



City of Lloydminster

Water Supply Agreement with Alberta Central East Water Corporation

January 4, 2023

Alberta Utilities Commission

Decision 27755-D01-2023

City of Lloydminster

Water Supply Agreement with Alberta Central East Water Corporation

Proceeding 27755

January 4, 2023

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The Commission may, within 60 days of the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

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1 Decision summary

1. In this decision, the Alberta Utilities Commission approves a potable water supply agreement between the City of Lloydminster and Alberta Central East Water Corporation (ACE) pursuant to Section 30(1) of the *Municipal Government Act*. The approved agreement is set to expire on January 1, 2038.

2 Background

2. On November 3, 2022, the City of Lloydminster filed an application with the Commission requesting approval of a water supply agreement with ACE.

3. The Commission issued notice of Lloydminster's application for the water supply agreement with ACE on November 16, 2022. The notice of the application was also published in Meridian Source on November 24, 2022. Interested parties were to register their concerns by December 5, 2022. No submissions were received in response to the notice.

4. Subsequent to its review of the application, the Commission issued one round of information requests (IRs) to Lloydminster. On December 6, 2022, Lloydminster provided responses to the IRs. The Commission determined that no further information was required and considers the close of record to be December 6, 2022.

3 Details of the application

5. As part of its long-term strategy to secure potable water supplies to the communities within east-central Alberta, ACE approached Lloydminster to act as a regional potable water supply hub for its community members. After Lloydminster confirmed that it was feasible to provide potable water services to ACE, parties decided to enter into a water supply agreement.¹

6. In 2017, in Proceeding 22920, Lloydminster indicated that it had a five-year water supply agreement to provide potable water to certain communities within ACE. Lloydminster and ACE intended for the water supply agreement to be extended to 20 years upon approval by the Commission, but parties requested that the Commission delay processing of the application to discuss certain issues with respect to the agreement. The proceeding was closed in 2020 after a period absent of any updates.

¹ Exhibit 27755-X0001, Application Request Letter.

7. On November 3, 2022, Lloydminster filed a new application requesting approval of the same water service agreement. This water service agreement is the subject of this decision.

3.1 Term of the agreement

8. The water supply agreement between Lloydminster and ACE is effective June 6, 2017. The term of the agreement is defined to be “a period of Twenty years (20) commencing on the date hereof and expiring on January 1, 2038.”² The only other date mentioned in the agreement is the effective date, June 6, 2017.

9. Section 30(1) of the *Municipal Government Act* states:

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.

10. Upon review of the expiration date of the water supply agreement, the Commission observes that 20 years from the effective date of the agreement would be June 6, 2037, and that does not coincide with the January 1, 2038, expiration date identified in the agreement. In response to a Commission IR, Lloydminster indicated that the supply of potable water to ACE began on October 2, 2018, even though the effective date of the agreement is June 6, 2017.³ When the Commission asked an IR about the agreement’s expiration date, Lloydminster explained that it has intentions to amend or transition the agreement upon approval by the Commission, to enact January 1, 2038, as the expiration date.⁴ On this basis, the Commission is satisfied that water supply agreement would extend beyond five years and requires the Commission’s approval.

11. Based on its review of the service agreement, the Commission is satisfied that the service agreement between Lloydminster and ACE, as it relates to the supply of potable water, is necessary and proper for public convenience and properly serves the public interest. The Commission is also satisfied with Lloydminster’s response to IRs that resolved the apparent discrepancy among the agreement’s effective date, expiry date and its 20-year term. The Commission understands from the IR responses that January 1, 2038, is the expiration date. On that basis and noting the absence of any objection to the application pursuant to Section 30(1) of the *Municipal Government Act*, the Commission hereby approves the potable water supply agreement, as attached to this decision as [Appendix 2](#).

4 Order

12. It is hereby ordered that:

- (1) Pursuant to Section 30(1) of the *Municipal Government Act*, the Commission hereby approves the potable water supply agreement, as filed.

Dated on January 4, 2023.

² Exhibit 27755-X0002, Water Supply Agreement, Section 1(o)(ii), PDF page 3.

³ Exhibit 27755-X0012, IR response to LLO-AUC-2022DEC01-001(b).

⁴ Exhibit 27755-X0012, IR response to LLO-AUC-2022DEC01-001(c).

