

# **Moving Forward**

## ***Building Opportunities for Our Future***

**Municipal District of Pincher Creek No. 9  
and the Village of Cowley**

**INTERMUNICIPAL COLLABORATION FRAMEWORK AGREEMENT**





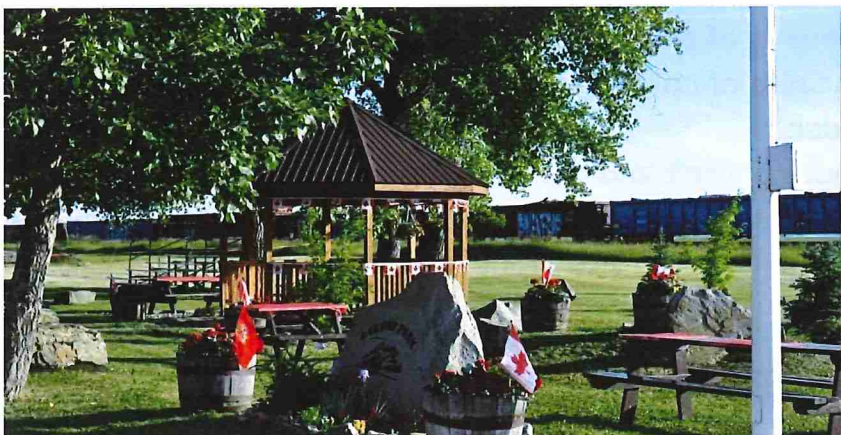
# FORWARD

The Municipal District of Pincher Creek No.9 and the Village of Cowley share a common history. Both have distinct and similar municipal characteristics, and both are rural municipalities based upon building and maintaining core services including roads, bridges and airports which are designed to service an agricultural, forestry and resource-based economy. Together these same individual characteristics link them into a healthy and viable regional municipality.

Most people understand increasing the level of collaboration as an ability to provide more efficient and better service levels to municipal ratepayers in the region. However, while some services can possibly be provided solely in a single municipality the increased opportunity in working together is also recognized in increased economies of scale, sustainability of some services, quality of services and efficiency in delivery. In other words, dovetailing the individual characteristics of the municipalities creates expanded resources and advances quality of life opportunities to the people in the region. The image of “two municipalities – one purpose” describes the philosophy of the two Councils.

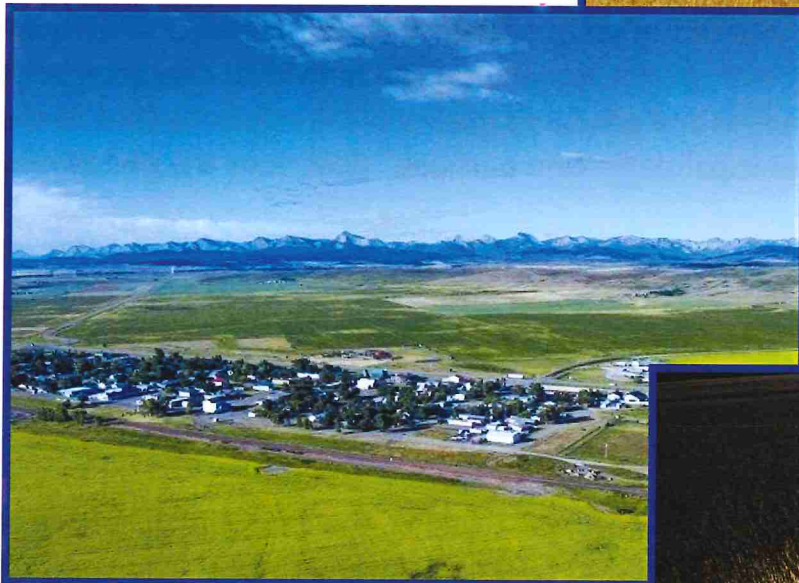
The two municipalities are committed to identify current and future issues where joint benefits may be realized through more formalized and rigorous processes and cooperation. Examples are evident in servicing areas such as planning, economic development and creating a complete region that is attractive for people to live, work and play.

As the Provincial Government seeks to encourage regional thinking, the Municipal District of Pincher Creek and the Village of Cowley are well placed to lead pro-actively through the creation of this Intermunicipal Collaboration Framework Agreement.





***The Village of Cowley  
and the  
Municipal District  
of Pincher Creek  
share a common history  
and foundation  
based upon the  
agriculture, forestry and the  
oil and gas industry***



## ***Goals of the Intermunicipal Collaboration Framework Agreement***

***The Intermunicipal Collaboration Framework has four main purposes:***

- 1 . To meet the requirements of provincial legislation.
2. To promote the principles of collaboration between neighboring municipalities with a common border.
- 3 . To ensure municipalities consult and communicate on intermunicipal matters.
- 4 . To clearly lay out a process that the partners to this agreement can review service levels and decide if the service would benefit from being regionally operated & funded.

*and also to consider appropriate fair funding mechanisms and deal with differences which may occur from time to time.*



## ***The ICF Agreement between the Municipal District of Pincher Creek and the Village of Cowley will:***

**Recognize and share the vision and priorities of the two municipalities toward providing effective and efficient service levels to their ratepayers:** Where feasible and practical – each municipality will work together to assess how commonly utilized services will be provided and funded for the benefit of ratepayers.

**Strengthen the region while maintaining local autonomy:** Each Council maintains the right to make individual decisions for their ratepayers, but each agree that they will always consider the bigger regional municipality in the decision-making process.

**Promote networks and linkages:** Developing positive joint approaches where practical to create efficiencies by sharing opportunities, connections, goals, knowledge and experience to promote the greater good between both municipalities.

**Embrace differences in respective municipalities:** The distinct characteristics of the individual municipalities is advantageous in providing choice and diversity.

**Cooperation not Competition:** Although each municipality is responsible to its citizens there is recognition that the citizens and businesses of the region share similar needs and interests and as such each Council will emphasize cooperation and therefore not direct competition with respect to setting municipal policy.

**Foster an environment of openness and trust:** Cooperation and collaboration requires communication that in turn encourages understanding and better results in reaching common goals.

### ***Commitment to Consultation and Cooperation – Consultation Protocol:***

The fundamental basis of this agreement is communication and consultation and as such the two municipalities agree to consult on projects which have a regional impact. By recognizing the requirement to consult, each municipality will include the other in their project circulations and both agree to meet and work through matters as they arise. Where notification has been provided that a meeting is required it shall be first handled by the respective CAOs or their designate and if that does not resolve the concerns at hand it shall be dealt with by a committee from each council recognizing time may be of essence. The purpose of this consultation protocol is to ensure that the municipalities leverage opportunities and develop common solutions to any challenges that affect the region.

It is understood that this agreement will encourage communication at all levels of the organization to ensure opportunities are recognized, information is passed through the respective organization and decision makers are informed not just about their own municipality but about

regional issues and concerns. Cooperation, collaboration and commitment to consult are not meant to constrain or restrict the authority or the ability of individual Councils or to homogenize the unique culture and identity of each municipality. It is likely that there will be instances of differences in values, goals, beliefs, perspectives and decisions which are not common to both communities. In these instances, where differences remain, the commitment to communicate will enable the communities to develop proactive and positive solutions to issues that may arise.

## ***Roles in Managing the Intermunicipal Collaboration Framework Agreement:***

### ***The Role of both Councils:***

Each Council retains the ability and responsibility to make decisions on behalf of their residents. As the public is at the center of any governance initiative their voice needs to be taken into account to insure the impacts of services and actions taken in the region have the desired results and support the sustainability of the region. By signing onto the agreement each Council affirms the commitment to increased cooperation at both the council and administration levels.

This agreement signals a shift towards maximizing regional benefit through collaborative decision making. Each Council member will demonstrate leadership to act strategically as they formulate plans for each of their organizations which will bring value to the citizens of both communities.

### ***The Role of the CAOs and Administration:***

The CAOs have been identified as the principals responsible for maintaining the agreement, its delivery and dealing with intermunicipal issues that surface from time to time during the term of this agreement. Administration brings continuity to the relationship between the municipalities and they each have the ability to initiate communication on an as needed basis to ensure that each municipality adheres to the principles of the agreement. The CAOs will foster increased communication and will act as conduits for facilitating the sharing of information, identifying opportunities and prioritizing municipal actions for the consideration of each Council. Disputes or disagreements between CAOs will be dealt with by a dispute resolution committee set up with members from each council.

