

THIS AGREEMENT made effective this \_\_\_\_ day of \_\_\_\_\_, 2013.

**BETWEEN:**

**CITY OF COLD LAKE**  
(the "City")

-and-

**MUNICIPAL DISTRICT OF BONNYVILLE NO. 87**  
(the "Municipal District")

## **WASTEWATER SERVICE AGREEMENT**

**WHEREAS:**

- A.** Pursuant to the Road License Agreement executed by the City and the Municipal District concurrently with this Agreement, the Municipal District operates a wastewater conveyance system which includes the operation of the Trunk Main shown within **Schedule "A"** attached to this Agreement;
- B.** The Serviceable Areas for the Trunk Main, based upon the Current Land Uses as shown within **Schedule "C"** attached to this Agreement, are shown within **Schedule "A"** and **Schedule "B"** attached to this Agreement;
- C.** Due to the designed capacity of the Trunk Main, the Serviceable Areas includes areas located within the boundaries of the City, as well as areas located within the Municipal District comprising the MD Serviceable Area;
- D.** The Municipal District may in the future, either directly as between the City and the Municipal District or indirectly as between the City and property owners located within the MD Serviceable Area, request the acceptance, transmission, treatment and disposal of Wastewater from lands located within the MD Serviceable Area, which service would be provided by or through the Trunk Main;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

### **1. DEFINITIONS**

**1.1** For this Agreement,

- (a)** "**Applicable Laws**" means any statute, regulation, code, order, bylaw, directive or other legal requirement of a governmental or quasi-governmental body having jurisdiction over one or more of the parties or the subject matter of this Agreement pursuant to law.
- (b)** "**Appurtenances**" shall mean any pipe, manhole, structure or monitoring device used for or aiding or measuring the flow of Wastewater within the Trunk Main and excludes service line connections to the Trunk Main.

- (c) “**Best Efforts**” means, in relation to the performance of an obligation, efforts that are sensible and practical, and involve the exercise of reasoned and sound judgment having regard to all of the relevant circumstances.
- (d) “**Good Industry Practice**” means the standards, practices, methods and activities and actions generally accepted and utilized by and within the wastewater management and treatment industry in Canada, generally consisting of standards and practices intended to achieve a cost-effective result consistent with licensing and regulatory considerations, environmental considerations, reliability, safety and expedition including, without restriction, such standards and practices that are from time to time prepared, endorsed, promoted or promulgated by:
  - (i) the American Water Works Association or the Canadian Water and Wastewater Association, to the extent that those are consistent;
  - (ii) the Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA); or
  - (iii) Guidelines for Municipal Water Works, Wastewater and Storm Drainage Systems, published by AENV in January 2006, as amended or replaced from time to time.
- (e) “**MD Serviceable Area**” means all those portions of the Serviceable Areas which are located within the municipal boundaries or the Municipal District;
- (f) “**MGA**” means the *Municipal Government Act* RSA, c. M-26, as amended or replaced from time to time;
- (g) “**Phase II**” means the further, future extension of the Trunk Main as shown within the plans contained within **Schedule “A”** attached to this Agreement;
- (h) “**Road License Agreement**” means that certain road license agreement executed by the City and the Municipal District concurrently with this Agreement, respecting the construction, operation and maintenance of the Trunk Main within municipal road allowances located within the Municipal District;
- (i) “**Serviceable Areas**” shall mean those areas within the Municipal District and the City shown as shaded green, blue, pink, red and purple, and forming part of Phase I, upon the plan attached as **Schedule “A”**.
- (j) “**Trunk Main**” shall mean the piping and Appurtenances from and including the manhole shown as MH 114, to and including the manhole shown as MH 100, each as shown on the plan attached as **Schedule “A”**.
- (k) “**Term**” shall mean that period commencing on the effective date of this Agreement, and ending on \_\_\_\_\_, 20\_\_, subject to early termination as contemplated herein.
- (l) “**Wastewater**” means the composite of water and water carried wastes from residential, commercial, industrial or institutional premises or any other source, subject always to acceptable parameters under the City’s applicable bylaw(s).