Alberta Utilities Commission

(original signed by)

Chris Arnot
Acting Director, Retail Energy and Water
On behalf of the Alberta Utilities Commission

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
City of Lloydminster

Alberta Utilities Commission
Delegated authority C. Arnot, Acting Director, Retail Energy and Water
Commission staff P. Khan (Commission counsel) E. Chu

Appendix 2 – Water Supply Agreement between the City of Lloydminster and Alberta Central East Water Corporation

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



Appendix 2 - Water
supply agreement

(consists of 19 pages)

WATER SUPPLY AGREEMENT

CITY OF LLOYDMINSTER

and

ALBERTA CENTRAL EAST WATER CORPORATION

THIS AGREEMENT made effective as of the 6 day of June, 2017.

BETWEEN:

CITY OF LLOYDMINSTER
(hereinafter referred to as the "City")

and

ALBERTA CENTRAL EAST WATER CORPORATION
(hereinafter referred to as the "Customer")

WATER SUPPLY AGREEMENT

WHEREAS:

- A. The City produces and supplies Water to customers within the corporate boundaries of the City;
- B. The Customer wishes to purchase Water from the City, and the City wishes to sell and deliver Water to the Customer, on terms and conditions contained within this Agreement;
- C. The City and the Customer recognize that conservation of water resources is an important goal.

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

1. Definitions

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

- (a) "Agreed Variance" means the standard for accuracy for the Meter being tested and calibrated as specified in the latest edition of the American Water Works Association C-700 Series Standards, as amended or replaced from time to time;
- (b) "Agreement" means this Water Supply Agreement including the introduction clauses, all attached Schedules and all documents produced or delivered according to the terms of this Agreement;
- (c) "Applicable Laws" means any statute, regulation, code, order, directive or other legal requirement of a governmental or quasi-governmental body having jurisdiction over one or more of the parties or the subject matter of this Agreement pursuant to law including, without restriction, the requirements of any permits or approvals issued thereunder;
- (d) "Best Efforts" means, in relation to the performance of an obligation, efforts that are sensible and practical, and involve the exercise of reasoned and sound judgment, having regard to all of the relevant circumstances;
- (e) "City Metering Station" means the metering station containing the Meter Chamber and Meter, and located at:

PLAN _____
BOCK _____
LOT _____
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

or, if not capable of being designated by the parties as of the execution of this Agreement, at a location to be determined by the City and the Customer, each acting reasonably;

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- (f) “**City System**” means the Water transmission system consisting of the Watermains, metering facilities, pumps, and associated piping, connections, equipment and works owned and/or operated by the City extending up to but excluding the Point of Delivery;
- (g) “**Cross Connection**” means any physical connection to a Watermain whereby any source of raw water or non-potable water supply becomes connected with the Watermain;
- (h) “**Customer Transmission System**” means the particular transmission system consisting of all Watermains existing or to be installed from, including, and after the Point of Delivery, together with all metering facilities, and associated piping, connections, equipment and works extending from and after the Point of Delivery, as depicted within **Schedule “B”**;
- (i) “**Force Majeure**” means, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, storms, floods, high waters, washouts, inclement weather, orders or acts of civil or military authorities, civil disturbances, or any other causes, whether of the kind herein enumerated or otherwise, not within the reasonable control of the party and which, by the exercise of due diligence, the party is unable to overcome, provided that lack of funds shall not be a cause beyond control;
- (j) “**Interest**” means the amount calculated on a sum owing under this Agreement based upon the rate established by the City from time to time and applicable to all customers of the City for late payment of Water service accounts, calculated from and including the date upon which the sum became due and owing, to but excluding the date of unconditional payment;
- (k) “**Meter**” means any and all consumption measuring device(s);
- (l) “**Meter Chamber**” means the metering chamber which houses the Meter including all necessary valves, pressure and flow controls, associated equipment and pipes, but excluding any Meter, which Meter Chamber is to be constructed by the Customer, or by the City at the Customer’s cost, to City specifications, and owned and operated by the City at the City Metering Station;
- (m) “**Point of Delivery**” means the outlet valve of the Meter located at the City Metering Station;
- (n) “**Rate**” means the price for Water determined from time to time according to the provisions of the attached **Schedule “C”**;
- (o) “**Term**” means the term of this Agreement being:
- (i) a period of Five (5) years commencing on the date hereof and expiring on _____, 20____; or
- (ii) upon the approval of this Agreement by the Alberta Utilities Commission, a period of Twenty (20) years commencing on the date hereof and expiring on January 1, 2038;
- (p) “**Water**” means treated water which has been produced by the City for human consumption; and
- (q) “**Watermain**” means a Water pipeline under pressure used to supply or deliver Water.

