ROCKY VIEW COUNTY
Cultivating Communities

Calalta Waterworks Ltd.

WATER UTILITY FRANCHISE AGREEMENT

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THIS AGREEMENT dated for reference the ___ day of _____, 2020.

BETWEEN:

ROCKY VIEW COUNTY
a municipal corporation created under the laws
of the Province of Alberta
(the "**County**")

AND:

CALALTA WATERWORKS LTD.
a corporation incorporated under the laws of the
Province of Alberta
(the "**Utility**")

WHEREAS:

A. The Utility is a public utility and is operating, and has operated since 1981, a waterworks system located within the County;

B. The County and the Utility wish to confirm the existing arrangement between the Parties and expand the boundaries of the area currently being served by the Utility;

C. The Utility is currently the owner of the Facilities which are currently located within that portion of the County shown within Schedule B-1 (Franchise Area) attached to this Agreement;

D. The County has entered into, and will in the future, enter into Development Agreements with one or more Developers respecting the subdivision and/or development of lands within the Franchise Area, as well as the design, construction, commissioning and testing of new additions to the Facilities;

E. The Development Agreements also require that upon Acceptance of new additions to the Facilities by the County, the Facilities will be transferred to the Utility for ownership, operations, maintenance, and the potential eventual transfer to the County, in accordance with the terms, covenants and conditions contained within this Agreement;

F. The County wishes to make provision for the supply of the Services within the Franchise Area and Non-Exclusive Extended Areas, as applicable, by the Utility, and the operation, maintenance, management and ownership of the Facilities;

G. Pursuant to the MGA the County has the right, subject to the conditions noted within Section 3.6 of this Agreement, to:

1. grant an exclusive right to supply a service of a public utility within the County;

2. charge a fee, rate or toll in respect of any service provided by the County to the Utility; and

3. charge a fee for the use and occupation of land comprising Public Properties;

H. The Utility wishes to maintain and install all works necessary for the provision of the Services

including pipes, valves, chambers, manholes, pumps and hydrants and other accessories, structures and equipment in, under, above, on, through or across highways, roads, streets, lanes, public space or public water within the Franchise Area and owned by or under the direction, control and management of the County;

I. The Utility requires the right to utilize the lands comprising Public Properties for the purposes of the Operation and Maintenance of the Facilities and the provision of the Services;

J. The parties desire to document their respective rights and obligations hereunder with respect to the foregoing.

NOW THEREFORE in consideration of the promises exchanged in this Agreement, and in consideration of payment of $1.00 by each Party to the other and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the County and the Utility), the County and the Utility covenant and agree with each other as follows:

1. INTERPRETATION

1.1 Defined Terms

The definitions set forth in Schedule A-1 (Definitions) to this Agreement shall govern the meaning of all defined terms used in this Agreement, unless there is something in the subject matter or context that is expressly inconsistent therewith.

1.2 Construction and Interpretation

In this Agreement, including the recitals, Schedules and appendices to this Agreement, except where expressly stated to the contrary or the context otherwise requires, the construction and interpretation of provisions shall be in accordance with Schedule A-2 (Interpretation and General Contractual Terms).

1.3 Schedules

All Schedules are included in and form part of this Agreement.

2. PURPOSE AND LEGAL RELATIONSHIP

2.1 Purpose of the Agreement

The purpose of this Agreement is, subject to the mandate and jurisdiction of the AUC, to:

(a) provide to the Utility the exclusive right to supply the Services within the Franchise Area, as contemplated under Section 45 of the MGA;

(b) to provide to the Utility the non-exclusive right to provide the Services within the Non-Exclusive Extended Areas, subject always to the terms of this Agreement;

(c) to provide to the Utility future opportunities for the Utility to provide the Services to additional lands outside of the Franchise Area on a non-exclusive basis, subject always to the terms of this Agreement and County's written consent on a case by case basis to be given or withheld in accordance with Section 3.2(b) of this Agreement;

(d) provide to the Utility the right to utilize the lands comprising the Public Properties for the purposes of operating and maintaining the Facilities and providing the Services;

(e) govern the manner by which the Utility, or any of its Operators or Sub-Contractors, access and utilize any lands comprising the Public Properties;

(f) govern the transfer of new additions to the Facilities to the Utility as contemplated under the Development Agreements;

(g) govern the manner in which the Services are provided within the County, subject to the mandate and jurisdiction of the AUC and AEP;

(h) govern the potential transfer of the Facilities to the County upon the expiration of this Agreement as contemplated under Section 47 of the MGA.

2.2 Legal Relationship

No partnership, joint venture, employment, fiduciary or agency relationship is created between the Utility and the County by this Agreement or under this Agreement and for all intents and purposes the Utility shall be deemed to be an independent contractor and owner/operator and not the servant, employee, partner, or agent of the County. All personnel employed by the Utility to provide the Services are at all times the employees of the Utility and not of the County. The Utility is solely responsible for arranging all matters arising out of the relationship of employer and employee. The Utility shall ensure that all agreements between the Utility and all of its Operators contain a disclaimer substantially similar to that contained within the preceding sentence.

3. GRANT AND TERM

3.1 Grant of Franchise

Subject to all Applicable Laws and the terms and conditions of this Agreement, the County hereby grants to the Utility the exclusive right to provide the Services within the Franchise Area throughout the Term, subject always to the limits, exclusions or exceptions contemplated within this Agreement and within the bylaw contemplated within Section 3.3 of this Agreement.

3.2 Non-Exclusive Extended Areas & Additional Services

Subject to the prior written consent of the County, which consent may be withheld and/or be subject to the planning, development and utility servicing discretions of the County, the Utility shall have the right (but shall not be obligated) to, at any time and from time to time throughout the Term:

(a) provide the Additional Services to the lands comprising the Non-Exclusive Extended Areas on a non-exclusive basis;

(b) whereupon the corresponding services approved by the County pursuant to such consent, and provided from time to time by the Utility, shall be deemed to form part of the Additional Services.

Upon providing Additional Services, the Utility shall comply with the requirements of this Agreement including, without restriction, Schedule B-5 (Non-Exclusive Extended Areas and Additional Services).

3.3 Exclusivity and Bylaw

Pursuant to the exclusive right granted to the Utility pursuant to Section 3.1, the County will exercise all reasonable efforts following the execution of this Agreement in order to propose for the adoption by Council a bylaw acceptable to the County and the Utility pursuant to Section 46 of the MGA prohibiting any Person other than the Utility from providing within the Franchise Area a utility service the same as or similar to the Services. In this regard:

(a) the exclusivity granted to the Utility shall at all times be subject to the limits, exclusions and exceptions contained within the applicable bylaw in the form passed;

(b) the County will not be liable to the Utility for any infringement of any of the exclusive rights granted to the Utility pursuant to Section 3.1 of this Agreement and/or the exclusivity bylaw contemplated within this Section unless the County has granted a right to the infringing party to provide a utility service within the Franchise Area (or a part thereof) which is the same as or similar to the Services; and

(c) the County shall, however, subject to all Applicable Laws exercise its best reasonable efforts to protect the rights granted pursuant to Section 3.1 of this Agreement including, without limitation, through the enforcement of the exclusivity bylaw adopted as contemplated within this Section during the Term, including any extension thereof.

3.4 Term

The Term of this Agreement will commence on the Effective Date and will continue until the Termination Date unless renewed or replaced as contemplated within Section 3.5, and subject always to the provisions of Section 47 of the MGA.

3.5 Renewal

Subject always to the provisions of Section 47 of the MGA the Parties may seek the approval of the AUC for the renewal or replacement of this Agreement for a term not to exceed twenty (20) years and on such terms and conditions as the County and the Utility may agree (such approval being subject always to Section 45 of the MGA). Not less than twenty-four (24) months prior to the expiration of the Term, the Parties shall meet to discuss their respective intentions and requirements with respect to renewal, replacement or expiration as contemplated within Section 47 of the MGA. The Parties shall thereafter meet as often and as many times as is reasonably required in order to determine each Party's intentions and/or willingness to renew, replace, or let this Agreement expire, which determination shall be made not less than twelve (12) months prior to the expiration of the Term. Any proposed renewal or replacement shall require that the Parties first prepare all documentation necessary to submit to the AUC as soon as reasonably possible following the determination of the Parties' respective intentions noted above, and subsequently obtain the approval of the AUC, all in accordance with Section 45 of the MGA.

3.6 Effective Date

Notwithstanding anything set forth herein, this Agreement (save and except this Section 3.6) shall not become effective or be of any force or effect until the day following the satisfaction or, if applicable, waiver, of the following conditions (such date being the "**Effective Date**"):

(a) Council has given third reading to a bylaw approving this Agreement and providing for the exclusivity of Services as contemplated in Section 3.1 of this Agreement, which bylaw shall be in form and substance satisfactory to the Utility and the County;

(b) this Agreement has been approved by the AUC by way of a decision issued pursuant to Section 45 of the MGA and any conditions of such approval shall be satisfactory to the Utility and the County.

If the Effective Date has not occurred by the last day of the eighteenth (18th) month following the month as of which this Agreement is dated for reference or such later date as may be agreed to in writing by the Parties, subject always to the jurisdiction of the AUC including under Section 47 of the MGA, either the County or the Utility may terminate this Agreement by delivering a Notice to that effect to the other Party without liability to the terminating Party and without prejudice to any other rights or remedies of the Utility. The conditions set forth in paragraphs (a) and (b) above may not be waived by either party. The County and the Utility shall confirm the Effective Date by an agreement in writing made within a reasonable time following the occurrence of the Effective Date.

3.7 Approval and Amendment

By executing and delivering this Agreement:

(a) each Party represents to the other Party that it has the legal right and power to execute and enforce this Agreement;

(b) the Utility agrees that it will not oppose the intervention by the County in any regulatory proceeding affecting the enforcement of the County's rights under this Agreement;

(c) the Parties agree that in the event that the AUC requires amendments to this Agreement before it will provide its approval, the Utility and the County shall act reasonably and negotiate in good faith to resolve any amendments to the terms of this Agreement necessary to facilitate approval;

(d) the Parties accept and agree to comply with each and every provision contained herein; and

(e) the Parties agree that this Agreement was granted pursuant to processes and procedures consistent with Applicable Laws, and agree that they will not raise any claim or defense to the contrary.

3.8 County Discretion

The rights granted in this Agreement are subject to the County's exercise of its statutory authority under all statutes that confer such authority on the County, and nothing in this Agreement shall be read to limit the exercise of such authority. The County, among other things, does not waive the requirements of Applicable Laws including, but not limited to, bylaws, codes, ordinances, and resolutions relating to zoning, building permits and fees, rules regarding the time, place and manner of construction, or the use of the lands comprising the Public Properties.

3.9 Utility Discretion

Save and except for as specifically required or contemplated under this Agreement, the rights granted in this Agreement are subject to the Utility's exercise of its powers under all statutes that confer power on the Utility, and nothing in this Agreement shall be read to limit the exercise of those powers. The Utility, among other things, does not waive the requirements of Applicable Laws including, but not limited to, the provisions of the *Water Act* and the *Public Utilities Act* and all bylaws, codes, ordinances, and resolutions relating to zoning, building permits and fees, rules regarding the time, place and manner

of construction, or the use of Facilities or the Public Properties.

3.10 Right to Purchase the Facilities

The County shall have the right to purchase the Facilities upon:

(a) the expiration of the Term of this Agreement, provided that no renewal or replacement has been agreed to; or

(b) the termination of this Agreement prior to the expiry of the Term pursuant to an express provision of this Agreement (save and except any termination pursuant to Section 3.6), or by operation of law or order of a Relevant Authority or Court of law having jurisdiction;

subject to and in accordance with the provisions of Section 47 of the MGA where applicable, which purchase shall be conducted in accordance with the applicable provisions of Schedule E-1 (Financial Operations) and Schedule E-2 (Transfer and Transition Procedures). In the event of any dispute respecting the terms and conditions of such a sale which cannot be resolved under the terms of this Agreement, the matter shall be referred to the AUC for determination. In the event that Section 47 of the MGA is no longer applicable and has not otherwise been replaced or superseded, the County's right to purchase the Facilities and the terms and price of such purchase shall be determined and conducted in accordance with the applicable provisions of Schedule E-1 (Financial Operations) and Schedule E-2 (Transfer and Transition Procedures).

3.11 Determination of Sale Price

The determination of the sale price for the purchase of the Facilities upon the termination of this Agreement in accordance with Section 47 of the MGA shall be subject to the terms contained within Schedule E-2 (Transfer and Transition Procedures).

3.12 Right of First Offer

(a) The Utility shall not, except with the prior written consent of the County, sell, transfer or otherwise dispose of the Facilities, or any portion thereof, during the Term of this Agreement without first complying with the provisions of this Section 3.12(b).

(b) If, during the Term of this Agreement, the Utility determines that it wishes to sell, or receives an un-solicited offer to purchase, all or any portion of the Facilities, the Utility shall:

(i) by Notice in writing to the County:

(A) notify the County of the intention or unsolicited offer, as the case may be;

(B) provide a description of the assets intending to be offered for sale or subject to the offer to purchase, as the case may be; and

(ii) prior to accepting any unsolicited offer to purchase, or prior to entering into any exclusive negotiations with any other party which prohibits or restricts the Utility from entertaining any other offers, the Utility shall allow a reasonable period of time, as determined by the Utility acting reasonably (but which shall in no event exceed one hundred and twenty (120) days) for the County to:

(A) consider, decide upon, prepare and/or present an offer to purchase;

(B) attempt to negotiate in good faith with the Utility;

respecting the Facilities or portions thereof as noted within the above-noted Notice.

(c) For clarity, Sections 3.9 and 3.10 of this Agreement shall not apply to any negotiations or discussions entered into between the County and the Utility pursuant to this Section.

(d) Nothing in this Section shall obligate the Utility to any specific time frames or any requirement to accept any offer that may be presented by the County or to consummate a sale with the County, nor does it prevent the Utility from entertaining offers or expressions of interest from any other parties respecting the Facilities.

(e) Nothing contained within this Section shall derogate in any manner the rights of the County as contemplated within Section 3.9 of this Agreement, or Section 47 of the MGA, nor shall it derogate from any requirement to obtain AUC approval for any alteration, sale, assignment or transfer of the Utility's interest in the Facilities and this Agreement.

(f) This Section 3.12 shall not apply to:

(i) sale, transfer or disposition of the Facilities to any Person which has been approved by the County in writing and completed concurrently with the assignment of this Agreement by the Utility to such Person made in accordance with this Agreement; or

(ii) the sale, transfer or disposition of any portion of the Facilities to any Person in the ordinary course of the operations of the Utility including, without restriction, the sale of any Equipment determined by the Utility to be functionally obsolete or whose function is otherwise effectively replaced by replacement Equipment or other portions of the Facilities; or

(iii) any sale, transfer or disposition of the Facilities or any part thereof to any Person where such sale, transfer or disposition is required pursuant to Applicable Laws.

4. THE SERVICING RESPONSIBILITY

4.1 Operation and Services

Subject to the further provisions of this Agreement, the Utility shall be solely and exclusively responsible for coordinating the commencement of the Services with the completion of Stages of and additions to the Facilities, and the provision of the Services within the Franchise Area, and in particular for performing the Operation and Maintenance, all on the terms and conditions set forth in this Agreement. Without restricting the generality of the foregoing, except as otherwise set forth in this Agreement, the Utility shall be fully responsible for:

(a) Operation and Maintenance of all parts of the Facilities in accordance with the operating plans and specifications contemplated within this Agreement;

(b) all funding and/or financing of the performance of the Operation and Maintenance;

(c) the provision of the Services, excluding the Additional Services, to all owners or occupiers of the Lands in accordance with all Regulatory Requirements;

(d) the provision of the Additional Services, to all Consumers who have contracted with the Utility for the provision of Additional Services in accordance with such contractual terms and all Regulatory Requirements;

(e) all billing and collections for or in respect of the provision of the Services; and

(f) ensuring that all of the Operators and Sub-Contractors supplying goods and/or services for all or any portion of the Operation and Maintenance are competent and qualified, and perform all Operation and Maintenance in accordance with the provisions of this Agreement,

(g) coordinating the commencement of Operation and Maintenance of new additions to the Facilities with the conclusion of the administration of construction, inspection and commissioning of such new additions by the County under the Development Agreements;

all in accordance with the provisions of Schedule C-2 (Operation, Maintenance and Services).

4.2 Stages

Pursuant to the provisions of the Development Agreements, the design, construction, commissioning and transfer to the Utility of new additions to the Facilities:

(a) shall occur in accordance with the Stages of the construction of such Facilities complementary to the subdivision and development of the applicable Lands contained within the Franchise Area. and as provided for in the applicable Development Agreement;

(b) the transfer and conveyance to the Utility of those facilities, works and rights (including any permissions, approvals and licenses providing for the right to divert and utilize allocations of water) existing as of the date of this Agreement required in connection with the initial Stage of the Facilities will be governed by and completed in accordance with the provisions of one or more Development Agreements to be entered into between the County and the Developer of the respective portion of the Lands prior to or in connection with the registration of the plan or plans of subdivision in respect to the Lands to be registered in connection with such initial Stage; and

(c) either:

(i) the design, construction, commissioning and transfer of the Extended Area Facilities within the Non-Exclusive Extended Areas to the Utility or new additions to the Facilities within the Non-Exclusive Extended Areas; or

(ii) the transfer to the Utility of the water systems now or hereafter servicing the Non-Exclusive Extended Areas;

as the case may be, may occur as a result of the extension of the Facilities, and/or the Utility agreeing to provide Additional Services to, existing development within the Franchise Area and lands forming part of the Non-Exclusive Extended Areas;

subject to the satisfaction of the conditions and consultation contemplated within Schedule E-1 (Financial Operations).

The Utility shall assume ownership and responsibility for, and commence Operation and Maintenance of, each of the new additions to the Facilities either in stages corresponding to the Stages upon the transfer to the Utility as contemplated above, or upon the assumption of the system and works (or a part thereof) servicing the Non-Exclusive Extended Areas as contemplated above, as the case may be.

4.3 Clarification

The Utility's responsibilities set forth in Sections 4.1 and 4.2 shall be subject to the following:

(a) upon Acceptance of new additions to the Facilities for a Stage pursuant to the applicable Development Agreement (Notice of which shall be promptly given to the Utility by the County), the Utility shall accept transfer of such new additions to the Facilities corresponding to each Stage subject to the relevant terms and conditions contained within Schedule E-1 (Financial Operations) having been satisfied and fulfilled, and thereafter commence Operation and Maintenance in accordance with this Agreement;

(b) upon transfer to and acceptance by the Utility of water systems now or hereafter servicing the Non-Exclusive Extended Areas, and/or the completion of alternate arrangements respecting any Non-Exclusive Extended Areas as contemplated by the relevant terms and conditions contained within the agreement between the Utility and the corresponding Consumer in each case, the Utility, subject to the relevant terms and conditions contained within Schedule E-1 shall commence Operation and Maintenance in accordance with this Agreement; and

(c) notwithstanding the foregoing, the Utility shall:

(i) comply with and be responsible for the consequences of any Change in Law;

(ii) be responsible for any failure of the Facilities to meet the requirements of the Operating Permits or other Applicable Laws; and

(iii) be responsible for any failure of the Facilities to meet the performance requirements forming part of the operational specifications contained within Schedule C-2 (Operation, Maintenance and Services).

4.4 Alberta Utilities Commission

(a) The Parties acknowledge and agree that the provision of the Services by the Utility shall be subject to the mandate and jurisdiction of the AUC. Where the mandate and jurisdiction of the AUC applies to the provision of the Services, the Utility hereby covenants and agrees to provide the County with:

(i) advance Notice of any applications to, hearings before, proceedings with, and submissions to the AUC in respect to such Services, which Notice shall be reasonably sufficient to permit the County to appropriately respond to, appear

before, or make submissions to the AUC in respect of the subject matter of the application, hearing, proceeding or submission;

(ii) notice of the submission or receipt of all correspondence to or from, as well as all filings with, the AUC in any manner respecting, relating to or concerning the applicable Facilities, the Services and the Franchise Area contemplated under this Agreement, together with copies thereof in the event that a full record is not available through the AUC's website records; and

(iii) copies of all complaints or concerns received by the AUC by any consumer of the Services which the Utility has also received, together with copies thereof in the event that a full record is not available through the AUC's website records.

(b) The County agrees to, upon the written request of the Utility from time to time, use reasonable efforts to take all necessary steps, and to cooperate in all regulatory hearings in order to support or otherwise carry out the terms, covenants and conditions of this Agreement subject to:

(i) any limitations or conditions imposed by any Applicable Law or regulatory authority having authority over the County; and

(ii) in the case of participation at regulatory hearings, the costs of such attendance (including all legal costs on a solicitor and his own client full indemnity basis) being the responsibility of the Utility;

provided always that in no event shall the foregoing limit or restrict the County or Council from disagreeing with positions taken by the Utility before the AUC or in submissions thereto, as to matters not otherwise specifically agreed upon within this Agreement.

4.5 Utility Responsibility

The Utility will, as between itself and the County, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of the Utility's Representative, any Operator or any Sub-Contractor and all of the respective directors, officers, employees, contractors and agents of the Utility, the Utility's Representative, any Operator or any Sub-Contractor. Accordingly, except where the context otherwise requires, all references in this Agreement to any act, default, omission, breach or negligence of the Utility will be construed to include any such act, default, omission, breach or negligence committed by the Utility's Representative, an Operator or Sub-Contractor or any director, officer, employee or agent of the Utility, the Utility's Representative, an Operator or a Sub-Contractor.

4.6 County Responsibility

The County will, as between itself and the Utility, be responsible for the performance, acts, defaults, omissions, breaches and negligence of the County's Representative and all councilors, employees, contractors and agents of the County and the County's Representative. Accordingly, except where the context otherwise requires, all references in this Agreement to any act, default, omission, breach or negligence of the County will be construed to include any such act, default, omission, breach or negligence committed by the County's Representative or any councilor, employee, contractor, agent or invitee of the County or the County's Representative.

4.7 Inspection / Review

Any inspection or review of documents or materials by the County whether pursuant to this Agreement (including the operating plans and specifications contained within Schedule C-2 (Operation, Maintenance and Services), and consultation and plan approvals contemplated within Schedule E-1 (Financial Operations) in respect of the completed Facilities) or the Development Agreements (including, without restriction, examination of plans by the County contemplated thereunder) shall not be considered as an approval or acceptance thereof by the County unless the County, in fact, approves or accepts same in writing, and in no event shall such approval or acceptance be deemed or interpreted as an amendment of any provisions of this Agreement or a waiver or release of any of the obligations of the Utility contained within this Agreement except as expressly provided for in this Agreement.

4.8 Ownership of Assets

The County acknowledges that the Facilities, together with all additions thereto once transferred to or otherwise acquired by the Utility, are or will be the sole property and responsibility of the Utility, subject to the transfer provisions of Schedule E-2 (Transfer and Transition Procedures).

4.9 Operating Permits

(a) The Utility shall ensure that the Utility has obtained, and once obtained continues to maintain, any and all such permissions, approvals, agreements and licenses necessary to ensure that the Utility has access to, and is entitled to divert and utilize, any and all such allocations of ground water and/or surface water as necessary to perform and carry out the obligations of the Utility under this Agreement, including the Water Licences listed within Schedule C-3 (Operating Permits), or such allocations in substitution or replacement therefor as the County may approve from time to time, such County approval not to be unreasonably withheld, which provide for the right to divert and utilize such allocations of ground water and/or surface water necessary to provide the Services at all times as and when required under this Agreement.

(b) As part of the Operation and Maintenance, the Utility shall be responsible for obtaining, as and when required, all Operating Permits including those listed in Schedule C-3 (Operating Permits), and any requisite extensions, renewals or modifications thereof or replacements therefor.

(c) Notwithstanding anything in this Section to the contrary, the County shall have no responsibility under this Agreement for and shall be relieved from all liability in respect of, any delay or failure in obtaining any Operating Permit.

(d) The Utility shall be solely responsible to acquire all required extensions or renewals of such Operating Permits and any modifications or replacements thereof relating to the Facilities.

(e) Without in any manner whatsoever restricting any statutory power, duty, or other discretion reserved or otherwise assigned to the County or Council, the County shall provide the Utility with such reasonable cooperation in pursuit of all Operating Permits or any requisite extension, renewal or modification thereof or replacement therefor as the County is legally authorized and able to provide from time to time.

(f) The Utility shall promptly provide to the County copies of all Operating Permits relating to the Facilities, and amendments, extensions or renewals thereof, when issued to the Utility.

(g) The Utility shall promptly notify the County of any orders received by the Utility in relation to an Operating Permit.

4.10 Key Contractors

The Utility has proposed **H2O Pro** as the sub-contracted Operator.

4.11 Changes

The Utility shall:

(a) promptly notify the County of any change in the Person engaged by the Utility as the Operator;

(b) promptly notify the County of any change in the Person(s) engaged as Sub-Contractors who may at any time control any portion of the operation of the Facilities; and

(c) provide the County with up to date contact information for all Operators and Sub-Contractors including 24 hour emergency contacts for the Operators and any such Sub-Contractors.