### ***The Role of Staff:***

Staff at all levels will be responsible to ensure the principles of the agreement are carried out operationally. This means that staff will work cooperatively with their municipal counterparts to address issues that arise within the scope of their authority and mandate. Staff will also bring to the attention of their respective CAO any issues that arise which require their attention with respect to meeting the commitment and intent of this agreement. Disputes among staff or municipal contractors between the municipalities will be dealt with by the CAOs.



# The Framework Protocols

## *Development of an Intermunicipal Communication Protocol*

Understanding that the success of this agreement is based upon respectful dialogue that both municipalities must be committed to ensuring the provision of information is handled in a transparent and honest manner. To foster the longevity and durability of this agreement both municipalities should jointly develop and abide by the principles of a communication protocol which should include the following principles:

1. The protocol should recognize that cooperative communication is the key to a successful relationship. At all times and through all levels of each organization the following principles should apply:
  - a. Seek to understand
  - b. Avoid personal attacks either privately or publicly
  - c. Asking for clarification on policies adopted by the other municipality to ensure understanding
  - d. Address issues as being of a joint nature meant to be resolved together
  - e. Seek to maximize the benefits for both parties
2. The Protocol should seek to ingrain collaboration and cooperation in each municipal organization
  - a. Both organizations agree to ensure proper training takes place on intermunicipal collaboration following a municipal election
  - b. Both organizations agree to provide additional training as required following any change in elected officials or senior administration
3. The protocol should ensure that each municipality provides to the other information pertaining to:
  - a. Major capital projects which may impact the other municipality
  - b. Lobby efforts to higher levels of government with respect an issue which may impact regional services
  - c. Adopted strategic plans
  - d. Funding, aid or support to other organizations within the other municipality when requested
  - e. Ceremonies, celebrations, events of regional impact
  - f. Promotion of collaborative successes

## **Conflict Resolution**

The municipalities recognized that the development of this agreement is the start – not the end – of the process. Recognizing that not all issues may be agreed upon the municipalities recognize the need to establish a conflict resolution process based upon the following principles:

1. At the earliest opportunity and at the point closest to where the problems initiated the Chief Administrative Officers and Chief Elected Officer will seek to address matters of conflict.
2. All matters of conflict should be sought to be resolved swiftly, inexpensively and in an uncomplicated way.
3. All matters of conflict should be resolved using a clear procedural pathway.
4. Maintain at all times, the essence of collaboration on the majority of issues even though conflict may exist on some issues.

## **Process**

If a municipality believes an obligation under the agreement has been breached the matter should be immediately brought to the attention of their CAO. The CAO will investigate and if it appears as if a 'breach' of the agreement has occurred the matter will be immediately brought to the attention of the other municipalities CAO. Once that has occurred an effort to resolve the matter through informal problem-solving discussions is to be initiated.

If differences occur outside of an outright 'breach' of an agreement, which may include divergent expectations in the delivery of a joint service, variance on how the committee wishes to proceed on an issue or any circumstance which may impact or disrupt service delivery or relationships, an informal discussion between CAOs will be conducted.

If this does not resolve the issue an Intermunicipal Dispute Committee shall be appointed by both councils who will decide on and negotiate an effective solution.

If the subcommittee negotiation process is unsuccessful a mediated process is initiated using the services of a jointly agreed upon mediator with costs shared equally between municipalities. The mediator will be solely responsible for the governance of the mediation process.

If the process cannot be resolved through mediation the municipalities will select an arbitrator sharing all costs in doing so, and will have the matter resolved through the process defined by Section 708.35 of the Municipal Government Act. The arbitrator is governed by the principles of natural justice and fairness.



## Inventory of Municipality Services

The following chart illustrates an inventory of municipal services available to ratepayers in each municipality. The inventory is a consideration of who provides a service, who has funded a service and where such services exist within the boundaries of a municipality. The services listed below are a representation of key services but it is not necessarily all services provided by each municipality. The services are utilized by the ratepayers of each municipality in one way or the other.

Type Of Service	MD of PC	Cowley	Inter Mun.	3rd Party
<b>Transportation</b>				
Road Grading & Gravelling	PC	C		
Road Calcium	PC			
Gravel Crushing	PC			
Road Construction	PC			
Culvert Installation				PC
Bridge Maintenance	PC			PC
Drainage Maintenance	PC			PC
Snow Plowing	PC	C		
Shop - Vehicle. Maint	PC	C		
Surveying				
Sign Installation & Maint	PC			
Paved Road Repairs	PC			PC
Rural Addressing Signs	PC			
Airport Operation	PC			
<b>Recreation</b>				
Skating Rinks			PC	
Curling Rinks			PC	
Shooting Ranges/Gun Club	PC			
Riding Arenas	PC			
Outdoor Rodeo Grounds				PC
Baseball Diamonds			PC	
Golf Courses			PC	
Indoor Athletic Fields				
Swimming Pools			PC	
Outdoor Soccer Fields			PC	
Tennis Courts			PC	
Senior Centres			PC	
Motocross Track			PC	
Bowling Alleys			PC	
Water Park			PC	
Skateboard Park			PC	
Gyms & Workout Centres			PC	
<b>Other Services</b>				
FCSS			B	PC
ORRSC - Planning				B
Planning & Development	PC	C		
Economic Development			PC	
Regional Waste Services			B	
General Administration	PC	C		
Adult Learning Assoc			PC	
Southgrow Eco. Dev.				B
Alberta Southwest Alliance				B
Libraries			B	
<b>Cowley</b>		C		
<b>MD of Pincher Creek</b>		PC		
<b>Both</b>		B		

**MD of Pincher  
Creek = PC**

**Village of  
Cowley = C**

**Both = B**

## Inventory of Municipality Services cont...

Type Of Service	MD of PC	Cowley	Inter Mun.	3rd Party
<b>Water</b>				
Water Treatment			B	
Water Distribution	PC	C		
Service Installs	PC	C		
Meter Reading	PC	C		
Utility Billing	PC	C		
Truck Fill Station			B	
<b>Waste Water</b>				
Certified Operators	PC	C		
WW Collection System	PC			
Lagoons	PC	C		
Irrigation of Effluent	PC			
Installation of Utilities		C		PC
<b>Recycling &amp; Waste Management</b>				
Landfill			B	
Collection		C		
Recycling			B	
<b>Ag Services &amp; Parks</b>				
Tree Planting				PC
Tree Spraying				PC
Tree Pruning				PC
Mowing	PC	C		
Weed Identification	PC			
Weed Act Enforcement	PC			
Weed Spraying	PC			
Raw Water Irrigation				
Cemetery Maintenance		C	PC	
Pest Control				PC
Park Maintenance	PC	C		
Sprinkler Installation				PC
Equip. Maintenance	PC	C		
Equipment Rentals	PC	C		
Building Maintenance	PC	C		
Park Operations	PC			
Campground Operation				PC
Municipality Halls	PC	C		
Museums			PC	
Visitor Centre				
Playgrounds	PC	C		
<b>Emergency Services</b>				
EMS Coordination			B	
Fire Department		C	B	
Peace Officer			PC	
Safety Code Officer	PC			
Safety Code Inspections				B
Disaster Management			B	
Mutual Aid Agreements			B	

**MD of Pincher  
Creek = PC**

**Village of  
Cowley = C**

**Both = B**

Service marked Intermunicipal Agreement only indicates that the service is provided through such an agreement. The agreement is not necessarily between the MD of Pincher Creek and the Village of Cowley.

Service marked 3rd Party indicates the service is provided by an outside agency or organization and is normally a paid professional service.



## **ICF Agreement – Statutory Provisions**

Amendments to the Municipal Government have amended the purpose of municipalities. The new act requires municipalities to work collaboratively with neighboring municipalities to plan, deliver and fund intermunicipal services. The act requires municipalities with common borders to develop an Intermunicipal Collaborative Framework Agreement. This agreement must address services related to transportation, water, wastewater, solid waste, emergency services and recreation. The discussion on the aforementioned topics is prescribed by the act, however the outcomes are not.

### **Emergency Services**

The Municipal District of Pincher Creek and the Village of Cowley have jointly entered into a Mutual Aid Agreement specific to providing mutual fire protection services. Opportunities exist for further development of Disaster Management interoperability for the purpose of providing assistance during disaster events within both communities.

List of other joint services including fire agreements, disaster management agreements etc.