2. Supply and Purchase

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

- (a) The Customer shall construct and install at its sole cost and expense (or, in the alternative and at the City’s option, the City shall construct and install and the Customer shall reimburse the City for all costs incurred in constructing and installing), the following:
- (i) the Meter and Meter Chamber; and

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- (ii) any Watermains necessary to connect the City System to the Meter and Meter Chamber, or connect the Meter to the Customer Transmission System;
- (b) Subject to the Customer's obligations within subsection (a), the City will use Best Efforts to:
 - (i) make Water available to the Customer at the Point of Delivery in the manner, at the rate of delivery, and at the operating pressure contemplated within **Schedule "A"** attached to this Agreement;
 - (ii) make the Water available to the Customer at the Point of Delivery in substantially the same quality as the City provides within its boundaries to customers; and
 - (iii) avoid situations where it is unable to supply the Customer the quantity of the Water specified in Section 2(b)(i);all as further contemplated or described within Schedule "A" attached to this Agreement;
- (c) Water purchased from the City by the Customer shall be determined as the volume of Water measured at the transmission line Meter contained within the Meter Chamber located at the City Metering Station. The Meter shall be read on the last work day of each month for the determination of monthly billing;
- (d) the Customer will pay the City for all Water metered as set forth above in an amount equal to the product of the Rate and the volume measured by the applicable Meter;
- (e) The City shall deliver a monthly invoice to the Customer specifying amounts of Water metered and total amount invoiced for the relevant month;
- (f) the Customer shall pay the City all amounts due within thirty (30) days of receipt of such invoice. If any invoice is not paid within such sixty (60) days of receipt as aforesaid, any unpaid amount will attract and be subject to the payment of Interest;
- (g) each party will furnish to the other party such information in its possession or control reasonably required for the proper performance of the respective obligations of the party and shall provide such cooperation as is reasonable in order for the other party to be able to perform its obligations under this Agreement;
- (h) the Customer will use Best Efforts in the management and operation of the Customer Transmission System to ensure and maintain a chlorine residual within and throughout the Customer Transmission System downstream from the Point of Delivery;
- (i) the Customer and the City are individually responsible for obtaining, at their sole expense, all necessary consents, approvals or orders from any level of government, board, tribunal or other regulatory authority which is or are required in order for each of them to enter into this Agreement or to perform and satisfy their respective obligations described herein. The Customer and the City will cooperate with each other and will provide reasonable assistance to each other, when requested;
- (j) neither the Customer nor the City will allow or permit any Cross Connection; and
- (k) the Customer and the City specifically agree that in the event of a Force Majeure, unless otherwise physically prevented due to the Force Majeure or impacts thereof the Customer will be entitled to receive a share of supply of available Water in the same manner as all customers of the City (i.e. same entitlements and corresponding rationing of available Water for all City customers, without preference or prejudice).

3. City Ownership, Metering and Supply:

- (a) The City owns:

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- (i) all Watermains, metering facilities, associated piping and connections up to the Point of Delivery, comprising the City System;
 - (ii) the Meter and the Meter Chamber.
- (b) The Customer shall at all times provide the City with unrestricted access to the above-noted equipment and all other property of the City located on the Customer property from time to time for the purposes of allowing the City to perform all of its obligations or exercise its rights hereunder.
- (c) Once per year, the City will test its Meters for accuracy at its sole expense. The Customer may require a copy of the test results that were conducted by an independent contractor.
- (d) If at any time a Meter Chamber or a Meter is out of service or is being repaired so that the measurement of the volume of Water being delivered is not being recorded accurately within the Agreed Variance, or if a test determines that a Meter has not registered accurately within the Agreed Variance, the Meter Chamber or Meter shall be repaired or adjusted as soon as practical, and the measurement shall be corrected for a period definitely known or agreed upon, or if not known or agreed upon for one-half of the period since the last Meter test, and the measurements shall be determined or adjusted, as the case may be, to correct for the degree of inaccuracy using the best available data in the following priority:
- (i) by estimating the volume based upon deliveries under similar conditions during a period of time when the Meter Chamber and Meter were working accurately;
 - (ii) by correcting the error, if the percentage of the error is ascertainable by calibration, test or mathematical calculation; or
 - (iii) by using any check measuring equipment if installed and if accurately registering within the Agreed Variance.
- (e) The Customer may require the City to conduct a test on its Meter(s) that is not the annual test contemplated in Section 3(c) above, when reasonable cause exists. If such test result indicates that the accuracy of the tested Meter exceeds the Agreed Variance, the City shall pay the costs for such tests and shall, at its sole expense, repair the Meter in order that the Meter falls within the Agreed Variance as soon as practical, and the measurement shall be corrected for a period definitely known or agreed upon, or if not known or agreed upon for one-half of the period since the last Meter test, and the measurements shall be determined or adjusted, as the case may be, to correct for the degree of inaccuracy using the best available data in the same priority as provided for within Section 3(d) above. If such test results indicates that the accuracy of the tested Meter is within the Agreed Variance, the Customer shall pay the costs for such test.