1.2 This Agreement, including Schedules attached hereto, constitute the entire agreement between the parties hereto and the parties acknowledge and agree that there are no covenants, representations,

warranties, agreements or conditions, expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement save as expressly set out in this Agreement.

## **2. TERM AND TERMINATION**

**2.1** This Term of this Agreement shall commence upon the effective date of this Agreement, and end upon the earlier of:

- (a)** the replacement of this Agreement by an inter-municipal wastewater service agreement between the City and the Municipal District, which agreement provides for all terms of service, service level and limitations, rate setting provisions necessary to govern the service to be provided to lands located within the MD Serviceable Area; or
- (b)** the capacity of the Trunk Main is fully committed to customers, which may include the Municipal District or customers located within the MD Serviceable Area; and
- (c)** the expiration of \_\_\_\_\_(\_\_\_\_\_) years from the effective date of this Agreement.

**2.2** Notwithstanding the foregoing, the parties hereby acknowledge, covenant and agree that:

- (a)** the provision of any Wastewater related services by the City as contemplated within this Agreement is subject to the future construction and installation of Phase II of the Trunk Main; and
- (b)** the construction and installation of Phase II of the Trunk Main, and the corresponding grant of the Municipal District's consent to utilize municipal road allowances as required for Phase II in a form and content substantially similar to the Road License Agreement, shall be a true condition precedent to the City providing Wastewater services to any portions of the MD Serviceable Area.

## **3. CITY SERVICE OBLIGATIONS**

**3.1** The City hereby covenants and agrees that, upon receipt of a request from the Municipal District to the City, the City shall:

- (a)** allow connections to the Trunk Main from individual service connections, collection systems and/or transmission mains located within and servicing the MD Serviceable Area; and
- (b)** subject to connection to the Trunk Main, use its Best Efforts to accept, transmit, treat and dispose of the Wastewater from the MD Serviceable Area, in the same manner as the City accepts, transmits, treats and disposes of Wastewater from all other sources by or through the Trunk Main, which service may involve the transmission of the Wastewater so received to a regional wastewater services commission or other third party for further transmission, treatment and ultimate disposal;

subject always to the conditions noted within Section 2.2 above, the availability of capacity within the Trunk Main, and the terms, costs or charges established by the City council from time to time.

**3.2** For clarity, the service commitment by the City under this Agreement shall be substantially the same as the municipal duty to supply as set forth within Section 34 of the MGA, subject always to the conditions set forth within Section 2.2 above.

**3.3** Provided always that the currently contemplated land uses within the Serviceable Areas remain the same as set forth within **Schedule “C”** attached to this Agreement, and provided that the corresponding intensity of development and Wastewater production rates utilized by the City for the purposes of establishing the design capacity of the Trunk Main remain accurate, throughout the Term the City shall maintain sufficient capacity within the Trunk Main to enable the servicing of the MD Serviceable Areas as contemplated within this Agreement.

**3.4** Throughout the Term of this Agreement, the Municipal District and the City will work cooperatively and use their respective Best Efforts to ensure that planning, development, and land uses within the Serviceable Areas are managed in such a manner so as to further ensure that there shall be sufficient capacity within the Trunk Main to service the entirety of the Serviceable Areas.