5. THE OPERATION AND MAINTENANCE RESPONSIBILITY

5.1 Operation and Maintenance and Services

In carrying out all Operation and Maintenance and the provision of the Services, the Utility shall:

(a) **Access to Public Properties** – together with its Operators and Sub-Contractors, be entitled to access, use and enjoy the lands comprising the Public Properties for the purposes of the Operation and Maintenance of the Facilities and providing the Services, subject to and in accordance with the provisions of Schedule C-1 (Public Properties and Access);

(b) **Insurance** – provide the County with written confirmation of the insurance coverage required under this Agreement and in accordance with the provisions of Schedule D-1 (Insurance Requirements);

(c) **Security –** as security for the due and timely performance of the Utility's obligations under this Agreement, deliver and deposit with the County the Security required for the Operation and Maintenance of the Facilities and the provision of the Services, in the form and amount prescribed within Schedule D-2 (Security);

(d) **Permits and Approvals** – obtain and maintain any and all Operating Permits required in relation to the Operation and Maintenance of the Facilities, and the provision of the Services, as required by Applicable Law;

(e) **Licenses/Rights of Entry** – obtain and maintain any required license, right of way, or right of entry from any third party which is or are necessary to allow the Utility or its Operators and Sub-Contractors access to any lands (including any roads), when and if

applicable and/or required by the respective third party owner or other authority and, in respect to access to the lands comprising the Public Properties, comply with the provisions of Schedule C-1 (Public Properties and Access);

(f) **General Operation** – undertake the Operation and Maintenance of the Facilities and provide the Services in accordance with the provisions of Schedule C-2 (Operation, Maintenance and Services), as applicable;

(g) **Franchise Fee** – in consideration of the rights granted to the Utility by the County pursuant to this Agreement, pay to the County during the Term of this Agreement, the Franchise Fee in accordance with the provisions contained within Schedule B-4 (Franchise Fee);

(h) **Financial Operations** – comply with the provisions of Schedule E-1 (Financial Operations);

(i) **Records & Reports** – maintain all records and reports, and comply with all PIPA requirements, in accordance with the provisions of Schedule F-3 (Records & Reports); and

(j) **Transfer and Transition** – where applicable, transfer to the County all of the Facilities (together with such other rights, systems and works of the Utility utilized in the provision of the Services, as contemplated under Section 47 of the MGA) in accordance with the provisions of Section 3.9 and Schedule E-2 (Transfer and Transition Procedures).

The foregoing matters shall be more particularly described, depicted, and governed by the provisions of this Agreement identified above, and the provisions of the respective Schedule identified and applicable to the item and obligation noted above.

5.2 Intellectual Property

Schedule F-1 (Intellectual Property) sets out the rights and obligations of the Parties with respect to Intellectual Property.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Utility

The Utility represents and warrants to the County that, as of the date of this Agreement, each of the following statements is accurate:

(a) the Utility is a corporation incorporated pursuant to the *Business Corporations Act* (Alberta) and is legally entitled to carry on business in Alberta;

(b) the Utility and/or its Operators are skilled and knowledgeable in the design, construction, management, operation, maintenance, repair and replacement of facilities, works and services similar to the Facilities and the related financing thereof, and has the expertise and skill required in connection with the discharge of the Utility's obligations under this Agreement in accordance with the terms hereof;

(c) the Utility has full power and capacity to enter into and carry out the transactions contemplated by and duly observe and perform all its obligations contained in this

Agreement and all documents, instruments and agreements required to be executed and delivered by the Utility pursuant to this Agreement;

(d) the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the Utility pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, shall have been duly authorized by all necessary corporate action on the part of the Utility when such documents, instruments and agreements are executed and delivered by the Utility, and this Agreement has been duly executed and delivered by the Utility and constitutes a legal, valid and binding obligation of the Utility enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court;

(e) subject to the County granting to the Utility the right to access the Public Properties identified in accordance with the provisions of Schedule C-1 (Public Properties and Access), the Utility has, directly or under contract, sufficient trained personnel, facilities, materials and equipment available to perform the Operation and Maintenance;

(f) the execution and delivery of this Agreement by the Utility does not, and the performance by the Utility of the transactions contemplated hereby will not:

(i) result in a breach of any Applicable Laws or any provision of the constating documents of the Utility or any agreement to which it is a party; or

(ii) contravene any provision of, or be an event that is (or with the passage of time will result in) a contravention of, or result in the acceleration of or entitle any party to accelerate (whether after the giving of notice or lapse of time or both) any obligation of the Utility under any security interest, agreement, instrument, order, arbitration award, judgment, injunction or decree to which the Utility is a party or by which it is bound, or conflict with any statute, rule or regulation applicable to the Utility,

which breach or contravention could have a material adverse effect on the ability of the Utility to perform its obligations under this Agreement;

(g) any report, plans, diagrams and technical information, whether oral or written, made, furnished or given by the Utility, its directors, shareholders, officers or anyone authorized to represent of the Utility in its dealings with the County in connection with this Agreement is materially correct and accurate;

(h) the Utility holds all permits, licenses, consents, authorizations, and authorities issued by any level of government or any agency of government, that are required by Law to conduct its business, and all required third party consents to the execution by the Utility, and performance of its obligations under, this Agreement have been received, other than those Operating Permits noted in Schedule C-3 (Operating Permits) as Operating Permits to be obtained by the Utility after the Effective Date and the approval of the AUC to be obtained prior to the Effective Date as contemplated within Section 3.6 of this Agreement;

(i) to the extent that the Utility Has Knowledge, there are no current, pending or threatened actions, claims, demands, lawsuits, assessments, arbitrations, judgments, awards, decrees, orders, injunctions, prosecutions or other proceedings or financial condition, of, by, against or relating to the Utility which could have a material adverse effect on the ability of the Utility to perform its obligations under this Agreement and the Utility does not Have Knowledge of any basis for any such action, claim, demand, lawsuit, assessment, arbitration, judgment, award, decree, order, injunction, prosecution or other proceeding;

(j) the Utility is neither a party to nor threatened with any environmental litigation and has no knowledge of any claims against it that would materially adversely affect its financial condition or its ability to fulfill its obligations under this Agreement;

(k) the Utility has filed all tax, corporate information, and other returns required to be filed by Applicable Laws, has complied with all workers compensation legislation and other similar legislation to which it is subject, and has paid all taxes, fees, and assessments due by the Utility under Applicable Laws as of the date of this Agreement;

(l) the Utility and, to the extent the Utility Has Knowledge, the Operators, have complied in all material respects with all Applicable Laws and have not been, and are not now, subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which, in the aggregate, have or are reasonably likely to have a material adverse effect on the ability of the Utility to perform its obligations under this Agreement;

(m) there is no pending or threatened grievance, labour dispute, work stoppage or pending or existing claim, action, strike, nor any charge or complaint against the Utility or, to the extent the Utility Has Knowledge, any Operator, before any Court, tribunal, commission, board or other agency, whether federal, provincial or municipal, involving any charge of unfair labour practice or relating to labour or employment issues or practices generally or relating to the payment of wages or benefits, discrimination in employment or health standards or occupational safety, which, in the aggregate, have or are reasonably likely to have a material adverse effect on the ability of the Utility to perform its obligations under this Agreement;

(n) the Utility is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada); and

(o) the Utility has carried out all reasonable due diligence and has made all such reasonable investigations and assessments prior to entering into this Agreement to satisfy itself as to the nature and extent of the rights acquired by it and the risks assumed by it hereunder, and in doing so the Utility's investigations have been based on its own examination, knowledge, information and judgment and not upon any statement, representation, or information made or given by the County.

6.2 Representations and Warranties of the County

The County represents and warrants to the Utility that, as of the date of this Agreement, each of the following statements is accurate:

(a) the County is a municipal corporation incorporated pursuant to the MGA (Alberta) and is legally entitled to carry on business in Alberta;

(b) the County has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all documents, instruments and agreements required to be executed and delivered by the County pursuant to this Agreement;

(c) the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the County pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action on the part of the County, and this Agreement has been duly executed and delivered by the County and constitutes a legal, valid and binding obligation of the County enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a Court;

(d) subject to the satisfaction of the conditions contemplated within Section 3.6 of this Agreement, all required third party consents to the execution by the County of, and performance of its obligations under, this Agreement have been received;

(e) to the extent that the County Has Knowledge, there are no current, pending or threatened actions, claims, demands, lawsuits, assessments, arbitrations, judgments, awards, decrees, orders, injunctions, prosecutions or other proceedings, of, by, against or relating to the County or the County which could have a material adverse effect on the ability of the County to perform its obligations under this Agreement and the County does not Have Knowledge of any basis for any such action, claim, demand, lawsuit, assessment, arbitration, judgment, award, decree, order, injunction, prosecution or other proceeding;

(f) the execution and delivery of this Agreement by the County does not, and the performance by the County of the transactions contemplated hereby will not:

(i) result in a breach of any Applicable Laws or any provision of the constating documents of the County or any agreement to which it is a party; or

(ii) contravene any provision of, or be an event that is (or with the passage of time will result in) a contravention of, or result in the acceleration of or entitle any party to accelerate (whether after the giving of notice or lapse of time or both) any obligation of the County under any security interest, agreement, instrument, order, arbitration award, judgment, injunction or decree to which the County is a party or by which it is bound, or conflict with any statute, rule or regulation applicable to the County; and

(g) to the extent the County Has Knowledge, the County has complied in all material respects with all Applicable Laws and has not been, and is not now, subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which, in the aggregate, have or are reasonably likely to have a material adverse effect on the ability of the County to perform its obligations under this Agreement.

6.3 Reliance and Survival

Notwithstanding any investigations made by a Party or anything else contained in any of the documents provided by each Party to the other, each Party expressly acknowledges and agrees that it has

entered into this Agreement in reliance upon the representations and warranties given herein by the other Party. All representations and warranties in this Article 6 shall be given as of the date of this Agreement only, although such representations and warranties, and the indemnity provided in Section 9.1(e) or 9.2(d), as the case may be, shall survive the execution and delivery of this Agreement, to the extent that any such representation or warranty was false or inaccurate as of the date of this Agreement.

6.4 Utility's Due Diligence

Notwithstanding any of the foregoing, in respect of the acceptance of transfer of all or any portions of the Facilities, the Utility acknowledges and agrees that it is acting and relying solely upon its own investigations and due diligence respecting the adequacy of and requirements for the Facilities, and costs and other requirements associated with the Operation and Maintenance of the Facilities, and the adequacy, quality and acceptability of any design or specification of or in respect of the Facilities. Furthermore, the County:

(a) gives no warranty or undertaking of whatever nature in respect of the knowledge, understanding or due diligence of the Utility, or whether or not the Utility's knowledge, understanding or due diligence is adequate in the circumstances;

(b) will not be liable to the Utility in respect of any failure or inadequacy of or in respect of any operating plans or specifications contained within Schedule C-2 (Operation, Maintenance and Services); and

(c) will not be liable to the Utility for, and the Utility will not seek to recover from the County or any County Indemnified Parties, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use, reliance on or application of any design or specification of the Facilities, any approval by the County in respect thereof, and any Acceptance of all or any portion of the Facilities by the County.

7. REPRESENTATIVES

7.1 County's Representative

The following will apply with respect to the appointment and authority of the County's Representative:

(a) the County's Representative will be the Person appointed by the County by Notice to the Utility under this Agreement;

(b) the County's Representative will have the limited authority to act on behalf of the County, as determined by the delegation of Council, and except as previously notified in writing before such act by the County to the Utility, the Utility's Representative will be entitled to treat any act of the County's Representative in connection with this Agreement as being expressly authorized by the County and the Utility and the Utility's Representative will not be required to determine whether any express authority has in fact been given;

(c) notwithstanding anything set forth in this Section 7.1, the County's Representative shall be deemed not to have the authority to bind the County, to modify or amend this Agreement, or to waive any provision of this Agreement;

(d) the County's Representative will be entitled at any time upon five (5) Business Days' Notice to the Utility to authorize any other Person to exercise the functions and powers of the County delegated to him pursuant to this Section 7.1, either generally or specifically, and any act of any such Person will, for the purposes of this Agreement, constitute an act of the County's Representative and all references to "the County's Representative" in this Agreement (apart from this Section) will be taken as references to such Person so far as they concern matters within the scope of authority of the County's Representative; and

(e) the County may, upon five (5) Business Days' Notice to the Utility, change the County's Representative, provided that in designating the individual the County shall take into account the need for the ability of the individual to liaison with the Utility and maintain continuity in respect of the activities of the Utility pursuant to this Agreement.

7.2 Utility's Representative

The following will apply with respect to the appointment and authority of the Utility's Representative:

(a) the Utility's Representative will be the Person appointed by the Utility by Notice to the County under this Agreement;

(b) the Utility's Representative will have the limited authority to act on behalf of the Utility for all purposes of this Agreement related to the operations of the Utility (but not otherwise) and, except as previously notified in writing before such act by the Utility to the County, the County's Representative will be entitled to treat any act of the Utility's Representative in connection with this Agreement as being expressly authorized by the Utility and the County and the County's Representative will not be required to determine whether any express authority has in fact been given;

(c) notwithstanding anything set forth in this Section 7.2, the Utility's Representative shall be deemed not to have the authority to bind the Utility, to modify or amend this Agreement, or to waive any provision of this Agreement;

(d) the Utility's Representative will be entitled at any time upon five (5) Business Days' Notice to the County to authorize any other Person to exercise the functions and powers of the Utility delegated to him pursuant to this Section 7.2, either generally or specifically, and any act of any such Person will, for the purposes of this Agreement, constitute an act of the Utility's Representative and all references to the Utility's Representative in this Agreement (apart from this Section) will be taken as references to such Person so far as they concern matters within the scope of authority of the Utility's Representative; and

(e) the Utility may, upon five (5) Business Days' Notice to the County, change the Utility's Representative, provided that in designating the individual the Utility shall take into account the need for the ability of the individual to liaison with the County and maintain continuity in respect of the Facilities pursuant to this Agreement.

8. INSURANCE, DAMAGE AND DESTRUCTION AND BONDING

8.1 Utility's Insurance

The Utility will obtain and maintain, either directly or indirectly through an Operator, the insurance coverage specified to be the responsibility of the Utility and described in Schedule D-1 (Insurance Requirements), and in all cases subject to and in accordance with the provisions of Schedule D-1 (Insurance Requirements).

8.2 Agreement Not Affected by Damage or Destruction

Except as otherwise expressly provided in this Agreement, the partial destruction or damage or complete destruction by fire or other casualty of the Facilities will not terminate this Agreement, nor entitle the Utility to surrender possession of or to abandon the Facilities.

8.3 Utility's Obligations – Damage or Partial Destruction

If the Facilities are damaged or partially destroyed, the Utility will repair, replace or restore any part of the Facilities so damaged or destroyed as soon as reasonably practicable. To the extent that any Operation and Maintenance of the Facilities and/or delivery of the Services are impaired by such damage or partial destruction, the Utility shall implement the provisions and contingencies of the Utility's Emergency Response Plan.

8.4 Utility's Obligations – Complete or Substantial Destruction

If the Facilities are completely or substantially destroyed, the Utility will:

(a) as soon as practicable (and in any event, within sixty (60) days of the occurrence of the complete or substantial destruction, and before undertaking any material remedial work) provide the County with a report (the "**Restoration Report**") as to the extent of the damage and the cost and proposed construction timetable to repair, replace or restore the Facilities and the Services;

(b) implement the provisions and contingencies of the Utility's Emergency Response Plan;

and thereafter, utilize all reasonable commercial efforts to repair, replace or restore the Facilities and the Services in accordance with the Restoration Report and this Agreement.

8.5 Standards of Replacement, Repair or Reconstruction

Any replacement, repair, or reconstruction of the Facilities or any part thereof pursuant to the provisions of Sections 8.3 or 8.4 will be made or done in compliance with the operating plans and specifications contained within Schedule C-2 (Operation, Maintenance and Services), subject to any agreement made between the County and the Utility to revise the operating plans and specifications as they pertain to any replacement, repaired or reconstructed Facilities.

8.6 Right to Repair and Receive Insurance Proceeds

If the Utility fails to undertake or complete the repair, replacement or restoration of the Facilities in accordance with its obligation under Section 8.3 or 8.4, as the case may be, such that the Utility's conduct constitutes an Event of Default and all notice periods and cure periods in respect of such Event of Default have expired such that the County is entitled to pursue its remedies in respect of such Event of Default, the County shall be entitled, in addition to all remedies available to the County, to effect such

restoration, reconstruction or replacement and all Insurance Proceeds shall be applied thereto and all other costs or expenses associated with the restoration, reconstruction or replacement shall be borne in the same manner as would have been the case had the Utility effected such restoration, reconstruction or replacement.

8.7 Replacement Insurance

If the Utility at any time during the Term fails to obtain and maintain all or any part of the insurance coverage that the Utility is required to obtain and maintain pursuant to this Agreement, then the County may (but shall not be obligated to) obtain and maintain such insurance coverage as was required to be maintained by the Utility (and to the extent reasonably possible, such coverage shall be obtained on the same terms and conditions, including amounts, deductibles and term of coverage, as was required to be maintained by the Utility) and the Utility shall pay to the County, within thirty (30) days of receiving an invoice, such amounts as the County has reasonably incurred in order to obtain and maintain such insurance.

9. INDEMNITY

9.1 Utility's Indemnities to the County

Subject to the terms of this Agreement, the Utility will indemnify and keep the County and the County Indemnified Parties indemnified at all times from and against all Direct Losses that any of them may sustain in connection with:

(a) any Claim arising out of, or in the course of, the Operation and Maintenance or the provision of the Services:

(i) for, or in respect of, the death or personal injury of any Person;

(ii) made by one or more third parties (including Claims for direct economic loss);

(iii) for any loss of or physical damage to property or assets of the County or any other Person; or

(iv) by one or more third parties arising by reason of any aspect of the Facilities infringing, or being alleged to infringe, the Intellectual Property rights of any Person;

in each case arising by reason of any:

(v) negligent act or omission of;

(vi) willful misconduct of; or

(vii) breach of any of the express provisions of this Agreement by;

the Utility or any Person for whom the Utility is responsible under Section 4.5;

(b) the Hazardous Substances for which the Utility is responsible;

(c) non-compliance by the Utility with any of its obligations under any Applicable Law;

(d) non-compliance by the Utility with any of its obligations to the County under this Agreement, except to the extent such non-compliance is excused in accordance with the provisions of Article 10 as a result of an event of Force Majeure; and

(e) any breach of any representation or warranty of the Utility to the County under this Agreement;

except in each case to the extent caused (or contributed to) by the breach of any express provision of this Agreement by the County or any negligent act, omission or willful misconduct of the County or any Person for whom the County is responsible under Section 4.6.

9.2 County's Indemnities to the Utility

Subject to the terms of this Agreement, the County will indemnify and keep the Utility and the Utility Indemnified Parties indemnified at all times from and against all Direct Losses that any of them may sustain in connection with:

(a) any Claim arising out of, or in the course of, the Operation and Maintenance or the provision of the Services:

(i) for, or in respect of, the death or personal injury of any Person;

(ii) made by one or more third parties (including Claims for direct economic loss);

(iii) for any loss of or physical damage to the Facilities or to the property or assets of the Utility or any other Person, including any Operator or Sub-Contractor;

in each case arising by reason of any:

(iv) negligent act or omission of;

(v) willful misconduct of; or

(vi) breach of any of the express provisions of this Agreement by;

the County or any Person for whom the County is responsible under Section 4.6;

(b) non-compliance by the County with any of its obligations under any Applicable Law;

(c) non-compliance by the County with any of its obligations to the Utility under this Agreement, except to the extent such non-compliance is excused in accordance with the provisions of Article 10 as a result of an event of Force Majeure; and

(d) any breach of any representation or warranty of the County to the Utility under this Agreement;

except in each case to the extent caused (or contributed to) by the breach of any express provision of this Agreement by the Utility or any negligent act, omission or willful misconduct of the Utility or any Person for whom the Utility is responsible under Section 4.5.

9.3 Reliance

This Article 9 may be relied upon by the County Indemnified Parties and Utility Indemnified Parties and may be enforced directly by any of them against the Party providing an indemnity hereunder in their favour in the same manner and to the same extent as if pursuant to a direct contractual indemnity between them and the Party providing the indemnity.

9.4 Notice of Indemnified Claims

Any Party receiving a Claim for which it appears that such Party is or may become entitled to indemnification pursuant to this Article 9 shall, as soon as reasonably practicable, and in any event within ten (10) days of receipt of the Claim, give Notice to the other Party. Such Notice shall specify with reasonable particularity, to the extent known, the factual basis for the Claim and the amount of the Claim. Any failure by a Party to notify the other Party of a Claim hereunder shall not relieve such other Party of any liability it may have hereunder, except to the extent such Party demonstrates that it has been prejudiced by the failure to receive proper Notice.

9.5 Mitigation

For greater certainty, notwithstanding that any Party (including, for purposes of this Section, any County Indemnified Parties, and Utility Indemnified Parties) may have a claim for indemnity pursuant to this Agreement, such claim for indemnity shall not lessen any obligation such Party may have to take reasonable steps to mitigate the circumstances which give rise to the claim for indemnity.

9.6 Conduct of Third Party Claims

The provisions of Schedule D-3 (Conduct of Third Party Claims) will apply to the conduct of Claims made by a third Person against a Party having, or claiming to have, the benefit of an indemnity under this Agreement.

10. FORCE MAJEURE

10.1 Relief from Obligations

Subject to the remainder of this Article 10, if the occurrence of an event of Force Majeure (including the occurrence of Abnormal Circumstances) prevents either Party from performing any of its material obligations under this Agreement (including in respect to the provision of the Services and the Operation and Maintenance) or prevents or delays the Utility in achieving Service Commencement, then the said Party shall be entitled to relief from the performance of such obligations hereunder or the applicable Service Commencement Deadline shall be extended to the extent required as a consequence of such event of Force Majeure as applicable, provided that no such relief may be claimed in respect of any obligation to make any payments or pay other amounts that may from time to time become owing hereunder. Without limitation to the foregoing, the Service Commencement Deadline or any date or period of time by or within which this Agreement stipulates that an obligation is to be performed or fulfilled shall, where a Party is entitled to an extension or relief from the performance of such obligation as aforesaid, be deemed to be extended on a day for day basis for each day during which such Party is entitled to such extension or relief or such longer period as may be appropriate in the circumstances.

10.2 Mitigation

If either Party is (or claims to be) affected by an event of Force Majeure:

(a) the Party will use commercially reasonable efforts to mitigate the consequences of such event upon the performance of any of its material obligations under this Agreement, and resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all commercially reasonable efforts to remedy its failure to perform;

(b) if the Party claiming relief is the Utility, without restricting any of the foregoing to the extent that any Operation and Maintenance of the Facilities and/or delivery of the Services is impaired by such event of Force Majeure, the Utility shall implement the provisions and contingencies of the Utility's Emergency Response Plan; and

(c) the Party will not be relieved from liability under this Agreement to the extent that it did not, or was not able to, perform its obligations under this Agreement due to its failure to comply with Section 10.2(a).

10.3 Information Supporting Relief Claimed

After the occurrence of an event of Force Majeure, the Party claiming relief shall:

(a) as soon as practicable (making all reasonable efforts to do so within five (5) Business Days) after it Has Knowledge of the relevant event of Force Majeure, give to the other Party an initial Notice of the event of Force Majeure, which initial Notice will give sufficient details to identify the particular event claimed to be an event of Force Majeure, its consequences and the nature of the relief claimed;

(b) deliver a subsequent Notice to the other Party as soon as practicable (making all reasonable efforts to do so within a further five (5) Business Days) which will contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the effect of the event of Force Majeure on the ability of the said Party to perform, the action being taken in accordance with Section 10.2, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it or its effects; and

(c) if, following the issue of any such Notice, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (or any failure to perform), it will submit such further information to the other Party as soon as reasonably possible.

10.4 Notice of Resumption

The Party claiming relief will give Notice to the other Party as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.

10.5 Unresolved Event of Force Majeure

If an event of Force Majeure has prevented the performance of all or a material portion of the obligations of a Party or otherwise prevented a Party from being in compliance with this Agreement (other than in relation to any obligation to make payments or pay other amounts that may from time to time become owing hereunder) for a period of one hundred eighty (180) days or more, the Parties will endeavour to agree on modifications to this Agreement which may be equitable having regard to the nature of the event of Force Majeure, and taking into account any failure by the parties to give Notice or implement mitigation measures as required by this Article 10.