4. Customer Ownership, Metering and Supply:

- (a) The Customer owns the Customer Transmission System.
- (b) The Customer shall be responsible for the operations and maintenance of the Customer Transmission System, including design, new construction, customer billing, customer service, Water quality compliance and all regulatory compliance as required in respect of the operation of the Customer Transmission System, as per **Schedule "B"**;
- (c) The Customer shall at all times provide the City with access to the above-noted equipment and all other property of the Customer for the purposes of allowing the City to perform all of its obligations or exercise its rights hereunder.

5. Repairs, Maintenance and Replacements

- (a) The City may interrupt or curtail Water service for periods of time as it may reasonably require for the purpose of effecting any repairs, maintenance, replacement, upgrading or other work relating

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to the City System provided that:

- (i) the City has given the Customer at least forty-eight (48) hours prior notice, or in the event of unforeseen circumstances, the City gives notice of such interruption or curtailment as soon as is reasonably possible; and
- (ii) the City acts reasonably in using Best Efforts to restore services as soon as reasonably possible;
- (b) The City will use Best Efforts to coordinate the repairs, maintenance, replacement, upgrading and other work referred to in the immediately preceding paragraph with the Customer so as to minimize to the extent reasonable the inconvenience to the Customer arising from such interruptions and curtailments;
- (c) During periods of interruption or curtailment provided for in Section 5(a), above, the City may reduce the level, quality or quantity of service provided to the Customer under this Agreement, provided that the City shall treat all of its customers affected by the interruption or curtailment, including the Customer, fairly, equitably and without preference, consistent with any physical and/or operating constraints then in effect. The City shall use Best Efforts to keep the Customer apprised of and up-to-date in respect of the relevant circumstances during each interruption or curtailment.

6. Force Majeure

- (a) Neither party hereto shall be liable to the other for any failure of or delay in the performance of its obligations hereunder nor be deemed to be in breach of this Agreement, if such failure or delay has arisen from Force Majeure.
- (b) Where either party is prevented from carrying out its respective obligations hereunder due to Force Majeure, such party shall, as soon as possible, give notice of the occurrence of such Force Majeure to the other party and of the obligations, the performance of which is thereby delayed or prevented and the party giving the notice shall thereupon be excused from the performance of such obligation for the period of time directly attributable to such prevention or delay.
- (c) During the period of Force Majeure, the City may impose reasonable restrictions on the delivery of Water, provided that the City shall treat all of its customers affected by the Force Majeure, including the Customer, fairly, equitably and without preference, consistent with any operating constraints then in effect;
- (d) The parties agree that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the particular party involved therein and such party may make settlement thereof in such time and on such terms and conditions as it may deem to be advisable and no delay in making such settlement shall deprive such party of the benefits of this Section;

7. Liability, Damages and Mutual Indemnity

- (a) Unless the cause is proven to be due directly to the negligence of either party, their employees or agents, the parties will have no liability to each other whatsoever for any damage, loss, cost or expense resulting from, arising out of or associated with:
 - (i) a break of any Watermain, service pipe or collapse of any ditch or trench;
 - (ii) the interference or suspension of the supply of Water due to maintenance work to, repair work to or replacement work for either party's Water system or an emergency situation regarding any part of either of the party's Water system; and
 - (iii) any accident to or failure of any part of either party's Water system.

