

NATURAL GAS DISTRIBUTION SYSTEM FRANCHISE AGREEMENT

CITY OF COLD LAKE

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NATURAL GAS DISTRIBUTION SYSTEM FRANCHISE AGREEMENT

THIS AGREEMENT made effective the 25 day of October, 2005.

BETWEEN:

CITY OF COLD LAKE, a Municipal Corporation in the Province of Alberta (the "**Municipality**")

OF THE FIRST PART

- and -

ATCO GAS AND PIPELINES LTD., a corporation having its head office at the City of Edmonton, in the Province of Alberta (the "**Company**")

OF THE SECOND PART

WHEREAS by Agreement dated June 7, 1995 made between the Company and the Town of Cold Lake a franchise was granted to the Company to supply natural gas to the Municipality and its inhabitants, for a period of ten (10) years;

WHEREAS by Agreement dated June 22, 1994 made between the Company and the Town of Grand Centre a franchise was granted to the Company to supply natural gas to the Municipality and its inhabitants, for a period of ten (10) years;

WHEREAS by Order in Council No 416/96 dated October 1, 1996 amalgamated the Town of Cold Lake and Town of Grand Centre and by the annexation of land from The Municipal District of Bonnyville No. 87 to form a town having the name Cold Lake;

WHEREAS by Agreement dated December 15, 1999 the Municipality consented to the assignment of the Franchise Agreement by Northwestern Utilities Limited to ATCO Gas and Pipelines Ltd.;

WHEREAS by Order in Council No 354/2000 dated September 6, 2000 Cold Lake received City status effective October 1, 2000;

WHEREAS the Municipality desires to grant and the Company desires to obtain an exclusive franchise to provide gas distribution services within the Municipal Area on the terms and conditions herein contained;

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

1) DEFINITIONS

Unless otherwise expressly provided in this Agreement, the words, phrases and expressions in this Agreement shall have the meanings attributed to them as follows:

- a) **“Act”** means the *Gas Utilities Act* (Alberta) as amended;
- b) **“Board”** means the Alberta Energy and Utilities Board as established under the *Alberta Energy and Utilities Board Act* (Alberta), as amended;
- c) **“Company”** means the party of the second part to this Agreement and includes its successors and permitted assigns;
- d) **“Construct”** means and includes establish, construct, reconstruct, upgrade or extend any part of the existing Gas Distribution System or proposed Gas Distribution System;
- e) **“Consumer”** means any individual, group of individuals, firm or body corporate, including the Municipality, with premises or facilities within the Municipal Area that is provided with Gas Distribution Service by the Company;
- f) **“Core Services”** means all those services set forth in Schedule “A”;
- g) **“Delivery Tariff”** means the tariff prepared by the Company as revised or amended from time to time and approved by the Board on an interim or final basis, as the case may be, approving and authorizing the rates charged by the Company to provide the service of the delivery of natural gas to the Consumer;
- h) **“Extra Services”** means those services set forth in Schedule “B” that are requested by the Municipality on behalf of its citizens and provided by the Company in accordance with Article 6;
- i) **“Gas Distribution Service”** means the delivery of natural gas in accordance with the Company’s Delivery Tariff;
- j) **“Gas Distribution System”** means any facilities owned by the Company to provide Gas Distribution Service within the Municipal Area, and without limiting the generality of the foregoing, shall include all mains, pipes, conduits, valves and all other installations used and required for the purpose of delivering natural gas to the Consumer within the Municipal Area and includes any natural gas transmission lines owned by the Company within the Municipal Area;

- k) **“Maintain”** means to maintain, keep in good repair or overhaul any part of the Gas Distribution System;
- l) **“Municipality”** means the party of the first part to this Agreement;
- m) **“Municipal Area”** means the area within the municipal boundaries of the Municipality, as at the date of this Agreement, and as it may be otherwise increased herein;
- n) **“Municipal Property”** means all property, including lands and buildings, owned, controlled or managed by the Municipality within the Municipal Area;
- o) **“Operate”** means to operate, interrupt or restore any part of the Gas Distribution System in a safe and reliable manner;
- p) **“Term”** means the term of this Agreement set out in Article 2;
- q) **“Terms and Conditions”** means the terms and conditions contained within the Delivery Tariff;
- r) **“Work”** means any work to Construct or Maintain the Gas Distribution System.

2) **TERM**

- a) This Agreement shall be for a term of 10 years, commencing on the first day after both the Board has approved this agreement and Council of the Municipality has passed third reading of the adopting bylaw 217-FA-05, whichever day comes later.
- b) It is agreed that this Agreement supercedes and replaces any prior gas franchise agreements between the Municipality and the Company.
- c) Unless otherwise agreed in writing between the parties, during the first year following the expiration of the Term, all the rights and obligations of the parties under this Agreement shall continue to be in effect.
- d) Provided the Company gives written notice to the Municipality not less than twelve (12) months prior to the expiration of the Term of its intention to negotiate a new franchise agreement, at any time following the expiration of the Term, and if the Municipality has not provided notice to the Company to exercise its rights to purchase the Gas Distribution System, either party may submit any items in dispute pertaining to a new franchise agreement to binding arbitration by the Board.

- e) Commencing one year following the expiration of the Term, unless either party has invoked the right to arbitration referred to in sub-paragraph (d) above, or the Municipality has given notice to purchase the Gas Distribution System, this Agreement shall continue in effect but shall be amended to provide the following:
 - (i) Fifty (50%) percent of the franchise fee otherwise payable under this Agreement to the Municipality shall be held back and in trust in an interest bearing trust account by the Company, for the sole benefit of the Municipality. The trust money along with all accumulated interest shall be paid to the Municipality immediately upon execution of another Gas Franchise Agreement with the Company, or if the Municipality purchases the Gas Distribution System, or if the Company transfers or sells the Gas Distribution System, or upon further Order of the Board.

3) **GRANT OF FRANCHISE**

- a) Subject to the terms and conditions hereof, the Municipality hereby grants to the Company the exclusive right within the Municipal Area to Construct, Operate, and Maintain the Gas Distribution System together with the exclusive right to use portions of roads, rights-of-way, and other lands owned, controlled or managed by the Municipality which have been designated by the Municipality for such use and which are necessary to Construct, Operate and Maintain the Gas Distribution System.