11. UTILITY DEFAULT

11.1 Utility Event of Default

For the purposes of this Agreement, "**Utility Event of Default**" means any of the following events or circumstances:

(a) if the Utility fails to perform or observe any material term, condition, covenant or undertaking to the County contained in this Agreement (other than in furtherance of compliance with Applicable Laws, or pursuant to the exercise of and in accordance with a right of suspension or termination provided for by this Agreement, or in circumstances where the Utility is entitled to relief from the performance of its obligations in accordance with Article 10) and such failure materially and adversely affects the performance of the Operation and Maintenance or the delivery of the Services;

(b) if any material representation or warranty made by the Utility to the County in this Agreement is incorrect in any material respect when made or deemed made, and such incorrect representation or warranty materially and adversely affects the performance of the Operation and Maintenance or the delivery of the Services;

(c) if the Utility commits any material breach of the terms of any Operating Permit, and such breach materially and adversely affects the performance of the Operation and Maintenance or the delivery of the Services;

(d) if the Utility abandons the Operation and Maintenance or ceases the delivery of the Services (other than in furtherance of compliance with Applicable Laws, or pursuant to the exercise of and in accordance with a right of suspension or termination provided for by this Agreement, or in circumstances where the Utility is entitled to relief from the performance of its obligations in accordance with Article 10);

(e) if the Service Commencement Date in respect to the applicable portion of the Services is more than thirty (30) days after the applicable Service Commencement Deadline (other than in furtherance of compliance with Applicable Laws, or pursuant to the exercise of and in accordance with a right of suspension or termination provided for by this Agreement, or in circumstances where the Utility is entitled to relief from the performance of its obligations in accordance with Article 10);

(f) if any of the following events occurs in respect of the Utility:

(i) any proceedings with respect to the Utility being commenced under the *Companies' Creditors Arrangement Act* (Canada) which are not stayed, dismissed or otherwise remedied within thirty (30) days;

(ii) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Utility and such appointment, execution or process is not set aside, vacated, discharged or abandoned within thirty (30) days;

(iii) the Utility ceasing to carry on business;

(iv) the Utility making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Utility under the *Bankruptcy and Insolvency Act* (Canada) or otherwise and, if commenced against the Utility, not stayed, dismissed or otherwise remedied within thirty (30) days of such commencement;

(v) a petition being filed (and not being contested in good faith using all reasonable efforts), or a resolution being passed or an order being made for the winding-up, liquidation or dissolution of the Utility;

(g) if the Utility provides the Services, or any portion thereof, or services which are the same as, related or similar to the Services, to any Person for the purposes of servicing lands located outside of the Franchise Area except where:

(i) the prior written approval of the County, where required pursuant to the provisions of this Agreement, has been obtained; or

(ii) the serviced lands are, or are deemed by the terms of this Agreement to be, part of the Non-Exclusive Extended Areas;

(h) if the Utility fails to obtain or maintain any of the Water Licences as and when required within Section 4.9(a) of this Agreement; or

(i) if the Utility sells, transfers or disposes of the Facilities or any material portion thereof to any Person without:

(i) the prior written authorization or consent of the AUC being obtained where such authorization or consent is required pursuant to Applicable Laws;

(ii) the prior written approval of the County where such approval is required pursuant to the provisions of this Agreement; or

(iii) first complying with the provisions of Section 3.12 of this Agreement, where applicable.

11.2 Notification

The Utility will, promptly on becoming aware of its occurrence, give Notice to the County of the occurrence and details of any Utility Event of Default.

11.3 Notice of Default or Termination

After the occurrence of a Utility Event of Default and while it is subsisting, the County may:

(a) in the case of a Utility Event of Default referred to in Section 11.1(a), 11.1(b), 11.1(c), 11.1(d), 11.1(e), 11.1(g), 11.1(h) or 11.1(i), unless Section 11.3(b) applies to such Utility Event of Default, deliver a Notice of default on the Utility, specifying in reasonable detail the type and nature of the default, requiring the Utility to remedy the Utility Event of

Default referred to in such Notice (if it is continuing) within ten (10) Business Days following the delivery of such Notice of default;

(b) in the case of an Utility Event of Default referred to in Section 11.1(a), 11.1(b), 11.1(c), 11.1(d), 11.1(e), 11.1(g), 11.1(h) or 11.1(i) which, due to the type and/or nature of the default is not reasonably capable of being rectified within ten (10) Business Days following delivery of a Notice of default, deliver a Notice of default on the Utility, specifying in reasonable detail the type and nature of the default, requiring the Utility to prepare and present to the County within ten (10) Business Days following such Notice of default a plan for rectifying the default (including alternative deadlines for rectification and the reasons for such deadlines) for approval by the County; or

(c) in the case of a Utility Event of Default referred to in Section 11.1(f), terminate this Agreement in its entirety (subject always to Section 15.4) by Notice to the Utility having immediate effect.

11.4 Right to Perform

If a Utility Event of Default in respect to which a Notice of default has been delivered pursuant to Section 11.3(a) is not remedied before the expiry of the applicable rectification period then, in addition to any and all other remedies that may be available to the County the County shall have the right to perform and otherwise correct and remedy any such obligations of the Utility in default. Any and all costs incurred by the County in carrying out the rectification of the Utility's obligations in default shall be due and payable by the Utility upon demand.

11.5 Reliance Upon Security

Notwithstanding any of the foregoing, if at any time a Utility Event of Default in respect to which a Notice of default has been delivered pursuant to Section 11.3(a) or (b) is not remedied before the expiry of the applicable rectification period, the County shall have the full right and authority to call upon and utilize the Security in the manner contemplated within Schedule D-2 (Security).

11.6 County Termination Right

If:

(a) a Utility Event of Default that is the subject of a Notice of default served under Section 11.3(a) is not remedied before the expiry of the applicable rectification period; or

(b) the Utility fails to present a rectification plan in respect of a Utility Event of Default that is the subject of a Notice of default served under Section 11.3(b); or

(c) the Utility fails to perform a rectification plan presented by the Utility and approved by the County in respect of a Utility Event of Default that is the subject of a Notice of default served under Section 11.3(b) (other than pursuant to compliance with Applicable Laws, or the exercise of and in accordance with a right of suspension or termination provided for by this Agreement or in circumstances where the Utility is entitled to relief from the performance of its obligations in accordance with Article 10);

then the County may terminate this Agreement in its entirety (subject always to Section 15.4) by Notice to the Utility with immediate effect.

11.7 Failure to Maintain Licenses or Achieve Service Commencement Deadline

In addition to any other rights of the County under this Agreement and subject to any relief to which the Utility may be entitled under this Agreement, if the Utility:

(a) fails to obtain or maintain any of the Water Licences as and when required within Section 4.9(a) of this Agreement; or

(b) does not achieve Service Commencement on or before the respective Service Commencement Deadline;

the Utility will indemnify and hold the County harmless from any and all Direct Losses suffered by the County resulting from or in connection with:

(c) any and all claims by third parties for damages resulting from such failure; and

(d) any and all legal costs on a solicitor and his own client full indemnity basis, incurred by the County in defending against, or otherwise dealing with, such claims.

11.8 County Costs

The Utility will reimburse the County for all reasonable Direct Losses incurred by the County in exercising any of its rights (including any actual legal expenses) under this Article 11.

11.9 Continued Effect – No Waiver

Notwithstanding any right of termination provided for in this Agreement arising from the breach of this Agreement by the Utility, and without prejudice to any other rights which the County may have in relation to it, the County may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of the County to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, will not be deemed a waiver of such right for any continuing or subsequent breach.

12. COUNTY DEFAULTS

12.1 Event of Default

For the purposes of this Agreement, "**County Event of Default**" means any of the following events or circumstances:

(a) if the County fails to perform or observe any material term, condition, covenant or undertaking to the Utility contained in this Agreement (other than in furtherance of compliance with Applicable Laws, or pursuant to the exercise of and in accordance with a right of suspension or termination provided for by this Agreement, or in circumstances where the County is entitled to relief form the performance of its obligations in accordance with Article 10); or

(b) if any material representations or warranty made by the County to the Utility in this Agreement is incorrect in any material respect when made or deemed made, and such incorrect representation or warranty materially and adversely affects the performance of the County's obligations contained in this Agreement;

12.2 Notifications

The County will, promptly on becoming aware of its occurrence, give Notice to the Utility of the occurrence and details of any County Event of Default.

12.3 Notice of Default or Termination

After the occurrence of a County Event of Default and while it is subsisting, the Utility may:

(a) deliver a Notice of default of the County, specifying in reasonable detail the type and nature of the default, requiring the County to remedy the Event of Default referred to in such Notice (if it is continuing) within ten (10) Business Days following the delivery of such Notice of default; or

(b) in the case of a County Event or Default which, due to the type and/or nature of the default is not reasonably capable of being rectified within ten (10) Business Days following delivery of a Notice of default, deliver a Notice of default of the County, specifying in reasonable detail the type and nature of the default, requiring the County to prepare and present to the Utility within ten (10) Business Days following such Notice of default a plan for rectifying the default (including alternative deadlines for rectification and the reasons for such deadlines) for approval by the Utility.

12.4 Utility Termination Right

If:

(a) a County Event of Default that is the subject of Notice of default served under Section 11.3(b) is not remedied before the expiry of the applicable rectification period; or

(b) the County fails to present a rectification plan in respect of County Event of Default that is the subject of a Notice of default served under Section 11.3(b); or

(c) the County fails to perform a rectification plan presented by the County and approved by the Utility in respect of a County Event of Default that is the subject of a Notice of default served under Section 11.3(b) (other than pursuant to compliance with Applicable Laws, or the exercise of and in accordance with a right of suspension or termination provided for by this Agreement or in circumstances where the Utility is entitled to relief from the performance of its obligations in accordance with Article 11.3(b);

12.5 then the Utility may, subject to section 47 of the Act, terminate this Agreement in its entirety (subject always to Section 15.4) by Notice to the County with immediate effect. Utility Costs

The County will reimburse the Utility for all reasonable Direct Losses incurred by the Utility in exercising any of its rights (including any actual legal expenses) under this Article 12.

12.6 Continued Effect – No Waiver

Notwithstanding any right of termination provided for in this Agreement arising from the breach of this Agreement by the County, and without prejudice to any other rights which the Utility may have in relation to its, the Utility may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of the Utility to exercise any right under this

Agreement, including any right to terminate this Agreement and any right to claim damages, will not be deemed a waiver of such right for any continuing or subsequent breach.

13. EFFECT OF REMEDIES

13.1 Remedies Cumulative

(a) The rights and remedies of the Parties under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available pursuant to Applicable Law or in equity or otherwise.

(b) A Party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.

(c) No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

14. CONFIDENTIALITY

14.1 Use and Disclosure of Confidential Information

Each Party will hold in confidence any Confidential Information received from the other Party, provided that the provisions of this Section 14.1 will not restrict either Party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that the Utility may, subject to obtaining undertakings in respect to confidentiality similar to those set out in this Agreement, provide to an Operator, or cause to be provided to other third parties, documents and other information which are necessary or useful for the Utility's performance of its obligations under this Agreement.

14.2 Exceptions

Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

(a) which the Party disclosing the Confidential Information confirms in writing is not required to be treated as Confidential Information; or

(b) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement; or

(c) to the extent any Person is required to disclose such Confidential Information by Applicable Laws; or

(d) to the extent consistent with any County policy concerning the County's Confidential Information, the details of which have been provided to the Utility in writing prior to the disclosure; or

(e) as the County may be entitled to receive from the Utility pursuant to this Agreement in the event of, or following, termination of this Agreement; or

(f) where the disclosing Party has consented to the disclosure of the Confidential Information.

14.3 Freedom of Information and Protection of Privacy Act

The Utility acknowledges the County is governed by the provisions of the *Freedom of Information and Protection Act (Alberta)*.

14.4 Announcements

Unless expressly provided in this Agreement or otherwise required by any Applicable Law (but only to that extent), neither Party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the prior written consent of the other Party.

15. DISPUTE RESOLUTION

15.1 Procedures

Except as otherwise provided in this Agreement, any Dispute referred by the mutual agreement of the Parties to, or specifically required by the terms of this Agreement to be resolved in accordance with, the Dispute Resolution Procedure will be resolved in accordance with the Dispute Resolution Procedure.

15.2 Continued Performance

The Parties will continue to perform their obligations under this Agreement, notwithstanding the giving of any Dispute Notice, or the commencement or performance of the Dispute Resolution Procedure.

15.3 Interest on Disputed Amounts

If payment of any amount payable under this Agreement is delayed while the matter is in Dispute, upon resolution of the Dispute, Interest will be payable on any amount determined payable pursuant to the Dispute Resolution Procedure and will be calculated from the time such amount became payable under this Agreement until paid.

16. GENERAL

16.1 Assignment by the Utility

The Utility may assign, transfer or otherwise dispose of any interest in this Agreement to any other Person, other than an Affiliate of the Utility as contemplated within this Section 15.1, provided that:

(a) the prior written authorization or consent of the AUC to such assignment, transfer or disposition is obtained, where required by Applicable Laws;

(b) the prior written consent of the County is obtained;

(c) save and except in the case of an assignment, transfer or disposition to an Affiliate of the Utility, the Utility has first complied with the provisions of Section 3.12 of this Agreement, where applicable pursuant to the provisions of this Agreement;

(d) notwithstanding the foregoing, the Utility shall be permitted to assign this Agreement for the purposes of and as security for the obtaining of financing or other financial

arrangements required to fund or finance the design, purchase, construction, installation, commissioning and operation of the Facilities, subject to the following terms and conditions:

(i) the assignee is a bona fide arm's length third party lender of, or a bona fide investor in, the Utility;

(ii) the assignment is for the purposes of obtaining financing or funding as contemplated above; and

(iii) prior to any such assignment the assignee, the Utility and the County shall enter into a tri party agreement respecting the assignment, which agreement shall include, without restriction, the following provisions:

(A) the County shall provide written notice to the assignee of the occurrence of any the Utility Default under Article 15 of this Agreement concurrently with providing any Default Notice to the Utility;

(B) the County shall not exercise its right to terminate this Agreement, so long as the covenants of the Utility contained in this Agreement are brought current and performed when due as contemplated within this Agreement;

(C) prior to termination of this Agreement pursuant to the provisions of Section 15.1 of this Agreement, the assignee shall be permitted an additional period of not less than Ten (10) Business Days to rectify any outstanding the Utility Default;

(D) the County will not enter into any agreement with the Utility to amend, modify, forfeit, terminate, surrender or cancel this Agreement, so as to have an adverse effect upon the continued operation of the Facilities and payments for services provided, without the prior written consent of the assignee, which consent shall not be unreasonably withheld;

(e) the appointment of a receiver or receiver/manager, and the exercise by the assignee of any of its rights under the credit, loan or other funding arrangements with the Utility, shall not in and of themselves constitute a the Utility Default under this Agreement; and

(f) upon relying upon the rights or benefits contained within the above subsections, the assignee, or any receiver on its behalf, shall be bound to perform the obligations of the Utility under this Agreement.

(g) such assignee assumes all of the obligations of the Utility under this Agreement to the extent of such assignment pursuant to an agreement in writing among the Utility, the assignee, and the County; and

(h) any release of the assignor shall be subject to the exercise of the County's consent.

16.2 Assignment by the County

(a) The County shall not, without the prior written consent of the Utility, assign, transfer or otherwise dispose of any interest in this Agreement. Notwithstanding the foregoing, the

County may assign the rights and benefits of any provisions respecting the purchase of the Facilities under this Agreement (including the rights and benefits under Sections 3.9 to 3.12 of this Agreement, inclusive) to any Affiliate of the County, provided that such assignee remains at all material times an Affiliate of the County.

(b) Any assignee of the County shall assume all of the obligations of the County under the respective portions of this Agreement to be assigned, pursuant to an agreement in writing among the Utility, the assignee, and the County and despite such assignment, transfer or other disposition, any release of the County shall be subject to the exercise of the Utility's consent.

(c) Notwithstanding the foregoing, assignment by operation of law, or by legal or statutory authority such as annexation, shall not constitute a default under or contravention of the foregoing provisions. The County shall, as part of any annexation proceeding, request that this Agreement, as it applies to the annexation area, is assumed by the party seeking the annexation of any portion of the Franchise Area (by agreement or by order), and upon completion of annexation the County shall have no further liability or responsibilities under this Agreement as it applies to the annexation area save and except for liabilities which arose prior to the effective date of such annexation.

16.3 Interest on Overdue Amounts

Subject to Section 15.3, if payment of any amount payable under this Agreement is not made when due, interest will be payable on such amount at the Default Interest Rate and will be calculated from the date due under this Agreement until paid.

16.4 Survival

Notwithstanding any other provision of this Agreement, the provisions of Sections 4.5, 4.6, Article 9 and any other provisions providing for the indemnification of a Party, Article 14, Schedule D-3 (Conduct of Third Party Claims), Schedule E-1 (Financial Operations), Schedule E-2 (Transfer and Transition Procedures), Schedule F-1 (Intellectual Property), Schedule F-2 (Dispute Resolution Procedure), and Schedule F-3 (Records & Reports), or any other provision which expressly survives the expiration or termination of this Agreement, and such other provisions the survival of which following the expiration or termination of this Agreement is necessary to give practical effect thereto or to any other provision hereof which survives as aforesaid, will survive the expiry or any earlier termination of this Agreement until all obligations owed by the Parties are fully performed or otherwise discharged.

[Balance of page intentionally left blank - Execution page to follow]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

ROCKY VIEW COUNTY

Per: _____

Name:

Title:

Per: _____

Name:

Title:

CALALTA WATERWORKS LTD.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

SCHEDULE A-1

DEFINITIONS

In this Agreement, including the Schedules, except as otherwise expressly provided or unless the context otherwise requires, the following words and expressions have the following meanings:

"**Abnormal Circumstances**" means circumstances of a significant and prolonged nature beyond the control of the Utility which impair the Operation and Maintenance of the Facilities and the provision of the Services resulting from and including but not limited to:

(a) presence of abnormal or toxic substances exceeding Regulatory Requirements in the raw water;

(b) hydraulic loadings exceeding the maximum hydraulic capacity of the Facilities;

(c) environmental protection orders or other directives or requirements of environmental or public health authorities, save and except those arising from acts or omissions of the Utility, its employees, agents, or contractors; and

(d) damage to the Facilities caused by the County or contractors (excluding the Utility, or any party described within Section 4.5 of this Agreement) or any other third party;

"**Acceptance**" means the acceptance of construction completion and issuance of construction completion certificates in respect to new additions to the Facilities by the County, including the design, construction and installation of new additions to the Facilities, and the conveyance and transfer of such additions to the Utility, all in accordance with the applicable Development Agreements and evidenced by issuance of "Construction Completion Certificate(s)" as defined and contemplated within such applicable Development Agreement;

"**Additional Services**" means those services the same as, related or similar to the Services, which Services are from time to time provided to portions of the Non-Exclusive Extended Areas:

(a) pursuant to, and as further detailed within, an approval by the County as contemplated within Section 3.2(b) of this Agreement; and

(b) as further defined within Schedule B-5 (Non-Exclusive Extended Areas and Additional Services) with respect to the respective Non-Exclusive Extended Areas existing as of the date of this Agreement described therein;

"**AEP**" means the Alberta Ministry of Environment and Parks and, where applicable, any predecessor or successor or Relevant Authority;

"**Affiliate**" in respect of a Person means any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person where "control" means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise,

including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person;

"**Agreement**" means this franchise agreement, including the recitals and Schedules to this Agreement, as amended, supplemented or restated from time to time;

"**Applicable Laws**" means all laws, statutes, regulations, treaties, judgments and decrees and all official directives, bylaws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Relevant Authority having the force of law from time to time, including, for greater certainty, those related to the issuance of Operating Permits;

"**AUC**" means the Alberta Utilities Commission, or any successor organization to the jurisdictions of the said commission as of the date of this Agreement;

"**Beneficiary**" has the meaning given in Schedule D-3 (Conduct of Third Party Claims);

"**Book Value**" means the capital cost of acquiring, constructing or improving the Facilities, or a particular portion thereof as applicable, excluding any No-Cost Capital contributed to such costs, in each case as determined in accordance with IFRS and forming a part of the Rate Base for the Utility in accordance with and for purposes of this Agreement, and for clarity and for the purposes of calculation shall exclude any value associated with:

(a) all water allocations and corresponding water licenses;

(b) all irrigation rights;

(c) all rights of way, easements, or other land dedications by Developers; and

(d) all right and privileges granted under this Agreement;

from time to time forming part of the Facilities;

"**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in Alberta;

"**Capital Replacements**" means replacements of components of the Facilities, together with capital repairs to the Facilities, as determined in accordance with IFRS and forming a part of the Rate Base for the Utility in accordance with and for purposes of this Agreement;

"**Change in Law**" means the coming into force of any new Applicable Law in Canada or amendments to or change in interpretation of any Applicable Law, after the date of this Agreement, having a material effect (positive or negative) on:

(a) the Facilities;

(b) the Utility, in its capacity as the Utility under this Agreement;

(c) any Operator, in its capacity as an Operator;

"**Claim**" means any claim, demand, action, proceeding or liability;

"**Confidential Information**" means all confidential information of a Party which is supplied, or to which access is granted, to or on behalf of the other Party (whether before or after the date of this Agreement), either in writing, orally or in any other form, directly or indirectly pursuant to discussions with the other Party, and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information;

"**Consumer**" means a customer of the Utility receiving the Services by or through all or any portion of the Facilities, and may include a Developer as applicable, and "**Consumers**" means two or more of them or all of them, as applicable and as the context may require and may include Developers as applicable;

"**Council**" means the municipal council of Rocky View County;

"**County**" means Rocky View County, a municipal corporation created under the laws of the Province of Alberta;

"**County Indemnified Parties**" means the County and any councilor, officer, employee, agent, servant, representative or advisor (including legal and financial advisors) of any of them, any contractor or subcontractor of the County, any Affiliate of the County, the County's Representative, any delegate of the County's Representative, any contractor of the County, and any director, officer, employee, agent, servant, representative or advisor (including legal and financial advisors) of the County or any of the foregoing;

"**County's Representative**" means the Person appointed by the County from time to time in accordance with Section 7.1;

"**Default Interest Rate**" means interest at 2% over the Prime Rate;

"**Developer**" means a Person who is a party to a Development Agreement, and "**Developers**" means two or more of them;

"Development Agreement" means an agreement in respect to the subdivision and/or development of any portion of the Lands or a part thereof which provides for the construction and installation of Facilities and the transfer thereof to the Utility by the owner or developer of the Lands, including a development agreement entered into pursuant to Sections 650 and/or 655 of the MGA, and "**Development Agreements**" means two or more of them;

"**Direct Losses**" means, in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services), proceedings, demands and charges (subject to any duty to mitigate at law), whether arising under statute, contract or at common law, which result directly from such condition, event or omission and which, in the case of negligence, are reasonably foreseeable as likely to occur:

(a) excluding any related Insurance Proceeds and Insurance Receivables;

(b) excluding any Indirect Losses;

"**Dispute**" means any disagreement, failure to agree or other dispute between the County and the Utility arising out of or in connection with this Agreement, including in respect of the interpretation, breach, performance, validity or termination hereof, whether in the law of contract or any other area of law;

"**Dispute Notice**" has the meaning given to it in Section 4 of Schedule F-2 (Dispute Resolution Procedure);

"**Dispute Resolution Procedure**" means the procedure set out in Schedule F-2 (Dispute Resolution Procedure);

"**Effective Date**" means the effective date of this Agreement determined in accordance with Section 3.6 of this Agreement;

"**Emergency Response Plan**" means the emergency response plan(s) to be prepared by the Utility and approved by the County pursuant to Schedule C-2 (Operations, Maintenance and Services), as amended, modified or replaced from time to time pursuant to Schedule C-2 (Operations, Maintenance and Services);

"**Environmental Laws**" mean all Applicable Laws relating to the protection of Environmental Resources and human health;

"**Environmental Resources**" includes all plant, animal, land, water and air resources that may be affected by the Operation and Maintenance or the provision of Services;

"**Equipment**" means all equipment owned or leased by the Utility forming part of or used in connection with the Facilities, including testing and control systems;

"**Event of Default**" has the meaning given in Section 11.1 of this Agreement;

"**Expiry Date**" means the 20th anniversary of the Effective Date;

"**Excluded Areas**" means the portion of the Franchise Area for which the Parties have agreed in writing that the Utility will not provide services;

"**Extended Area Facilities**" means those Facilities constructed, installed, operated and maintained exclusively for the purpose of providing the Additional Services;

"**Non-Exclusive Extended Areas**" means those lands located outside of the Franchise Area which are from time to time serviced by the Utility with the Additional Services:

(a) pursuant to, and as further detailed within, an approval by the County as contemplated within Section 3.2(b) of this Agreement; and

(b) as further defined within Schedule B-5 (Non-Exclusive Extended Areas and Additional Services) with respect to the respective Additional Services described therein;

"**Facilities**" means those facilities described within Schedule B-3 (Facilities) owned or held by the Utility, together with:

(a) all new additions to such Facilities that are transferred to the Utility in accordance with this Agreement;

(b) any other systems and works owned by the Utility (whether or not situate within the Franchise Area) used in connection with the provision of the Services or the Additional Services;

(c) Capital Replacements; and

(d) all Equipment;

"**Facilities Data**" means drawings, reports, documents, plans, software, formulae, calculations and all other materials, data, or information, whether oral or fixed in any form, relating to the Facilities, prepared by or on behalf of the Utility;

"**Facilities Intellectual Property**" means the Intellectual Property which is created, brought into existence, acquired, licensed or used by the Utility, any Operator, any Sub-Contractor or any other third party, directly or indirectly, for the purposes of the Operation and Maintenance, improvement or testing of the Facilities comprising each portion of the Facilities or otherwise for the purposes of this Agreement;

"**Financial Operations**" means the financial operations and requirements attached to this Agreement as Schedule E-1 (Financial Operations);

"**Fire Suppression System**" means:

(a) Hydrant-based system forming part of the Facilities;

(b) Private Hydrant-based system, owned and controlled by the owner of the development; and/or

(c) Sprinkler System, owned and controlled by the owner of the development;

"**FOIPP Act**" means the *Freedom of Information and Protection of Privacy Act* (Alberta), as amended or replaced from time to time;