**3.5** The parties acknowledge, covenant and agree that all rates, tolls or charges for Wastewater services (including, without restriction, connection fees necessary to account for the capital costs of the City’s system in order to remain consistent with all other rate payers located within the City), shall be:

(a) based upon those rates, tolls and charges applied to customers located within the boundaries of the City; or

(b) such other rates, tolls or charges established by the City in order to account for the unique nature of the services being provided to lands located within the MD Serviceable Area, provided always that such rates, toll or charges utilize a rate base and cost of service methodology which are in general accordance with:

(i) generally accepted rate making principles and practices;

(ii) the requirements of the *Public Utilities Act*; and

(iii) the requirements of the Alberta Utilities Commission including, without restriction, prohibitions against improper or discriminatory rates, tolls or charges as contemplated under Section 43 of the MGA;

which may include cash operating expense, depreciation, return on investment, reasonable deemed debt/equity allocation, and where appropriate an allocation of costs to customer groups in an equitable manner using Good Industry Practice and the above-noted generally recognized principles;

and provided further that such rates, tolls or charges for service are approved by City council.

**3.6** The terms of service shall be governed by either:

(a) an inter-municipal service agreement between the City and the Municipal District respecting the provision of the service by the City, delivery /connection point for all services, and the payment of costs thereof by the Municipal District; or

(b) extra-municipal service agreements between the City and consumers located within the MD Service Area respecting the provision of the service by the City, delivery /connection point for all services, and the payment of costs thereof by the consumer.

In the event of any dispute between the City and either the Municipal District or any consumer respecting the establishment or content of the forgoing agreements, any party may seek to have the dispute, disagreement or other issue determined by the Alberta Utilities Commission.

- 3.7** The City shall provide true copies of all documentation and correspondence relating to the calculation of the rates, tolls and charges upon receipt of written request therefore from the Municipal District.

#### **4. MUTUAL OBLIGATIONS**

- 4.1** The City and the Municipal District shall:

- (a)** take all reasonable steps and utilize Best Efforts to maintain all Wastewater quantities and qualities from the Serviceable Areas within the design parameters of the Trunk Main, the standards set out in the City's applicable Wastewater service bylaw(s), and any Applicable Laws.
- (b)** at all times and in all respects abide by all laws, bylaws, legislative and regulatory requirements of any governmental or other competent authority relating to the performance of their respective obligations hereunder.
- (c)** indemnify and save harmless the other party, for any damages or losses (including legal fees on a solicitor and his own client full indemnity basis), injuries or loss of life, resulting from the acts or omissions of their respective employees, servants, agents or contractors which may occur in the performance, purported performance, or non-performance of their respective obligations under this Agreement; provided that, such indemnity shall be limited to an amount in proportion to the degree to which the indemnifying party, its employees, servants, agents or contractors are at fault or otherwise held responsible in law. The indemnifications set forth above, hereof, will survive the expiration of the Term or the termination of this Agreement for whatever cause and any renewal or extension of the Term, as the case may be.

- 4.2** The City may interrupt or curtail the Wastewater services contemplated within this Agreement for periods of time as it may reasonably require for the purpose of effecting repairs, maintenance, replacement, upgrading or other work related to the Trunk Main, or other system or works of the City or any downstream service provider, provided that:

- (a)** the City will use its Best Efforts to minimize such interruptions and curtailments, to the extent reasonably possible;
- (b)** the City, will act in accordance with Good Industry Practice in conducting such interruptions and curtailments and the associated work;
- (c)** for a planned interruption or curtailment the City will give the other party at least three (3) working days prior notice of the proposed interruption or curtailment;
- (d)** for an unforeseen or unplanned interruption or curtailment the City will notify the other party as soon as is reasonably possible of each such event; and

- (e) the City will use its Best Efforts to restore the respective Wastewater services as soon as reasonably possible.

4.3 Notwithstanding the foregoing, during periods of interruption or curtailment, the City may reduce the level, quality or quantity of Wastewater treatment or transmission services provided to customers including the Municipal District or customers located within the MD Serviceable Area provided that the City will treat all of its customers affected by the interruption or curtailment, including the parties to this Agreement, fairly, equitably, and without preference, consistent with any operating constraints then in effect. The City will use its Best Efforts to keep the Municipal District properly informed and current in respect of relevant circumstances during each interruption or curtailment.