Subject to the terms hereof, the Municipality agrees that it will not, during the Term, grant to any other person, firm or corporation, the right to Construct, Operate and Maintain any gas distribution system nor the exclusive right to use the portions of the roads, rights-of-way and other lands owned, controlled or managed by the Municipality which have been designated by the Municipality for such use and which are necessary to Construct, Operate and Maintain a gas distribution system, for the purpose of delivering natural gas in the Municipal Area for Consumers, so long as the Company delivers to the Municipality and the Consumers their requirements of natural gas.

- b) The Company agrees to:
 - i) bear the full responsibility of an owner of a natural gas distribution system and to ensure all services provided pursuant to this Agreement are in accordance with the Delivery Tariff, insofar as applicable;
 - ii) Construct, Operate and Maintain the Gas Distribution System;

- iii) use designated portions of roads, rights-of-way, and other lands including other lands owned, controlled or managed by the Municipality necessary to Construct, Operate and Maintain the Gas Distribution System, including the necessary removal, trimming of trees, shrubs or bushes or any parts thereof; and
- iv) use the Municipality's roads, rights-of-way and other Municipal Property granted hereunder solely for the purpose of providing Gas Distribution Service and any other service contemplated by this Agreement.

4) **FRANCHISE FEE**

a) **Calculation of Franchise Fee**

In consideration of the exclusive grant of franchise, the ability to use Municipal rights-of-way, and the mutual covenants herein, the Company agrees to pay to the Municipality a franchise fee. The parties agree that s. 360(4) of the *Municipal Government Act* RSA 2000 c. M-26, as amended, does not apply to the calculation of the franchise fee in this Agreement. The parties further agree that the Consumers located in the area know as Canadian Forces Base 4 Wing Cold Lake (see attached map Schedule "C") shall not be assessed the franchise fee. For each calendar year the franchise fee will be calculated as a percentage of the Company's actual total revenue derived from the Delivery Tariff, including without limitation the fixed charge, base energy charge, demand charge but excluding the cost of gas (being the calculated revenues from the gas cost recovery rate rider or the deemed cost of gas and revenues from gas related riders, for clarity Method A in the company's Rate Rider A as approved by the Board from time to time) in that year for Gas Distribution Service within the Municipal Area. For the first calendar year or portion thereof of the Term of this Agreement, the franchise fee percentage shall be thirteen (13.00) percent.

By no later than September 1 of each year, the Company shall: (i) advise the Municipality in writing of the total revenues that were derived from the Delivery Tariff within the Municipal Area for the prior calendar year; and (ii) with the Municipality's assistance, provide in writing an estimate of total revenues to be derived from the Delivery Tariff within the Municipal Area for the next calendar year.

By no later than November 15 of each year, the Municipality shall advise the Company in writing of the franchise fee percentage to be charged for the following year. Failing which notification, the franchise fee percentage shall remain unchanged.

b) **Franchise Fee Cap**

The franchise fee percentage shall not at any time exceed thirty five (35%) percent, unless there has been prior Board approval.

c) **Notice to Change Franchise Fee**

Prior to implementing any change to the franchise fee, the Municipality shall notify its intent to change the level of the franchise fee and the resulting effect that such change will have on an average residential customer's annual gas bill through publication of a notice once in the newspaper that has the widest circulation in the Municipal Area at least 45 days prior to implementing the revised franchise fee. A copy of the notice shall be filed with the Board.

d) **Payment of Franchise Fee**

Immediately upon the Municipality passing third reading of the applicable by-law approving this Agreement, the Company shall pay the franchise fee amount, billed to each Consumer, to the Municipality on a monthly basis within forty-five (45) days after billing for each Consumer.

e) **Reporting Considerations**

The Company shall provide to the Municipality along with payment of the franchise fee amount, the information containing total Delivery Tariff billed, the franchise fee percentage applied, the derived franchise fee amount, used by the Company to verify the payment of the franchise fee amount.

5) **CORE SERVICES**

The Company agrees to provide those Core Services to the Municipality as set forth in Schedule "A" and further agrees to the process contained in Schedule "A".

6) **PROVISION OF EXTRA SERVICES**

Subject to an agreement being reached, the Company agrees to provide to the Municipality those Extra Services, if any, as set forth in Schedule "B", as requested by the Municipality from time to time. The Company is entitled to receive from the Municipality a reasonable amount for full compensation for the provision of those Extra Services in accordance with Schedule "B".

Any breach by the Company for failing to provide any Extra Services contained in this Agreement shall not constitute a breach of a material provision of this Agreement for the purposes of Article 8.

7) **MUNICIPAL TAXES**

Amounts payable to the Municipality pursuant to the terms and conditions hereof shall be (without duplication) in addition to the municipal taxes and other levies or charges made by the Municipality against the Company, its land and buildings, linear property, machinery and equipment.

8) **RIGHT TO TERMINATE ON DEFAULT**

In the event either party breaches any material provision of this Agreement, the other party may, at its option, provide written notice to the party in breach to remedy such breach. If the said breach is not remedied within two (2) weeks after receipt of the written notice or such further time as may be reasonably required by the party in breach using best efforts on a commercially reasonable basis to remedy the breach, the party not in breach may give six (6) months notice in writing of the termination of this Agreement to the other party, and unless such breach is remedied to the satisfaction of the party not in breach acting reasonably this Agreement shall terminate subject to prior Board approval.

9) **SALE OF GAS DISTRIBUTION SYSTEM**

Upon the expiration of the Term of this Agreement, or the termination of this Agreement pursuant to the terms and conditions hereof or by operation of law or order of a governmental authority or court of law having jurisdiction, the Municipality may, subject to the approval of the Board, (i) exercise its right to require the Company to sell to it the Gas Distribution System pursuant to the provisions of the Municipal Government Act (Alberta), as may be amended, where applicable, or (ii) if such right to require the Company to sell the Gas Distribution System is either not applicable or has been repealed, require the Company to sell to it the Gas Distribution System. If, upon the expiration of the Agreement, the parties are unable to agree on the price or on any other terms and conditions of the purchase, the unresolved matters shall be referred to the Board for determination.