"**Force Majeure**" means any cause beyond the control of the Party affected thereby which prevents or delays the performance by such Party of any obligation hereunder and not caused by such default or act of commission or omission and not avoidable by the exercise of reasonable care, including but not limited to:

(a) war, civil war, armed conflict or terrorism;

(b) civil disturbance or sabotage;

(c) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Utility;

(d) fire, earthquake, tornado, flood or unusual or severe weather conditions directly affecting the Facilities;

(e) pressure waves caused by devices traveling at supersonic speeds;

(f) strikes or other labour difficulties;

(g) inability to obtain materials or equipment;

(h) transportation delays or accidents;

(i) legislative, administrative or judicial action which has been resisted in good faith by all reasonable lawful means;

(j) actions or failures to act on the part of governmental authorities; or

(k) Abnormal Circumstances;

but specifically excluding lack of funds/finances, and excludes failure to obtain or maintain any Water Licenses or access to allocations thereunder as and when required within Section 4.9(a) of this Agreement except when beyond the reasonable control of the Utility and not as a result of a default on the part of the Utility under this Agreement or any other arrangement providing the Utility with access to the allocations under the Water Licences;

"**Franchise Area**" means that portion of Rocky View County designated in Schedule B-1 (Franchise Area), as amended from time to time by the Parties;

"**Franchise Fee**" means the franchise fee described within Schedule B-4 (Franchise Fee);

"**IFRS**" means the International Financial Reporting Standards or other accounting standards as published in the Handbook of the Canadian Institute of Chartered Accountants;

"**Good Industry Practice**" means the standards, practices, methods and activities and actions generally accepted and utilized by and within the treated water management and treatment industry in Canada, generally consisting of standards and practices intended to achieve a cost-effective result consistent with Applicable Laws, Regulatory Requirements, environmental considerations, reliability, safety and expedition, including such standards and practices that are from time to time prepared, endorsed, promoted or promulgated by:

(a) the American Water Works Association, the Canadian Water and Wastewater Association, and the Association of Professional Engineers and Geoscientists of Alberta (APEGA), or successor organization, to the extent that those are consistent or complementary to each other and accepted and utilized by and within the water management and treatment industry in Canada; and

(b) AEP, including the:

(i) Part 1 Standards for Municipal Waterworks, published in April 2012, as amended or replaced from time to time;

(ii) Part 2 Guidelines for Municipal Waterworks, published in April 2012, as amended or replaced from time to time;

and in the event of a conflict between any of the aforesaid standards and practices, a standard or practice which is generally applied in the industry in Canada and is in compliance with Applicable Laws will apply;

"**Has Knowledge**" or "**Have Knowledge**" means:

(a) a natural person knows or has knowledge when information is acquired by the individual under the circumstances in which a reasonable individual would take cognizance of it; and

(b) a corporation knows or has knowledge when information has come to the attention of:

(i) a director or officer of the corporation; or

(ii) a senior employee of the corporation with responsibility for matters to which the information relates;

under circumstances in which a reasonable person would take cognizance of it;

"**Hazardous Substance**" means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation, or release into or presence in the environment is prohibited, controlled or regulated under Environmental Laws;

"**Hydrants**" means fire hydrants designed, intended or relied upon to provide for a water based fire suppression system, together with associated distribution system, specifically excluding Private Hydrants and Sprinkler Systems;

"**Indemnifier**" has the meaning given in Schedule D-3 (Conduct of Third Party Claims);

"**Indirect Losses**" means loss of profits, loss of use, loss of revenue, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity, exemplary or punitive damages or any consequential loss or indirect loss of any nature;

"**Insurance Proceeds**" means the amount of any insurance proceeds received by the Utility in respect of a claim made under any policy of insurance required to be maintained by the Utility under this Agreement;

"**Insurance Receivables**" means the amount of any insurance proceeds which a Person is entitled to receive pursuant to policies of insurance required to be maintained by the Utility under this Agreement but which have not been received;

"**Intellectual Property**" means any or all of the following and all rights, arising out of or associated therewith: (a) all national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in part thereof; (b) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data, product formulations, designs and specifications, and all documentation relating to any of the foregoing throughout the world; (c) all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world; (d) all industrial designs and any registrations and applications therefor throughout the world; (e) all rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world; (f) all moral rights of authors and inventors; and (g) any similar or equivalent rights to any of the foregoing anywhere in Canada;

"**Interest**" means interest at the Prime Rate;

"**Lands**" means the lands contained within the Franchise Area;

"**MGA**" means the *Municipal Government Act*, RSA 2000, c. M-26, as amended and replaced from time to time;

"**Net Book Value**" Book Value of the Facilities or identified portions thereof, less the accumulated depreciation thereon calculated in accordance with Good Industry Practice as the depreciation expense claimed and recovered by the Utility through its rates;

"**No-Cost Capital**" means the cost of acquiring, constructing or improving the Facilities or identified portions thereof or Capital Replacements, in each case to the extent that such cost is paid for by:

(a) grants or contributions from of Canada, Province of Alberta, or the County;

(b) Developers, including contributions of additions to or extension of the Facilities, or financial contributions and similar payments funding the cost of acquiring, constructing or improving the Facilities or identified portions thereof;

(c) Consumers located within any of the Non-Exclusive Extended Areas, including contributions of additions to or extension of the Facilities, or financial contributions and similar payments funding the cost of acquiring, constructing or improving the Facilities or identified portions thereof; and

(d) payments or contributions from any other Person or entity (excluding the Utility) on account of the cost of acquiring, constructing or improving the Facilities or identified portions thereof, or Capital Replacements thereof, including connection fees, capital cost rate components, and similar payments by Consumers funding the cost of acquiring, constructing or improving the Facilities or identified portions thereof, or funding Capital Replacements thereof;

"**Notice**" has the meaning given in Schedule A-3 (Notice);

"**Operating Permits**" means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations required from any Relevant Authority to carry out the Operation and Maintenance and the provision of the Services in accordance with this Agreement including those listed in Schedule C-3 (Operating Permits);

"**Operation and Maintenance**" means the management, operation, maintenance, repair and replacement of the Facilities, or any components thereof, as more particularly set forth within Schedule C-2 (Operation, Maintenance and Services);

"**Operator**" means that party identified within Section 4.10 of this Agreement as the Operator, together with any replacements thereof or additions thereto and "**Operators**" means two or more of them, as the case may be;

"**Party**" means either the County or the Utility, and "**Parties**" means the County and the Utility, together with their respective successors and permitted assigns;

"**Person**" means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Relevant Authority;

"**PIPA**" means the *Personal Information Protection Act* (Alberta), as amended or replaced from time to time;

"**Prime Rate**" on any day means the annual rate of interest announced by Bank of Montreal (or its successor), or any other Canadian chartered bank agreed to by the Parties, from time to time as its reference rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

"**Private Hydrants**" means fire hydrants designed, intended or relied upon to provide for a water based fire suppression system, together with associated distribution system, which are located within privately owned lands, and under the ownership and control of the owner of the lands;

"Public Properties" means all fee simple and leasehold estates (excluding environmental reserves), rights-of-way, undersurface rights, easements (excluding environmental reserve easements, and conservation easements) and other interests in land or licenses or rights in respect to land, now and hereafter held or acquired by the County (including municipal roads, reserve lands, and public utility lots), in respect of which the County is able and legally entitled to grant access as contemplated within Schedule C-2 (Public Properties and Access);

"**Rate Base**" means the rate base established by the AUC for the purposes of calculating the approved rates to be charged by the Utility for the identified portion of the Services;

"**Regulatory Requirements**" means the standards enacted or imposed by any Relevant Authority, Applicable Laws or Operating Permits applicable to the Operation and Maintenance of the Facilities and the provision of the Services;

"**Relevant Authority**" means, with respect to any circumstance or matter, any federal, provincial, or municipal government, and any government agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government, in each case having jurisdiction over such circumstance or matter and includes, as applicable, the AUC;

"**Restoration Report**" has the meaning given in Section 8.4 of this Agreement;

"**Security**" means the security required in the form and amount prescribed within Schedule D-2 (Security);

"**Service Commencement**" means, in respect to the applicable portion of the Services, the commencement of the provision of such Services in accordance with this Agreement;

"**Service Commencement Date**" means the date on which Service Commencement in respect to the applicable portion of the Services is achieved;

"**Service Commencement Deadline**" means that date thirty (30) days following:

(a) in respect of Services to be provided pursuant to the non-exclusive rights granted in Section 3.2:

(i) the completion of the following:

(A) the transfer to and acceptance by the Utility of the applicable water and/or Wastewater systems now or hereafter servicing the Non-Exclusive Extended Areas; and/or

(B) alternate arrangements respecting such Non-Exclusive Extended Areas including, where applicable, the completion of new additions to the Facilities necessary to provide applicable Additional Services to the respective portion of the Non-Exclusive Extended Areas;

in each case as contemplated by any applicable County consent or approval pursuant to Section 3.2 of this Agreement and the terms and conditions contained within any applicable agreement of the Utility to service such Non-Exclusive Extended Areas; and

(ii) the satisfaction or waiver of the conditions set forth in Section 3(b) of Schedule E-1 (Financial Operations) as applicable and as provided for therein; or

(b) in respect of Services to be provided pursuant to the exclusive right granted in Section 3.1:

(i) Acceptance of the applicable new additions to the Facilities for a Stage pursuant to the applicable Development Agreement, as contemplated within the applicable Development Agreement and as contemplated by the relevant terms and conditions contained within Schedule E-1 (Financial Operations); and

(ii) the satisfaction or waiver of the conditions set forth in Section 3(a) of Schedule E-1 (Financial Operations) as applicable and as provided for therein;

"**Services**" means those treated water services described within Schedule B-2 (Services) and, as applicable, the Additional Services;

"**Sprinkler System**" means fire sprinkler system designed, intended or relied upon to provide for a water based fire suppression system, together with associated distribution system, which are located within a building on privately owned lands, and under the ownership and control of the owner(s) of the lands and/or building;

"**Stage**" means a stage of construction and installation of the Facilities contained within the Franchise Area as provided for in the applicable Development Agreement;

"**Sub-Contract**" means any contract entered into by an Operator, or a Sub-Contractor or any of their respective subcontractors, with one or more third parties in relation to the carrying out of the Operation and Maintenance and/or the provision of the Services, as amended or replaced from time to time in accordance with this Agreement;

"**Sub-Contractor**" means any third party that enters into a Sub-Contract;

"**Term**" has the meaning given in Section 3.4;

"**Termination Date**" means:

(a) the Expiry Date; or

(b) such earlier date on which the termination of this Agreement may become effective in accordance with the terms hereof;

in each case subject to six (6) months' Notice of termination and approval of the AUC in accordance with Section 47 of the MGA;

"**Utility**" means Calalta Waterworks Ltd., or such other parties as may be approved by the County as the grantee under any of this Agreement;

"**Utility Indemnified Parties**" means (a) any Affiliate of the Utility; (b) the Utility's Representative; (c) any delegate of the Utility's Representative; (d) any Operator or other contractor of the Utility; (e) any Sub-Contractor; and (f) any director, officer, employee, agent, servant, representative or advisor (including legal and financial advisors) of the Utility or any of the foregoing;

"**Utility's Representative**" means the Person appointed by the Utility under Section 7.2 of this Agreement. And

"**Water Licences**" means those water licences issued under the Water Act and described within Section 4.9 and listed within Schedule C-3 (Operating Permits) of this Agreement, together with such further and other water licences contemplated within Schedule B-3 (Facilities).

SCHEDULE A-2

INTERPRETATION AND GENERAL CONTRACTUAL TERMS

1. Construction and Interpretation

In this Agreement, including the Schedules, and in any amendments thereto, except as otherwise expressly provided, or unless the context otherwise requires:

(a) the recitals and headings to Articles, Sections and Schedules are for convenience only and will not affect the interpretation of this Agreement;

(b) all references in this Agreement or in any Schedule to "articles", "sections", "subsections", "paragraphs", "clauses", and "subclauses" or to other designated subdivisions are to the designated subdivisions of this Agreement or the applicable Schedule, as the case may be;

(c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria (to the extent binding and having the force of law) made under that statute and any successor statute, each as amended or re-enacted from time to time;

(d) each reference to a ministry, office, agency or similar body of any Relevant Authority is deemed to be a reference to any successor or replacement of such ministry, office, agency or similar body;

(e) each reference to a guideline, policy, regulation, rule or directive is deemed to be a reference to any successor or replacement of such guideline, policy, regulation, rule or directive;

(f) words importing the singular include the plural and vice versa, words importing gender include all genders, and words importing individuals shall include firms and corporations, and vice versa;

(g) references to time of day or date mean the local time or date in Calgary, Alberta;

(h) all references to amounts of money mean lawful currency of Canada;

(i) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with IFRS consistently applied;

(j) the word "written" includes printed, typewritten or faxed (but does not, for clarity, include e-mailed) and "in writing" has a corresponding meaning;

(k) the words "include" and "including" are to be construed as meaning "including, without limitation";

(l) except to the extent otherwise expressly provided by this Agreement, any requirement contained in this Agreement, including any Schedule, for the Utility to consult with, or have regard to the proposals or comments of any Person or to have due regard to, or take

account of, any matter or representation will not be construed as a requirement to adopt, incorporate or comply with the result of any such consultation, such proposals or such matter;

(m) the words "herein" and "hereunder" and words of similar import refer to this Agreement as a whole including the Schedules and not to any particular Section or other subdivision;

(n) any reference to an entity shall include and be deemed to be a reference to an entity (or entities) that is a successor, assign or successor in title to such entity, including any entity which assumes by agreement, by operation of law or otherwise, the rights and/or obligations of the entity;

(o) words that have well-known technical or trade meanings and that are not specifically defined in this Agreement are used in this Agreement in accordance with their recognized meanings;

(p) any reference to "approval", "authorization" or "consent" of any Person, including any Party, means the written approval, written authorization or written consent of such Person;

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

(r) a reference to a month is a reference to a calendar month;

(s) if the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall, unless specifically indicated to the contrary, be extended until that time on the next Business Day;

(t) where a word or phrase is specifically defined, other grammatical forms of that word or phrase have corresponding meanings; and

(u) a reference to time is a reference to the time in effect in Alberta, taking into account the *Daylight Saving Time Act* (Alberta).

2. Governing Law

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of Alberta and the laws of Canada applicable in Alberta, which will be deemed to be the proper law of this Agreement.

3. Severability

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Agreement or the legality, validity or enforceability of that provision in any other jurisdiction except that if:

(a) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable; and

(b) as a result of the determination by a Court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of such determination or this Paragraph 3, the fundamental intentions of the Parties in this Agreement are frustrated, the Parties will use reasonable efforts to amend, supplement or otherwise vary this Agreement to put each Party in a position substantially equivalent to that which is consistent with their mutual intention in entering into this Agreement. If the Parties cannot agree on the aforementioned adjustments, then either Party may submit the matter for determination pursuant to arbitration in accordance with Schedule F-2 (Dispute Resolution Procedures).

4. Further Assurances

The Parties shall, with reasonable diligence, hold all meetings, perform all acts, execute and deliver all documents and instruments, do all things and provide all reasonable assurances as may be reasonably necessary or desirable to give effect to the provisions and intent of this Agreement and to complete the transactions contemplated by this Agreement.

5. Approvals

No approval, consent, authorization, sanction, permission or determination required to be provided or made, or any discretion to be exercised (but does not, for clarity, include any statutory discretion or power of the County or Council), by a Party under this Agreement shall, unless specifically indicated to the contrary, be unreasonably or arbitrarily withheld, delayed or exercised by the Party providing, exercising or making same.

6. Waivers

No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the Parties, except that any provision which does not give rights or benefits to particular Parties may be waived in writing, signed only by those Parties who have rights under, or hold the benefit of, the provision being waived if those Parties promptly send a copy of the executed waiver to all other Parties. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

7. Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

8. Time of the Essence

Time, where mentioned herein, shall be of the essence.

9. Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all Parties had signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

10. Delivery

Any Party may deliver an executed copy of this Agreement by facsimile or electronic transmission provided that the Party will promptly dispatch by delivery in person to the other Party an originally executed copy of this Agreement.

11. Amendments

Except as specifically provided in this Agreement, no amendments, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by each Party at the time of the amendment, supplement restatement or termination.

12. Submission to Jurisdiction

Subject to the Dispute Resolution Procedure where and to the extent applicable, each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of Alberta and all courts having appellate jurisdiction over those courts in any suit, action or other proceeding in any way related to or arising out of this Agreement by any Party against the other Party.

13. Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiations, discussions, undertakings representations, warranties and understandings in respect thereof, whether written or oral, express or implied, statutory or otherwise.

14. Continuing Nature of Rights and Obligations

Except as otherwise provided for in this Agreement, the expiry or termination of this Agreement shall not relieve any Party of any rights, liabilities or obligations that by their nature survive expiry or termination, including warranties, remedies, indemnities and obligations of confidentiality or environmental compliance, or that arose prior to the expiry or termination of this Agreement.

15. No Application of Contra Preferentum

The provisions of this Agreement were negotiated by the Parties and this Agreement shall be deemed to have been drafted by both Parties. The Parties hereby acknowledge that they have read this Agreement in its entirety and that each has obtained independent legal advice in connection with the preparation and execution of this Agreement and the principle of contra preferentum shall not be argued, pleaded or applied in any proceeding subsequent to the execution hereof in respect to any provision of this Agreement.

16. Conflict and Inconsistency

In the event of a conflict or inconsistency between the provisions of any Schedule to this Agreement and the provisions contained in the main body of this Agreement, the provisions of the main body shall prevail to the extent of the conflict or inconsistency.

SCHEDULE A-3

NOTICE

Except as otherwise expressly provided in this Agreement, any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Agreement (each, a "**Notice**") to a Party must be given in writing. A Notice may be given by delivery to an individual or electronically by fax and will be validly given if delivered on a Business Day at the following address, or, if transmitted on a Business Day by fax addressed to the following party as follows:

To the County:

Rocky View County
c/o 262075 Rocky View Point
Rocky View County, Alberta
T4A 0X2

Attention: General Manager of Infrastructure and Operations Services

Telephone: (403) 230-1401
Fax: (403) 277-5977
Email: briemann@rockyview.ca

To the Utility:

Calalta Waterworks Ltd.
245033 Range Road 33
Calgary, Alberta T3Z 2E9

Attention: Bob Williams

Telephone: (403)685-6102
Fax: (403)242-3885

Email: bob.williams@calawaypark.com

or to any other address, e-mail or fax number or individual that such Party designates. Any Notice:

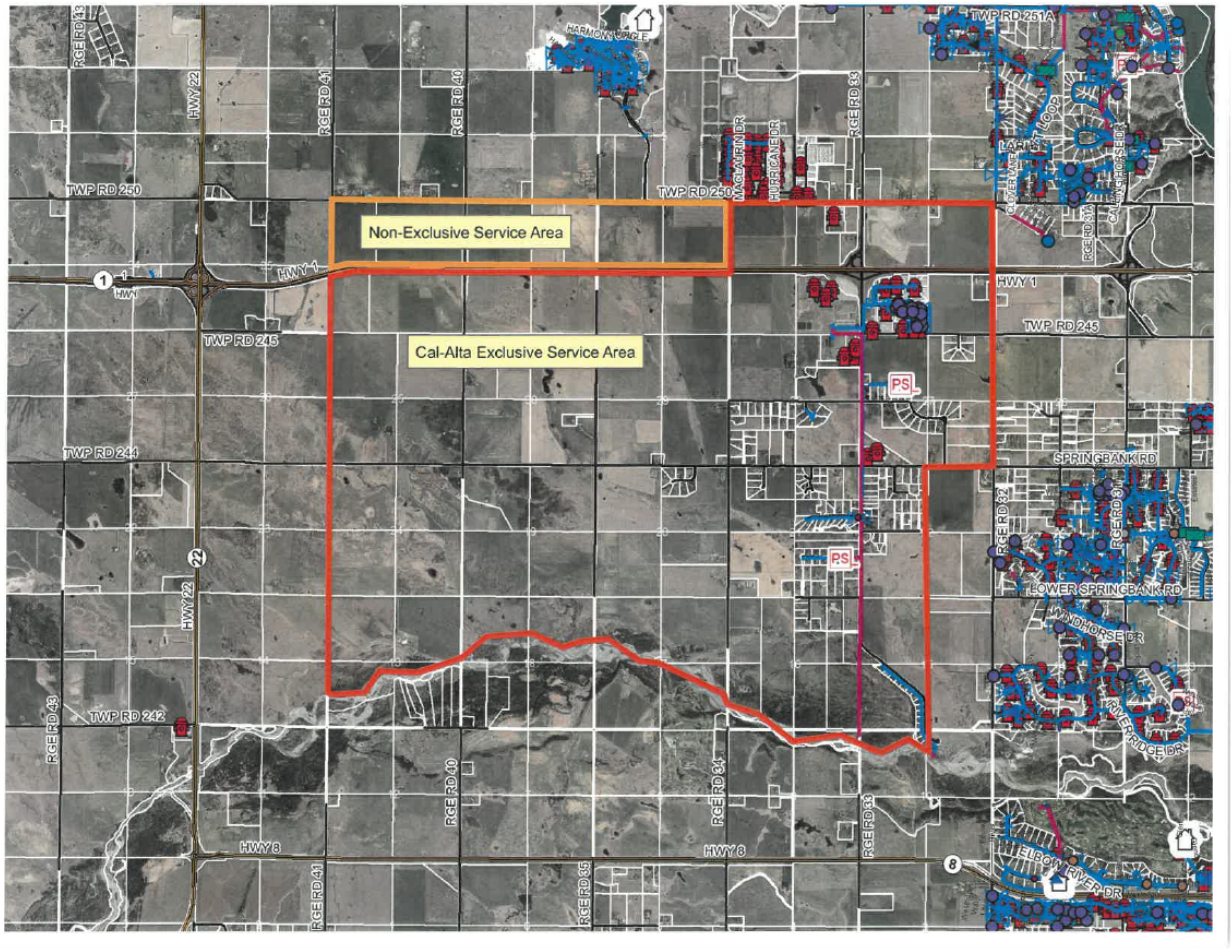
(a) if validly delivered, will be deemed to have been given when delivered;

(b) if validly transmitted electronically by fax before 3:00 pm. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day; and

(c) if validly transmitted electronically by fax after 3:00 p.m. (local time at the place of receipt) on a Business Day or at any time on a non-Business Day, will be deemed to have been given on the Business Day after the date of transmission.

SCHEDULE B-1

FRANCHISE AREA



SCHEDULE B-2

SERVICES

Without prejudice to the definition and provision of Additional Services to the Non-Exclusive Extended Areas under this Agreement, the Services shall consist of the following:

1. Residential and Non-Industrial Consumers Treated Water Service

Subject always to:

(a) the execution or acceptance of the service agreement and/or terms of service required by the Utility;

(b) payment of all rates, tolls and charges imposed by the Utility; and

(c) Applicable Laws, Operating Permits and Regulatory Requirements;

in each case as approved from time to time by the AUC, the Utility shall provide to each Consumer requesting physical connection and service within the Franchise Area piped treated water service suitable for human consumption at the following rates:

Average Daily Demand (ADD) for:	
• Residential (single family)	0.7 m^3/day
• Residential (multi-family)	0.63 m^3/unit/day
• Commercial (village)	1.5 l/m^2 floor area/day
• Commercial (business park)	15 m^3/ha parcel area/day
• Golf Course Lands (potable only for club house and maintenance facility)	60 m^3/day
• Schools within the Lands	40 l/day/student (elementary or junior high) 50 l/day/student (high school) 160 l/day/student (boarding school)
• Seniors Housing within the Lands	450 l/room/day
• Hotels within the Lands	180 1/room/day
Maximum Daily Demands (MDD)	2.10 x ADD
Peak Hour Demands (PHD)	3.7 x ADD
Minimum Operating Pressure (at the service connection) • Remainder of Lands	300 kPa (44 psi)

in each case unless otherwise approved by the County and in compliance with Applicable Laws, Operating Permits and Regulatory Requirements, and their respective applicable standards. These flow rates are based upon predicted demands, and are initial minimum service levels. Actual usage and demand

will dictate deliveries to Consumers requesting physical connection and service, and constructed capacity within the Facilities from time to time will be guided by such actual usage and demand from such Consumers.