## 5. CONSULTATION

5.1 The City and the Municipal District shall each appoint 1 or more representatives for the purposes of facilitating on-going consultation between the City and the Municipal District for the purposes of providing for an advisory function and to advise the respective councils and/or administrations of the City and the Municipal District regarding any and all aspects of Wastewater transmission and treatment related to the Serviceable Areas. Such consultation and advice may include and/or relate to:

- (a) managing available capacity in the Trunk Main;
- (b) pursuit of reductions in the amount of inflow and infiltration into the Trunk Main;
- (c) development of a long term plan for Wastewater conveyance and treatment through the Trunk Main;
- (d) recommendations or solutions for operational issues pertinent to this Agreement.

5.2 No additions or extensions to the Serviceable Areas will be made without the advance written consent of both parties hereto.

## 6. DISPUTE RESOLUTION

6.1 In the event of a dispute between the parties including with respect to the exercise of any discretion or decision contemplated within this Agreement, or the interpretation of any provision within this Agreement, the parties shall refer the dispute to be resolved through the dispute resolution procedure attached to this Agreement as **Schedule “D”**.

## 7. Force Majeure

7.1 Neither the City nor the Municipal District will be liable for any failure of or delay in performance of its obligations hereunder or be deemed to be in breach of this Agreement if such failure or delay arises from “force majeure”.

7.2 For the purposes of this Agreement, “force majeure” means any cause not reasonably within the City’s or the Municipal District’s control, as the case may be, and includes, without limitation, acts of God, strikes, lockouts, industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, storms, floods, washouts, inclement weather, orders or acts of evil or military authorities, civil disturbances, or any other causes not within the reasonable control of the City or the Municipal District, respectively, and

which, by the exercise of due diligence, the City or the Municipal District, respectively, is unable to overcome, provided that lack of funds will not be a cause beyond control.

- 7.3 The City or the Municipal District, as the case may be, will give the Municipal District or the City, respectively, prompt notice of such circumstances and will take all reasonable steps to remove such disability.
- 7.4 The parties agree that the settlement of strikes, lockouts, and other industrial disturbances will be entirely within the discretion of the particular party involved therein, and such party may make settlement thereof in such time and on such terms and conditions as it may deem to be advisable. No delay in making such settlement will deprive such party of the benefits of this clause.
- 7.5 An event of force majeure will merely suspend contractual obligations for the duration of the event, and not bring this Agreement or any portion thereof to an end.
- 7.6 Notwithstanding the foregoing, the maximum period for relief provided to a party due to an event of force majeure shall be limited to:
- (a) in the case of any obligation contained within this Agreement that is required by Applicable Laws, a maximum relief period of thirty (30) days or the compliance period stipulated by the said legal authority (whichever is shorter);
  - (b) in the case of any obligation contained within this Agreement that if not performed would cause a violation of any Applicable Laws by one or more of the parties, a maximum relief period of thirty (30) days or the compliance period stipulated by the said legal authority (whichever is shorter);
  - (c) in the case of any obligation contained within this Agreement that if not performed would cause substantial damage to property, practical or legal interruption to the operations of the Gold Bar Wastewater Treatment Plant or the Trunk Main, or injury to any individuals, a maximum relief period of thirty (30) days or the period prior to the occurrence of the damage or injury (whichever is shorter); and
  - (d) in the case of any other obligation contained within this Agreement, a maximum relief period of one hundred and eighty (180) days, after which the parties shall negotiate an equitable solution to any impasse and failing such an agreement within ninety (90) days any items in dispute shall be resolved by the dispute resolution procedures contained within **Schedule "D"**.