10) **PROVISION OF DETAILED PLANS AND EQUIPMENT**

a) **Detailed Plans**

The Company agrees to provide to the Municipality for the Municipality's purposes only, the most current set of detailed plan sheets including as-built drawings and specifications showing the locations (excluding depth) and alignments of the Gas Distribution System, excepting service lines and installations on private property, according to the plan sheets in hard copy and in the Company's electronic form, together with as many prints of the overall Gas Distribution System as the Municipality may reasonably require. These plans and plan sheets shall be updated by the Company on at least an annual basis.

The Municipality shall upon reasonable request, provide to the Company any subdivision development plans of the Municipality in hard copy and in the Municipality's electronic form where available. The subdivision development plans are provided to the Company for the sole purpose of assisting the Company in delivering natural gas to the Consumer.

b) **Provision of Equipment**

The Company agrees to provide the Municipality's fire department with the equipment necessary for the operation of curb boxes and service valves so that in case of fire, the service valves may be turned off by the fire department if they reach a fire before the Company's representative. The Municipality will notify one of the Company's representatives of fires which may affect the Gas Distribution System and /or the operations as quickly as reasonably possible, or, in the event that they cannot reach a Company representative, the Municipality will advise the Company's standby personnel of such fires. The Company shall ensure that its representatives reasonably cooperate with the Municipality in preventing, controlling and investigating fires involving or affecting the Gas Distribution System.

11) **RIGHT OF FIRST REFUSAL TO PURCHASE**

- a) If during the Term of this Agreement, the Company receives a *bona fide* offer to operate, take control of the entire Gas Distribution System or purchase the Gas Distribution System within the Municipal Area, which the Company is willing to accept, then the Company shall promptly give written notice to the Municipality of the terms and conditions of such offer and the Municipality shall during the next one hundred and twenty (120) days, have the right of first refusal to operate, take control of or purchase that part of the Gas Distribution System, as the case may be, for the same price and upon the terms and conditions contained in the said offer. Notwithstanding the foregoing, in the event that the Municipality fails or refuses to exercise its right of first refusal, the Municipality shall retain the right to withhold its consent to an assignment of this Agreement in accordance with paragraph 18 below. For the purposes of this paragraph 11, "operate, take control" shall not be construed as including the subcontracting by the Company of only some portions of its operations where the Company continues to be responsible for the performance of this entire Agreement;
- b) If the Municipality does not exercise its right of first refusal and the said *bona fide* offer that the Company is willing to accept does not proceed to closure, the Municipality retains its right of first refusal on any other offer.

- c) This right of first refusal only applies where the offer pertains to the entire Gas Distribution System and the right of first refusal does not apply to offers that include any other distribution systems or distribution facilities of the Company located outside of the Municipal Area. If such offer includes other distribution systems of the Company, the aforesaid right of first refusal shall be of no force and effect and shall not apply.
- d) Where the Municipality exercises its rights to purchase the Gas Distribution System from the Company and thereby acquires the Gas Distribution System, the Municipality agrees that should it no longer wish to own the Gas Distribution System within five (5) years after it acquires the said system and the Municipality receives any *bona fide* offer from an arms length third party to purchase the Gas Distribution System, which it is willing to accept, then it shall promptly give notice to the Company of the terms and conditions of such offer. The Company shall during the next one hundred and twenty (120) days have the first right of refusal to purchase the Gas Distribution System for the same price and upon the same terms and conditions as contained in the said offer, providing the offer is equal to or greater than the terms of the original purchase by the Municipality from the Company (taking into account the depreciation of the Gas Distribution System at the time of the offer).
- e) The Municipality's right of first refusal shall not apply where the Company has agreed to transfer the entire Gas Distribution System to a third party utility company in exchange for certain other assets provided all of the following conditions are met:
 - (i) the third party utility can demonstrate to the satisfaction of the Municipality that it meets the necessary technical and financial requirements to own and operate the Gas Distribution System;
 - (ii) the only consideration that shall be exchanged between the Company and the third party utility company is the transfer and exchange of assets and monetary consideration limited to a maximum of 49% of the net book value of the Gas Distribution System;
 - (iii) there is no adverse impact to the Municipality resulting from the transfer and exchange above referenced as determined by the Board;
 - (iv) the Company and the third party utility company obtain all the requisite regulatory requirements prior to completing the exchange; and
 - (v) full compensation is paid to the Municipality for all costs including administrative and legal costs incurred by the Municipality in ensuring all of the conditions (i) through (iv) above are satisfied.

12) **CONSTRUCTION/MAINTENANCE OF GAS DISTRIBUTION SYSTEM**

a) **Municipal Approval**

Before undertaking any Work, or in any case in which the Municipality specifically requests the same, the Company will submit to and obtain the approval from the Municipality, or its authorized officers, of the plans, and the specifications when available for the proposed Work and its location. Approval by the Municipality granted in accordance with this paragraph shall be limited to an approval of the location and alignment of the Work only, and shall not signify approval of the structural design or the ability of the work to perform the function for which it was intended.

Prior to commencing any Work, the Company shall obtain such applicable permits as are required by the Municipality.

The Company shall obtain prior written approval from the Municipality of any traffic lane or sidewalk closures required to be made at least forty-eight (48) hours prior to the commencement of the proposed Work.

b) **Restoration of Municipal Property**

The Company agrees that when it or any agent employed by it undertakes any Work on any Municipal Property the Company shall complete the said Work promptly and in a good and workmanlike manner, and, where applicable, in accordance with the approved plans and specifications. Further, the Company shall forthwith restore the Municipal Property to the same state and condition, as nearly as reasonably possible, in which it existed prior to the commencement of such Work, subject to reasonable wear and tear.

The Company shall, where reasonably practicable, locate its pipelines and related equipment in lanes and alleys rather than in the streets and main thoroughfares.

The Company further covenants that it will not unduly interfere with the works of others or the works of the Municipality. Where reasonable and in the best interests of both the Municipality and the Consumer, the Company will cooperate with the Municipality and coordinate the installation of the Gas Distribution System along the designated rights-of-way pursuant to the direction of the Municipality. During the performance of the Work, the Company shall use commercially reasonable efforts to not interfere with existing Municipal Property and to cause as little damage as possible to the property of others (including the Municipality Property). If the Company causes damage to any existing Municipal Property during the performance of any Work, it shall cause such damage to be repaired at its own cost.

