of City owned water transmission system, water pump station, or water reservoir. Including major energy interruption	a) reduced or no water supply to Regional Customers and/or inside City customers b) voluntary or mandatory water restrictions to regional and/or inside City customers	a) City Supervisor to contact Customer Local Emergency Contact b) City to contact Customer Local Emergency Contact

The foregoing are in addition to the responsibilities and liabilities of the Parties as provided for within this Agreement, or under Applicable Law, and shall in no manner whatsoever be interpreted as a replacement thereof or limitation thereto.

The Customer and not The City has an obligation to notify and respond to any failures of the East Calgary Regional Water Line east of the Point of Delivery which impacts the City of Chestermere.

Table 2 outlines the contacts for the City and Customer that are available to respond to local emergencies 24 hours a day, seven days a week.

TABLE 2: LOCAL EMERGENCY CONTACT		
Local Emergency Contact	Phone	Comments
City of Calgary		
On Call Duty Supervisor	**403-370-0286**	**Water (24/7)**
Town of Strathmore		
Emergency Number	**403-934-3133**	**24/7 (business and after hours)**
EPCOR Water Emergency	**403-934-9440**	**EPCOR**

3. MAJOR SYSTEM EMERGENCY

For the major emergencies identified in Table 3, the appropriate response protocol has been identified.

TABLE 3: MAJOR EMERGENCY RESPONSE PROTOCOL			
#	Scenario	Potential Customer Impacts	Response
4	Drought / Low River flows	a) reduced water supply to all customers b) mandatory water restrictions	City planning or engineering staff to contact Customer planning or engineering staff.
5	WTP Shutdown (failure or water quality related)	a) reduced water supply to all customers b) mandatory water restrictions	City to contact Customer Major Emergency Contact
6	Potable water system contamination (anywhere in system – reservoir or pipe, or source)	a) reduced or no water supply to certain pressure zones b) voluntary or mandatory water restrictions	City to contact Customer Major Emergency Contact

7	Flooding. Reduced WTP output, or inundated water facilities (PS)	a) reduced or no water supply to certain pressure zones b) possible water restrictions	City to contact Customer Major Emergency Contact

The foregoing are in addition to the responsibilities and liabilities of the Parties as provided for within this Agreement, or under Applicable Law, and shall in no manner whatsoever be interpreted as a replacement thereof or limitation thereto.

Table 4 outlines the contacts for the City and Customer that are available to respond to major emergencies 24 hours a day, seven days a week.

TABLE 4: MAJOR EMERGENCY CONTACT

Major Emergency Contact	Phone	Comments
City of Calgary		
On Call Duty Supervisor	**403-370-0286**	**Water (24/7)**
Town of Strathmore		
Emergency Number	**Emergency Number**	**Emergency Number**
EPCOR Water Emergency	**EPCOR Water Emergency**	**EPCOR Water Emergency**

4. Emergency Protocol & Management Plans

In addition to the specific responses for Local Emergencies and Major Emergencies, the Parties covenant and agree as follows:

(i) The City or Customer, as the case may be, shall promptly respond to the Emergency;
(ii) The Responding Party as outlined above shall notify the other Party as provided above, and where such Emergency may adversely affect the health of members of the public, then it shall forthwith notify Alberta Environment and the local public health authority as to the extent and nature of the Emergency;
(iii) Should any Emergency place members of the public in immediate danger of adverse health effects then, in addition to the foregoing, the Responsible Party shall take all steps reasonably necessary to promptly notify such individuals of the nature of the risk and any prudent steps recommended to minimize or eliminate such risk, without regard for the time of day;
(iv) In all other circumstances, the Responsible Party shall promptly take all steps reasonably practicable to notify members of the public of any circumstances in which their health may be compromised and to advise of any known prudent steps which are recommended to be taken to minimize or eliminate such risk;
(v) The Responsible Party shall give notice under regulatory requirements of Applicable Law and to the other Party immediately, and in any event within 24 hours after it becomes aware of any Emergency;
(vi) The Responsible Party shall, within a reasonable time, make recommendations to the other Party of steps required to restore normal service;

Pursuant to Section 9.8 of the body of this Agreement, the Parties may establish such additional emergency response plans, or amendments or additions to existing emergency response plans, as may be required and agreed upon by the Parties. This may include a site specific Emergency protocol that will be kept on site and reviewed annually for effectiveness and application. Such additional emergency response plans may, for example, include plans addressing the following:

biological results exceeding limits
turbidity / particle counts exceeding limits
chemical overfeed
no chemical or coagulant feed
low chlorine
equipment failure at specific facilities
flood at specific facilities
power failure
specific facilities becoming inoperable
list of contacts for Alberta Environment, health authority, fire / police and Municipal and Provincial emergency coordinators

5. Service Interruption Protocol

The following protocol shall apply in the event of any scheduled or anticipated interruption or curtailment of Potable Water:

(i) the City shall give the Customer prior notice of any scheduled or anticipated interruption in Potable Water Servicing as soon as is reasonably practicable and in any event at least fourteen (14) days prior to such interruption;
(ii) the City shall use reasonable efforts to carry out scheduled maintenance work in such a manner as to minimize the impact on the users of the corresponding system or portions thereof;
(iii) where impacts to users of the corresponding system or portion thereof cannot be avoided, the scheduled maintenance work should be completed in off-peak use hours where possible;
(iv) the City shall restore service as soon as reasonably practicable;

Notwithstanding the foregoing, in conducting scheduled maintenance the City shall coordinate with the Customer so as to ensure that:

(i) the Customer is able to maintain a minimum amount of water within its Potable Water reservoir required for fire suppression, in addition to a supply of Potable Water to meet consumer demand, throughout the interruption or curtailment for scheduled maintenance; and
(ii) the City shall keep the Customer apprised of and up-to-date in respect of relevant circumstances during each interruption or curtailment of service, and shall coordinate any required work with the Customer in order to minimize inconvenience to the Customer;
(iii) there will be developed, such additional service interruption plans as may be required and agreed upon by the City and the Customer. This may include a site specific protocol for service interruptions that will be kept on site and reviewed annually for effectiveness and application.