## 8. GENERAL

### 8.1 Notice

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

- (a) personally, by delivering it to the party on whom it is to be served at the address set out herein, provided such delivery shall be during normal business hours. Personally delivered Notice shall be deemed received when actually delivered as aforesaid and addressed as specified below; or

- (b) by facsimile directed to the party on whom it is to be served at that address set out herein. Notice so served shall be deemed received on the earlier of:
- (i) upon transmission with answer back confirmation if received within the normal working hours of the business day; or
  - (ii) at the commencement of the next ensuing business day following transmission with answer back confirmation thereof; or
- (c) by mailing postage prepaid, to the party on whom it is served. Notice so served shall be deemed to be received seventy-two (72) hours after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received;
- (d) Notices shall be delivered to the parties as follows:
- (i) the City: 5513 – 48 Avenue  
Cold Lake, Alberta  
T9M 1A1  
  
**Attention: General Manager of Public Services**  
Ph: (780) 594-4494  
Fax: (780) 594-3480
- and
- (ii) the Municipal District: PO Bag 1010  
Bonnyville, AB T9N 2J7  
**Attention:** \_\_\_\_\_  
Ph: (780) 826-3171  
Fax: (780) 826-4524

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

## 8.2 Governing Law

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

## 8.3 Time of Essence

Time shall be of the essence of this Agreement.

## 8.4 Headings

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



## **8.5** Relationship between Parties

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

## **8.6** No Authority

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

## **8.7** Further Assurances

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

## **8.8** Amendments

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

## **8.9** Waiver

No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

## **8.10** Counterpart

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

## **8.11** Statutory Reference

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

## **8.12** Unenforceability

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

#### **8.13** Survival

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

#### **8.14** Remedies Generally

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

#### **8.15** Payment of Monies

The parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds.

#### **8.16** GST Exclusive

All amounts payable by one party to the other hereunder will be exclusive of any goods and services tax ("GST") and the paying party, in addition to the amounts payable hereunder, pay to the other party all amounts of GST applicable thereon.

#### **8.17** Singular, Plural and Gender

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

#### **8.18** Binding Effect

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

#### **8.19** Assignment

Neither party shall assign its interest in this Agreement, nor any part hereof, in any manner whatsoever without having first received written consent from the other party, such consent shall not be unreasonably withheld.

#### **8.20** Requests for Consent

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

**IN WITNESS WHEREOF**, the parties have hereunto caused their corporate seals to be affixed, attested under the hands of their proper officer in that behalf, as of the day and year first above written.

**MUNICIPAL DISTRICT OF BONNYVILLE NO. 87**

(corporate seal)