Upon default by the Company or its agent to repair damage caused to Municipal Property, the Municipality may provide written notice to the Company to remedy the default. If the default is not remedied with two (2) weeks after receipt of the written notice or such further time as may be reasonably required and requested by the Company using the best efforts on a commercially reasonable basis to remedy the default, the Municipality may undertake such repair work and the Company shall be liable for the reasonable costs thereof.

c) Urgent Repairs and Notification to Municipality

If any repairs or maintenance required to be made to the Gas Distribution System are of an urgent nature where the operation or reliability of the Gas Distribution System is materially compromised or potentially materially compromised, the Company shall be entitled to conduct such repairs or maintenance as are commercially reasonable without prior notice to the Municipality, on the understanding and agreement that the Company will provide written or verbal notice to the Municipality as soon as practicable and in any event no later than 72 hours after the repairs are commenced.

d) Company to Obtain Approvals from Other Utilities

The Company shall be solely responsible for locating, or causing to be located, all existing utilities or utility mains, pipes, valves and related facilities in, on or adjacent to the Work site. The Company shall notify all other utility operators and ensure that utilities and utility mains, pipes, valves and related facilities are staked prior to commencement of construction. Unless the Municipality has staked the location for the utility property, staking shall not be deemed to be a representation or warranty by the Municipality that the utility or utility property are located as staked. The Municipality shall not be responsible for any damage caused by the Company to any utility or any third party as a result of the Company's Work, unless the Municipality has improperly staked the utility property. Approval must be obtained by the Company from the owner of any third party utility prior to relocation of any facility owned by such third party utility.

e) Approvals

Where any approvals are required to be obtained from either party under this Article, such approvals shall not be unreasonably withheld.

The Company shall ensure that all Work is performed in accordance with the requirements of all applicable legislation, rules and regulations. The Company shall immediately notify the Municipality of any lien, claim of lien or other action of which it has or reasonably should have knowledge, and shall cause the same to be removed within 30 days (or such additional time as the Municipality may allow in writing), failing which the Municipality may take such action as it reasonably deems necessary to remove the same and the entire cost thereof shall be immediately due and payable by the Company to the Municipality.

13) **RESPONSIBILITIES FOR COST OF RELOCATION**

Upon receipt of one (1) years notice from the Municipality, the Company shall, at its own expense, relocate to Municipal Property such part of the Gas Distribution System that is located on Municipal Property as may be reasonably required by the Municipality due to planned Municipal construction.

In order to encourage the orderly development of Municipal facilities and the Gas Distribution System, the Municipality and the Company agree that they will meet regularly to: a) review the long-term facility plans of the Municipality and the Company; and b) determine the time requirements and costs for final design specifications for each relocation. Providing the Municipality is not the developer requesting the relocation for commercial or residential resale to third parties, the Company shall bear the expenses of the required relocation.

Notwithstanding the foregoing, the Company shall not be required to move any part of the Gas Distribution System after receipt of notice from the Municipality in accordance with this Article where:

- a) the Company has illustrated to the satisfaction of the Municipality, acting reasonably, that an appropriate Alternative Course of Action is available;
- b) the Municipality has provided the Company with its written approval of the Alternative Course of Action (which approval may not be unreasonably withheld by the Municipality); and
- c) the Company has provided its written undertaking to carry out the Alternative Course of Action promptly and within a sufficiently short period of time so as to ensure that the Municipality will be left with sufficient time to complete the said planned Municipal construction within the Intended Time Frame (taking into account any delays which the Municipality may encounter as a result of the Company utilizing the Alternative Course of Action).

For the purposes of this Article 13, the term "Alternative Course of Action" shall mean any course of action that will enable the Municipality to complete the said Municipal construction and will result in a net cost savings to the Company (taking into account all additional costs incurred by the Company in carrying out the Alternative Course of Action and any additional costs which the Municipality may incur and which the Company will be required to pay in accordance with this Article 13) and "Intended Time Frame" shall mean the period of time within which the Municipality would have reasonably been able to complete the said Municipal construction if the Company would have relocated the Gas Distribution System in accordance with this Article 13.

If the Municipality agrees to permit the Company to utilize an Alternative Course of Action, the Company shall pay any and all costs incurred in carrying out the Alternative Course of Action and shall pay on demand to the Municipality (on a full indemnity basis) any and all costs incurred by the Municipality:

- (i) in conducting a review of the Alternative Course of Action to determine whether the Alternative Course of Action is acceptable to the Municipality;
- (ii) in modifying any plans the Municipality may have prepared in respect of the said Municipal construction (which are referred to herein as "Modified Plans") or in preparing or developing plans and procedures (which are referred to herein as "Work Around Procedures") to work around the Gas Distribution System or any improvement, thing, or component utilized by the Company in effecting the Alternative Course of Action; and
- (iii) in the course of conducting the said planned Municipal construction where such costs would not have been incurred by the Municipality if the Company had relocated the Gas Distribution System in accordance with this Article 13 (including any additional cost the Municipality may incur in completing the said Municipal Construction in accordance with the Modified Plans or in effecting any Work Around Procedures).

The following example illustrates the intended application of the foregoing provisions:

- Where :
- (A) The Municipality requires the Company to move a gas line so that the Municipality can replace its own sewer lines. The cost of moving the gas line is \$10,000. The cost of carrying out the replacement of the sewer line after moving the gas line is \$40,000;
 - (B) The Company proposes to simply brace the gas line (at a cost of \$2,000) and the Municipality, acting reasonably, approves of this as an Alternative Course of Action;

- (C) As a result of having to prepare Modified Plans and to prepare and implement Work Around Procedures to work around the braces, the actual cost incurred by the Municipality in replacing the sewer line is \$45,000 (being a net increase in cost of \$5,000);

The Company is required to pay the \$2,000 cost of the bracing together and the additional cost of \$5,000 incurred by the Municipality (resulting in a net savings of \$3,000 to the Company).

In cases of emergency, the Company shall take all measures that are commercially reasonable and necessary to ensure public safety with respect to relocating any part of the Gas Distribution System that may be required in the circumstances.