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- (b) Notwithstanding any other provision of this Agreement, neither the City nor the Customer will be liable to the other for:
 - (i) any losses or costs arising from third party claims or causes of action, including claims or causes of action of the other's customers; or
 - (ii) any indirect, consequential or punitive damages, including loss of profits or revenues or other similar damages.
- (c) Each party (the "indemnifying party") agrees to indemnify and save harmless the other party (the "indemnified party"), its agents and employees from and against any and all damage, injury, loss, costs, causes of action, including legal costs on solicitor and own client basis, and claims suffered or incurred by the indemnified party, its agents or employees which are in any way connected with the performance or nonperformance of this Agreement and which are caused either directly or indirectly or contributed to in whole or in part by any act or failure to act of the indemnifying party, its agents and employees, in respect of which indemnifying party, its agents or employees are liable or otherwise responsible in law, provided that such indemnity shall be limited to an amount in proportion to which the indemnifying party, its agents and employees are at fault or otherwise held responsible in law.
- (d) Without restricting the foregoing provisions of this Section 7, or the provisions of Section 6 of this Agreement, the Customer acknowledges and agrees as follows:
 - (i) in entering into this Agreement the City is not guaranteeing a continuous or uninterrupted source of supply of Water to the Customer;
 - (ii) the City shall not be liable to the Customer, to any customer of the Customer, or to any third party for any interruption in the supply of Water from the City System to any member or customer of the Customer if the interruption of supply is due to the occurrence of an event of Force Majeure; and
 - (iii) the Customer shall at all times save harmless and indemnify the City from and against all claims and demands by or liability to any member or customer of the Customer arising as a result of the partial or absolute failure of the City to supply Water to the Customer under the terms of this Agreement or otherwise and from and against all damages, losses, costs, charges and expenses which the City may sustain or incur or be liable for as a consequence of any such claims or demands, if such partial or absolute failure is due to the occurrence of an event of Force Majeure.
- (e) The indemnities contained herein shall survive the expiry or termination of this Agreement, howsoever it occurs.

8. Water Shortage

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

9. Performance by Either Party

A party shall be deemed to be in default hereunder if any of the following events occur (each of the following events to be referred to as an "Event of Default", the party in default to be referred to as the "Defaulting Party" and the party not in default to be referred to as the "Non-defaulting Party"):

- (a) a party fails to make a payment as required by any provision of this Agreement including failure to pay an indemnity amount required to be paid pursuant to the terms of this Agreement (a "Payment Default");

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- (b) a party fails to perform any of its obligations under Section 2 of this Agreement or fails to perform any other material obligation imposed upon such party under this Agreement (which, for greater certainty, shall not include obligations resulting in a Payment Default if not performed) (each such event being a “Performance Default”); or
- (c) a party experiences any of the following events (an “Insolvency Default”):
 - (i) the party institutes voluntary liquidation, dissolution or winding-up procedures;
 - (ii) the party takes any voluntary proceedings under any bankruptcy or insolvency legislation to be adjudicated a bankrupt or for any other relief;
 - (iii) the party makes a compromise with or an assignment for the benefit of creditors;
 - (iv) a receiver/receiver manager is appointed with regard to the party or to any material part of the party’s property;
 - (v) a court adjudges the party to be bankrupt or makes an order requiring the liquidation, dissolution or winding up of the party; or
 - (vi) if the corporate existence of the party is otherwise terminated.

10. Notice of Default

- (a) If a party claims that there has been a Payment Default or Performance Default committed by or affecting the other party, the party making the claim shall give to the party alleged to be in default a notice (hereinafter referred to as the “Notice of Default”). The Notice of Default shall specify and provide particulars of the alleged Event of Default.
- (b) In the event the alleged Event of Default is capable of being remedied, the party alleged to be in default shall:
 - (i) have no cure period in respect of an Insolvency Default;
 - (ii) have a cure period of Thirty (30) days after receipt of the Notice of Default with respect to a Payment Default;
 - (iii) subject to subsections (b)(iv) and (c) below, have a cure period of Thirty (30) days after receipt of the Notice of Default with respect to a Performance Default; or
 - (iv) if a Performance Default is such that it cannot be reasonably remedied within Thirty (30) days after receipt of the Notice of Default, have a reasonable period of time to cure the Performance Default provided that the Defaulting Party promptly commences and diligently continues thereafter to remedy the Event of Default.
- (c) If before the expiry of the later of the cure period (if any) referred to in subsection (b) above or the time to cure specified in the Notice of Default the Defaulting Party cures the Event of Default, the Default Notice shall be inoperative and the Defaulting Party shall lose no rights hereunder.