PER: \_\_\_\_\_

PER: \_\_\_\_\_

**CITY OF COLD LAKE**

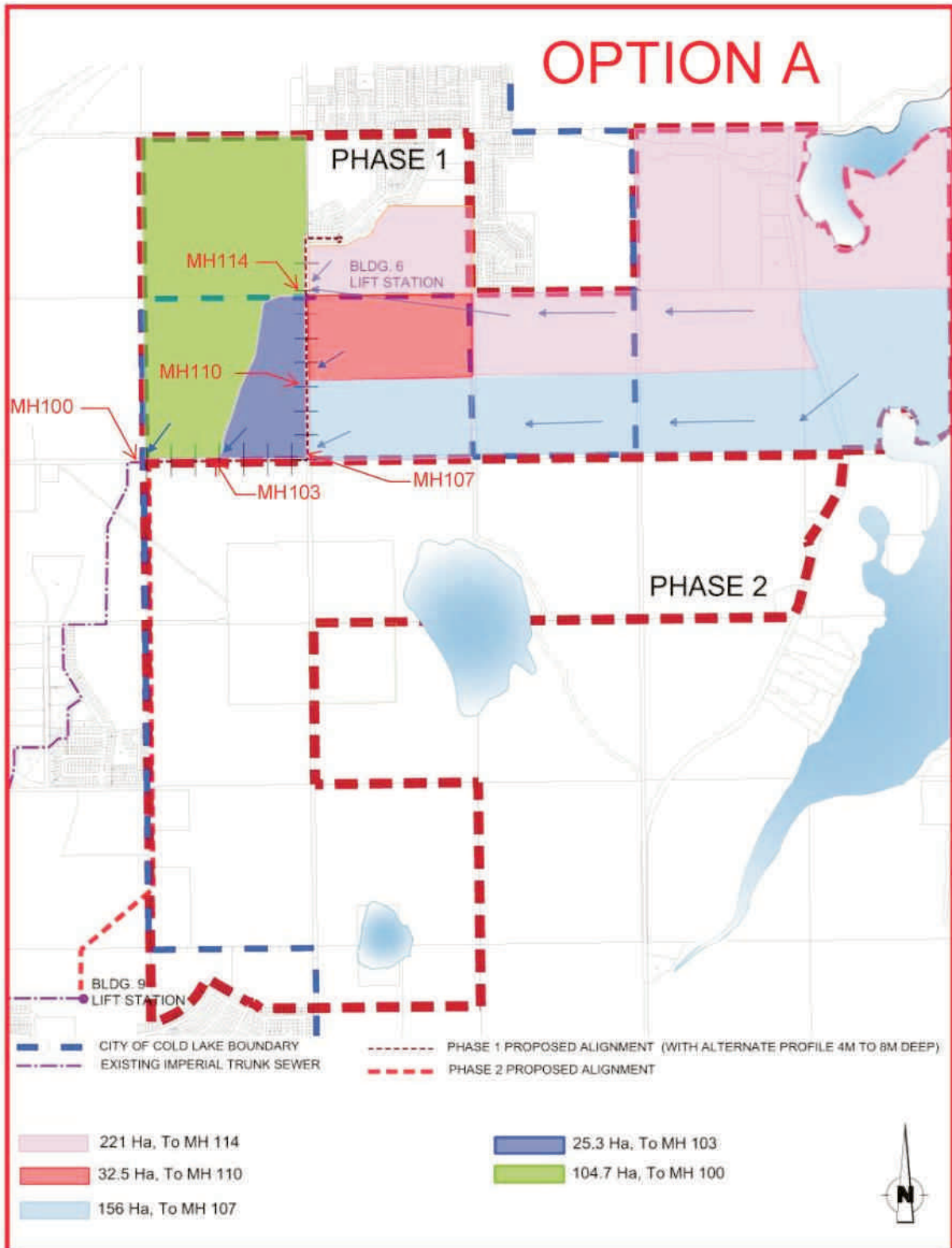
(corporate seal)