If the Company fails to complete the relocation of the Gas Distribution System or fails to repair or do anything else required by the Company pursuant to this clause without valid justification and in a timely and expeditious manner to the satisfaction of the Municipality's representative, acting reasonably, the Municipality may, but is not obligated to, complete such relocation or repair and the Company shall pay the reasonable costs of such relocation or repair forthwith to the Municipality.

If the Municipality chooses to complete such relocation or repair the Municipality will ensure that such work is completed using the Company's design specifications and standards, as provided by the Company, including the use of good and safe operating practices.

The Municipality is not responsible, either directly or indirectly, for any damage to the equipment which forms part of the Gas Distribution System which may occur during its installation, maintenance or removal by the Company, nor is the Municipality liable to the Company for any losses, claims, charges, damages and expenses whatsoever suffered by the Company including claims for loss of revenue or loss of profits, on account of the actions of the Municipality, its agents or employees, working in, under, over, along, upon and across its highways and rights-of-ways or other Municipal Property other than direct loss or damage to the Company caused by the negligence or wilful misconduct of the Municipality, its agents or employees.

In the event the relocation or any part thereof requires the approval of a third party, the Municipality will use reasonable efforts to assist the Company in any negotiation with such third party to obtain the necessary approval(s).

In the event the relocation results from the demand or order of an authority having jurisdiction, other than the Municipality, the Municipality shall not be responsible for any of the costs of such relocation.

14) **GAS DISTRIBUTION SYSTEM EXPANSION**

Subject to the Terms and Conditions, and at no cost to the Municipality unless otherwise provided for under the Terms and Conditions, the Company shall, on a timely basis use its best efforts on a commercially reasonable basis to meet the Gas Distribution System expansion requests of the Municipality or a Consumer, and provide the requisite facilities for connections for new Consumers to the Gas Distribution System.

15) **INCREASE IN MUNICIPAL BOUNDARIES**

Where the Municipal Area is increased through annexation or amalgamation as understood under the *Municipal Government Act* (Alberta) by the greater of 640 acres and twenty five (25%) percent of the current area or more, the Municipality shall have the right to:

- (a) terminate this Agreement provided the Municipality gives notice in writing to the Company of its intention to do so; or
- (b) add the increased area to the Municipal Area already served by the Company so that the rights and obligations contained in this Agreement will apply in respect of the whole Municipal Area, including the increased area.

For all other increases to the Municipal Area through annexation or amalgamation as understood under the *Municipal Government Act* (Alberta), the rights and obligations contained in this Agreement will apply in respect of the whole Municipal Area, including the increased area.

16) **JOINT USE OF GAS DISTRIBUTION SYSTEM**

a) **Municipal Use**

The Municipality shall upon notice to the Company have, for any reasonable municipal purpose, the right to make use of the Gas Distribution System (excluding the transportation of gas) and any rights-of-way granted to the Company, provided such use complies with good and safe natural gas operating practices, as determined by the Company acting reasonably, applicable legislation, and does not unreasonably interfere with the Company's use thereof, at no charge to the Municipality. The Municipality is responsible for its own costs and any necessary and reasonable costs incurred by the Company including the costs of any alterations that may be required in using Gas Distribution System.

b) Third Party Use and Notice

The Company agrees that should any third party including other utilities desire to jointly use the Gas Distribution System or trenches or any parts of the Gas Distribution System, the Company shall not grant the third party joint use except in accordance with this Article, unless otherwise directed by any governmental authority or court of law having jurisdiction.

The Company agrees that the following procedure shall be used in granting permission to third parties desiring joint use of the Gas Distribution System:

- i) first, the third party shall be directed to approach the Company to initially request conditional approval from the Company to use that part of the Gas Distribution System it seeks to use;
- ii) second, upon receiving written conditional approval from the Company, the third party shall be directed to approach the Municipality to obtain its written approval to jointly use that part of the Gas Distribution System on any Municipal Property or right-of-way. As a condition of granting its consent, the Municipality may require that such third party enter into an agreement with the Municipality, and such agreement may require that such third party pay compensation to the Municipality;
- iii) third, upon receiving written conditional approval from the Municipality, the third party shall be directed to obtain final written approval from the Company to jointly use that part of the Gas Distribution System. Once a joint use agreement has been entered into between the Company and the third party, it shall not be subsequently amended without the consent of the Municipality (which consent will not be unreasonably withheld).

c) Cooperation

The Company and Municipality agree they will use reasonable efforts to cooperate with each other in encouraging the use of joint trenching and in any negotiations with third parties desiring joint use of any part of the Gas Distribution System located on Municipal Property.

d) Payment

The compensation paid or to be paid by such third party to the Municipality for the use of the Municipal Property including its rights-of-way, shall be determined between the Municipality and the third party.

The compensation paid or to be paid by such third party to the Company for the joint use any portion of the Gas Distribution System shall be determined between the Company and the third party, subject to the jurisdiction of any governmental authority over the matter and the Municipality's right to intervene in any related regulatory proceeding.

e) **Provision of Agreements**

The Company shall provide to the Municipality within 6 months of executing this Agreement a copy of all agreements between the Company and any third parties involved in the joint use of any part of the Gas Distribution System.

Upon reasonable request by the Municipality, copies of these agreements shall be updated by the Company and provided to the Municipality at no cost to the Municipality.

17) **RECIPROCAL INDEMNIFICATION AND LIABILITY**

- a) Company shall indemnify and save the Municipality, its servants, agents, employees, licensees, contractors and invitees, harmless from and against any and all liability, actions, demands, claims, damages, losses and expenses (including all legal costs and disbursements), including indemnity from and against any claim, loss, cost, demand and legal or other expense, whether in respect of any lien, encumbrance or otherwise, arising out of any Work performed by or for the Company, which may be brought against or suffered, sustained, paid or incurred by the Municipality, its servants, agents, employees, contractors, licensees and invitees, arising from, or otherwise caused by:
 - (i) any breach by the Company of any of the provisions of this Agreement; or
 - (ii) the negligence or wilful misconduct of the Company, or any of its servants, agents, employees, licensees, contractors or invitees in carrying on its business within the Municipal Area.
- b) The Municipality shall indemnify and save the Company, its servants, agents, employees, licensees, contractors and invitees, harmless from and against any and all liability, actions, demands, claims, damages, losses and expenses (including all legal costs and disbursements) which may be brought against or suffered, sustained, paid or incurred by the Company, its servants, agents, employees, licenses, contractors and invitees, arising from, or otherwise caused by:

- (i) any breach by the Municipality of any of the provisions of this Agreement; or
 - (ii) the negligence or wilful misconduct of the Municipality, or any of its servants, agents, employees, licensees, contractors or invitees, in carrying on the business of the Municipality.
- c) Notwithstanding anything to the contrary herein contained, in no event shall the Municipality or the Company be liable under this Agreement, in any way, for any reason, for any indirect, special or consequential damages (including damages for pure economic loss, loss of profits, loss of earnings or loss of contract), howsoever caused or contributed to.