- *08-013 Emergency Management Agency*
- *Bylaw No 1307-19 - Pincher Creek Regional Emergency Management*
- *Southern Alberta Emergency Management Resource Sharing Agreement*

### **Solid Waste**

The following agreements exist and are currently in force between The Municipal District of Pincher Creek and the Village of Cowley in the area of Solid Waste and Recycling.

- *15-11\_30 Crowsnest Pincher Creek Landfill Agreement*
- *11-002 Cowley Recycle Site Agreement*

### **Transportation**

No agreements exist or are currently required between The Municipal District of Pincher Creek and the Village of Cowley in the area of transportation.

### **Recreation**

No agreements exist or are currently required between The Municipal District of Pincher Creek and the Village of Cowley in the area of recreation.

## **Water**

The following agreements exist and are currently in force between The Municipal District of Pincher Creek and the Village of Cowley in the area of water services.

- *04-014 Water Standpipe Agreement*
- *14-012 Cowley Water Master Transfer Agreement*
- *14-013 Cowley Lease Agreement*
- *14-014 Cowley Lundbreck Water Treatment Operations Agreement*
- *2017 Cowley Water Amendment*

## **Waste Water**

No agreements exist or are currently required between The Municipal District of Pincher Creek and the Village of Cowley in the area of waste water.

## **Other**

The Municipalities jointly are provided planning services from the Oldman River Regional Services Commission.

The Municipalities agree to collaboratively share responsibilities regarding invasive weeds as per the *Weed Control Act* and Regulations. Once weeds are identified and inventoried within the recognized IDP Boundary of our Municipalities, and a plan of action determined, this information will be shared from one Agricultural Services Board to the other.

The Municipalities agree to collaboratively share responsibilities regarding agricultural pests as per the *Agricultural Pests Act*. Through their respective Agricultural Service Boards, both municipalities will identify and agree upon a management strategy in the event an agricultural pest infestation is identified within the recognized IDP boundaries of our Municipalities.

The Municipalities agree to collaboratively share responsibilities regarding assisting the control of animal disease as per the *Animal Health Act*. In the event that a disease outbreak occurs, both municipalities will respond and support the event through the provision of manpower, equipment and other resources. Via their respective Agricultural Service Boards, both municipalities will work collaboratively with the Canadian Food Inspection Agency to support the management of any reportable disease should an outbreak occur.



## Commitment to Collaboration

ID4- Waterton Lakes National Park and the Municipal District of Pincher Creek acknowledge and affirm that they will seek to fulfill both the intent and the spirit of this agreement by seeking opportunities to collaborate where practical as well as to honour all applicable legislation with respect Intermunicipal collaboration within the Province of Alberta.

**IN WITNESS WHEREOF** the parties have hereunto set their hands and affixed their corporate seals as witnessed by the hand or hands of its proper signing officers duly authorized in that behalf as of

the \_\_\_\_\_ day of \_\_\_\_\_, 20 . (ID4 - Waterton)

the 25 day of February, 20 . (MD of PC)

FOR ID #4 - WATERTON LAKES NATIONAL PARK

FOR MUNICIPAL DISTRICT OF PINCHER CREEK No. 9

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

REEVE

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

REEVE

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

CAO

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

CAO





## **Schedule of Attachments**

- 1**     *Index*
- 2**     *08-013 Emergency Management Agency*
- 3**     *Bylaw No 1307-19 - Pincher Creek Regional Emergency Management*
- 4**     *Southern Alberta Emergency Management Resource Sharing Agreement*
- 5**     *15-11\_30 Crowsnest Pincher Creek Landfill Agreement*
- 6**     *11-002 Cowley Recycle Site Agreement*
- 7**     *04-014 Water Standpipe Agreement*
- 8**     *14-012 Cowley Water Master Transfer Agreement*
- 9**     *14-013 Cowley Lease Agreement*
- 10**    *14-014 Cowley Lundbreck Water Treatment Operations Agreement*
- 11**    *2017 Cowley Water Amendment*

*\* any updates or revision statements of the agreements will appear at the end of each section.*



08-013  
(15)

2540

THIS AGREEMENT made in duplicate this 15<sup>th</sup> day of MAY, A.D. 2008.

BETWEEN

THE TOWN OF PINCHER CREEK

Hereinafter called the "the  
Town" Party of the FIRST  
PART

-and-

THE MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9

Hereinafter called "the M.D."  
Party of the SECOND PART

-and-

THE VILLAGE OF COWLEY

Hereinafter called "the  
Village" Party of the THIRD  
PART

EMERGENCY MANAGEMENT AGENCY

WHEREAS

The Town of Pincher Creek {hereinafter called the "Town"} and  
The Municipal District of Pincher Creek No. 9 {hereinafter called  
the "M.D."} and the Village of Cowley {hereinafter called the  
"Village"} are responsible for the direction and control of its  
Emergency response and is required, under the Emergency  
Management Act, Chapter E-6.8, Revised Statutes of Alberta  
2000, to appoint a Disaster Service Committee and to establish  
And maintain a Emergency Management Agency; and

WHEREAS It is in the interest of public safety, that such a  
Committee be appointed and such an agency be established and  
Maintained to carry out Council's statutory powers and obligations



Under the said Emergency Management Agency; and

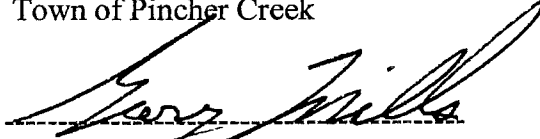
WHEREAS the Town, the M.D. and the Village agree to appoint a Joint Emergency Management Committee and to establish a joint Emergency Management Agency.

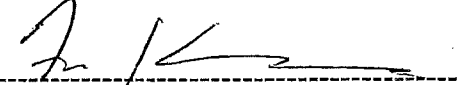
NOW THEREFORE, THE PARTIES DESIRE THAT a Joint Emergency Management Agency be established the parties hereto agree as follows:

1. That the Preamble shall form part of this agreement.
2. That the Town, the M.D. and the Village will adopt a by-law establishing a Joint Municipal Emergency Management Agency.
- 2A. The Town, the M.D. and the Village create a Joint Municipal Emergency Management Committee.
3. That the Joint Municipal Emergency Management Agency shall be operated in Accordance with the by-laws adopted by the Town, the M.D. and the Village Councils.
4. Create a cost sharing formula.
5. Any party may terminate this agreement upon two {2} years notice in writing.

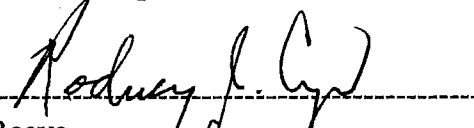
In Witness Whereof the parties have hereunto affixed their corporate seals attested to by their property officers on the day and year first written above.

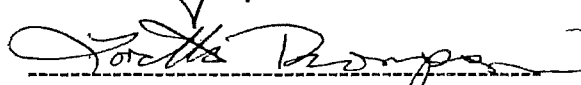
Town of Pincher Creek

  
-----  
Mayor

  
-----  
Chief Administrative Officer

The Municipal District of Pincher Creek No. 9

  
-----  
Reeve

  
-----  
Chief Administrative Officer

The Village of Cowley

*Gregory W. Martin*

Mayor

*Luigi*

Chief Administrative Officer





Please note :

This agreement, 08-013 is no longer in force, as of 27 August, 2019 when the Emergency Management Bylaw, referenced as 1307-19 was signed by all 3 partners, including the MD & Town of Pincher Creek and the Village of Cowley.

Date Reviewed

13 Feb 2020



Troy MacCulloch  
CAO, MD of Pincher Creek



Cindy Cornish  
CAO, Village of Cowley



**MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9  
BYLAW NO. 1307-19**

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**MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9  
BYLAW NO. 1307-19**

**A BYLAW OF THE MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9 IN THE PROVINCE  
OF ALBERTA TO PROVIDE FOR EMERGENCY MANAGEMENT.**

WHEREAS the Council of the Municipal District of Pincher Creek No. 9 is responsible for the direction and control of its emergency response and is required, under the *Act*, to appoint an emergency advisory committee and to establish and maintain an emergency management agency and appoint a director of the emergency management agency;

AND WHEREAS it is recognized that an *Emergency* or *Disaster* of a jurisdictional or multi-jurisdictional nature could affect any or all of the *Partnering Municipalities* to such a degree that local resources would be inadequate to cope with the situation;

AND WHEREAS *Council* wishes to maintain a regional emergency management partnership between the *Partnering Municipalities* for the purpose of integrated emergency management planning and operations;

**NOW THEREFORE, the Council of Municipal District of Pincher Creek No. 9, in the province of Alberta, duly assembled enacts as follows:**

**PART I:  
CITATION, PURPOSE AND DEFINITIONS**

**Citation**

1. This bylaw may be cited as the "Emergency Management Bylaw".

**Purpose**

2. The purposes of this bylaw is to provide for the direction and control of emergency operations under the *Act* in the *Municipality*.