11. Remedies

Upon the occurrence of an Insolvency Default, or in the event that a Notice of Default has been given and the party alleged to be in default does not cure or remedy the Event of Default in the manner contemplated by Section 10(c), the Non-defaulting Party shall have the following rights and remedies:

- (a) in the case of a Payment Default, to charge the Defaulting Party Interest with respect to the unpaid amount until it is paid, calculated daily, regardless of whether the Non-defaulting Party has notified the Defaulting Party in advance of its intention to charge Interest with respect to the unpaid amount; and/or

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- (b) in the case of a Performance Default, the Non-defaulting Party may but shall not be obligated to, either directly or indirectly by engaging a third party or otherwise, as the case may be, do all such things in order to rectify such Event of Default at the sole cost and expense of the Defaulting Party; and/or
- (c) in the case of any Event of Default, the Non-defaulting Party may:
 - (i) suspend performance of its obligations under this Agreement, including the right to suspend any payment owing pursuant to this Agreement; and/or
 - (ii) set-off against the unpaid amount any sums due or accruing to the Defaulting Party by the Non-defaulting Party in accordance with this Agreement or the City Supply Agreement; and/or
 - (iii) maintain an action or actions for the unpaid amount and Interest thereon on a continuing basis as the amounts become payable but are not paid by the Defaulting Party, as if the obligation to pay those amounts and the Interest thereon was a liquidated demand due and payable on the date the amounts were due to be paid, without any right or resort of the Defaulting Party to set-off or counter-claim; and/or
 - (iv) terminate this Agreement.

12. Remedies Cumulative

A Non-defaulting Party may, at its discretion, exercise the remedies referenced in Section 11 applicable to it in the alternative, concurrently or cumulatively, except where inconsistent with the express provisions contained in this Agreement and provided that in the case of a Payment Default the concurrent or cumulative exercise of remedies shall not result in duplication or a recovery on the part of the Non-defaulting Party based on an amount (excluding Interest) in excess of the Payment Default. No delay or omission by a Non-defaulting Party in exercising its rights or remedies hereunder shall operate as a waiver of those rights or remedies or of any other right or remedy and no single or partial exercise thereof shall preclude any other or future exercise thereof or the exercise of any other right or remedy.

13. Termination, Renewal or Extension of Term

The Term may be extended by the parties for a further period of ten (10) years commencing on the day immediately following the last day of the Term and renewal term, as the case may be, PROVIDED THAT the parties mutually agree in writing to such extension, failing which this Agreement shall expire on the last day of the Term and shall be of no further force and effect. If this Agreement is extended, all other terms and conditions within this Agreement shall remain in full force and effect.

14. Mediation and Remedies

- (a) If a dispute arises between the Customer and the City regarding the interpretation, application, operation or breach of this Agreement or any part of it and the dispute is not within the jurisdiction of the Alberta Utilities Commission, the Municipal Government Board, or any of their successor entities, then the dispute must be submitted to mediation before either party may take any additional action or step or pursue any available remedy other than to preserve the right to pursue such remedy. The dispute resolution process is described in greater detail in the attached **Schedule "D"**.
- (b) Notwithstanding the mediation process, the parties will continue to perform their obligations described in this Agreement (except to the extent the performance is rendered unreasonable as a result of the pending or ongoing mediation) until such time as the mediation process is complete;
- (c) Subject to Section 6 and 7(b), if a party fails to perform its obligations hereunder, then the other party will have all available legal and equitable remedies.

WATER SUPPLY AGREEMENT**15. General****(a) Notices**

Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing. Notice shall be served by one of the following means:

- (i) personally, by delivering it to the party on whom it is to be served at the address set out herein, provided such delivery shall be during normal business hours. Personally delivered Notice shall be deemed received when actually delivered as aforesaid and addressed as specified in this subsection (a) below; or
- (ii) by telecopier or by any other like method by which a written or recorded message may be sent, directed to the party on whom it is to be served at that address set out herein. Notice so served shall be deemed received on the earlier of:
 - (A) upon transmission with answer back confirmation if received within the normal working hours of the Business Day; or
 - (B) at the commencement of the next ensuing Business Day following transmission with answer back confirmation thereof; or
- (iii) by mailing via first class registered post, postage prepaid, to the party on whom it is served. Notice so served shall be deemed to be received three (3) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received;

except as herein otherwise provided. The addresses for Notices to the parties shall be as follows:

- (i) if to the City:

City of Lloydminster
4420- 50 Avenue, Alberta
Lloydminster, Alberta
T9V 0W2
Attention: City Manager
Telephone No.: 780-875-6184
Fax No.: 780-871-8345
- (ii) if to the Customer:

c/o County of Vermilion River
Box 69, 4912 – 50 Avenue
Kitscotty, Alberta
TOB 2P0
Attention:
Telephone No.: (780) 846-2244
Fax No.: (780) 846-2716

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

(b) Governing Law

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

(c) Time of Essence

Time shall be of the essence of this Agreement.