2. Residential and Non-Industrial Consumers Non-Treated Water Service

Subject always to:

(a) the execution or acceptance of the service agreement and/or terms of service required by the Utility;

(b) payment of all rates, tolls and charges imposed by the Utility; and

(c) Applicable Laws, Operating Permits and Regulatory Requirements;

in each case as approved from time to time by the AUC, the Utility shall provide to each consumer requesting physical connection and non-treated water service within the Franchise Area, piped non-treated water service not suitable for human consumption, including the following existing Consumers:

Consumer	Service Location/Customer Address	Average Rate
Residential:		
• Dr. Westersund	37 Mountain River Estates, Calgary, AB T3Z 3J3	1 m^3/day
Commercial		
• Springbank Park for All Seasons Agricultural Society	32224A Springbank Rd, Calgary, AB T3Z 2L9	17 m^3/day
• West View Water Supply Ltd.	70 West View Estates, Calgary, AB T3Z 2S9	10 m^3/day

3. Fire Protection

Subject always to all Applicable Laws, Operating Permits and Regulatory Requirements, when and if the Facilities operated by the Utility include Hydrants that are owned and operated by the Utility so as to provide for Fire Suppression (it being acknowledged that as of the date of this Agreement, no such Hydrants for Fire Suppression exist), the Utility shall provide for the following level of fire suppression service based upon the requirement for a Fire Suppression System:

(a) **Capacity** – the minimum required capacities are:

Type	Flow	Duration	Volume
Residential Lands*	(10,000 l/m to 15,000 l/m)	3.5 hours	3713 m^3
Commercial and Industrial Lands*	(10,000 l/m to 15,000 l/m)	3.5 hours	3713 m^3
** Range in fire flows is dependent on type of use and scale of project.*			

(b) **System** – a Fire Suppression System may consist of one or more of the following:

(i) Hydrant-based system forming part of the Facilities;

(ii) Private Hydrant-based system, owned and controlled by the owner of the development; and/or

(iii) Sprinkler System, owned and controlled by the owner of the development;

(c) **Service** – For clarity:

(i) **Existing Services** – existing serviced Lands as of the date of this Agreement may be serviced for fire suppression through one or more of the systems comprising a Fire Suppression System;

(ii) **New Services** – subdivisions of or development upon the Lands created from and after the date of this Agreement may be serviced for fire suppression through one or more of the systems comprising a Fire Suppression System, subject always to applicable subdivision or development approvals and the applicable Development Agreement; and;

(iii) **Non-Exclusive Extended Areas** – all lands included with the Non-Exclusive Extended Areas from time to time, when and if serviced by the Utility, may be serviced for fire suppression through one or more of the systems comprising a Fire Suppression System, and/or as may be contemplated within the County consent provided pursuant to Section 3.2.

Accordingly, the Services respecting fire protection and fire suppression shall only apply to such portions of the Lands and/or developments where actually serviced by a Fire Suppression System which is directly supplied by the Utility;

(d) **Minimum Pressure Requirements** – the following minimum pressure requirements shall be maintained within all Hydrants forming a part of the Facilities and all Private Hydrants serviced by the Utility:

Fire Flow **150 kPa (22 psi)**

For systems providing delivery pressures above 550 kPa (80 psi), the owner of the individual lot is required to provide pressure reducing valves to buildings.

The lot owner developing the individual lot will be required to provide on-site booster pumps/storage and/or other requirements to meet Alberta Building Code or other applicable codes such as NFPA (National Fire Protection Association) if the fire distribution system cannot provide adequate pressure/flow.

Minor pressure losses through valves and fittings must be accounted for.

(e) **Flow Velocities** – for all hydrants and water based fire suppression systems comprising the Facilities, main line flow velocities should not exceed 4.0m/s during peak flow conditions and/or MDD plus fire flow conditions. Fire sprinkler flows shall be in accordance with building and fire code requirements.

SCHEDULE B-3

FACILITIES

The Facilities shall include the following, together with all rights and privileges, all rights of way and/or land interests, and all appurtenances related thereto owned or held by the Utility from time to time and necessary for the Operation and Maintenance thereof:

1. Water Licences/Allocations:

(a) **Dedicated Water Licences/Allocations** – the rights, benefits and other entitlements of the Utility in respect of

(i) any Water Licences issued in the name of the Utility, together with any Water Licence transferred to the Utility by the County;

(ii) any point of diversion under any Water Licences held by any third parties, for the purposes of the servicing of any properties comprising the Lands within the Franchise Area;

(iii) any Water Licences held by any third parties, which allocations and accompanying Water Licences have been assigned, temporarily transferred, or otherwise committed or dedicated to for the purposes of the servicing of any properties comprising the Lands within the Franchise Area (including, without restriction, the underlying agreement or arrangement providing any such commitment to access to the water allocation under the Water Licence);

(iv) those allocations and Water Licences dedicated and transferred to the Utility as part of the approval of any subdivision of the Lands contained within the Franchise Area that are to be serviced by the Utility (for clarity, this will include such allocations permanently transferred to the Utility at no cost to the Utility pursuant to the dedication of such allocations to the servicing of any properties comprising the Lands within the Franchise Area);

(b) **Non-Exclusive Extended Areas Water Licences/Allocations –** any further or other Water Licenses applicable to the servicing of the Non-Exclusive Extended Areas which may be transferred to the Utility; and

(c) **Utility Licenses/Allocations** – the rights, benefits and entitlements of the Utility in respect of any and all allocations and accompanying Water Licences held by the Utility as of the date of this Agreement, or subsequently acquired by the Utility through purchase for valuable consideration or otherwise, but only to the extent of the portion of the allocations available under such Water Licences are used or required for provision of the Services to the Franchise Area having taken into account the allocations and dedications as set forth above.

2. Water Facilities and Works:

(a) **Raw Water Intakes, Wells and Supply Facilities -** any and all groundwater wells, surface water intakes, pipes, valves, meters, pumps and related system or works comprising the raw water supply system;

(b) **Water Treatment, Storage and Supply Facilities -**any and all water treatment plants, storage reservoirs and related systems or works;

(c) **Treated Water Supply and Distribution Lines** – any and all pipes, valves, meters, flushing valves, pumps, storage reservoirs, and related system or works comprising the treated water supply and distribution system;

(d) **Raw Water Supply and Distribution Lines –** any and all pipes, valves, meters, flushing valves, pumps, storage reservoirs, and related system or works comprising the raw water supply and distribution system;

owned by the Utility from time to time throughout the Franchise Area, the Non-Exclusive Extended Areas, together with all rights and privileges, all rights of way and/or land interests, and all appurtenances related thereto owned or held by the Utility from time to time and necessary for the Operation and Maintenance thereof:

3. Fire Suppression Systems:

(a) **Hydrants** – any and all fire Hydrants and related system or works;

(b) **Fire Lines** – any and all pipes, valves, meters, and related system or works comprising the fire distribution or supply system supplying any Fire Suppression System;

which may be owned and operated by the Utility from time to time so as to provide for Fire Suppression (it being acknowledged that as of the date of this Agreement, no such Hydrants for Fire Suppression exist) throughout the Franchise Area and the Non-Exclusive Extended Areas, together with all rights and privileges, all rights of way and/or land interests, and all appurtenances related thereto owned or held by the Utility from time to time and necessary for the Operation and Maintenance thereof.

SCHEDULE B-4

FRANCHISE FEE

1. Calculation of Fee

The Franchise Fee payable by the Utility to the County shall be established as:

(a) a specified fee, calculated as a percentage of gross utility accounts collected by the Utility as further provided for within this Schedule; or

(b) a specified fee, calculated as a percentage of gross utility accounts collected by the Utility as further provided for within this Schedule, with periodic increases established by such formula as may be acceptable to Council and the AUC; or

(c) an approved fee range (i.e. within a maximum and minimum fee limit) as may be acceptable to Council and the AUC, within which Council may set the fee no more often than once annually as contemplated within this Schedule; or

(d) such other fee as Council may propose and the AUC may approve;

which shall be first approved by Council, and subsequently approved by the AUC upon a submission by the County for approval.

2. Calculation of Fee

Subject always to the foregoing, the Franchise Fee payable by the Utility to the County shall be calculated and paid as follows:

(a) the setting and changes to the Franchise Fee shall be subject to establishment by County Council from time to time by bylaw;

(b) alterations to the Franchise Fee shall occur no more often than once annually;

(c) the maximum amount of the Franchise Fee shall be ten (10%) percent of gross utility accounts collected by the Utility (excluding goods and services taxes and similar taxes), including consumption rate/commodity charge, the fixed rate, and any surcharges;

(d) the Franchise Fee shall be reviewed annually by the County in consultation with the Utility;

(e) prior to seeking approval of or the imposition of any Franchise Fee or amendments thereto, the County shall consult with the Utility for the purposes of establishing the Franchise Fee;

(f) the Franchise Fee shall initially be 0.0% as of the date of this Agreement, subject always to the balance of the terms of this Schedule;

(g) the Utility shall collect and pay the Franchise Fee amount to the County, on a quarterly basis (or such more frequent basis as the Utility may choose to invoice Consumers), within sixty (60) days after billing each Consumer;

(h) concurrently with payment of the Franchise Fee amount, the Utility shall provide to the County the financial information used by the Utility to verify the Franchise Fee amount; and

(i) the Utility shall disclose to each Consumer the Franchise Fee amount, in dollars, on each bill.

3. Partial Years

The Franchise Fee to be paid by the Utility to the County is based on the assumption that the rights granted to the Utility will accrue on a per diem basis throughout a full calendar year, and whenever any of those rights commence on any day other than January 1 in any year or are terminated, cease or expire before December 31 in any year, the amount to be paid by the Utility to the County therefor, shall be adjusted on a per diem basis.

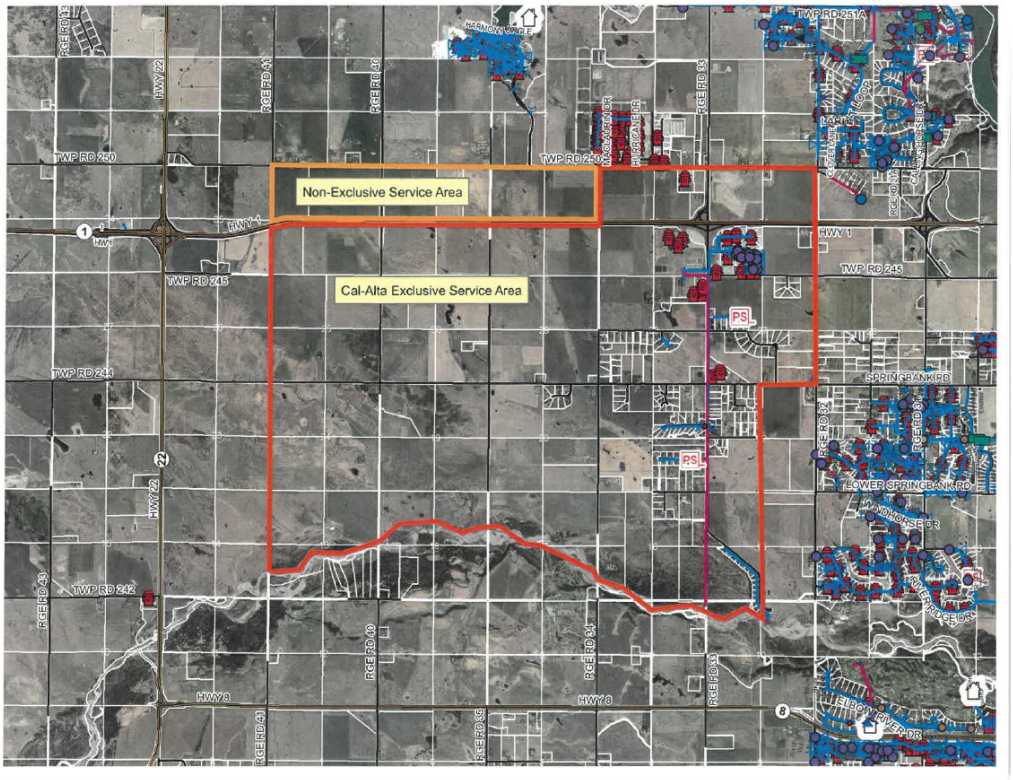
4. Financial Information

To verify the amount of the Franchise Fee, the Utility, on the written request of the County, shall provide to the County on or before April 30 in each year, or such other time agreed upon by the Parties, an unaudited financial report prepared by the Utility and opined on by an arm's length, fully qualified certified accountant utilizing IFRS, to be satisfactory to the County, stating the aggregate amount of gross utility accounts collected by the Utility in the prior calendar year for purposes of calculating the Franchise Fee payable by the Utility to the County in accordance with this Schedule. If such financial report reveals that the amount of the Franchise Fee remitted and paid by the Utility to the County was more or less than the amount due and payable, the difference shall be immediately due and payable by the County to the Utility or by the Utility to the County as the case may be.

SCHEDULE B-5

NON-EXCLUSIVE EXTENDED AREAS AND ADDITIONAL SERVICES

As of the date of this Agreement, the Non-Exclusive Extended Areas are comprised of the non-exclusive service area shown below:



Notwithstanding the foregoing, unless otherwise specifically authorized by the County, the terms of service applicable to the Additional Services to the Non-Exclusive Extended Areas shall:

1. be specific and appurtenant to the lands comprising the respective portion of the Non-Exclusive Extended Areas, and not assignable to any other party other than the registered owner(s) from time to time of the respective parcels comprising the Non-Exclusive Extended Areas and the tenants or occupants thereof;

2. not permit resale of water or other services comprising the Additional Services;

3. not permit secondary services to other lands not contained within the parcels comprising the Non-Exclusive Extended Areas;

4. only contemplate direct service by the Utility to the respective Consumer, and not permit or contemplate secondary servicing and distribution/collection within the parcels comprising the Non-Exclusive Extended Areas; and

5. where applicable, not exceed the volumes or other service descriptions approved by the County pursuant to Section 3.2 of this Agreement.

SCHEDULE C-1

PUBLIC PROPERTIES AND ACCESS

1. Use of Public Properties in the Performance of the Operation, Maintenance and Services

Subject always to the provisions of this Schedule and the terms of this Agreement, the County hereby grants to the Utility the right, permission and power to use, break up, dig, trench, or excavate within the lands comprising the Public Properties under the control of the County, within or adjacent to the Lands, and otherwise to do such work therein and thereon as may be necessary from time to time to construct, develop, erect, lay, operate, maintain, repair, extend, relay and remove any Facilities in connection with the Operation and Maintenance and the provision of the Services, as may be necessary for the purpose of this Agreement. Notwithstanding anything contained within this Schedule:

(a) the rights of use and occupation granted under this Agreement are not exclusive and it does not explicitly or implicitly affect the County's right to authorize use of the lands comprising the Public Properties by other Persons. A grant under this Agreement shall not fetter the County's management authority over the Public Properties;

(b) this Agreement does not confer rights other than as provided by this Agreement or Applicable Laws;

(c) no privilege or exemption is granted or conferred except those specifically prescribed herein;

(d) nothing in this Agreement shall be read to create an expectancy of renewal or to an entitlement to the renewal or extension of the Term or the extension of the Franchise Area, except as may otherwise be provided by Applicable Laws; and

(e) any privilege claimed under this Agreement by the Utility in respect to any Public Properties or other public property shall be subordinate to any prior lawful use or occupancy in respect to such Public Properties or other public property.

2. Authorizations

No construction, nor any Operation and Maintenance, shall be commenced prior to the Utility obtaining the written consent of the County to enter upon such Public Properties; and the County shall not unreasonably delay or withhold such written consent. Access to all Public Properties shall be subject to the following process and terms:

(a) not less than fourteen (14) days prior to the date that the Utility intends to enter upon any such lands for the purposes of constructing or installing any new or additional Facilities or other improvements, as well as all alterations or extensions to all existing Facilities (except in the case of emergency repair work), the Utility shall provide to the County for approval a detailed written proposal for such work, including:

(i) a specific work schedule and procedures proposed to be followed;

(i) detailed engineering drawings of all additional Facilities or other improvements to be constructed or installed, as well as all alterations, extensions or connections

to or impacts upon all existing Facilities or other municipal infrastructure, property and services;

(ii) provisions to be implemented for temporary access and services;

(iii) the installation of temporary traffic control devices and personnel deployment to minimize traffic disruption; and

(iv) the form and schedule of notification and public relation strategy to be utilized;

it being agreed that the County shall make all reasonable efforts to provide the requested approval (or reasons for the refusal to provide such approval) in writing within ten (10) days following the County's receipt of such written proposal; and

(b) not less than seven (7) days prior to the date that the Utility intends to enter upon any Public Property for the purposes of maintaining or repairing all existing Facilities (except in the case of emergency repair work), the Utility shall provide to the County detailed written proposals, for approval by the County, for the Operation and Maintenance to be done within any such property, including:

(i) a specific work schedule and procedures proposed to be followed;

(ii) detailed descriptions of the maintenance and repairs to be performed to all existing Facilities;

(iii) provisions to be implemented for temporary access and services;

(iv) installation of temporary traffic control devices and personnel deployment to minimize traffic disruption; and

(v) form and schedule of notification and public relation strategy to be utilized.

it being agreed that the County shall make all reasonable efforts to provide the requested approval (or reasons for the refusal to provide such approval) in writing within four (4) Business Days following the County's receipt of such written proposal.

Without restricting the foregoing, the Utility shall provide all required information and obtain all required municipal and provincial approvals normally required prior to commencing any construction activities, Operation and Maintenance, or provision of the Services.

3. Conditions and Terms of Use of Public Properties

Notwithstanding the foregoing, unless otherwise specifically agreed to the access to, use of, and conduct of all activities and Operation and Maintenance upon all lands comprising the Public Properties shall be subject always to the following terms and conditions:

(a) the design, construction, operation and maintenance of the Facilities shall be in accordance with all relevant municipal, provincial and federal standards, and the terms of any applicable easements, right of way agreements, or leases comprising or otherwise affecting such lands;

(b) the laying, construction, replacement, repair, maintenance, inspection, operation and removal of the Facilities under or within such lands shall be conducted in a good and workmanlike manner and in compliance with all the terms and conditions of this Agreement;

(c) the Operation and Maintenance shall be conducted and completed in accordance with generally accepted engineering and operating standards for works and facilities similar to the Facilities;

(d) the Operation and Maintenance shall be performed in a manner that safeguards and protects all other structures, transmission lines, facilities and improvements of any kind ("Improvements") present in the Public Properties;

(e) save and except for where Facilities are located within roadways and cannot be accessed without cutting of the physical roadways improvements, or unless otherwise agreed to by the County, the Utility shall not directly undertake, nor otherwise permit, any open cutting of physical roadway improvements forming part of the Public Properties and no hard surfaces or other travelled upon portions of roads will be disturbed by the Utility or any contractor or agent, except with the prior written approval of the County;

(f) the Utility shall ensure that all work carried out within or upon such lands shall have sufficient and proper traffic control, safety devices and warning devices or flagman as and where necessary;

(g) if the County requires that any Operation and Maintenance be stopped, the Utility shall cease such Operation and Maintenance upon delivery of Notice to the Utility to that effect by the County;

(h) the Utility shall be responsible for all Operation and Maintenance, including the cost of such Operation and Maintenance;

(i) the Utility shall carry out such work within or upon such lands only during daylight hours except if required otherwise in cases of emergency;

(j) unless otherwise agreed to by the County, a crossing of any road by any Facilities shall be constructed at a 90 degree angle to the physical roadway;

(k) the Operation and Maintenance within or upon such lands by the Utility and its agents, contractors and subcontractors shall be subject to the inspection rights of the County as set forth in this Agreement and all directions and requirements of the County shall be obeyed;

(l) the Utility shall do as little damage as reasonably possible to such lands in the performance of the Operation and Maintenance, and will cause as little obstruction to such lands as reasonably possible, and will cooperate and coordinate with the County in conducting all activities within such lands;

(m) upon completion of the Operation and Maintenance, the Utility shall restore all such lands to a condition and state of repair equivalent to that which prevailed prior to the performance of such Operation and Maintenance, including, where necessary, the re-planting or replacement of trees and shrubs, and shall maintain such restored portions of

such lands, including such replaced or re-planted trees and shrubs, for a period of one (1) year, ordinary wear and tear excepted; and

(n) if within thirty (30) days subsequent to notifying the Utility that the restoration of any such lands is inadequate given reasonable cause for such inadequacy (or sooner, if in the opinion of the County the likelihood of harm to persons is imminent), the County may take reasonable measures to complete the required restoration, and the cost of such restoration shall be borne by the Utility.

4. Utility to Obtain Approvals from Other Utilities

The Utility shall be solely responsible for locating, or causing to be located, all existing utilities or utility lines on or adjacent to lands comprising the Public Properties. The Utility shall notify all other utility operators and ensure those utilities and utility mains are staked prior to commencement of construction. The County shall not be responsible for any damage caused by the Utility to any other utility facilities or any third party as a result of the Utility's activities upon lands comprising the Public Properties. The Utility must obtain approval from the owner of any third party utility prior to relocation of any facility owned by such third party utility.

5. Contractors

The Utility will ensure that, when working within any of the Public Properties, the Utility's contractors comply with the County's bylaws, regulations, and applicable standards pursuant to this Agreement. Any act or omission of any contractor of the Utility, which violates any provision of this Agreement, shall be considered an act or omission of the Utility for the purposes of this Agreement. The Utility shall designate any of its contractors as "prime contractor" in accordance with the *Occupational Health and Safety Act* and the Regulations thereunder in respect to work sites where work is undertaken by the Utility unless a third party service provider is undertaking work at such work site and has been designated a "prime contractor" for such work site. The Utility's engineers, contractors and agents shall have a valid Certificate of Recognition issued by a certifying partner authorized to administer the Certificate of Recognition (COR) program to Alberta employers, or in the case of any such party (other than the Operator) has a valid safety program in place in compliance with all Regulatory Requirements.

6. Emergency Work/Access

In the event of an emergency involving the Facilities which requires emergency Operation and Maintenance to be undertaken by the Utility:

(a) the Utility may perform such Operation and Maintenance as is strictly necessary to end the emergency without the prior consent of the County, provided that the Utility notifies the County of the occurrence of the Operation and Maintenance without delay;

(b) the Utility shall attempt to give the County verbal notice before commencing any Operation and Maintenance involving a ground disturbance; and

(c) notwithstanding Section 3 of this Schedule, no prior written notice shall be required to be given to the County for the Utility to enter any lands comprising the Public Properties.

In this regard, emergency Operation and Maintenance means the installation, maintenance, repair or replacement of Facilities in Public Properties where health, safety or the provision of the Services is endangered.

7. Construction Clean-up and Debris

The Utility covenants and agrees that it shall, at the Utility's own cost and expense, be responsible for the cleanup and removal of all construction debris, foreign material and dirt from all lands comprising the Public Properties, including roadways, subject to the following conditions:

(a) it shall be the responsibility of the Utility to monitor the condition of such lands and take immediate action as necessary to comply with the provisions of this Section; and

(b) in the event that the County considers that any cleanup or removal of construction debris, foreign material or dirt for which the Utility is responsible in accordance with this Section is required, the Utility shall, within forty-eight (48) hours of receiving Notice from the County, take all necessary action as determined by the County or as soon as reasonably practicable thereafter weather permitting, failing which, the County may take action and charge back all costs and expenses to the Utility.

8. Liability

(a) The County shall not, in connection with this Agreement, be liable for any damage to the Facilities or other property of the Utility, or for the injury or death of any officer, employee, agent, contractor, licensee or invitee of the Utility except where caused by the willful misconduct or gross negligence of the County or any Person for whom the County is responsible under Section 4.6 of this Agreement.

(b) Notwithstanding anything contained in this Agreement, the County shall not be liable in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement or with any Facilities, other property or Public Properties governed hereby.

9. Environmental Responsibility

The Utility agrees to assume all environmental liability relating to the occupancy and use of the lands comprising the Public Properties, by itself, the Operator, and any Sub-contractor, together with their respective employees, agents or contractors, including but not limited to any liability for clean-up of any Hazardous Substance in, on, under, along, across and around such lands but only to the extent which the environmental liability results from:

(a) the operations of the Utility, or any Person for whom the Utility is responsible under Section 4.5 of this Agreement, in, on, under, along, across or around such lands; or

(b) any products or goods brought in, on, under, along, across or around such lands by the Utility, or any Person for whom the Utility is responsible under Section 4.5 of this Agreement.

The foregoing assumption of liability by the Utility shall not apply to any Hazardous Substance in, on, under, along, across and around the lands comprising the Public Properties which result from the operations or carriage of any Person other than the Utility, or a Person for whom the Utility is responsible under Section 4.5 of this Agreement, using or occupying Public Properties,

under Section 4.5 of the Agreement.

10. Relocation

(a) Upon receipt of sixty (60) days advance Notice from the County, or such other time as is mutually agreed to by the parties, the Utility shall, at its own expense, relocate Facilities located within lands comprising Public Properties dedicated as a public road where such relocation:

(i) is required by a Provincial statute or regulation;

(ii) is required by a lawful directive received from Alberta Transportation, or any successor department or Relevant Authority responsible for roads under Provincial title of ownership; or

(iii) is required for purposes of any repair, maintenance or improvement/alteration of any road comprising the Public Properties and such repair, maintenance or improvement/alteration cannot be reasonably completed without such relocation;

provided, however, that the County will exercise reasonable efforts to ensure that the Utility shall not be obliged to relocate any Facilities between October 1 and April 30. However, in cases of emergency, the County may take any measures deemed necessary for public safety with respect to the Facilities that may be required in the circumstances as the County shall determine and the Utility shall reimburse the County for all related expenses thereby incurred.

(b) If the Utility fails to complete the relocation of any portion of the Facilities, or fails to repair or maintain the Public Properties in accordance with this Schedule, or to perform any other Operation and Maintenance required to be done by the Utility pursuant to this Agreement in a timely and expeditious manner to the satisfaction of the County, the County may, but is not obligated to, at its sole option, complete such relocation, repair and maintenance or Operation and Maintenance. In such event, the Utility shall pay the cost of such relocation, repair and maintenance or Operation and Maintenance to the County, together with an administrative charge of fifteen percent (15%) of such cost.