**Definitions**

3. In this bylaw, unless the context otherwise requires:
  - (a) "**Act**" means the Emergency Management Act, Revised Statutes of Alberta 2000, Chapter E-6.8 and the regulations thereto, as amended or replaced from time to time;
  - (b) "**Agency**" (*Emergency Management Agency*) means the agency established under section 28;
  - (c) "**Council**" means the municipal council of the *Municipality*;
  - (d) "**Councils**" means each municipal council of the *Partnering Municipalities*;
  - (e) "**Deputy Directors**" and "**Deputy Regional Directors of Emergency Management**" mean each person appointed as a Deputy Regional Director of Emergency Management under section 36;
  - (f) "**Director**" and "**Director of Emergency Management**" mean the person appointed Regional Director of Emergency Management under section 36 and the director of emergency management and the director of the emergency management agency under section 37;
  - (g) "**Disaster**" means an event that results in serious harm to the safety, health or welfare of people or in widespread damage to property or the environment;
  - (h) "**Emergency**" means an event that requires prompt co-ordination of action or special regulation of persons or property to protect the safety, health or welfare of people or to limit damage to property or the environment;
  - (i) "**Emergency Advisory Committee**" means the committee established under section 14;
  - (j) "**Emergency Declaration Committee**" means the committee established under section 44;

- (k) **"Emergency Management Agency"** (*Agency*) means the agency established under section 28;
- (l) **"Emergency Management Program"** means those activities authorized or required by this bylaw and includes the emergency management program referenced in the *Regulations*;
- (m) **"Emergency Plan"** means the plan of the *Partnering Municipalities* prepared to coordinate response to an *Emergency* or *Disaster* and includes any material required by the *Regulations* for a municipality's emergency plan;
- (n) **"Emergency Plans and Programs"** means
  - (i) the *Emergency Plan*,
  - (ii) the *Emergency Management Program*,
  - and
  - (iii) any other emergency plan or program under the *Act* related to the *Partnering Municipalities*.
- (o) **"Joint Emergency Management Committee"** means the committee established under section 4;
- (p) **"Municipal Government Act"** means the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26 and the regulations thereto, as amended or replaced from time to time;
- (q) **"Minister"** means the minister responsible for the *Act*;
- (r) **"Municipality"** means Municipal District of Pincher Creek No. 9;
- (s) **"Partnering Municipalities"** means each of the municipalities listed in Schedule "A";
- (t) **"Regional Director of Emergency Management"** (*"Director"* or *"Director of Emergency Management"*) means the person appointed Regional Director of Emergency Management under section 36;
- (u) **"Regulations"** means the regulations under the *Act*;  
and
- (v) **"State of Local Emergency"** means a state of local emergency declared in accordance with the *Act* and this bylaw.

## PART II: JOINT EMERGENCY MANAGEMENT COMMITTEE

### Establishment

4. There is hereby established the Pincher Creek Joint Emergency Management Committee, that shall be a joint committee of the *Partnering Municipalities* under section 11.3(1)(b)(ii) of the *Act*.

### Membership and Quorum

5. Each of the *Partnering Municipalities* shall appoint to the committee the number of voting members listed in Schedule "A" from the members of council of their municipality.
6. Each of the *Partnering Municipalities* may designate one or more alternates for the voting members it has appointed to the committee.
7. In the absence of a voting member for which they were designated as an alternate, the alternate may participate in the committee as a voting member.
8. Quorum for the committee is a majority of voting members.

### Functions and Duties

9. Upon a ministerial order under section 11.3(1)(b)(ii) of the *Act* so authorizing, the committee is delegated the power and duty under section 11.1(1) of the *Act* to appoint the *Emergency Advisory Committee* as established under section 14 of this bylaw.

10. Upon a ministerial order under section 11.3(1)(b)(ii) of the *Act* so authorizing, the committee is delegated the power and duty under section 11.3(1)(a) of the *Act* to delegate to the *Emergency Advisory Committee* the powers to declare, renew and terminate a *State of Local Emergency* according to section 21 of this bylaw.

#### **Committee Chair**

11. At the first meeting of each year, the committee shall appoint a chair from its members.

#### **Meetings**

12. The committee will meet upon
- (a) the appointment or change of appointment of its members,
  - or
  - (b) the receipt or change of a ministerial order under section 11.3(1)(b)(ii) of the *Act*.

#### **Member Expenses**

13. The *Municipality* shall provide for the payment of expenses of the members of the committee in accordance to the funding formula listed in Schedule "A".

### **PART III: EMERGENCY ADVISORY COMMITTEE**

#### **Establishment**

14. There is hereby established the Pincher Creek Regional Emergency Advisory Committee, that shall be the emergency advisory committee of the *Partnering Municipalities* under section 11.1(1) of the *Act*.

#### **Membership and Quorum**

15. Each voting member of the *Joint Emergency Management Committee* designated under section 5 shall be appointed a voting member of the *Emergency Advisory Committee*.
16. Each alternate designated under section 6 may act as an alternate on the committee for the same person they were designated an alternate for on the *Joint Emergency Management Committee*.
17. In the absence of a voting member for which they were designated an alternate, the alternate may participate in the committee as a voting member.
18. Quorum for the committee is
- (a) any two voting members, when meeting for the sole purpose of declaring, renewing or terminating a *State of Local Emergency*,
  - or
  - (b) a majority of voting members, in any other circumstances.

#### **Purpose**

19. During an emergency or disaster, the purpose of the committee is to carry out the functions and duties of section 21 and when those events are not occurring, the purpose of the committee is to carry out the functions and duties of section 20.

#### **Functions and Duties**

20. The committee shall:
- (a) provide governance, guidance and direction to the *Emergency Management Agency*;
  - (b) review the *Emergency Plans and Programs* on a regular basis;
  - (c) advise *Councils*, on the status and development of the *Emergency Plans and Programs* at least once each year;
  - (d) recommend to *Councils*, an annual budget to carry out approved *Emergency Plans and Programs*, develop and update *Emergency Plans and Programs*, and fund the expenses of

the *Joint Emergency Management Committee*, the *Emergency Advisory Committee* and the *Emergency Management Agency*;

- (e) ensure the *Emergency Management Agency* performs all duties and functions in sections 30 to 31;  
and
- (f) ensure the *Director* and *Deputy Directors* perform all duties and functions in sections 39 to 41.

#### **Declare, Renew or Terminate a SOLE**

- 21. The committee may declare, renew or terminate a *State of Local Emergency* for any of the *Partnering Municipalities* by resolution in accordance with sections 53 to 60.
- 22. For greater certainty, a resolution under section 21 may be for any of the *Partnering Municipalities* regardless of whether any of the voting members present are from the council of the affected municipality.

#### **Committee Chair**

- 23. The committee annually shall appoint a chair from its members.

#### **Meetings**

- 24. The committee shall meet a minimum of two times per year.
- 25. All decisions of the committee shall be by resolution.
- 26. When meeting for the sole purpose of declaring, renewing or terminating a *State of Local Emergency*,
  - (a) the committee shall meet at the request of the *Director of Emergency Management* or delegate or any member of the committee;
  - (b) meetings do not require notice;  
and
  - (c) meetings may be held in person, by telephone or other means of communications or combination thereof.

#### **Member Expenses**

- 27. The *Municipality* shall provide for the payment of expenses of the members of the committee in accordance to the funding formula listed in Schedule "A".

### **PART IV: EMERGENCY MANAGEMENT AGENCY**

#### **Establishment**

- 28. There is hereby established the Pincher Creek Regional Emergency Management Agency, that shall be the emergency management agency of each of the *Partnering Municipalities* under section 11.2(1) of the *Act*.