WATER SUPPLY AGREEMENT

(d) Preamble and Schedules

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

- Schedule "A" - Additional Supply Terms and Conditions
- Schedule "B" - Transmission Lines, Customer Transmission System & Point of Delivery
- Schedule "C" - Rates
- Schedule "D" - Dispute Resolution Process

(e) Headings

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

(f) Relationship between Parties

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

(g) No Authority

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

(h) Agreement Entire Relationship

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

(i) Further Assurances

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

(j) Amendments

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

(k) Waiver

No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder. Failure on the part of either party to complain of

WATER SUPPLY AGREEMENT

any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

(l) Counterparts

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

(m) Statutory Reference

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

(n) Unenforceability

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

(o) Survival

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

(p) Remedies Generally

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

(q) Payment of Monies

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

(r) GST Exclusive

All amounts payable by one party to the other hereunder will be exclusive of any goods and services tax ("GST") and the party providing payment will, in addition the amounts payable hereunder, pay to the other party all amounts of GST applicable thereon. The City's GST number is 12207 1954 RT0001.

(s) Singular, Plural and Gender

WATER SUPPLY AGREEMENT

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

(t) Binding Effect

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

(u) Assignment

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

(v) Requests for Consent

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

IN WITNESS WHEREOF the parties hereunto have hereunto executed this Agreement all effective as of the date and year first set forth above, notwithstanding the actual date or dates of execution hereof.



CITY OF LLOYDMINSTER

Per: [Signature]
Mayor

Per: [Signature]
City Clerk

ALBERTA CENTRAL EAST WATER CORPORATION

Per: Pat Gardner

Per: [Signature]

SCHEDULE "A"

ADDITIONAL SUPPLY TERMS AND CONDITIONS

Throughout the Term the City shall provide Water to the Point of Delivery in the following manner:

- 1. **Capacity/Flow** – the City will make available to the Customer entitlements to capacity within the City System to provide for flow and volume demands up to the following total limits:

Flow Demands (L/sec)					Flow Demands (cu.m./day)				
2016-2019	2020-2024	2025-2034	2035-2039	2040-2041	2016-2019	2020-2024	2025-2034	2035-2039	2040-2041
26.98	28.60	32.89	40.09	44.26	2,331	2,471	2,842	3,464	3,824

- 2. **Operating Pressure** – subject to the 5 year forecast not exceeding the design capacity of the City System, the City will exercise its Best Efforts to provide Water pressure to the Point of Delivery as depicted on the following chart:

Minimum Pressure*	Normal Pressure	Maximum Pressure
*140 kPa	280 to 455 kPa	574kPa

SCHEDULE "B"

WATER TRANSMISSION LINE & POINTS OF DELIVERY

SCHEDULE “C”

RATES

Subject always to the jurisdiction of the Alberta Utilities Commission, Rates will be calculated and charged on the basis of the following principles:

1. **Cost of Service Basis** – on a cost of service basis utilizing the principles set out in the American Water Works Association (“AWWA”) manuals of practice dealing with Water rates and charges, as revised and updated from time to time, and ensuring that costs of providing service are distributed in a fair and equitable manner, in proportion to the benefit derived by each customer class, so as to ensure that the rates charged or proposed to be charged to the Customer by the City are just and reasonable;
2. **Amendment** – principles and practices to be applied to determine Rates may change from time to time by way of negotiated agreement between the parties, as a result of changes to the foregoing references for principles and rate setting practices, or as a result of a decision or order of the Alberta Utilities Commission, or a successor tribunal or authority. Without restricting the foregoing, the parties may, for example, mutually agree to sharing of capital costs related to the Water services provided to the Customer by the City, subject to corresponding adjustments to the Rates so as to conform to the principles and practices to be applied to pursuant to this Agreement;
3. **Rate Setting by City** – the Rates shall be established and amended from time to time by the Council of the City, which is to be comprised of variable rate component(s) per cubic meter; and
4. **Current Rate** – as of the date of this Agreement, the current Rate shall be comprised of \$1.27 /m³ of Water measured at the Meter located within the Meter Chamber.