18) **ASSIGNMENT**

In the event that the Company agrees to sell the Gas Distribution System to a third party purchaser, the Company shall comply with Article 11 above. In addition, the Company will request that the third party purchaser confirm in writing that it will agree to all the terms and conditions of this Agreement between the Company and the Municipality. The Company agrees that it will provide to the Municipality a copy of the third party purchaser's confirmation letter.

The Company agrees to provide the Municipality with reasonable prior written notice of a sale of the Gas Distribution System to a third party purchaser. The parties shall thereafter meet to discuss the technical and financial capabilities of the third party purchaser to perform and satisfy all terms and conditions of the Agreement, and the compensation payable to the Municipality for all costs including administrative and legal costs relating to providing its consent to the Assignment. ("Municipal Compensation")

The Municipality has thirty (30) days from the meeting date with the Company to provide written notice to the Company of its intention to consent or withhold its consent to the assignment of the Agreement to the third party purchaser. The Company agrees that the Municipality may provide notice of its intention to withhold its consent to the assignment of this Agreement to the third party purchaser if the Municipal Compensation is inadequate or if the third party purchaser fails to covenant, in favour of the Municipality, to perform and observe all of the covenants and obligations of the Company to be performed and observed under this Agreement and otherwise solely on the basis of reasonable and material concerns regarding the technical capability or financial wherewithal of the third party purchaser to perform and satisfy all terms and conditions of the Agreement. In this case, such notice to the Company must specify in detail the Municipality's concern. Should the Municipality not reply within the thirty (30) days, it is agreed that the Municipality will be deemed to have consented to the assignment. The Company further agrees that, when it applies to the Board for approval of the sale, it will include in the application any notice received from the Municipality, including the reasons given by the Municipality for withholding its consent. The Municipality shall have the right to make its own submissions to the Board.

Subject to the Company having fulfilled the obligations outlined in the preceding three paragraphs, the Company shall be entitled to assign this Agreement to an arm's length third party purchaser of the Gas Distribution System without the consent of the Municipality, subject to paying the Municipal Compensation for the assignment, and having obtained the Board's approval for the sale of the Gas Distribution System and, the third party purchaser's confirmation in writing that it agrees to all the terms and conditions of this Agreement.

Where the Board approves such sale of the Gas Distribution System to a third party and the third party provides written confirmation to assume all liabilities and obligations of the Company under this Agreement, then upon the assignment of this Agreement and the payment of the Municipal Compensation for its consent to the Assignment subject to Board approval, the Company shall be released from all its liabilities and obligations thereunder.

The Company shall be entitled to assign this Agreement to a subsidiary or affiliate of the Company without the Municipality's consent. Where the Company assigns this Agreement to a subsidiary or affiliate, the Company will remain jointly and severally liable.

Further, it is a condition of any assignment that the subsidiary, affiliate or third party purchaser, as the case may be, shall provide written notice to the Municipality indicating that it will assume all liabilities and obligations of the Company under this Agreement.

Any disputes arising under the operation of this Article shall be submitted to the Board for determination.

19) NOTICES

All notices, demands, requests, consents, or approvals required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given if personally served or sent by registered mail or sent by fax to the Municipality or to the Company as the case may be, at the addresses set forth below:

- (i) ATCO Gas and Pipelines Ltd.
 Attention: Manager, Yellowhead Region
 Box 2426
 Edmonton, Alberta T5J 2V6
 Phone (780) 420-8935 Fax: (780) 420-5784
- (ii) City of Cold Lake
 Attention: Chief Administrative Office
 5513 – 48 Avenue
 Cold Lake, Alberta T9M 1A1
 Phone (780) 594-4494 Fax: (780) 594-3480

The date of receipt of any such notice as given above, shall be deemed to be as follows:

- (i) In the case of personal service, the date of service;
- (ii) In the case of registered mail, the seventh (7th) business day following the date of delivery to the Post Office, provided, however, that in the event of an interruption of normal mail service, receipt shall be deemed to be the seventh (7th) day following the date on which normal service is restored;
- (iii) In the case of a fax, the date the fax was actually received by the recipient.

20) **INTERRUPTIONS OR DISCONTINUANCE OF DELIVERY SERVICE**

Subject to its Delivery Tariff, the Company shall use its best efforts on a commercially reasonable basis to avoid and minimize any interruption, reduction or discontinuance of Gas Distribution Service to any Consumer. However, the Company reserves the right to do so for any one of the following reasons:

- (i) Where the Company is required to effect necessary repairs or changes to the Gas Distribution System;
- (ii) On account of or to prevent fraud or abuse of the Gas Distribution System;
- (iii) On account of defective aspects of the Gas Distribution Systems which in the opinion of the Company, acting reasonably, may become dangerous to life or property;
- (iv) Where required, under the Terms and Conditions, due to a Consumer's non-payment of gas bills.

To the extent the Company has any planned major interruptions, reductions or discontinuances in Gas Distribution Service, it shall notify the Municipality in writing as soon as practicable in the circumstances. For any other major interruption, reductions or discontinuances in Gas Distribution Service, the Company shall provide verbal notice to the Municipality as soon as is practicable in the circumstances.