PER: \_\_\_\_\_

PER: \_\_\_\_\_

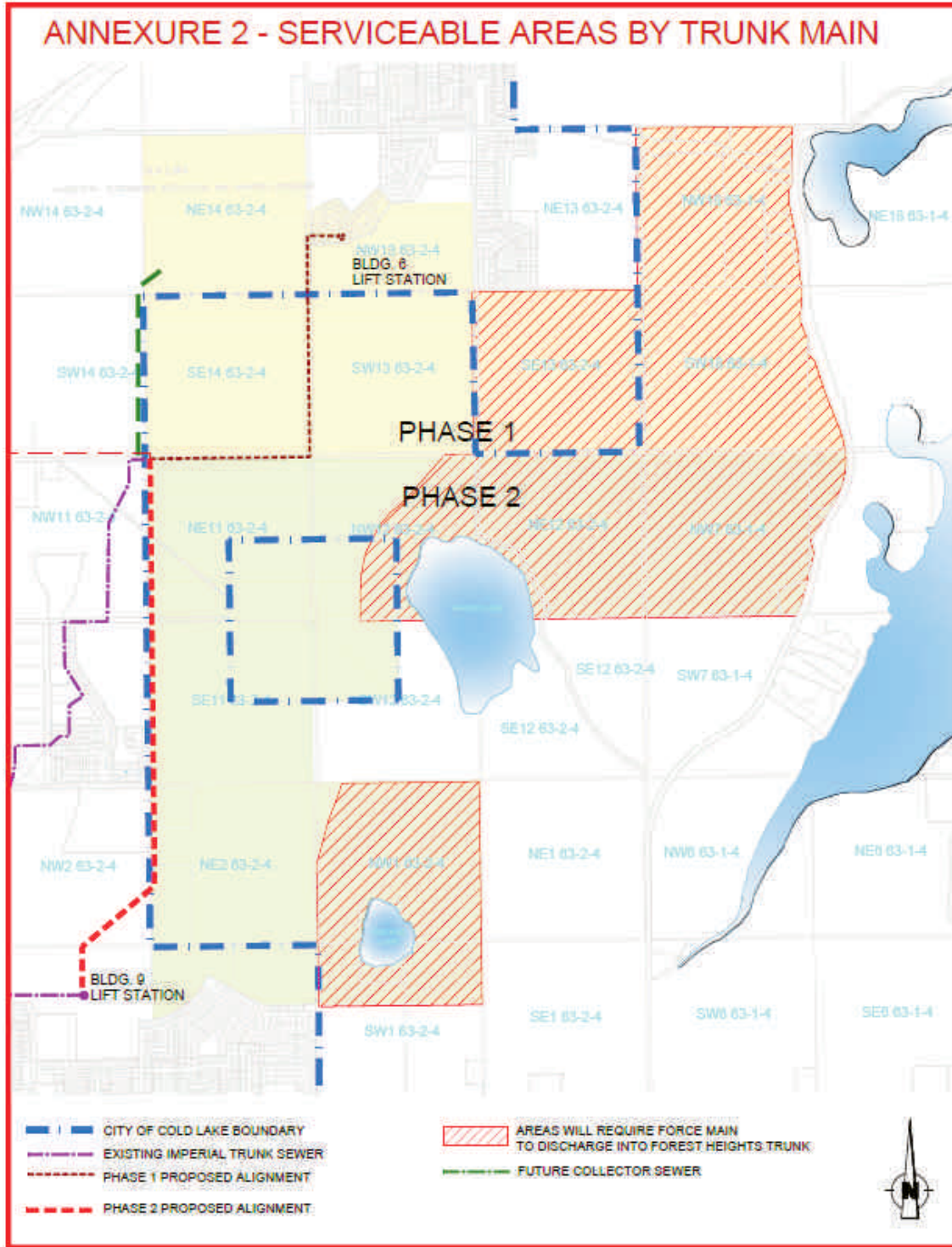
# SCHEDULE "A"