11. Occupational Health and Safety and Traffic

Subject to designation of an approved contractor or other third party service provider as "prime contractor" as contemplated within Section 5 of this Schedule, the Utility shall be deemed to be the "prime contractor" for all activities by the Utility, its employees, agents or contractors within or upon Public Properties. The Utility shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all health and safety laws including any regulations requiring installing of safety devices or appliances, and any applicable traffic laws or regulations (collectively "**Safety Rules**"). The County may, on twenty-four (24) hours Notice to the Utility, or sooner, if in the opinion of the County the likelihood of harm to persons is imminent, suspend Operation and Maintenance performed by or on behalf of the Utility on that portion of the Facilities located in, on, under, along or across the lands comprising the Public Properties where there appears to be a lack of compliance with the Safety Rules or because conditions of danger exist that would likely result in injury to any person. Such suspension shall continue until the lack of compliance or danger is eliminated.

12. Utility and Inspection Fees

(a) The County shall be entitled to have a representative present prior to, during and following any work upon and lands comprising the Public Properties for purposes of inspecting such work and the undertaking thereof.

(b) The Utility agrees to pay inspection fees of general application as established by the County to cover the cost of the inspections and related administration costs, as established from time to time under the County's master rates bylaw.

13. County Control, Use and Discretions

The rights, privileges and licenses herein granted to the Utility are strictly limited to the rights, privileges and licenses expressly granted herein. Nothing contained in this Schedule shall be deemed to limit or in any manner prohibit the County or its assigns or licensees from fully using and enjoying any portions of the lands comprising the Public Properties in any lawful manner whatsoever, subject to the rights, privileges and licenses herein granted to the Utility. Notwithstanding the foregoing, the County shall, in exercising or purporting to exercise any right to undertake any repair, maintenance, relocation or other work in respect to or in connection with the Facilities pursuant to this Schedule (or otherwise pursuant to the Agreement including, without limitation, Section 11.4), undertake such repair, maintenance, relocation and other work in accordance with all Applicable Laws and all Regulatory Requirements applicable to the Utility or the County in respect thereto.

14. Limitations of Grants

The grant of access to the lands comprising the Public Properties contemplated within this Schedule shall not restrict the County's rights to use, or allow any Person not a party to this Agreement to use such lands for any purpose, provided that such use will not materially hinder or interfere with the Utility's use in accordance with this Schedule and further provided that the Utility's use is in accordance with the terms and conditions of this Agreement.

15. No Interest

Save and except as otherwise specifically agreed to in writing by the County and the Utility, no use of Public Properties pursuant to this Agreement shall create or vest in the Utility any ownership or other property rights in the Public Properties or any portion thereof (save and except for as agreed upon and documented between the County and the Utility pursuant to specific agreement to that effect), and the Utility shall be and remain a mere licensee of the Public Properties.

SCHEDULE C-2

OPERATION, MAINTENANCE AND SERVICES

The following provisions shall apply to the Operation and Maintenance of the Facilities and the delivery of the Services by the Utility:

1. General Operating Requirements

(a) **Scope of Work** - the Utility shall provide all Services within the Franchise Area 24 hours a day and 365 days each year during the Term, and in so doing, the Utility shall:

(i) provide full-time, continuous and effective management of the Facilities at all times;

(ii) ensure adequate staffing levels are in place at all times, including adequate supervisory, administrative, customer service, technical, operational and maintenance staff;

(iii) supply and ensure the availability of all necessary tools, equipment and transportation facilities; and

(iv) exercise Good Industry Practice in operating and maintaining the Facilities, to the extent not contrary to any Applicable Laws, Operating Permits or Regulatory Requirements;

(b) **Operating Requirements** - the Utility shall, at all times during the Term and subject to the further provisions of this Agreement, accept all requests for the provision of Services within the Franchise Area, and ensure that the quality, designated capacity and system operating parameters required to provide the Services delivered at the Consumer's property line, meet the prescribed standards under all Operating Permits and all Regulatory Requirements, subject always to the Consumer agreeing to pay the Utility's fees, rates and charges related to providing the Services and subject to the availability of capacity. For clarity, in the event of a lack of available capacity, the Utility shall offer, and if acceptable to the Consumer pursue, a servicing proposal that provides for a cost of servicing necessary to facilitate the expansion of capacity that is required, and is otherwise in compliance with the approvals of the AUC;

(c) **Interruptions** - the Utility shall, at all times during the Term, and subject always to the other provisions of this Agreement, including Schedule C-1, Section 6:

(i) ensure that continuous Services are provided by the Facilities within their design capabilities, provided that the Utility may interrupt or cut all the service of any part of the Facilities for such periods of time as it may reasonably require for the purpose of effecting any repairs, maintenance, replacement, upgrading or other work related to the Facilities;

(ii) give the County and Consumers prior Notice of any scheduled interruption as soon as is reasonably possible and at least seventy-two (72) hours prior to such interruption, and shall restore Services as soon as reasonably possible. During periods of interruption the Utility may reduce the level, quality or quantity of service provided; however the Utility shall treat all users affected by the

interruption fairly, equitably and without preference, subject to any operating constraints then in effect; and

(iii) keep the County apprised of the relevant circumstances during each interruption of Services and coordinate with the County the repairs, maintenance, replacement, upgrading and other work referred to above, in order to minimize the inconvenience to Consumers;

(d) **Staffing** - the Utility shall, at all times during the Term:

(i) employ staff and employees, or subject to the terms of this Agreement engage contractors, experienced in water systems operations and Facilities maintenance procedures to provide the Services; and

(ii) undertake Operation and Maintenance of the Facilities only under the direct supervision of personnel who possess valid certificates of competency as required by Regulatory Requirements and who maintain continuing education competency certification in accordance with Regulatory Requirements;

(e) **Maintenance** - the Utility shall, at all times during the Term:

(i) maintain security systems for all of the Facilities;

(ii) complete or cause to be completed all required maintenance, repairs, replacements and enhancements to the Facilities. The scheduling of proper service intervals shall be undertaken pursuant to a program developed by the Utility; and

(iii) keep clean and neat all existing buildings, structures and grounds in which the Facilities are located, provided that, nothing in this Agreement shall obligate the Utility to improve the current condition of any existing buildings, structures and grounds except as required under any capital expenditure program for which the Utility has responsibility, or as required by Applicable Law or Regulatory Requirements;

(f) **Regulatory Requirements** - comply with all Regulatory Requirements including, but not limited to:

(i) providing the routine testing and laboratory analyses required by currently existing and future regulations, licenses and Operating Permits;

(ii) preparing and signing all Provincial regulatory agency-required monitoring and operating reports and submitting them to the proper Provincial agencies and providing copies of such reports to the County;

(iii) submitting samples to an authorized Provincial regulatory agency in compliance with Regulatory Requirements. All test results shall be kept in a permanent file in the Utility offices on site and shall be available for inspection by the County; and

(iv) prepare applications for renewal of the Operating Permits as required from time to time including attendance at or preparation for any public hearings relating to such Operating Permits or otherwise relating to the Facilities;

(g) **Utility Metering and Account Management**:

(i) the Utility will be responsible for the reading of water meters and the monthly (or such other period as the Utility may apply to billing) issuance to Consumers of an itemized bill detailing the previous months water consumption, the applicable monthly service charge and related taxes related to water-related Services, the Franchise Fee and any late or outstanding payments; and

(ii) the Utility will be responsible for the collection of all charges billed to Consumers;

(h) **Operational Plans** - comply with or conform to all operational plans contemplated under and approved pursuant to the provisions of Sections 4, 5, 6 and 7 of this Schedule.

2. Water Distribution and Fire Flows

The Utility agrees that the Facilities shall be sized for domestic flows as defined by all applicable Regulatory Requirements and the standards referenced herein. In the event of a conflict between the Regulatory Requirements and the specific standards required within this Agreement, a standard that is generally applied in the industry in Canada and complies with Applicable Laws shall be adhered to. Without restricting the forgoing, the Utility shall ensure compliance with the following operating and maintenance requirements:

(a) **Fire Service** – if Hydrants intended to provide for Fire Suppression (it being acknowledged that as of the date of this Agreement, no such Hydrants for Fire Suppression exist) form part of the Facilities at any time, if the County deems it necessary or advisable to connect to fire hydrants or other devices forming part of the Facilities from time to time to combat fire, or for evaluating the operational compliance of the Facilities, or for any other such reason, no charge shall be made to the County or the respective fire department for the connection. Except in the case of an emergency, the County shall give the Utility two (2) Business Days Notice of their intention to make such connection. The Utility may at its discretion meter water flows from hydrants, and impose a unit charge for the water at an appropriate bulk water customer rate to be determined at the time of introduction of Hydrants for Fire Suppression. The rate may be varied by mutual consent from time to time. This does not prohibit the Utility or any governmental entity from charging a private developer for such cost;

(b) **Distribution Mains** - distribution mains shall be maintained in compliance with the following:

(i) Distribution mains shall be designed and maintained in accordance with the County Servicing Standards and applicable guidelines, standards and specifications referenced therein;

(ii) Distribution mains shall be continuous (looped) whenever possible, and no more than thirty (30) residential dwelling units or ninety (90) meters dead end section off of main (whichever is less onerous) shall be permitted on an unlooped section of water main;

(iii) All dead end mains shall have a flushing hydrant at the end of the main;

(iv) Water demands for industrial, commercial, and high-density areas must be analyzed to determine the grid and main size requirements;

(v) An air release valve may be required based on the Engineering Consultant's design of the water infrastructure;

(vi) The Utility's Engineering Consultant is required to submit proposed disinfection/flushing procedures to the County for review with engineering design drawings. All water lines are to be flushed after streets are constructed and before issuance of building permits. Before being placed into service, the entire distribution system shall be disinfected according to industry standard practices. A flushing hydrant shall be installed at the end of all dead end water mains to facilitate flushing and disinfection of the main;

(vii) A water main shall be provided to the boundary of all municipal reserve lots (inclusive of municipal reserves, school reserves, municipal and school reserves, and public utility lots). Stubs to the boundary of a development shall be provided for to accommodate future connections; and

(viii) Service connections to residential lots are to be installed 3.5 meters inside the property line. All curb stops for water service connections (control valves to individual lots) shall be located within the adjacent municipal road right of way or an easement area located within six meters of the municipal roadway. Residential water services shall be 20mm or larger as needed. Pressure reducing valves are required where static pressure is greater than 80 psi. It is recommended that the pressure reducing valve be set at 65 psi for residential services.

(c) **Hydrants** – Hydrants intended to provide for Fire Suppression (it being acknowledged that as of the date of this Agreement, no such Hydrants for Fire Suppression exist) forming part of the Facilities from time to time shall be maintained in compliance with the following:

(i) **Approvals** – a plan showing all proposed hydrant locations within any subdivision and/or development must be submitted to the County's Emergency Services Department and Engineering Services Department, for review of locations and spacing prior to finalizing the design of the water distribution system;

(ii) **Alignment and Placement** – Hydrants should be placed in accordance with the County Servicing Standards; and

(iii) **Hydrant Type** – unless otherwise agreed to in writing by the County, Hydrants shall be as specified in the County's Servicing Standards as amended, and all other applicable County Standards and Bylaws as amended.

(d) **Ponds/Reservoirs** – all raw water pond(s) and/or reservoir(s) forming part of the Facilities or being relied upon by the operation of the Facilities to provide the Services or Additional Services shall be maintained by the Utility at levels appropriate to design and/or natural capacities (including, without restriction, accounting for any and all impacts of infiltration, ordinary drainage and storm drainage into the pond(s) and/or

reservoir(s)), and in such a manner so as not to endanger property or necessitate modification or addition of municipal improvements or infrastructure by the County.

3. Non-Exclusive Extended Areas

The Parties acknowledge that the applicability of the forgoing to the Non-Exclusive Extended Areas shall be subject always to the terms and conditions under which the extension of the Additional Services to the Non-Exclusive Extended Areas is accepted by the Utility as contemplated within Schedule E-1 (Financial Operations), and subject to the applicable terms and conditions of any County consent and the definition of the Additional Services pursuant to Section 3.2 of this Agreement.

4. Utility Strategy Plan

As soon as reasonably practicable following the Effective Date and in any event not later than One Hundred and Eighty (180) days following the Effective Date unless otherwise agreed to in writing by the Utility and the County, the Utility and the County shall jointly establish a utility strategy plan for the entire Franchise Area which shall be compatible with the applicable statutory and non-statutory plans adopted in the County and consistent with any applicable area structure plan. The utility strategy plan shall be updated by the Utility if new area structure plans are approved or other statutory plans are amended, or the Franchise Area is amended, and otherwise at such other times as may be determined by the Utility. In the event that the Parties are unable to agree upon a utility strategy plan or any material amendment thereto proposed by the Utility, each such material amendment requiring the written approval of the County, the dispute shall be resolved through the Dispute Resolution Procedure.

5. Emergency Response Plan(s)

As soon as reasonably practicable following the Effective Date and in any event not later than Sixty (60) Business Days following the Effective Date unless otherwise agreed to in writing by the Utility and the County, the Utility shall establish an Emergency Response Plan acceptable to the County acting reasonably, that shall be responsible for reactions to all interruptions to or impacts upon the Facilities or the Services provided through the Facilities. In the event that the Parties are unable to agree upon an Emergency Response Plan(s) or any amendment thereto proposed by the Utility, each such amendment requiring the written approval of the County, the dispute shall be resolved through the Dispute Resolution Procedure.

6. Annual Reports

Within sixty (60) days after the close of the Utility's fiscal year, the Utility shall submit to the County a written annual report, in a form acceptable to the County, which shall include the following information for the Franchise Area:

(a) copy of the annual submission to the AUC and to AEP;

(b) subject always to limitations imposed upon the Utility respecting the protection of personal information and the protection of privacy, a summary of the previous year's activities in development of the Facilities, including, but not limited to, services begun or discontinued during the reporting year, and the number of Consumers for each class of service (i.e., residential, commercial, institutional, etc.);

(c) the current three (3) year capital improvement plan consistent with the approved utility strategy plan contemplated by this Schedule and any applicable statutory or non-statutory plans adopted by the County including the applicable area structure plans; and

(d) any changes to the Utility' officers, members of its boards of directors, and other principals of the Utility.

7. Copies of Federal and Provincial Reports

The Utility shall, upon request, submit to the County copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Utility or its parent corporation(s), to any federal or provincial, regulatory agencies and other government bodies (i.e. AEP reporting) in connection with any application or proceeding of a regulatory nature relating to the Utility or the provision of the Services. The Utility shall not claim confidential, privileged or proprietary rights to such documents unless under federal, provincial, or local law such documents have been determined to be confidential by a Court of competent jurisdiction, or a federal or provincial authority. Subject to the FOIPP Act and PIPA, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by the County and its authorized agents and shall not be made available for public inspection. With respect to all other reports, documents, and notifications provided to any federal or provincial regulatory agency as a routine matter in the course of operating the Facilities, the Utility shall make such documents available to the County upon the County's request.

8. Connections

A summary of connection requests to either party, identifying the number and nature of the requests and their disposition, shall be completed for each six (6) month period and submitted to the County by the tenth (10th) day of the succeeding period.

9. Service Interruptions

A log of all service interruptions shall be maintained and provided to the County quarterly, provided that if there was no service interruption within the previous quarter no reporting is required.

10. Joint Activities

The Parties acknowledge that there are common areas of interest between the Facilities owned by the Utility and the wastewater collection and treatment system owned by the County. The Parties agree to work together on the following activities:

(a) Water conservation programs; and

(b) Billing practices and account management.

SCHEDULE C-3

OPERATING PERMITS

The Operating Permits include:

1. **Water Licences –** the Water Licences contemplated within Section 4.9(a) this Agreement including, without restriction, the following:

LICENCE/AMENDMENT NO.	PRIORITY NO.	ANNUAL DIVERSION RATE	NAMED LICENCEE
00198467-01-00	2003-06-10-001	66,608 m^3	Calalta Waterworks Ltd.
0035772-00-00 0035772-00-01 0035772-00-02	1981-04-30-02	104,856 m^3	Calalta Waterworks Ltd.
00034481-00-00 00034481-00-01	1983-12-06-09	7,401 m^3	Springbank Park for all Seasons Agricultural Society (through works of Calalta)
00218496-00-00 00218496-00-01	1985-12-13-001	10,361 m^3	West View Water Supply Ltd. (through works of Calalta)
00221674-00-00	2005-06-30-001	42,000 m^3	B. Stuart Sports Enterprises (Edge School) (through the works of Calalta)
00383026-00-00	1893-10-15-001	111,013 m^3	Bingham Crossing Properties Ltd. (through the works of Calalta)
No. 14502 Interim Licence	1984-10-01-09	33,304 m^3	Rocky View County (through the works of Calalta)

2. **Alberta Utilities Commission** – approval of all rates, tolls and charges of the Utility, and terms of service, by the AUC. The required approval and on-going compliance will be obtained in due course including after the Effective Date of this Agreement.

3. **Approvals and Permits** – issuance of all AEP approvals and operating permits

applicable to the Facilities as and when required for purposes of the provision of the Services to the Franchise Area and the provision of any Additional Services to the Non-Exclusive Extended Areas, including:

(a) **Approvals and Permits –** Approval by the Province of Alberta under the Environmental Protection and Enhancement Act (EPEA), R.S.A. 2000, c.E-12, as amended. Approval No.: 1654-03-00, Application No.: 011-164. Effective Date: April 29, 2019. Registration Holder: Calalta Waterworks Ltd. Activity: Construction, operation or reclamation of a waterworks system that serves the area in Rocky View County;

(b) **Future Stages/Expansions –** amendment of existing AEP approval(s) required under the *Environmental Protection and Enhancement Act*, as amended or replaced from time to time, and/or issuance of new AEP approval(s) required under the *Environmental Protection and Enhancement Act*, as amended or replaced from time to time, so as to allow for the expansions of the Facilities and the provision of the Services to new areas of the Franchise Area (by expansions of the Franchise Area, by subdivision and servicing of portions of the Lands, or otherwise); and

(c) **Non-Exclusive Extended Areas/Expansions –** amendment of existing AEP approval(s) required under the *Environmental Protection and Enhancement Act*, as amended or replaced from time to time, and/or issuance of new AEP approval(s) required under the *Environmental Protection and Enhancement Act*, as amended or replaced from time to time, so as to allow for the expansions of the Facilities and the provision of the Additional Services to new areas of the Non-Exclusive Extended Areas.

To the extent that any of the foregoing approvals or permits are issued in the name of a Developer (or any other party, as the case may be, including an owner in the case of Non-Exclusive Extended Areas), the amendment, assignment or transfer of the approval or permit to the Utility shall commence no later than the earlier of the transfer of the Facilities governed by the applicable approval or permit to the Utility as contemplated within Section 4.2 of this Agreement, the commencement of Operation and Maintenance of the applicable Facilities by the Utility, or the date upon which such amendment, assignment or transfer is required under the Applicable Laws governing the approval or permit, and shall be completed within a reasonable period following the date of the required commencement of the amendment, assignment or transfer. The Utility shall diligently and continuously pursue any such amendment, assignment or transfer until completed. Notwithstanding the foregoing, any amendment, assignment or transfer required by Applicable Laws governing the approval or permit shall be completed on the date required in accordance with those Applicable Laws.

SCHEDULE D-1

INSURANCE REQUIREMENTS

A. UTILITY'S CONSTRUCTION INSURANCE

1. All Builders' Risk

Throughout all periods of new construction undertaken by the Utility (it being acknowledged that as of the date of this Agreement, there is not currently any new construction underway), the Utility will obtain and keep in force or cause to be obtained and kept in force All Risks Course of Construction insurance, which insurance coverage shall:

(a) include the Utility as the insured, and the County as a loss payee as its interest may appear;

(b) provide for coverage not less than the insurance required by IBC Forms 4042 and 4047, or their equivalent replacement;

(c) cover all equipment, materials and supplies to be incorporated into the Facilities on a replacement cost basis where possible;

(d) include coverage for transit and off-site storage, temporary structures used in the erection of the work prevention of access and off premises power interruption; and

(e) have a deductible of not more than $25,000 (or such higher deductible as may be approved by the County, acting reasonably), to be borne by the Utility.

2. Wrap-up Liability

Throughout all periods of new construction undertaken by the Utility (it being acknowledged that as of the date of this Agreement, there is not currently any new construction underway), the Utility will obtain and keep in force or cause to be obtained and kept in force Wrap-up Liability insurance to cover personal injury (including bodily injury and death) and third party property damage resulting from construction, which insurance coverage shall:

(a) include the Utility as the insured, and the County and the Operator as additional insureds;

(b) include any Sub-Contractor, any contractor of a Sub-contractor, and any architects, engineers and other professionals engaged in design of the Facilities, as additional insureds;

(c) be in an amount of not less than $10,000,000.00 per occurrence, subject to such reasonable sub-limits as are customarily applicable to such insurance;

(d) provide for coverage not less than the insurance required by IBC Forms 2100 and 2320, or their equivalent replacement;

(e) include an extension of coverage for twenty-four (24) months after Service Commencement for products and completed operations; and

(f) without limiting the foregoing, include coverage, subject to such reasonable sub-limits as are customarily applicable, for:

(i) independent contractors;

(ii) broad form property damage;

(iii) completed operations;

(iv) blanket contractual liability, including this Agreement;

(v) shoring, blasting, excavating, underpinning, demolition, pile driving and caisson work, work below ground surface, tunneling and grading;

(vi) employees as additional insureds;

(vii) contingent employers' liability;

(viii) non-owned automobiles;

(ix) sudden and accidental pollution;

(x) cross liability;

(xi) incidental non-owned aircraft and watercraft, as applicable and if required in connection with the Facilities; and

(xii) firefighting expenses.

3. Environmental Liability

Throughout all periods of new construction undertaken by the Utility, to the extent not provided by the insurance required pursuant to Section A.2 above, the Utility shall obtain and keep in force or cause to be obtained and kept in force insurance for sudden and accidental pollution in an amount not less than $10,000,000.00 on an occurrence basis for pollution arising from the negligence of the Utility.

4. Other Construction Coverage

Throughout all periods of new construction undertaken by the Utility, the Utility will obtain and keep in force or cause to be obtained and kept in force the following:

(a) Automobile Liability insurance, which insurance coverage shall:

(i) cover all licensed motor vehicles owned, rented, leased or operated by the Utility, an Operator or Sub-contractor in connection with the performance of the Operation and Maintenance under this Agreement;

(ii) cover bodily injury and property damage liability to a limit of no less than $1,000,000.00 for each occurrence involving bodily injury, death or property damage;

(iii) include coverage for third party property damage and bodily injury (including accident benefits) arising out of the use of such automobiles in the performance of the Operation and Maintenance;

(b) Excess liability insurance with limits not less than $4,000,000.00 for each occurrence to the extent coverage includes automobile liability outlined above;

(c) Workers' Compensation coverage for all employees engaged in the performance of the Operation and Maintenance in accordance with the statutory requirements of Alberta; and

(d) Employers' liability insurance, when applicable, with limits not less than $5,000,000.00 covering employees engaged in the Operation and Maintenance who are not covered by Workers' Compensation in accordance with the statutory requirements in Alberta.

B. UTILITY'S OTHER INSURANCE

1. Property Coverage

From and after the earlier of commencement of Operation and Maintenance of any of the Facilities or the termination of the All Risks builder's coverage contemplated above, the Utility will obtain and keep in force or cause to be obtained and kept in force All Risks Property insurance covering the Facilities, which insurance coverage shall:

(a) include the Utility as the insured;

(b) cover all equipment, materials and supplies to be incorporated into the Facilities on a replacement cost basis;

(c) boiler and machinery coverage; and

(d) have a deductible of not more than $25,000 (or such higher deductible as may be approved by the County, acting reasonably), to be borne by the Utility.

2. Comprehensive General Liability

During the Term, the Utility will obtain and keep in force or cause to be kept in force Comprehensive General Liability insurance covering Operation and Maintenance for personal injury (including bodily injury, death and third party property damage), which insurance coverage shall:

(a) include the Utility as the insured, and the County and the Operator as additional insureds;

(b) be in an amount of not less than $10,000,000.00 per occurrence, subject to such reasonable sub-limits as are customarily applicable to such insurance;

(c) without limiting the foregoing, include coverage, subject to such reasonable sub-limits as are customarily applicable, for:

(i) independent contractors;

(ii) broad form property damage;

(iii) completed operations;

(iv) blanket contractual liability, including this Agreement;

(v) employees as additional insureds;

(vi) contingent employers' liability;

(vii) non-owned automobiles;

(viii) sudden and accidental pollution;

(ix) cross liability; and

(x) firefighting expenses; and

(d) provide that the coverage shall be the primary coverage, and that any policy maintained by the County shall be excess coverage to this primary policy.

3. Other Operation and Maintenance Coverage

During the Term, the Utility will obtain and keep in force or cause to be obtained and kept in force the following:

(a) Automobile Liability insurance, which insurance coverage shall:

(i) include the County as an additional insured;

(ii) cover all licensed motor vehicles owned, rented, leased or operated by the Utility in connection with the performance of Operation and Maintenance under this Agreement;

(iii) cover bodily injury and property damage liability to a limit of no less than $1,000,000.00 for each occurrence involving bodily injury, death or property damage; and

(iv) include coverage for third party property damage and bodily injury (including accident benefits) arising out of the use of such automobiles in the performance of Operation and Maintenance;

(b) Excess liability insurance with limits not less than $4,000,000.00 for each occurrence to the extent coverage includes automobile liability outlined above;

(c) Workers' Compensation coverage for all employees engaged in the performance of Operation and Maintenance in accordance with the statutory requirements of Alberta; and

(d) Employers' liability insurance, when applicable, with limits not less than $5,000,000.00 covering employees engaged in Operation and Maintenance who are not covered by Workers' Compensation in accordance with the statutory requirements in Alberta.