21) **DISPUTE SETTLEMENT**

To the extent permitted by law, the Company and Municipality agree that unresolved disputes pertaining to this Agreement, other than those related to the sale of the Gas Distribution System as contemplated in Articles 9, 11(a) and 18 hereof, that pursuant to the terms of this Agreement, are to be submitted to the Board for determination, or any other matter that is within the exclusive jurisdiction of a governmental authority having jurisdiction, shall be submitted to arbitration for determination and may be commenced by either party providing written notice to the other party stating the dispute to be submitted to arbitration. The parties shall attempt to appoint a mutually satisfactory arbitrator within 10 business days of the said notice. In the event the parties cannot agree on a single arbitrator within the 10 business days, each party shall appoint an arbitrator within the 10 business days thereafter by written notice, and the two arbitrators shall together appoint a third arbitrator within 25 business days of written notice for arbitration. If either party fails to appoint an arbitrator within the time set forth above, the arbitrator appointed by the other party shall proceed with the arbitration and the award of such arbitrator shall be final and binding. In the two arbitrators appointed by the parties hereto fail to agree upon a third arbitrator within the 25 business day period from the date of delivery of the written notice for arbitration, either party may apply, on ten (10) days written notice to the other, to a Judge of the Court of Queen's Bench of Alberta for the appointment of the third arbitrator. The dispute shall be heard by the arbitrator(s) within 45 business days of the written notice for arbitration unless extended by mutual agreement between the parties. The arbitrator(s) shall render a decision within 20 business days of the last day of the arbitration hearing. Save as otherwise expressly provided in this Agreement, the provisions of the Arbitration Act (Alberta) (as amended from time to time) shall apply to any arbitration undertaken under this Agreement subject always to the Board's jurisdiction over any matter submitted to arbitration. Pending resolution of any dispute, the Municipality and the Company shall continue to perform their respective obligations hereunder. The decision of the majority of the arbitrators shall be final and binding.

The Company shall advise the Board of any dispute submitted to arbitration within ten (10) business days of it being submitted and shall advise the Board of the results of arbitration within ten (10) business days following receipt of the decision of the arbitrator(s).

22) **APPLICATION OF WATER, GAS AND ELECTRIC COMPANIES ACT**

This Agreement shall be deemed to operate as consent by the Municipality to the exercise by the Company of those powers which may be exercised by the Company with the consent of the Municipality under and pursuant to the provisions of the *Water, Gas and Electric Companies Act* (Alberta), as amended.

23) **FORCE MAJEURE**

If either party shall fail to meet its obligations hereunder within the time prescribed, and such failure shall be caused or materially contributed by an event of "force majeure", such failure shall be deemed not to be a breach of the obligations of such party hereunder, but such party shall use its best efforts to put itself in a position to carry out its obligations hereunder. The term "force majeure" shall mean any acts of God, strikes, lock-outs, or other industrial disturbances, acts of the Queen's enemies, sabotage, war, blockades, insurrections, riots, epidemics, lightening, earthquakes, storms, fires, wash-outs, nuclear and radiation activity or fall-out, restraints of rulers and people, orders of governmental authorities or courts of law having jurisdiction, the inability to obtain any necessary approval from a governmental authority having jurisdiction (excluding municipal governments), civil disturbances, explosions, mechanical failure, and any other causes similar in nature not specifically enumerated or otherwise specified herein that are not within the control of such party, and all of which by the exercise of due diligence of such party could not have been prevented. Lack of finances shall be deemed not to be an event of "force majeure".

24) **TERMS AND CONDITIONS**

The Terms and Conditions that apply to the Company and are approved by the Board, as revised or amended from time to time by the Board, shall apply to the Municipality.

25) **NOT EXCLUSIVE AGAINST HER MAJESTY**

Notwithstanding anything to the contrary herein contained, it is mutually understood and agreed that the rights, powers and privileges conferred and granted by this Agreement shall not be deemed to be exclusive against Her Majesty in the right of the Province of Alberta.

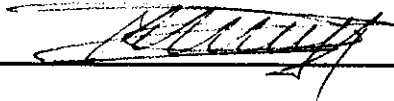
26) **SEVERABILITY**

To the extent permitted by law, any provision of this Agreement which is prohibited or unenforceable, shall be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining portions hereof.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

CITY OF COLD LAKE

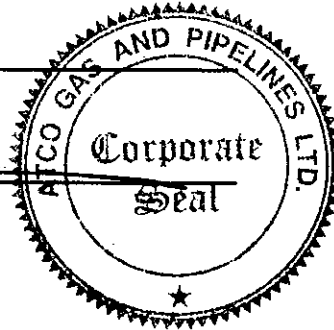
PER: 

PER: 

ATCO GAS AND PIPELINES LTD.

PER: _____

PER: 



SCHEDULE "A"
Core Services

The Company shall provide to the Municipality the following basic services as Core Services:

- 1) The Company shall deliver natural gas to the Consumers within the Municipal Area in accordance with the Company's Terms and Conditions, the Company's Distribution Tariff, the Act, any regulations thereto, and any Board Orders.
- 2) The Company shall install all natural gas facilities required to provide service to the Consumers within the Municipal Area and in accordance with the Terms and Conditions.
- 3) As required by legislation, the Company shall provide and install all necessary regulators and meters necessary for measuring the natural gas supplied to each Consumer. The point of delivery shall be upon the Consumer's premise, currently at the outlet side of the meter.
- 4) The Company agrees to collaborate with the Municipality's Fire Department in an effort to mutually develop emergency response procedures relating to natural gas emergencies.
- 5) The Company shall do all things to Operate and Maintain the Gas Distribution System, including in accordance with all applicable regulations, codes, applicable standards and common industry practices.
- 6) The Company shall provide twenty-four hour a day "Trouble Service" to investigate any natural gas odor and make safe any suspected gas leak inside or outside the Consumer's premise.
- 7) The Company will utilize the services of professional engineers who are responsible for designing all natural gas facilities to satisfy all applicable regulatory codes and standards; preparing of necessary work order plans and monitoring the distribution network pressures to ensure that the Company's facilities will satisfy the Consumer's current and future natural gas delivery requirements.
- 8) The Company shall provide to the Municipality, on request, copies of any and all Gas Distribution Service related written information or reports required to be filed with the Board, with the exception of responses to questions from interveners or the Board related to rate hearings.
- 9) The Company shall provide to the Municipality, upon request, an annual report on the following standards specific to the Municipality:

II

i) **System Reliability** - that will be measured by:

- The number of major interruptions to Gas Distribution Service resulting in a loss of service to Consumers;
- The number of Consumers affected by each outage; and
- The average duration of each outage.

ii) **Customer Satisfaction with local Gas Distribution Service** - that will be measured by the number and nature of unresolved local non-rates related customer complaints received by the Company.