#### **Membership**

- 29. The *Agency* shall consist of:
  - (a) the *Director* and *Deputy Directors*;
  - (b) the Chief Administrative Officers of each of the *Partnering Municipalities*;
  - (c) the administrative head of the following departments of each of the *Partnering Municipalities*:
    - (i) Operations,
    - (ii) Public Works,
    - (iii) Community Services,



- (iv) Finance,
    - and
  - (v) Information Technology;
- (d) the identified representative for emergency management purposes of each agency or organization that serves the following purposes in all or a part of the *Partnering Municipalities*:
  - (i) fire response,
  - (ii) policing,
  - (iii) emergency medical services,
  - (iv) public health,
  - (v) disaster social services,
    - and
  - (vi) provincial emergency management agency;
- (e) the identified representative for emergency management purposes of each federal or provincial business unit that is responsible for the following matters in the *Partnering Municipalities*:
  - (i) transportation,
  - (ii) parks,
    - and
  - (iii) streams, rivers and water bodies;
- (f) upon the invitation of the *Director*, the identified representative for emergency management purposes of each agency, organization, or company that serves the following purposes in all or a part of the *Partnering Municipalities*:
  - (i) search and rescue,
  - (ii) health care facilities,
  - (iii) school boards,
  - (iv) dam operations,
  - (v) energy, utility or environmental regulation,
  - (vi) utility companies,
  - (vii) energy transport companies,
  - (viii) major industry,
  - (ix) animal care,
    - and
  - (x) neighbouring emergency management agencies;
    - and
- (g) all others deemed necessary by the *Director* to assist in the preparation or implementation of *Emergency Plans and Programs*.

### Functions and Duties

- 30. The *Agency* shall act as the agent of each of the *Councils* to carry out all of their powers and duties under the *Act*. This does not include the power to declare, renew or terminate a *State of Local Emergency*.
- 31. The *Agency* shall
  - (a) provide assistance and guidance to the *Director*,
  - (b) be responsible for the administration of the *Emergency Management Program* of the *Partnering Municipalities*;

- (c) report to the *Emergency Advisory Committee* at least two times a year to provide updates on *Agency* activities, which shall include an update of the *Agency's* review of the *Emergency Plan* of the *Partnering Municipalities*;
- (d) use a command, control and coordination system prescribed by the Managing Director of the Alberta Emergency Management Agency or in absence of such a prescription, the Incident Command System;
- (e) provide advice to the *Emergency Advisory Committee* as required;
- (f) review all *Emergency Plans and Programs* of the *Partnering Municipalities* on an annual basis and ensure their accuracy;
- (g) cause the *Emergency Plan* to be activated when required;
- (h) provide training on the *Emergency Plan* for *Agency* members, elected officials, municipal staff, mutual aid responders, volunteers and public;
- (i) keep training records;
- (j) plan and execute exercises to validate the *Emergency Plan*;
- (k) review all exercises conducted;
- (l) review the impact of incidents on the system;
- (m) conduct public information programs relating to emergency preparedness;
- (n) share public information, as necessary, on the *Emergency Plan* with:
  - (i) municipal departments,  
and
  - (ii) industrial and municipal neighbours;
- (o) ensure the *Partnering Municipalities* have appropriate resources and equipment available;  
and
- (p) perform any other functions and duties as required by this bylaw or by *Councils*.

#### **Director**

32. The *Director of Emergency Management* shall be the director of the *Agency*.

#### **Meetings**

33. The *Agency* shall meet in plenary at least once annually.
34. The *Director* may form working groups from the *Agency*, which may meet as needed, to carry out those functions and duties of the *Agency* designated by the *Director*.

#### **Expenses**

35. The *Municipality* shall provide for the payment of expenses of the *Agency*, the *Emergency Management Program* and the development and updating of *Emergency Plans and Programs* in accordance to the funding formula listed in Schedule "A".

### **PART V: DIRECTOR AND DEPUTIES**

#### **Appointment**

36. Upon the recommendation of the *Emergency Advisory Committee*, *Council* shall appoint by resolution a *Regional Director of Emergency Management* and one or more *Deputy Regional Directors of Emergency Management*.
37. The *Regional Director of Emergency Management* shall be, under the *Act* and *Regulations*, the director of emergency management for all *Partnering Municipalities* and the director of the emergency management agency.

38. Each of the *Deputy Regional Directors of Emergency Management* shall be a deputy director of emergency management for all *Partnering Municipalities* and a deputy director of the emergency management agency.

### **Functions and Duties**

39. The *Director* with the advice and assistance of the *Agency* shall
- (a) prepare and co-ordinate *Emergency Plans and Programs* for the *Partnering Municipalities*;
  - (b) act as director of emergency operations on behalf of the *Emergency Management Agency*;
  - (c) co-ordinate all emergency services and other resources used or required in an *Emergency*;
  - (d) perform other duties as prescribed by the *Emergency Advisory Committee* or *Councils*;
  - (e) implement and follow the *Emergency Plan* when the criteria for it are met;
  - (f) act as the director as described in the *Emergency Plan* or ensure someone is designated to so act;
  - (g) report on an annual basis to the *Emergency Advisory Committee* on all activities of the *Emergency Management Agency* and provide an update on the review of the *Emergency Plans and Programs*;
  - (h) liaise with external agencies and surrounding municipalities who have a role in emergency response at regional facilities;
  - (i) submit to *Councils* annually through the *Emergency Advisory Committee*, a report on the status of the *Emergency Management Program* in the *Partnering Municipalities*;
  - (j) ensure the *Emergency Management Agency* performs all duties and functions in sections 30 to 31;
  - (k) or ensure that someone is designated to discharge the responsibilities specified in subsections 39(a) to 39(j).
40. *Deputy Directors* shall have the powers, duties and functions of the *Director* in the *Director's* absence or inability to act or as time to time delegated by the *Director*.
41. The *Director* is authorized to delegate and authorize further delegations of any powers, duties, and functions delegated to the *Director* under this bylaw.

## **PART VI: EMERGENCY PLANS AND PROGRAMS**

### **Approval**

42. Upon the recommendation of the *Emergency Advisory Committee*, *Council* shall approve the *Emergency Plans and Programs*.
43. Amendments to the *Emergency Plans and Programs* that are
- (a) required by legislation or regulations,
  - (b) housekeeping,
  - or
  - (c) non-substantive
- may be approved by the *Director* and ratified by *Emergency Advisory Committee*, and upon the recommendation of the *Emergency Advisory Committee* by *Councils*.

## **PART VII: EMERGENCY DECLARATION COMMITTEE**

### **Establishment**

44. There is hereby established the Emergency Declaration Committee for the *Municipality*.

45. For greater certainty, the committee shall act independently of the similar committees for the other *Partnering Municipalities*.

#### **Membership and Quorum**

46. Every member of *Council* shall be a member of the committee.  
47. Quorum shall be any two members of the committee.

#### **Functions and Duties**

48. The committee is authorized to declare, renew or terminate a *State of Local Emergency* by resolution in accordance to sections 53 to 60.

#### **Meetings**

49. The committee shall meet at the request of the *Director of Emergency Management* or delegate, the Chief Administrative Officer of the *Municipality*, or any member of the committee.  
50. Meetings do not require notice.  
51. Meetings may be held in person, by telephone or other means of communications or combination thereof.

#### **Member Expenses**

52. The *Municipality* shall provide for the payment of expenses of the members of the committee.

### **PART VIII: STATE OF LOCAL EMERGENCY**

#### **Each Municipality**

53. A declaration, renewal or termination of a *State of Local Emergency* shall  
(a) be processed separately for each of the *Partnering Municipalities* affected;  
and  
(b) address only the *Municipality* upon whose behalf it is made.

#### **Declaration or Renewal of a SOLE**

54. By resolution  
(a) the *Emergency Declaration Committee* authorized under section 48,  
or  
(b) in situations where the *Emergency Declaration Committee* is unable to meet on a timely basis, the *Emergency Advisory Committee* authorized under section 21  
may make a declaration or renewal of a *State of Local Emergency*, at any time when it is satisfied that an *Emergency* exists or may exist.
55. Any declaration or renewal shall be accompanied by a recommendation from the *Director of Emergency Management* or delegate.
56. When a *State of Local Emergency* is declared or renewed, the committee making the declaration shall:  
(a) ensure the declaration or renewal identifies the nature of the *Emergency* and the area of the municipality in which it exists;  
(b) cause the details of the declaration or renewal to be published immediately by such means of communication considered most likely to notify the population of the area affected;  
(c) notify the Alberta Emergency Management Agency as soon as reasonably practicable;  
and  
(d) forward a copy of the declaration or renewal to the *Minister* forthwith.