4. Environmental Impairment Liability

During the Term, to the extent not provided by the insurance required pursuant to Section B.1 above, the Utility shall obtain and keep in force or cause to be obtained and kept in force insurance for sudden and accidental pollution in an amount not less than $10,000,000.00 on an occurrence basis for pollution arising from the negligence of the Utility.

C. GENERAL

1. General Terms

All policies of insurance required under this Schedule will:

(a) be on terms and conditions which would be obtained by prudent owners and operators of projects of similar scope and magnitude as the Facilities and, in addition to the required inclusions or permitted exclusions for each policy specifically described in this Schedule, include such other inclusions and exclusions as such prudent owner or operator would require or permit;

(b) to the extent generally available, provide thirty (30) days' notice of termination, cancellation or material change to all named insureds and additional insureds;

(c) be issued by such reputable and duly qualified insurers rated A.M. Best A- or better, and if a rating from A.M. Best is not available an equivalent rating issued by a rating agency as may be agreed between the parties, and if such agreement cannot be reached, be determined pursuant to the Dispute Resolution Procedure;

(d) to the extent generally available, be non-contributing with and apply only as primary and not excess to any other insurance available to the County or the County Indemnified Parties; and

(e) to the extent generally available, provide that such policies of insurance will not be invalidated by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies.

2. Evidence of Insurance

Upon the issue of and upon every renewal of a policy of insurance, and otherwise upon the written request by the County, the Utility will deliver to the requesting party a certified copy of the policy of insurance, or other satisfactory evidence of adequate insurance. No review or approval of any certificate or policy by either the County or the Utility derogates from or diminishes the respective rights of the County or the Utility under this Agreement.

SCHEDULE D-2

SECURITY

The following provisions will apply to the Security required to be provided under this Agreement, and the administration of that Security under this Agreement:

1. Letter of Credit

Subject always to the County's discretions contemplated within this schedule, within thirty (30) days following the date of execution of this Agreement, the Utility shall deliver and deposit with the County, and thereafter maintain, security in the form of an irrevocable letter of credit provided by a chartered bank or the Alberta Treasury Branches in an amount equal to the sum of **$0.00**, and the letter of credit shall be upon terms and in form acceptable to the County's solicitor. Notwithstanding the foregoing, the County may, upon direction of Council, increase the amount of the required letter of credit in the event that:

(a) the letter of credit has been drawn upon by the County in accordance with the provisions of this Agreement twice or more within any calendar year; or

(b) the letter of credit has been drawn upon by the County in accordance with the provisions of this Agreement, and has not been either replenished or replaced, as the case may be, by the Utility as and when required by the County; or

(c) the Utility has incurred a liability to the County under this Agreement in an amount in excess of the amount of the letter of credit,

provided that the maximum amount of the letter of credit shall not, in any event, exceed **$150,000.00**. The County and the Utility may agree at any time to amend the amount of the letter of credit, or dispense with the requirement for the letter of credit.

2. Term and Renewal

(a) Any irrevocable letter of credit provided as security by the Utility shall contain a covenant by the issuer thereof that such letter of credit shall automatically be renewed, upon the same terms and conditions, for a further period of One (1) year from the present or any future expiration date thereof; and

(b) a right on the part of the County to draw upon the full amount of the irrevocable letter of credit, or any portion thereof, in the event that the County has not received a replacement letter, or confirmation of an extension or renewal of the existing letter, at least Sixty (60) days prior to the expiry of the security.

3. Administration

In regards to the Security provided under this Agreement, the following terms and conditions shall apply:

(a) the Utility's interest in any cash security deposit, irrevocable letter of credit, or other security required or otherwise provided by the Utility to the County pursuant to this Agreement is hereby assigned and pledged to the County as security for the performance

of the Utility's obligations as contemplated herein (such assignment and pledge to be perfected by possession and/or registration);

(b) the Utility acknowledges having received a copy of this Agreement, and the security terms contemplated herein, and waives any right it may have to receive a copy of any financing statement or financing change statement in relation hereto;

(c) notwithstanding any other provision of this Agreement and further, without prejudice to any other right or remedy of the County, the obligation of the County or its solicitor to release any security deposit funds held by it under or in connection with this Agreement (including any cash deposit) is subject to the County's right to deduct or set off any amount which may be due by the Utility to the County or the amount of any claim by the County against the Utility under this Agreement (including, without limitation, the amount of any liquidated damages). Without limitation, if the Utility is in breach or default of any provision of this Agreement or of any provision of any contract with any project manager(s), subcontractor or supplier, and, after receiving Notice thereof, the Utility does not promptly remedy such default or breach or commence and diligently prosecute the remedy of such breach or default, the County may (but shall not be obligated to) take any measures it considers reasonably necessary to remedy such default or breach and any costs or liabilities incurred by the County in respect thereof may be deducted from or set off against any amount(s) to be paid or released to the Utility under this Agreement. This provision shall survive the termination of this Agreement for any reason whatsoever; and

(d) the County may from time to time draw down upon the letter of credit and apply the proceeds thereof in payment of any amounts due and owing to the County by the Utility but unpaid.

4. Expiration

In the event that the irrevocable letter of credit shall expire prior to the date for release of the security under this Agreement, and the Utility has failed to provide a replacement letter of credit or evidence of renewal satisfactory to the County not less than thirty (30) days prior to that expiration date, the County may draw upon all or any portion of the security and hold or apply the proceeds in the same manner as a cash security deposit.

5. Reductions

The amount of the Security to be provided by the Utility to the County may, in the sole and absolute discretion of the County, be reduced:

(a) in recognition of prior years of operation, maintenance, and delivery of water serviced by the Utility; and/or

(b) on application by the Utility upon the Utility having a default-free, claim-free, complaint-free, and incident-free record for Operation and Maintenance and the provision of the Services for a period of no less than twenty-four (24) consecutive months;

provided however that the County shall have the option and discretion to require that the level of security return that the level otherwise required under this Agreement in the event that the forgoing record for the Utility changes.

6. Cash

In the event that the County has negotiated or called upon the security to be deposited by the Utility with the County, the County may, at its option and discretion, use any funds thereby obtained in any manner the County deems fit to discharge the obligations of the Utility pursuant to this Agreement.

7. No Limitations

The security requirement contained within this Schedule and provided by the Utility is without prejudice to the Utility's responsibility under this Agreement. Nothing shall prevent the County from demanding payment or performance by the Utility in excess of the required Security, and without having to call upon or otherwise exhaust its remedies in respect of the required Security prior to making such demand.

8. Return of Security

Within Ninety (90) days following the expiration or earlier termination of this Agreement, the County shall return the letter of credit and any proceeds from any drawing thereunder, subject to the provisions of this Schedule, and to the extent not applied by the County in accordance with this Agreement.

SCHEDULE D-3

CONDUCT OF THIRD PARTY CLAIMS

The following provisions will apply to the conduct of Claims made by a third person against a Party having, or claiming to have, the benefit of an indemnity under this Agreement:

1. The Party having, or claiming to have, the benefit of the indemnity is referred to as the "**Beneficiary**" and the Party from whom the indemnity is sought is referred to as the "**Indemnifier**".

2. Subject to the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement, the following provisions shall apply to all such Claims:

(a) If the Beneficiary receives any notice, demand, letter or other document concerning any Claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement, the Beneficiary will give Notice to the Indemnifier as soon as reasonably practicable and in any event within ten (10) days of receipt thereof.

(b) Subject to Sections 2(d), 2(e) and 2(f), of this Schedule on the giving of a Notice by the Beneficiary pursuant to Section 2(a) of this Schedule, if it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not less than all) of the liability arising out of the Claim, the Indemnifier will be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defense, dispute, compromise, or appeal of the Claim and of any incidental negotiations. The Beneficiary will give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim.

(c) In defending any Claim described in Section 2(b) of this Schedule in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such Claim and, if it is determined that the Beneficiary is entitled to indemnification by the Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity from the indemnifier.

(d) With respect to any Claim conducted by the Indemnifier pursuant to Section 2(b) of this Schedule:

(i) the Indemnifier will keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;

(ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;

(iii) the Indemnifier will not pay, compromise or settle such Claim without the prior consent of the Beneficiary;

(iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary; and

(v) the Indemnifier shall use all reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the Persons bringing the Claim to which these provisions relate.

(e) The Beneficiary may take conduct of any defense, dispute, compromise or appeal of the Claim and of any incidental negotiations if:

(i) the Indemnifier is not entitled to take conduct of the Claim in accordance with Section 2(b) of this Schedule;

(ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant Claim within twenty (20) Business Days of the Notice from the Beneficiary under Section 2(a) of this Schedule or notifies the Beneficiary that it does not intend to take conduct of the Claim; or

(iii) the Indemnifier fails to comply in any material respect with the provisions of Section 2(d) of this Schedule.

In the case of Section 2(e)(iii), of this Schedule, the Beneficiary may pay or settle any Claim on such terms as it thinks fit (provided such settlement is in monetary terms only) and without prejudice to its rights and remedies under this Agreement. Otherwise the Beneficiary will not pay or settle such Claims without the prior consent of the Indemnifier.

(f) The Beneficiary may at any time give Notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any Claim, or of any incidental negotiations, to which Section 2(e) above of this Schedule applies. On receipt of such Notice the Indemnifier will promptly take all steps necessary to transfer the conduct of such Claim to the Beneficiary, and will provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purpose of considering and resisting such Claim. If the Beneficiary gives any Notice pursuant to this Section 2(f), the Indemnifier will not thereby be released from its obligation to indemnify the Beneficiary pursuant to this Article.

(g) If the Indemnifier pays to the Beneficiary an amount in respect of any indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim under the indemnity, the Beneficiary will forthwith repay to the Indemnifier the lesser of:

(i) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering such sum; and

(ii) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity;

provided that there will be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier will be repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any Direct Loss sustained by the Beneficiary.

(h) Any Person taking any of the steps contemplated by this Schedule shall comply with the requirements of every insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.

(i) To the extent that an Indemnifier has fulfilled its indemnity obligations pursuant to this Schedule, the Indemnifier shall be subrogated to all rights and claims of the Beneficiary who the Indemnifier has indemnified, and shall be entitled to exercise all remedies available to such Indemnifier.

(j) In response to any Claim of infringement or alleged infringement of the Intellectual Property rights of any Person, the Utility may satisfy its indemnity obligations hereunder by replacing the infringing or allegedly infringing part of the Facilities comprising each portion of the Facilities provided that:

(i) the replacement is performed without additional cost to the County; and

(ii) the replacement has at least equal quality performance capabilities when used in conjunction with the Facilities comprising each portion of the Facilities.

SCHEDULE E-1

FINANCIAL OPERATIONS

The following provisions will apply to the conduct of financial operations of the Utility in relation to the Facilities and the Services under this Agreement:

1. Setting of Rates and Charges

Rates and charges charged to a Consumer for the right to receive Services (including connection fees) by or through all or any portion of the Facilities shall be set or otherwise approved by the AUC. The Parties agree that the County may apply for intervener status with the AUC. or otherwise directly or indirectly make written or oral submissions to the AUC, respecting any application for approval of rates and charges and any changes or increases thereto.

2. Utility's Responsibility for Costs of Operation and Maintenance

Notwithstanding the setting or approval of rates and charges by the AUC, and the typical or actual process and approach applied by the AUC to cost of service and cost recoveries, the Utility acknowledges and agrees that nothing contained within this Schedule shall be interpreted as a limit to, or restriction upon the obligations and liabilities of the Utility under this Agreement including, without restricting the foregoing, the Utility's obligations to remedy any default on the part of the Utility under this Agreement (it being acknowledged by the Utility that the costs and expenses incurred by the Utility in remedying such default may not be a cost and expense that the Utility can recover from the rates and charges payable by Consumers).

3. Conditions to New Services and/or Expansions

The obligations of the Utility to provide the Services within areas of the Franchise Area not already serviced by the Utility shall in each case be subject to the following respective conditions:

(a) **Stages of Facilities** – with respect to stages of any new subdivisions and/or developments approved by the County, the extension of Services to, and the assumption of any facilities and systems within, the Franchise Area, the Utility's obligation under this Agreement to provide such Services shall be subject to:

(i) the Utility approving the plans and specifications for all new additions to the Facilities necessary to provide the Services to each subdivision or development;

(ii) such new additions to the Facilities being completed in accordance with the plans and specifications approved by the Utility;

(iii) Acceptance of the Facilities by the County; and

(iv) the new additions to the Facilities being transferred to the Utility at no cost, forming part of No-Cost Capital, as contemplated under the respective Development Agreement;

it being agreed that the Utility shall make all reasonable efforts to provide the requested approval (or reasons for the refusal to provide such approval) in writing within thirty (30)

days following the Utility's receipt of such plans and specifications for additions to the to the Facilities;

(b) **Non-Exclusive Extended Areas** – without limitation to Section 3.2 of this Agreement, with respect to the extension of Services to, and the assumption of any facilities and systems within, the Non-Exclusive Extended Areas, such extension and assumption shall be subject to:

(i) the Utility obtaining terms of service with the applicable Consumers on terms and conditions satisfactory to the Utility in its sole discretion, but subject always to the requirements set forth in Schedule B-5 (Non-Exclusive Extended Areas and Additional Services) and to the jurisdiction of the AUC, as applicable;

(ii) the Utility reaching financial or other arrangements with the owners of the lands contained within the applicable portion of the Non-Exclusive Extended Areas for the:

(A) transfer to and assumption by the Utility of existing local services used to service the lands contained within the portion of the Non-Exclusive Extended Areas, if any and where applicable;

(B) payment of the cost of constructing and installing all upgrades to existing local services to be transferred to and assumed by the Utility, if any and where applicable; and

(C) payment of the cost of constructing and installing all new additions and extensions to the Facilities, if any and where applicable;

which may be required in order to provide the Additional Services to the applicable portion of the Non-Exclusive Extended Areas in accordance with the requirements of this Agreement, it being agreed that the Utility shall be entitled to be satisfied in its sole discretion with such financial or other arrangements and matters related thereto;

(c) **Water Allocations** – the Utility reaching satisfactory arrangements with the Developer of Lands, or with the owners of the lands contained within the applicable portion of the Non-Exclusive Extended Areas, for temporary and permanent transfer of water allocation under water license(s) issued under the *Water Act* so as to permanently dedicate such amount of raw water required for the Utility to provide the Services to the applicable Stage or Non-Exclusive Extended Areas (such dedication, payment or arrangement to ensure the acquisition of the corresponding allocation at no cost to the Utility so as to form no cost capital of the utility);

(d) **Utility Funded Expansions** – with respect to any portions of the Franchise Area that the Utility chooses to service through expansion of the Facilities other than through the above processes, the provision of the Services shall be subject to the Utility entering into terms of service and agreements to pay rates, tolls or charges for the Services, as may be mandated or otherwise approved from time to time by the AUC.

The County reserves the right to deal with the Utility for and on behalf of any Developer, as part of the exercise of the County's concurrent subdivision and/or approval authority jurisdiction and

discretions under the MGA. The Utility's obligations are also subject to the availability of raw water resource in such amounts, in such locations, and subject to such license conditions and terms of access, which are reasonably necessary to permit delivery of the Services, it being agreed that the Utility shall be entitled to be satisfied in its sole discretion with such arrangements and matters related thereto; and

4. New Additions to Facilities

The Utility and the County shall consult and cooperate with each other and the affected Developers or owners of Lands within the Franchise Area and the Non-Exclusive Extended Areas, where applicable, in each case respecting the requirements for servicing new such portions of the Franchise Area or the Non-Exclusive Extended Areas, and negotiate in good faith so as to jointly establish:

(a) **Development Agreement Terms** – the terms and provisions of the Development Agreements in order to account for or otherwise facilitate the performance of the provisions of this Schedule including, without restriction, the establishment of:

(i) the length of warranty periods under Development Agreements;

(ii) the security required from Developers during the applicable warranty periods under the Development Agreements;

(iii) the process for issuance of construction completion certificates under Development Agreements for the purposes of Acceptance of new additions to the Facilities;

(iv) the process for issuance of final acceptance certificates under Development Agreements for the purposes of terminating the applicable warranty periods;

(v) the coordination and timing of inspections throughout construction of any works by Developers which are to be transferred to the Utility and form part of the Facilities;

(vi) the process for the transfer and conveyance to the Utility of the works to form part of the Facilities and the determination, where required, or the cost of construction of such works; and

(vii) where applicable and approved by the County, the mechanism by which the Utility may enforce or otherwise receive the benefit of the warranty obligations of Developers under the Development Agreements;

(b) **Designs and Specifications** - designs and specifications, and/or standards to be applied in respect thereof, for upgrades to existing services, and new extensions or additions to the Facilities, which are to be constructed and installed by or on behalf of Developers and/or owners of lands within portions of the Franchise Area or the Non-Exclusive Extended Areas to facilitate the provision of the Services or Additional Services, as the case may be, to the Franchise Area or the Non-Exclusive Extended Areas by the Utility; and

Cost Contribution/Connection Fees - the cost contributions and/or connection fees to be paid by Developers and/or owners as conditions of their approval or permits, to fund the Utility to undertake and

complete the construction and installation of the new extensions or additions to the Facilities required to service the portion of the Franchise Area or the Non-Exclusive Extended Areas proposed to be serviced by the Utility.

5. Dispute/Determination

In the event that the participants are unable to reach agreement as to any the forgoing requirements respecting new extensions or additions to the Facilities within Section 3 or 4 above so as to facilitate the provision of Services to any new subdivision and/or development or existing development:

(a) the County may apply to the AUC for such order or direction as the AUC may deem necessary or warranted; or

(b) in the absence of such application, the dispute preventing the completion of all arrangements necessary to facilitate the provision of Services to the new subdivision and/or development may be determined by the AUC, which determination shall be final and binding upon the Parties.

6. Waiver/Release for Minor Servicing

The Utility and the County may, by agreement in writing, agree to waive the rights of exclusivity and release the obligations to service with respect to:

(a) the servicing of minor subdivisions or developments within the Franchise Area; or

(b) minor extensions or expansions of services within the Franchise Area by service providers located outside of the Franchise Area;

where it is determined by the Parties to not be economically feasible for the Utility to deliver the Services. Unless otherwise agreed to by the Parties, the Lands serviced under such agreement(s) shall thereupon form part of the Excluded Areas.

7. Financial Records and Tracking

The Utility shall maintain such adequate records of all costs incurred in its operation and the delivery of the Services as may be required by, or may be reasonably necessary to satisfy the requirements of, the AUC for the purposes of establishing cost of service and all rates and charges to be imposed by the Utility, and as is required for purposes of Schedule E-2 (Transfer and Transition Procedures). Without restricting the foregoing, the Utility shall maintain records of:

(a) any and all contributions, connection fees, capital contributions, or other consideration or payment made to the Utility by any developer/owner of any Lands within the Franchise Area or any properties located within the Non-Exclusive Extended Areas;

(b) the cost of any and all contributions of new additions to the Facilities provided to the Utility by any developer/owner of any Lands within the Franchise Area or any properties located within the Non-Exclusive Extended Areas;

(c) the cost of any and all contributions of new additions to the Facilities by the County or any other party for, on behalf of, or at the direction of the County; and

(d) the Net Book Value and No-Cost Capital of all portions of the Facilities including new extensions, additions or upgrades to the Facilities performed by the Utility at the Utility's cost;

in each case calculated and maintained in accordance with IFRS and, in priority thereto, any principles generally or specifically accepted and applied by the AUC for the purposes of tracking No-Cost Capital, cost of service, and return on equity.

8. Alberta Utilities Commission Jurisdiction

The foregoing is in addition to any and all obligations owed from time to time by the Utility to the AUC, and shall not derogate from, limit, restrict, replace or in any manner displace, the lawful jurisdiction, discretion, requirements or directions of the AUC.

SCHEDULE E-2

TRANSFER AND TRANSITION PROCEDURES

A. TRANSFER PROCEDURES

1. Determination of Purchase Price Payable by County

Unless otherwise agreed to by the Parties in writing, the consideration payable by the County to the Utility upon any transfer of the Facilities to the County shall be determined on the following basis:

(a) in accordance with Section 2 below upon the:

(i) expiration of the initial twenty (20) year Term of this Agreement, provided that no renewal or extension has been agreed to, as contemplated within Section 3.9(a) of this Agreement; or

(ii) the termination of this Agreement as contemplated within Section 3.10(b) of this Agreement;

(b) in accordance with Section 3 below where neither Section 1(a)(i) or (ii) above applies.

2. Purchase Price – Acquisition Upon Expiration/Termination of Initial Term

The purchase price for the Facilities to be determined pursuant to Section 1(a) above shall be determined by negotiations between the Parties, each acting in good faith, and in the event that the Parties cannot agree either Party may refer the matter to the AUC as contemplated under Section 47 of the MGA. For clarity, and for the purposes of calculation and negotiation, the price shall exclude any value associated with:

(a) shall exclude any value associated with:

(b) all Water Licences and corresponding water allocations transferred to the Utility at no cost;

(c) all Facilities transferred by the County, or a Developer as required by the County, to the Utility at no cost, and No-Cost Capital;

(d) all rights of way, easements, or other land dedications by Developers at no cost to the Utility; and

(e) all rights and privileges granted under this Agreement;

from time to time forming part of the Facilities, subject always to the deductions and adjustment provided within Section 4 below.

3. Purchase Price – Other Acquisitions

The purchase price for the Facilities to be determined pursuant to Section 1(b) above shall be in accordance with the agreement reached between the County and the Utility:

(a) in the case of a purchase pursuant to Section 3.12 of this Agreement; or

(b) in the case of any other negotiated arrangement outside of the provisions of this Agreement.

4. Adjustments

The purchase price for the Facilities shall in each case be subject to the following deductions and adjustments, which shall be set-off against such purchase price (without duplication):

(a) all Direct Losses suffered by the County or the Utility as a result of the non-performance of any and all obligations to be performed by the opposite Party under this Agreement including:

(i) any failure to insure the Facilities, or provide proceeds of insurance received by the Utility, in respect of any loss of or damage to the Facilities; and

(ii) repair of uninsured damage to the Facilities (normal wear and tear excluded);

(b) without restricting the foregoing, in the case of the purchase by the County due to the exercise of the right to purchase upon a termination of this Agreement due to default, all Direct Losses reasonably incurred or sustained by the County by reason of the termination of this Agreement, including the cost of:

(i) assuming operation of the Facilities; and

(ii) putting the Facilities into the condition in which they are required to be maintained and operated in accordance with the terms of this Agreement at the time of termination; and

(c) any amount which either Party is otherwise entitled to set off or deduct pursuant to any other provisions contained within this Agreement.

5. Dispute/Determination

(a) In the event of a dispute respecting the settlement of the consideration payable by the County for the Facilities, or the terms under which the Facilities will be transferred which has not been resolved through the negotiation and mediation procedures of Schedule F-2 (Dispute Resolution Procedure) (provided that the arbitration procedure of Schedule F-2 shall not apply to such dispute, subject to paragraph (b) below), the matters in dispute, subject to paragraph (b) below, shall be determined by the AUC in accordance with Section 47(4) of the MGA. The order or written direction of the AUC shall be final and binding upon the Parties as to the matter in dispute and falling within the jurisdiction of the AUC.

(b) In the event of a dispute respecting the settlement of the purchase price for the Facilities payable by the County or the terms under which the Facilities will be transferred which the AUC has refused or lacks jurisdiction to determine in whole or in part, such dispute shall be submitted for resolution pursuant to the arbitration procedure of Schedule F-2

(Dispute Resolution Procedure), it being agreed by the Parties that the arbitral decision shall be final and binding upon the Parties as to such matters in dispute.

B. TERMINATION AND TRANSITIONAL PROCEDURES

1. Continuing Performance

The County and the Utility shall continue to perform their respective obligations under this Agreement (including this Schedule), notwithstanding the giving of any notice of default or notice of termination, until the Termination Date.