- including the Company-wide Call Centre targets and statistics (wait times, abandoned calls, call volumes, etc); and any
- customer complaints received by the Board.

iii) **Public Safety:** that will be measured by:

- the number of customer injuries and/or damages due to Gas Distribution System failure;
- the number of line hits per total locates completed;
- the number of line hits as a result of inaccurate locates;
- the percentage of the area of the Municipality surveyed for leaks and yearly cathodic protection measures;
- the number and nature of calls received from the Municipality and any of its Municipal agencies (including fire department, police department etc.) regarding the Gas Distribution System.

- 10) The Company shall meet at least annually with the Municipality ensuring that through a mutual exchange of information the Municipality is kept apprised of the Company's construction and upgrading programs planned for the Municipality. The Municipality will advise the Company of any issues relating to the Gas Distribution System that have been addressed by Municipal council.

SCHEDULE "B"
Extra Services

- 1) After the Municipality requests Extra Services, the Company will provide its applicable operations and maintenance standards for Gas Distribution System field services.
- 2) If the Company and the Municipality agree that the Company will provide Extra Services requested by the Municipality, the parties shall complete the information required in subparagraph 3), and subparagraph 4) shall apply in respect of such Extra Services.
- 3) Extra Services shall mean:

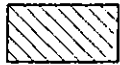
[Not Applicable]

- 4) In consideration for the provision of the Extra Services, the Municipality shall pay to the Company the sum of Nil Dollars (\$0.00) which if forming part of this Agreement shall be collected as part of the Franchise Fee.
- 5) Within sixty (60) days of the end of each calendar year, the Company shall provide a written report to the Municipality, outlining the actual performance of the Extra Services provided and the related costs for each service for the Municipality to assess if the performance standards for the Extra Services have been met.
- 6) In the event the Company breaches any material provision of the Extra Services contract, the Municipality may, at its option, provide written notice to the Company to remedy such breach. If the said breach is not remedied within two (2) weeks after receipt of the written notice or such further time as may be reasonably required by the Company using its best efforts on a commercially reasonable basis to remedy the breach, the Municipality may give six (6) months notice in writing of the termination of the Extra Services contract to the Company, and unless such breach is remedied to the satisfaction of the Municipality acting reasonably, the Extra Services contract shall terminate.

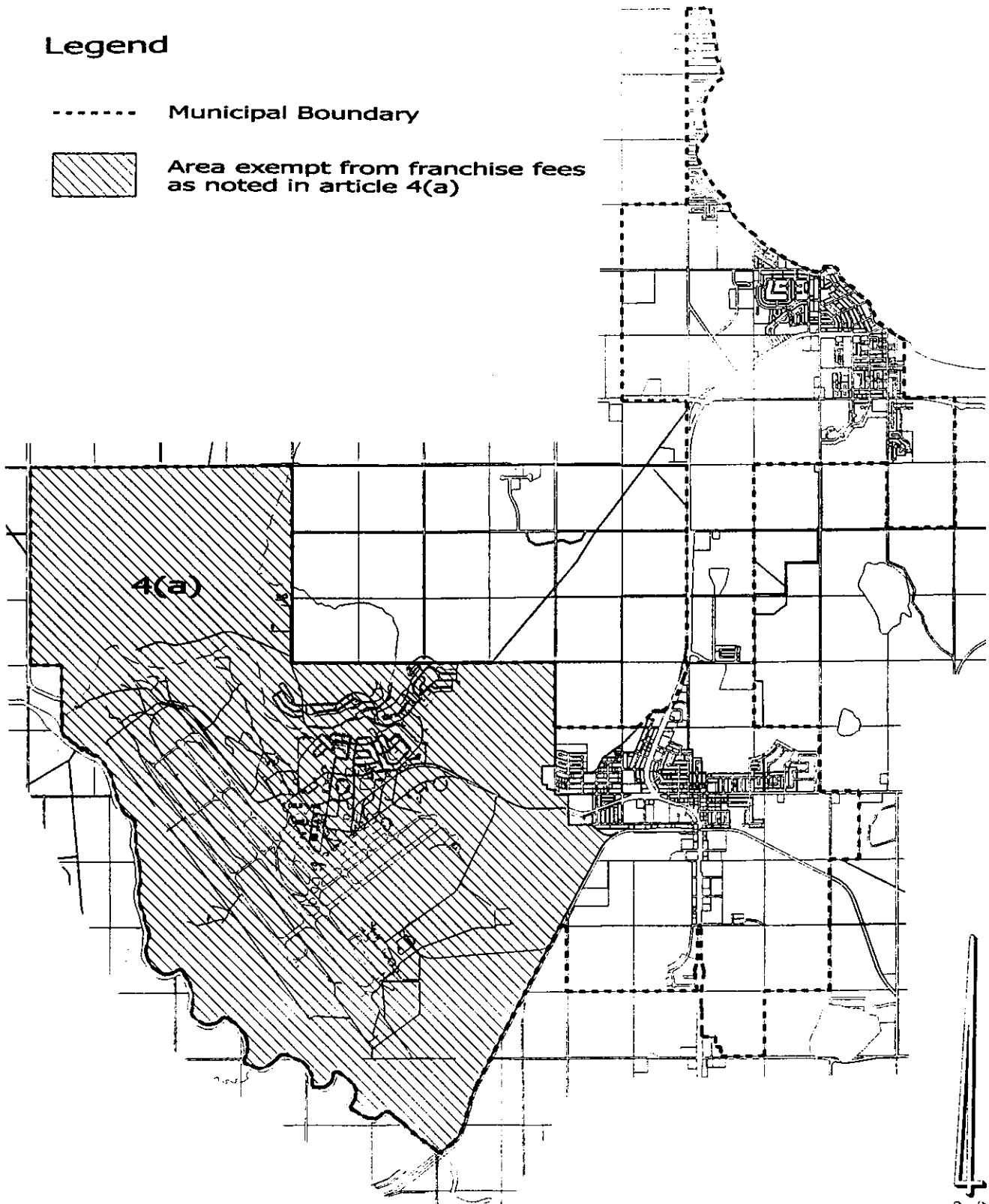
Cold Lake

Legend

----- Municipal Boundary



Area exempt from franchise fees
as noted in article 4(a)



North