### Termination of SOLE

57. A declaration or renewal of a *State of Local Emergency* is considered terminated and ceases to be of any force or effect when:
- (a) a resolution is passed under section 58;
  - (b) a period of seven days has lapsed since it was declared, unless it is renewed by resolution;
  - (c) the Lieutenant Governor in Council makes an order for a State of Emergency under the *Act*, relating to the same area;
- or
- (d) the Minister cancels the *State of Local Emergency*.
58. By resolution,
- (a) the *Emergency Declaration Committee* authorized under section 48,
- or
- (b) in situations where the *Emergency Declaration Committee* is unable to meet on a timely basis, the *Emergency Advisory Committee* authorized under section 21,
- shall terminate a current declaration or renewal of a *State of Local Emergency* when in the opinion of the committee, an *Emergency* no longer exists in relation to which the declaration was made.
59. Any termination shall be accompanied by a recommendation from the *Director of Emergency Management* or delegate.
60. When a *State of Local Emergency* has been terminated, the committee doing so shall:
- (a) cause the details of the termination to be published immediately by such means of communication considered most likely to notify the population of the area affected;
  - (b) notify the Alberta Emergency Management Agency as soon as reasonably practicable;
- and
- (c) forward a copy of the termination to the *Minister* forthwith.

### Powers

61. Subject to section 57, upon declaration or renewal of a *State of Local Emergency* and for the duration of the *State of Local Emergency*, the *Emergency Management Agency* under the direction of the *Director* may perform all powers and duties given to the *Municipality* in section 24(1) of the *Act*.
62. *Council* may, during or within 60 days after the *State of Local Emergency*, by bylaw that is not advertised but is approved by the minister responsible for the *Municipal Government Act*, borrow any money necessary to pay expenses caused by the *Emergency* including payment for services provided by the Government of Alberta or by the Government of Canada when the services were provided at the request of the *Municipality*.

### Protection from Liability

63. No action lies against the *Municipality*, the *Council*, the *Emergency Declaration Committee*, the *Joint Emergency Management Committee*, the *Emergency Advisory Committee*, the *Emergency Management Agency*, the *Director*, the *Deputy Directors* and any person acting under the direction or authorization of these entities for anything done or omitted to be done in good faith while carrying out a power or duty under this bylaw during a *State of Local Emergency*.
64. In accordance with section 535(2) of the *Municipal Government Act*, councillors, council committee members, municipal officers and volunteer workers are not liable for loss or damage caused by anything said or done or omitted to be done in good faith in the performance or intended performance of their functions, duties, or powers under the *Municipal Government Act* or any other enactment.

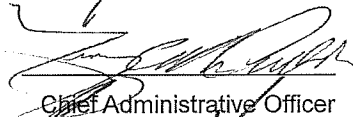
**PART IX:  
GENERAL PROVISIONS**

65. *Council* may:
- (a) by bylaw that is not advertised borrow, levy, appropriate and expend all sums required for the operation of the *Emergency Management Agency*; and
  - (b) enter into agreements with and make payments or grants, or both, to persons, or organizations for the provision of services in the development or implementation of *Emergency Plans and Programs*, including mutual aid plans and programs.
66. Bylaw 1254-14 and amendments thereto are repealed.
67. This bylaw comes into force upon third and final reading and the subsequent signing by the chief elected official and Chief Administrative Officer of the *Municipality*.

READ A FIRST TIME THIS 9 DAY OF JULY, 2019

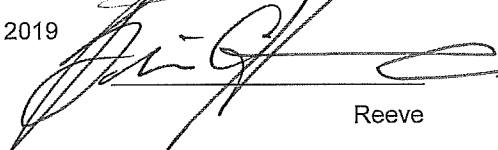


Reeve



Chief Administrative Officer

READ A SECOND TIME THIS 27 DAY OF AUGUST, 2019

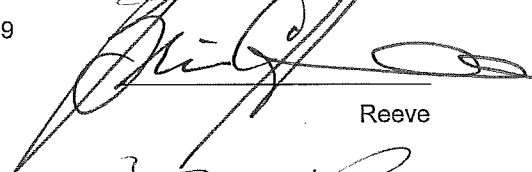


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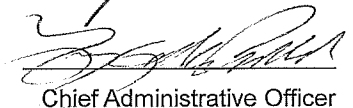


Chief Administrative Officer

READ A THIRD TIME THIS 27 DAY OF AUGUST, 2019



Reeve



Chief Administrative Officer

Attachment: Schedule "A"

**Schedule "A"**  
**Partnering Municipalities**

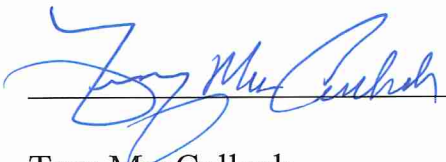
<u><b>Municipality</b></u>	<u><b>Number of Voting Members</b></u>	<u><b>Funding Percentage</b></u>
Municipal District of Pincher Creek No. 9	2	49%
Town of Pincher Creek	2	49%
Village of Cowley	1	2%

Please note :


This agreement has been reviewed and deemed still in force.

Date Reviewed

13 Feb 2020



Troy MacCulloch  
CAO, MD of Pincher Creek



Cindy Cornish  
CAO, Village of Cowley

**Next Review Date**

Jan 01, 2023

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**Reviewed by :**

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# **Southern Alberta Emergency Management Resource Sharing Agreement**

# **SOUTHERN ALBERTA EMERGENCY MANAGEMENT RESOURCE SHARING AGREEMENT**

**THIS AGREEMENT** made this 1<sup>st</sup> day of September A.D. 2017

**BETWEEN:** As per list of parties identified in Appendix D

**WHEREAS** a major emergency could affect any community, municipality(s), and/or First Nations at any time, regardless of size to such a degree that local resources would be inadequate to stabilize the situation.

**AND WHEREAS** the parties to this agreement desire to progressively work toward a high level of emergency management preparedness and state of readiness for prompt regional collaboration in support of two or more parties as identified in Appendix D and Appendix E during a Type 3, 2, 1 incident/event as defined by ICS Public Safety Canada.

**AND WHEREAS** the parties to this Agreement are not limited to Municipal Corporations within the Province of Alberta, incorporated pursuant to the *Municipal Government Act RSA 2000, M-26*, as amended;

**AND WHEREAS** each party to this Agreement is required to provide *Emergency Services* within their respective boundaries;

**AND WHEREAS** each of the parties acknowledge and agree that it is desirable and to the parties mutual benefit, that from time to time, each be able to provide assistance to any or all of the other parties to this Agreement;

**AND WHEREAS** each of the parties desire to enter into this Agreement to formalize the systems and procedures which can be utilized in order for the parties to request resources and assistance from another party or parties to this Agreement and to respond where/when possible to such requests;

**AND WHEREAS** the parties understand that this agreement is intended for the purposes of transitioning toward formal regionalization and effective incident management for Type 3 escalating, Type 2 and/or 1 incidents to best provide public protection;

**AND WHEREAS** the authority for local authorities to enter into this agreement by bylaw is provided in Sections 7 (a & f) and 54 of the current Municipal Government Act and/or Band Council Resolution (BCR).

**NOW THEREFORE** in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt of which are hereby acknowledged, each municipality and First Nations Council that is a party to this Agreement agrees as follows:

1. In this Agreement, the following words and terms shall have the following meanings:

a) "Assistance" shall mean *Emergency Services* and/or multidisciplinary resources made

available pursuant to this Agreement. *Assistance* may relate to incidents that the *Requesting Party* may or may not attend, and/or incidents that the *Requesting Party* does attend, but believes it would be prudent to require additional resources for augmenting response purposes.

- b) “*Consumables*” shall mean tools; equipment and products once used cannot likely be recovered.
- c) “*Designated Officer*” shall mean person whom in their scope of responsibilities can authorize the employment or deployment of equipment, personnel, consumables and delegation of authority for the provision of *Emergency services*.
- d) “*Emergency Services*” shall be multidisciplinary organizations who evaluate and/or respond to all hazards incidents and/or events for the purposes of providing public safety protection.
- e) “*Equipment*” shall mean vehicles, apparatus and equipment by type and by kind, commensurate with the degree of complexity of the incident.
- f) “*Fee Schedule*” shall be on a cost recovery basis as defined by the *Responding Party(s)*. Where the *Fee Schedule* is in dispute, the posted Rate Schedule published by Alberta’s Ministry of Infrastructure and Transportation shall be utilized.
- g) “*FOIPPA*” The parties hereby acknowledge and agree that this Agreement and its contents may be subject to disclosure under the *Freedom of Information and Protection of Privacy Act (FOIPPA)*, *Alberta*, and nothing in this Agreement shall require a party to violate any duty or obligation the party has or may have under *FOIPPA*.
- h) “*Governance*” of this agreement shall be accomplished through the Chair of *SAEMRSA* whom shall be chosen by committee members by whatever means deemed appropriate by the committee and will be responsible for a one-year term to coordinate meetings, assign a minute taker who will distribute minutes to all parties.
- i) “*Incident Complexity*” typing shall be defined in concert with ICS Public Safety Canada as per Appendix G
- j) “*Incident Management Team*” as defined as per Appendix F
- k) “*Local Authority*”: is defined in Section 1 (g) of the current *Emergency Management Act, Alberta*.
- l) “*Municipality*” is defined in Section 1 (i) of the current *Emergency Management Act, Alberta*.
- m) “*Municipal Emergency*” is defined as any situation where the resources of the Local Authority and its service providers are involved in efforts to mitigate immediate threat

to life, property, environment and/or economy within the municipality.