2. Transfer of Assets, Contracts, etc.

No later than the Termination Date:

(a) in so far as title to any such assets or rights is in the name of the Utility and any transfer will be necessary to fully and effectively transfer property, the Utility will transfer to, and there will vest in, the County (or such other Person as may be appointed or designated by the County) free from all financial encumbrances and encumbrances in respect of leases and other encumbrances, liens and interests which the County has agreed, acting reasonably, to assume:

(i) all fee simple, leasehold interest and other interests in real property including, without limitation, easements, and utility rights of way, comprising the Facilities, subject to the assumption by the County of all liabilities and obligations in respect thereto;

(ii) the Facilities, including such part of the Facilities as has been constructed on or has become affixed to the Public Properties and the Utility's interest (if any) in any portion of the Facilities that have been decommissioned by the Utility and abandoned in place in accordance with Applicable Laws;

(iii) all construction materials on-hand to be affixed to the lands comprising the Public Properties or otherwise used in the Facilities; and

(iv) all equipment and chattels used in connection with the Operation and Maintenance or the provision of the Services, in each case owned or leased by the Utility;

(b) the Utility will, at the County's sole option, cause each contract and agreement (save and except agreements with an Operator which shall be subject to the provisions of paragraph (c) below) entered into or assumed by the Utility in connection with the construction of the Facilities, the Operation and Maintenance, or the provision of the Services to be novated or assigned to the County, subject to:

(i) the assumption by the County of all liabilities and obligations under such contract and agreement to be so novated or assigned; and

(ii) the consent of any third party to such contract or agreement to such novation or assignment, where such consent is required pursuant to the terms of such contract or agreement;

(c) if the County so elects, the Utility will cause any agreement with an Operator in respect of the Operation and Maintenance to be novated or assigned to the County, subject to:

(i) the assumption by the County of all liabilities and obligations under any agreement to be so novated or assigned on a go forward basis; and

(ii) the consent of the Operator to any such novation or assignment, where such consent is required pursuant to the terms of such agreement;

(d) the Utility will deliver to the County (to the extent not already delivered to the County):

(i) all existing designs, plans and other documents produced in connection with the Facilities and in the control of the Utility (provided that the Utility may retain one copy of all such materials);

(ii) one (1) complete set of existing "as built drawings" showing all alterations made to the Facilities since the commencement of operation of the Facilities; and

(iii) one (1) complete set of existing up to date maintenance, operation and training manuals for the Facilities,

subject to reasonable generally applicable third party licensing terms;

(e) the Utility will ensure that the benefit of existing Intellectual Property and all warranties in respect of mechanical and electrical plant and equipment, used or made available by the Utility under this Agreement and included in the Facilities but not previously assigned or licensed to the County are assigned, licensed or otherwise transferred to the County;

(f) to the extent held by the Utility and permitted by Applicable Laws, the Utility will assign to the County (or such other Person as may be appointed or designated by the County) all Operating Permits;

(g) the Utility will deliver to the County all records required to be kept by the Utility under this Agreement (the Utility having the right to retain copies thereof) unless such documents are:

(i) required by Applicable Laws to be retained by the Utility or an Operator or Sub-Contractor, in which case complete copies will be delivered to the County; or

(ii) privileged from production pending resolution of any outstanding Dispute, in which case such records will be delivered forthwith upon resolution of such Dispute, provided that any records that are necessary for Operation and Maintenance will be delivered to the County no later than the Termination Date;

(h) to the extent not previously delivered to the County, the Utility will deliver to the County's Representative:

(i) all keys, access codes or other devices required to operate the Facilities;

(ii) any Intellectual Property required to be delivered by the Utility pursuant to Schedule F-1 (Intellectual Property); and

(i) the Utility shall, at its sole cost, terminate and fully compensate all of the Utility's employees utilized in respect of the Facilities as of the Termination Date, or otherwise reallocate such employees to other projects.

3. Provision in Sub-contracts

The Utility will ensure that provision is made in all applicable agreements with any Operator or Sub-Contractors to ensure that the County will be in a position to exercise its rights, and the Utility will be in a position to comply with its obligations, under this Schedule without additional payment or compensation by the County to any Person except as expressly provided for herein.

4. Transitional Arrangements

The Utility will:

(a) on request by the County and on payment of the Utility's reasonable costs (including both reasonable out-of-pocket expenses and reasonable internal costs) by the County, for a period not to exceed three (3) months after the Termination Date, co-operate fully with the County and any successor providing to the County services in the nature of any of the Operation and Maintenance or any part of the Operation and Maintenance, in order to achieve a smooth transfer of the manner in which the County obtains services in the nature of the Operation and Maintenance and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the County and members of the public;

(b) as soon as practicable following the Termination Date, remove from the Public Properties all property of the Utility (if any) not acquired by the County pursuant to this Schedule (or not otherwise belonging to the County) and if it has not done so within sixty (60) days after any Notice from the County requiring it to do so the County may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds, less all costs incurred, to the credit of the Utility; and

(c) as soon as practicable after the Termination Date, vacate the Public Properties (for greater certainty, without removing any portion of the Facilities) and will leave the Public Properties and the Facilities in a fully operational, safe, clean and orderly condition.

SCHEDULE F-1

INTELLECTUAL PROPERTY

1. Defined Terms

In this Schedule, in addition to the terms defined elsewhere in this Agreement:

(a) "**Off The Shelf Software**" means software generally available through commercial suppliers on standard terms and conditions; and

(b) "**use**", in respect of Intellectual Property, will include acts of copying, executing, processing and translating the material in question and incorporating such material with other materials:

(i) by the Utility, solely for the purposes of Operation and Maintenance pursuant to this Agreement; and

(ii) by the County, for the purposes of Operation and Maintenance of the Facilities, or the operation and maintenance of any other facilities, system or works of the County incorporating the Facilities or otherwise, from and after the Termination Date;

and the term "right to use" will be construed accordingly.

2. Third Party Intellectual Property

The Utility will not use in the performance of this Agreement or incorporate into the Facilities comprising each portion of the Facilities any Intellectual Property which is subject to the rights of, or claims that, to the extent that the Utility has knowledge, have been made by, any Person that conflict with the use of such Intellectual Property for the purposes contemplated within this Agreement unless the Utility has entered into agreements with such Person licensing to the Utility the right to use such Intellectual Property or the Utility is actively defending against such claim in good faith.

3. Intellectual Property Licenses

Except for Off The Shelf Software, the Utility will ensure that all licenses for the use of Facilities Intellectual Property which the Utility obtains from any Person and incorporates in the Facilities comprising each portion of the Facilities will:

(a) be non-exclusive;

(b) be on payment terms no less favourable than those offered to similar licensees in the usual distribution practices of such third party licensor or, in the case of Intellectual Property licensed from an Affiliate of the Utility, on commercially reasonable terms; and

(c) subject to the terms of each license, permit the use of the Facilities Intellectual Property for the purpose of Operation and Maintenance.

4. Facilities Data and Facilities Intellectual Property Rights

Subject to the further provisions of this Schedule, the Utility will:

(a) ensure that any third party license agreements respecting Confidential Information, Facilities Data, Facilities Intellectual Property (other than Off The Shelf Software) and ownership rights of the Utility therein, if any, will be fully transferable to the County or its nominees without transfer cost, so as to provide to the County the right use same after the Termination Date;

(b) obtain all necessary licenses, permissions and consents, and take all requisite actions, to permit the Utility to transfer its rights in any Confidential Information, Facilities Data and Facilities Intellectual Property (other than Off The Shelf Software) to the County as required by this Agreement, so as to allow the County the right to use same after the Termination Date;

(c) with respect to third party licenses to be transferred to the County pursuant to this Agreement, ensure that there are no restrictions under third party license agreements on the County's ability to use the transferred rights in respect of Confidential Information, Facilities Data and any Facilities Intellectual Property (other than Off The Shelf Software) after the Termination Date, subject to:

(i) payment by the County after the Termination Date of any reasonable maintenance, support or similar ongoing fees consistent with those which the Utility was required to pay to the arms-length third party licensor prior to the Termination Date; and

(ii) commercially reasonable industry standard licensing restrictions such as confidentiality and restrictions on re-sale;

(d) on the Termination Date, to the extent it has any rights, transfer or cause the transfer of its rights under any third party license agreements and its rights as owner of such Confidential Information, Facilities Data and Facilities Intellectual Property (other than Off The Shelf Software), to the County or its nominee to the extent necessary so as to provide the right to use same after the Termination Date; and

(e) at the County's request, to the extent the Utility Has Knowledge, identify all Off The Shelf Software which is included in the Facilities Intellectual Property.

5. Utility's Proprietary Information

The Utility shall not be obliged to transfer to the County rights in respect of:

(a) Confidential Information or Intellectual Property that is proprietary to the Utility, an Operator or Sub-contractor that is not required for Operation and Maintenance; or

(b) software which is generally used for the design and planning of projects similar to the Facilities comprising each portion of the Facilities including software for computer aided drafting and project management.

6. Infringement

The Utility will:

(a) to the extent reasonably possible, avoid infringing the Intellectual Property rights of any Person during the performance of the Operation and Maintenance or otherwise in connection with the Facilities; and

(b) promptly use reasonable commercial efforts to resolve any Claim of infringement made in respect of any Facilities Intellectual Property.

7. Limitation on Acceptance by the County

The County's acceptance of any aspect of the Facilities, including the design of the Facilities, the Equipment or any materials which the Utility supplies to the Facilities, will not be construed to relieve the Utility of any obligation under this Agreement.

SCHEDULE F-2

DISPUTE RESOLUTION PROCEDURE

1. Definitions

In this Schedule, in addition to terms defined elsewhere in this Agreement, the following words and phrases have the following meanings:

(a) "**Approved Arbitrators**" means a list of pre-approved arbitrators agreed upon by the Parties and which may be revised and/or updated by the mutual agreement of the Parties from time to time (for clarification, Approved Arbitrators may include reference to a group of practitioners, or a firm or corporation engaged in the business of providing Arbitration services);

(b) "**Approved Mediators**" means a list of pre-approved mediators agreed upon by the Parties and which may be revised and/or updated by the mutual agreement of the Parties from time to time (for clarification, Approved Mediators may include reference to a group of practitioners, or a firm or corporation engaged in the business of providing Mediation services);

(c) "**Arbitrator**" means the individual appointed to act as such to resolve any Dispute;

(d) "**Arbitration**" means a process whereby each of the Parties, with or without legal counsel, agrees to jointly engage and meet with an Arbitrator who will render a binding decision in respect of any Disputes;

(e) "**Disclosed Information**" means the information disclosed by a Party for the purpose of settlement, negotiation, Mediation or Arbitration;

(f) "**Mediation**" means a process whereby a Representative of each Party, with or without legal counsel, agrees to jointly engage the services and meet with a Mediator to participate in a mediation, conciliation or similar dispute resolution process;

(g) "**Mediator**" means the individual appointed to facilitate the resolution of a Dispute between the Parties; and

(h) "**Representative**" means an individual who has no direct operational responsibility for the matters comprising the Dispute, who holds a senior position with a Party and who has full authority to settle a Dispute (and, for greater certainty, shall not be either the County's Representative or the Utility's Representative under this Agreement).

2. Principles of Dispute Resolution

The County and the Utility acknowledge and agree that:

(a) in any business relationship a difference of opinion or interpretation or a divergence of interest may arise;

(b) the County and the Utility are committed to resolving any disputes in a non-adversarial, informal and cost efficient manner;

(c) the following Dispute Resolution Procedure shall apply in respect of Disputes which are either referred by the mutual agreement of the Parties to, or are specifically required by the terms of this Agreement to be resolved in accordance with, the Dispute Resolution Procedure; and

(d) the Parties shall make all reasonable efforts to resolve all Disputes by negotiation and agree to provide, without prejudice, open and timely disclosure of relevant facts, information and documents to facilitate these negotiations as further contemplated within this Schedule.

3. Dispute Process

In the event of any Dispute to which the Dispute Resolution Procedure applies pursuant to Section 2(c) of this Schedule, the Parties agree that they shall undertake a process to promote the resolution of a Dispute in the following order:

(a) first, by negotiation;

(b) second, by way of Mediation; and

(c) third, if agreed to mutually by the parties, by Arbitration.

Negotiation, Mediation or Arbitration shall refer to, take into account, and apply the intentions and principles stated by the Parties within this Agreement. For clarity, the elevation of any Disputes to Arbitration shall exclude Disputes for which the AUC has final jurisdiction and final determination over, in which instances in the event that Mediation does not resolve a Dispute, the determination of the Dispute by the AUC shall apply instead of Arbitration as otherwise contemplated within this Agreement.

4. Negotiation

A Party may give Notice ("**Dispute Notice**") to the other Party of a Dispute and outline in reasonable detail the relevant information concerning the Dispute. Within seven (7) days following receipt of the Dispute Notice, the Parties shall each appoint a Representative, who shall meet and attempt to resolve the Dispute through discussion and negotiation. If the Dispute is not resolved within thirty (30) days of the appointment of a Representative by each Party, the negotiation shall be deemed to have failed.

5. Mediation

(a) If the Representatives cannot resolve the Dispute through negotiation within the thirty (30) day period provided for in Section 4 above, then either Party may within ten (10) days following such thirty (30) day period (but not thereafter) provide the other Party with a Notice ("**Mediation Notice**") specifying:

(i) the subject matters remaining in Dispute, and the details of the matters in Dispute that are to be mediated; and

(ii) the nomination of an individual from the list of Approved Mediators to act as the Mediator.

(b) The Parties shall, within thirty (30) days of the Mediation Notice, jointly nominate or agree upon a Mediator from the list of Approved Mediators (unless the Approved

Mediators are unwilling or unable to accept the appointment, or there are no Approved Mediators that have been pre-approved by the Parties, in which case the Parties may jointly nominate or agree upon a Mediator from outside of the list of Approved Mediators).

(c) Where a Mediator is appointed, the Parties shall submit in writing their Dispute to the Mediator, and afford to the Mediator access to all records, documents and information the Mediator may reasonably request. The Parties shall meet with the Mediator at such reasonable times as may be required and shall, through the intervention of the Mediator, negotiate in good faith to resolve their Dispute. All proceedings involving a Mediator are agreed to be without prejudice, and the cost of the Mediator shall be shared equally between the Parties.

(d) In the event that:

(i) the Parties do not jointly nominate or agree on the appointment of a Mediator with thirty (30) days of the Mediation Notice;

(ii) the Mediation is not completed within thirty (30) days after the appointment of the Mediator; or

(iii) the Dispute has not been resolved within sixty (60) days from the date of receipt of the Mediation Notice;

either Party may by Notice to the other withdraw from the Mediation process and in such event the Dispute shall be deemed to have failed to be resolved by Mediation.

6. Arbitration

(a) If either Party withdraws from the Mediation process as provided for in Section 5(d) of this Schedule, either of the Parties may provide the other Party with Notice ("**Arbitration Notice**") within ten (10) days following such withdrawal (but not thereafter) specifying:

(i) the subject matters remaining in Dispute and the details of the matters in Dispute that are to be arbitrated; and

(ii) the nomination of an individual from the list of Approved Arbitrators to act as the Arbitrator.

Within fourteen (14) days following receipt of the Arbitration Notice, the other Party shall, by written Notice, advise as to which matters stated in the Arbitration Notice it accepts and with which matters it disagrees and, where the Dispute has been referred by the mutual agreement of the Parties to be resolved in accordance with the Dispute Resolution Procedure (but not otherwise), the other Party shall also advise whether it agrees with the resolution of the disputed items by Arbitration, and whether it agrees with the Arbitrator selected by the initiating Party or provide the name of one Arbitrator selected by that other Party. Where the Dispute has been referred by the mutual agreement of the Parties to be resolved in accordance with the Dispute Resolution Procedure (but not otherwise), should the Parties fail to agree to resolve any disputed items by Arbitration, this Dispute Resolution Process shall come to an end.

(b) Subject to agreement of the Parties to resolve any disputed items by Arbitration as contemplated above the Parties shall, within thirty (30) days of the Arbitration Notice, jointly nominate or agree upon an Arbitrator from the list of Approved Arbitrators (unless the Approved Arbitrators are unwilling or unable to accept the appointment, or there are no Approved Arbitrators that have been pre-approved by the Parties, in which case the Parties may nominate or agree upon an Arbitrator from outside of the list of Approved Arbitrators).

(c) Should the Parties fail to agree on a single arbitrator within the thirty (30) days following receipt of the Arbitration Notice, then either Party may apply to a Justice of the Court of Queen's Bench of Alberta to have the arbitrator appointed.

(d) The terms of reference for Arbitration shall be those areas of dispute referred to in the Arbitration Notice, and the receiving Party's response thereto.

(e) The Arbitrator shall conduct the Arbitration in accordance with the commercial arbitration rules (the "**Rules**") established from time to time by the ADR Institute of Canada Inc. (or a successor thereto), unless the Parties agree to modify the same pursuant to any arbitration agreement. The *Arbitration Act* (Alberta) shall apply to all Arbitrations but if there is a conflict between the Rules and the provisions of the Act, the Rules shall prevail. Notwithstanding the foregoing, any such Arbitration shall be conducted in the English language.

(f) The Arbitrator shall proceed to hear and render a written decision concerning any Dispute within:

(i) forty-five (45) days, if the subject matter of the Dispute is less than $50,000.00; or

(ii) one hundred and twenty (120) days, if the subject matter of the Dispute is greater than $50,000.00.

(g) The Arbitrator has the right to award solicitor-client costs against the unsuccessful Party and to award interest but does not have the right to award punitive, consequential or other exemplary damages.

(h) The Arbitrator's decision is final and binding but is subject to appeal or review by any Court of proper jurisdiction only with respect to an allegation of fraud.

(i) Judgment upon any award (an "**Award**") rendered in any such Arbitration may be entered in any Court having jurisdiction thereof, or application may be made to such Court for a judicial acceptance of the Award and an enforcement order, as the laws of such jurisdiction may require or allow.

(j) The Parties acknowledge and agree that, where a Dispute involves a Claim for injunctive relief, a Party may refer such matter to Arbitration in accordance with this Schedule or apply to the appropriate Court for relief.

7. Participation

The Parties and their Representatives will participate in good faith in the negotiation, Mediation and, if applicable, Arbitration processes, and provides such assistance and Disclosed Information as may be reasonably necessary.

8. Location

The place for Mediation and Arbitration shall be within the City of Calgary, Rocky View County, or such other location as the Parties may agree.

9. Selection of Mediator and Arbitrator

Without restricting any of the foregoing and subject to Section 6(c) above, if the Parties are unable to agree upon the appointment of a single Mediator or Arbitrator within the list of Approved Mediators or Approved Arbitrators, respectively, within ten (10) days after receipt of the Mediation Notice or Arbitration Notice, as the case may be, either of the Parties may request that a single Mediator or Arbitrator, as the case may be, of suitable training, experience and independence, and who in respect of the subject matter of the Dispute has a reasonable practical understanding, be recommended by the executive director or other individual fulfilling that role for the ADR Institute of Canada, Inc. (or a successor thereto) for an appointment by the Parties. The executive director shall be requested to make this determination within five (5) days of receipt of the request.

10. Costs

Subject to Section 6(g) of this Schedule, the Parties shall bear their respective costs incurred in connection with the negotiation, Mediation and, if applicable, Arbitration provided that the Parties shall equally share the fees and expenses of the Mediator and Arbitrator and the cost of the facilities required for Mediation and Arbitration.

11. Disclosed Information

All Disclosed Information shall be treated as confidential and neither its delivery nor disclosure shall represent any waiver of privilege by a Party disclosing such Disclosed Information. Subject only to the rules of discovery, each Party agrees not to disclose the Disclosed Information to any other Person or for any other purpose. Such Disclosed Information cannot be used in any subsequent proceedings without the consent of the Party who has made the disclosure. The Parties agree that any Representative, Mediator and, if applicable, Arbitrator shall not be subpoenaed or otherwise compelled as a witness in any proceedings for the purpose of testifying with respect to the nature or substance of any dispute resolution process that may arise in relation to any matter that is a subject of this Agreement. Nothing in this Dispute Resolution Procedure shall require a Party to disclose information that is subject to confidentiality obligation in favour of third parties.

SCHEDULE F-3

RECORDS & REPORTS

1. Definitions

In this Schedule:

(a) "**Record**" means record as that term is defined in PIPA, as applicable, as amended from time to time including, without restriction, those documents and information described within Section 2 of this Schedule; and

(b) "**Personal Information**" means personal information as that term is defined in PIPA, as applicable, as amended from time to time.

2. Project Records

The Utility will keep and maintain the following (but only to the extent that the same are otherwise created or obtained in the course of the Utility's performance of its obligations under this Agreement) and shall make the same (or copies thereof) available to the County for inspection and audit in accordance with Section 3 of this Schedule (collectively, the "**Project Records**"):

(a) this Agreement and its Schedules, including all amendments thereto;

(b) the "record drawings" and other construction documentation in respect to the Facilities including specifications for all portions of the Facilities;

(c) licences and similar documentation relating to Facilities Intellectual Property;

(d) records relating to the appointment and replacement of the Utility's Representative for a period of six (6) years;

(e) data relevant to the design of the Facilities;

(f) documents relating to material Operating Permits, including applications, consents, refusals and appeals, for a period of six (6) years after the Operating Permit expiry or, if earlier, the expiration or termination of this Agreement;

(g) notices, reports, results and certificates relating to completion of Operation and Maintenance activities including certificates, letters of assurance and other documents produced in accordance with the construction approval process contemplated within this Agreement;

(h) all operation and maintenance manuals for the Facilities comprising each portion of the Facilities;

(i) all documents relating to Force Majeure and the consequences thereof for a period of six (6) years after the event occurred, or in the case of a Disputed matter, for a period of six (6) years after determination;

(j) all formal notices, reports or submissions made to or received from the County's Representative for a period of six (6) years;

(k) all documents related to referrals to the Dispute Resolution Procedure for a period of six (6) years after a determination has been made in respect thereto;

(l) all records required by Applicable Laws (including in relation to health and safety matters) for such period as the Applicable Laws requires and if no such period, six (6) years;

(m) all documents relating to insurance and insurance claims for a period of six (6) years after the relevant claim is settled;

(n) automatically or manually recorded incidents involving damage to or failures of the Facilities comprising each portion of the Facilities affecting performance of the Facilities, including date and time of occurrence and response taken for a period of three (3) years;

(o) the transfer of all or any portions of the Facilities; and

(p) periodic inspection reports of the Facilities or portions thereof.

3. Access by the County

Subject to all Applicable Laws including the *Personal Information Protection Act* (Alberta) ("**PIPA**"), and obligations of confidentiality owed with respect to third party information, the Utility shall provide to the County:

(a) access to any and all Project Records related to this Agreement and the Operation and Maintenance for inspection, at the Utility's expense; and

(b) access to any and all Project Records related to this Agreement and the Operation and Maintenance for copying, at the County's expense,

during normal business hours upon reasonable Notice, and in any event within fifteen (15) days of written notification by the County, whose notification shall where possible specify with reasonable particularity the Project Records to which the County requires access.

4. Retained Format

Wherever practical, the Utility will retain and maintain original hard copy records in hard copy form and electronically collected data in electronic form. True hard or electronic copies of the original hard copy records may be kept by the Utility if it is not practicable to retain original records. Any drawings required to be made or supplied pursuant to this Agreement will be of a size appropriate to show the detail to be depicted clearly and will be available in both hard and electronic copy. Where, by prior agreement with the Utility, the County has agreed to accept microfilm, microfiche or other storage media (which must include secure back up facilities), the Utility will make or supply, or have made or supplied, drawings and other documents in the agreed form.

5. Term of Retention

Subject to Section 2 of this Schedule, the Utility will retain and maintain all Project Records for the period specified in Section 2 of this Schedule (and, where not so specified, for the duration of the Term) or as required or permitted by Applicable Laws, all in sufficient detail, in appropriate categories and generally in such a manner to enable each Party to comply with its obligations and exercise its rights under this Agreement.

6. Transfer

Upon the expiration or earlier termination of this Agreement, subject to Applicable Laws, including PIPA, and obligations of confidentiality owed with respect to third party information, the Utility will at the County's cost deliver to the County all Project Records that pursuant to this Schedule are then retained by the Utility (or, if those records are required by statute to remain with the Utility, an Operator or a Sub Contractor, copies thereof) in the manner and at the location as the County, acting reasonably, may determine. The Utility shall provide the County with a written confirmation that it has provided all Project Records to the County. The Utility may retain a copy of all Project Records for its internal purposes or as required by Applicable Laws.

7. Disposal

The Utility will not dispose of any Project Records prior to the expiry of the period for retaining such Project Records without the prior consent of the County. The Utility will notify the County if it determines that Project Records maintained pursuant to this Schedule are no longer reasonably required. Unless the County agrees to take delivery of any Project Records which the Utility, acting reasonably, determines may be destroyed, the County will not unreasonably withhold its consent to a request by the Utility to destroy specific Project Records.

8. Personal Information

The Utility shall maintain all Personal Information transferred to it by the County or collected or compiled by the Utility in accordance with the requirements of this Agreement.

9. Private Sector Privacy Legislation

The County acknowledges that the Utility is subject to PIPA and/or other applicable private sector privacy legislation and, as a result, is subject to the provisions of such legislation with respect to Personal Information, including restrictions relating to disclosure of Personal Information, (including to the County), as well as requirements relating to access, correction, retention and security of Personal Information.

The County shall not handle any Personal Information provided by the Utility to the County except in accordance with the Utility's duty under such legislation.

The County is responsible for ensuring compliance of any of those Persons for whom the County is responsible at law or pursuant to Clause 4.6 with all terms and conditions related to PIPA and/or other applicable private sector privacy legislation, including protection of privacy. In the event that the County becomes aware of a breach of any of those terms or conditions in respect of the information received pursuant to this Agreement it shall notify the Utility immediately in writing.

The County must ensure that each Person for whom it is responsible at law and who may be involved in the handling of any Personal Information is aware of the applicable requirements of the relevant legislation.

10. Collection

Any Personal Information collected by the Utility shall be handled in compliance with Applicable Laws.

11. Use

The Utility shall not use, either directly or indirectly, any Personal Information except for the express purpose of performing its obligations in this Agreement or as otherwise permitted by Applicable Laws.

12. Survival

The provisions of this Schedule shall survive the expiration or termination of this Agreement.