Year	Production Costs	Depreciation Costs	Profit	Total
2018	\$0.77	\$0.33	\$0.17	\$1.27
2019	\$0.78	\$0.33	\$0.17	\$1.28
2020	\$0.80	\$0.31	\$0.17	\$1.28
2021	\$0.82	\$0.30	\$0.17	\$1.28
2022	\$0.83	\$0.29	\$0.17	\$1.29

SCHEDULE "D"

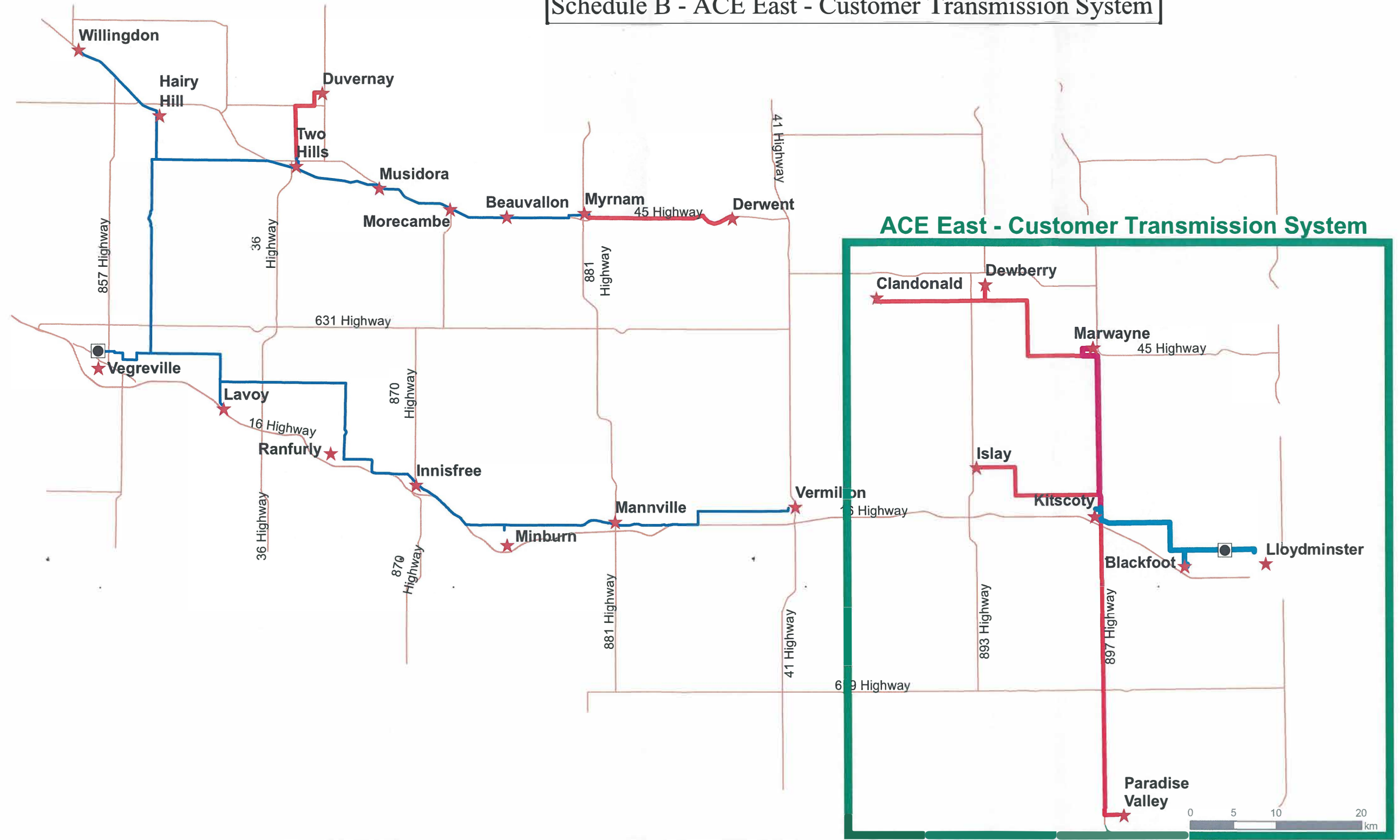
MEDIATION PROCESS

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

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

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

Schedule B - ACE East - Customer Transmission System



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- Key**
- ★ Communities
 - Water Transfer Station
 - Existing System
 - Phase 4
 - Phase 5
 - Future Phases

Date
2016.08.22
Project No.
2482.0029.02



ACE Regional Water System

All Phases - Alignment

Figure

1