- n) “*Personnel*” shall mean those individuals who respond to requests for *Assistance* and who comply with all standards under the *Occupational Health and Safety Act and Regulations, Alberta*.
  - o) “*Requesting Party*” shall mean any party to this Agreement that requests *Assistance* from another party to this Agreement.
  - p) “*Responding Party*” “*Responding Party*” shall mean any party to this Agreement that responds to the request for *Assistance* made by a *Requesting Party*.
  - q) “*SAEMRSA*” shall mean Southern Alberta Emergency Management Resource Sharing Agreement.
2. The “Southern Alberta Emergency Management Resource Sharing Agreement” may be activated when two or more municipalities or First Nations are involved in an incident or event that has, or will likely, overwhelm mutual aid resources.
  3. Subject to the terms and conditions of this Agreement, any *party* to this Agreement may request the *Assistance* of another *party* to this Agreement.
  4. Subject to the terms and conditions of this Agreement, the parties to this Agreement agree that they will endeavor to provide *Assistance* to the *Requesting Party* upon request. At all times, whether or not assistance will be provided, and the nature of the *Assistance* to be provided, if any, will be in the unfettered discretion of the *Responding Party*.
  5. Any *Party* to this Agreement may withdraw from this Agreement by providing the other party with six (6) months written notice of their intention to withdraw.
  6. All requests for *Assistance* pursuant to this Agreement shall be directed to the *Designated Officer* or authorized representative of the *Responding Party*, as soon as reasonably possible. If the *Responding Party’s Designated Officer* or designate cannot be contacted, the next person in the chain of command of the *Responding Party* may, but will not be required to respond.

NOTE: The *Requesting Party* shall complete the request form in “Appendix A” and forward to the manager or designate of the *Responding Party* at the time of request or as soon as reasonably possible.

7. The *Requesting Party’s Designated Officer* may delegate authority to a *Responding Party* to request, employ or command equipment or personnel as defined. When operating under the *delegation of authority* the party doing so, shall present the *delegation of authority* form to the on-site *Requesting Party*.

NOTE: The *Delegation of Authority* form is provided in Appendix C of this Agreement.

8. A *Responding Party* may, after responding to a request for *Assistance*, withdraw their *Assistance* in the event that the *Responding Party*, the *Responding Party’s Designated Officer*, or their designate of either of them, deems it prudent or desirable to withdraw



*Assistance*. Without restricting the generality of the forgoing, *Assistance* may be withdrawn if the *Responding Party's* Equipment or services are required elsewhere, or it is deemed to be prudent and/or unsafe to provide or continue providing *Assistance*.

9. When providing *Assistance*, the following command and control structure applies:
  - a. The *Requesting Party* shall have incident command authority over all incidents which occur within its geographic boundaries, provided that the *Requesting Party's Emergency Services* is in attendance and does not relinquish incident command to the *Responding Party*;
  - b. The *Requesting party* agrees that in the event that a *Responding Party* is the first response to arrive at the scene of an incident, that *Responding Party* will assume and establish incident command until such time as the *Requesting Party* assumes and/or unifies command or the *Responding party* transfers command.
  - c. Formal requests including a recommendation for a *declaration of a state of local emergency* by the Incident Commander or qualified designate, shall be communicated in accordance with incident command structure protocol.
  - d. "*Declaration of a state of local emergency*" as defined in Section 21 (1) of the *Emergency Management Act, Alberta*.
10. In providing *Assistance*, a *Responding Party* shall not be required to provide Equipment that is not owned by the *Responding Party*, or employees or volunteers who are not employed or usually utilized by the *Responding Party*.
11. It is acknowledged and agreed by the signatories hereto that a *Responding Party* providing *Assistance* pursuant to this Agreement shall be entitled to bill or charge the *Requesting Party* for Equipment and/or services, or support for *Assistance* provided.

NOTE: The fee schedule for the purposes of billing as defined in Appendix B of this agreement.

NOTE: Where the fee schedule is in dispute the current Rate Schedule published by Alberta's Ministry of Infrastructure and Transportation shall be utilized.

12. The *Requesting Party* shall indemnify, defend, pay on behalf of and hold harmless the *Responding Party*, its officers, officials, agents, representatives, employees and volunteers from and against all losses, claims, demands, costs (including solicitor/client costs), damages, actions, suits, or proceedings arising, directly or indirectly, out of or in connection with the provision of *Assistance* by the *Responding Party*, except where the losses, claims, demands, costs, damages, actions, suite or proceedings arose due to the gross negligence of any employee, volunteer or representative of the *Responding Party*. The liability of the *Requesting Party* shall survive the termination of this Agreement.
13. Notwithstanding Article 11 and 12 of this Agreement, the parties to this Agreement covenant and agree that a *Responding Party* will not in any way be liable to a *Requesting Party* for:

- a. Failure to respond to a request for *Assistance*, or failure to provide *Assistance*;
  - b. Failure to respond to a request for *Assistance* within a certain period of time, or in a timely fashion;
  - c. Consequential, indirect, exemplary or punitive damages;
  - d. Economic loss;
  - e. Any Claims that arise as a result of a party's refusal to provide *Assistance*;
  - f. Any Claim that arises or results from the manner in which a *Responding Party* provides or does not provide *Assistance*, save and except Claims directly arising from the gross negligence of the *Responding Party* while providing *Assistance*.
14. The *parties* hereto shall, at their own respective cost and expense, maintain in full force and effect during the life of this Agreement, general liability insurance in an amount not less than \$5,000,000.00 per occurrence for personal injury and/or property damage, together with such other insurance that may be agreed to in writing by the parties hereto as being reasonable and obtainable.
  15. Nothing in this Agreement, nor any of the acts of any party hereto shall be construed, implied or deemed to create a relationship of agency, partnership, joint venture, or employment as between the signatories hereto, or any of them, and none of the parties have the authority to bind any other party to this Agreement to any obligation of any kind.
  16. The party providing *Assistance* will be responsible for submitting to the *Requesting Party* a written invoice for the services provided to the *Requesting Party* within 30 days of the service(s) being provided.
  17. The *Requesting Party* will be responsible for the payment of all costs associated with the provision of the service and or support within 60 days of receipt of a written invoice for services provided. Extensions may be provided upon approval of the *Responding party(s)*
  18. No signatory to this Agreement may assign this Agreement to a non-signatory without the written consent of the other signatories' hereto.
  19. The terms and conditions contained in this Agreement shall extend to and be binding upon the respective successors and permitted assigns of the parties to this Agreement.
  20. In this Agreement, the singular shall mean the plural, and the masculine the feminine, and vice-versa, as the context of this Agreement may require.
  21. This Agreement may be executed in counterparts each of which when so executed shall be deemed to be an original and such counterparts shall constitute one in the same instrument, notwithstanding their date of execution.
  22. In the event that any dispute arises pursuant to the terms of this Agreement, or the interpretation thereof, the parties hereto agree that, in the event that such a dispute cannot be resolved by mutual negotiations, they will submit the dispute to a third party

arbitrator for a determination of the dispute pursuant to the *Arbitration Act of Alberta*. The costs of the arbitrator will be shared equally between the parties to any such dispute.

23. The parties shall notify their respective *Designated Officers* and *Emergency Services* officers of this Agreement so that they may become familiar with this Agreement, and its terms.
24. Appendix 'D' herein will serve as the record of the parties to this Agreement. The parties to this Agreement further acknowledge and agree that they will comply with all laws, rules, regulations, and codes applicable to the provision of *Emergency Services* within the Province of Alberta.