## Diagram/Plan of Trunk Main and Serviceable Areas



**SCHEDULE “B”**

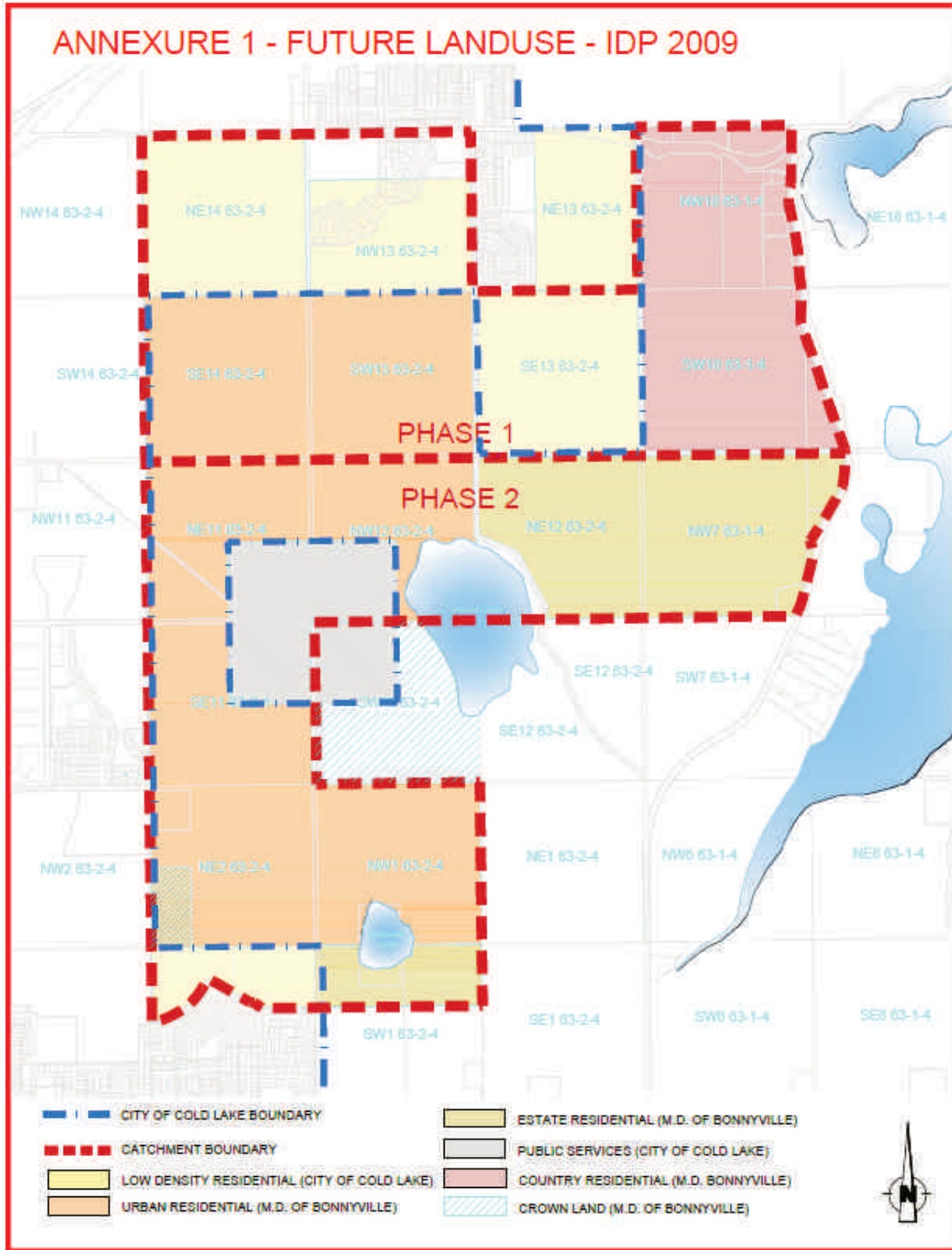
**The Serviceable Areas**



**For Clarification, the lands contained within NE 18-63-1-4 and SW 18-63-1-4 shall also require force main in order to discharge into the Trunk Main.**

# SCHEDULE "C"

## The Current Land Uses of the Serviceable Areas



For clarification, the land use for NE 18-63-1-4 and SW 18-63-1-4 is also contemplated to be Country Residential.

## SCHEDULE “D”

### 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 person 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 person 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.

#### 2. Principles of Dispute Resolution

The City and the Municipal District acknowledge and agree that:

- (a) in any business relationship a difference of opinion or interpretation or a divergence of interest may arise;
- (b) the City and the Municipal District are committed to resolving any disputes in a non-adversarial, informal and cost efficient manner;

- (c) the following process 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 provisions of this Schedule 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 following the delivery of the Dispute Notice, 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, in which case the Parties may jointly nominate or agree upon a Mediator from outside of the list of Approve 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 Party 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, 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 \$500,000.00; or
  - (ii) one hundred and twenty (120) days, if the subject matter of the Dispute is greater than \$500,000.00.
- (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 provide such assistance and Disclosed Information as may be reasonably necessary.

## **8. Location**

The place for Mediation and Arbitration shall be within the City of Cold Lake, 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.