### APPENDIX A - Resource Request Form

Name of Incident or Event: \_\_\_\_\_

*Requesting Party:* \_\_\_\_\_

*Responding Party:* \_\_\_\_\_

The *Requesting Party* formally requests the following resources from the *Responding Party* for an estimated duration of \_\_\_\_\_ days.

1: \_\_\_\_\_

2: \_\_\_\_\_

3: \_\_\_\_\_

4: \_\_\_\_\_

5: \_\_\_\_\_

6: \_\_\_\_\_

If further resources are required attach an addition sheet.

A- The *Requesting Party* agrees that if personnel are to be deployed for greater than 12 (twelve) hours at a distance of greater 150 Km from home base, lodging will be supplied for a minimum of 8 (eight) hour rest period.

B- The *Requesting Party* agrees to ensure adequate food and lodging are supplied to Responding Party personnel if deployed greater than 24 (twenty four) hours.

C- The *Requesting Party* agrees to pay the *Responding Party* at agreed upon rates as agreed upon in Appendix B.

D- The *Responding Party's Designated Officer* will communicate, by any means available i.e., email, text, cell phone etc., as to what resources can be supplied.

*Requesting Party Designated Officer:* \_\_\_\_\_ Contact Information:

Signature: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Date: \_\_\_\_\_ E-Mail: \_\_\_\_\_

## APPENDIX B - Fee Schedule

*Fee Schedule* shall be on a cost recovery basis as defined by the *Responding Party(s)*. Where the *Fee Schedule* is in dispute, the posted Rate Schedule published by Alberta's Ministry of Infrastructure and Transportation shall be utilized. Potential Resources (not exhaustive) that may be requested:

1. Mileage – Under one-ton to and from event.
2. Mileage – Over one-ton to and from event.
3. Lodging
4. Meals include healthy Breakfast – Lunch – Supper
5. *Consumables*
6. Personnel (Career)
7. Personnel (Volunteer)
8. Personnel (Paid on Call)
9. Damaged Equipment – Insurance or Cost Recovery of repair or replacement.
10. Fire Apparatus (without staffing):
  - a. Type 1 – 2 Engines
  - b. Type 3 – 5 Engines
  - c. Type 6 – 7 Engines
  - d. Ladder
  - e. ATV – UTV
  - f. Rescue (Light, Medium or Heavy)
  - g. Squad/Car
  - h. Sprinkler Trailer
  - i. Specialty Apparatus – i.e.: Hazmat
11. Fire Apparatus: Based on 24 Hour Day (without staffing):
  - a. Command Vehicle
  - b. Command Center
12. Other Vehicles and Construction Equipment – Current Alberta Road Builders Rates
13. One Time Administration Fee
14. Responding Party will provide backup data for cost recovery items.

### APPENDIX C - Delegation of Authority

1. Authority has been assigned to \_\_\_\_\_ to act on behalf of the  
Municipality of \_\_\_\_\_,  
to mitigate, respond/stabilize, and/or aid in the recovery of the \_\_\_\_\_  
incident.
2. You have full authority to (request, employ or command) \_\_\_\_\_  
equipment, personnel required. Your primary responsibility is to organize and direct your  
assigned or ordered resources for efficient and effective control of the incident.
3. You are accountable to \_\_\_\_\_ or his/her  
designated representative listed below.
4. Financial limitations will be consistent with the best approach to the values at risk. Specific  
direction for this incident covering the management and other concerns are:
  - A: \_\_\_\_\_
  - B: \_\_\_\_\_
  - C: \_\_\_\_\_
  - D: \_\_\_\_\_
  - E: \_\_\_\_\_
  - F: \_\_\_\_\_

\_\_\_\_\_ will represent me on any occasion that I am not immediately available.

5. This authority is effective: Date: \_\_\_\_\_ Time: \_\_\_\_\_.

\_\_\_\_\_  
Requesting Designated Officer

\_\_\_\_\_  
Designated Officer Signature

\_\_\_\_\_  
Date and Time



# APPENDIX D:

# Parties to this Agreement

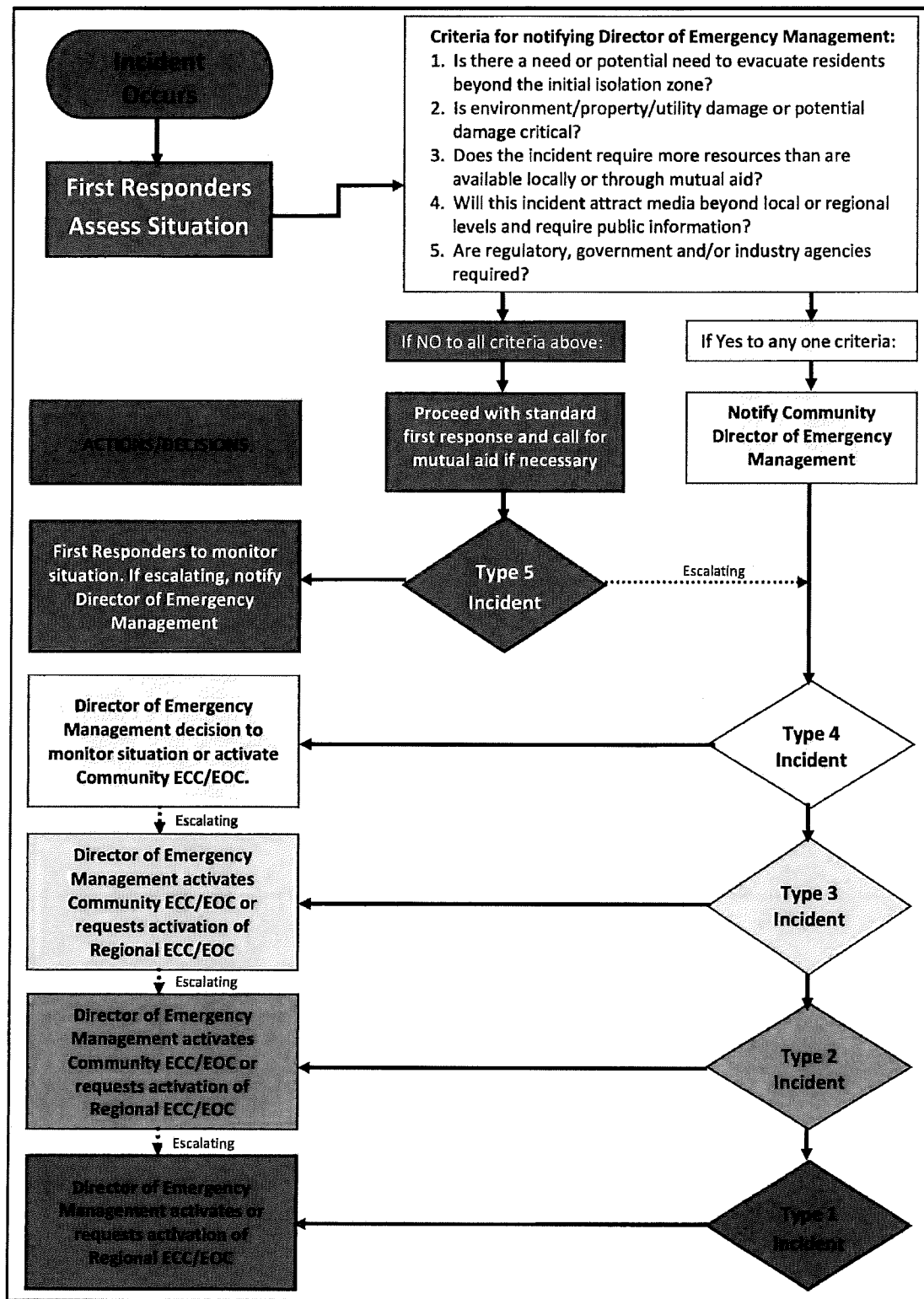
As of August 21, 2019

Municipality or First Nation	Emergency Contact	Contact Information	Council Resolution	Resolution Date
Cardston County				
City of Brooks	Kevin Swanson (DEM)	403-363-4330, 403-362-2331 kswanson@brooks.ca	18/267	4-Sep-18
City of Lethbridge	Marc Rathwell (DEM)	403-329-1824 marc.rathwell@lethbridge.ca	N/A	20-Feb-18
City of Medicine Hat	Merrick Brown (DEM)	403-502-8712 merbro@medicinehat.ca	N/A	12-Apr-18
Cypress County				
County of Forty Mile No. 8.	Stewart Payne (DEM)	403-867-4284 DEM@fortymile.ab.ca	94/18	14-Mar-18
Lethbridge County	Clayton Rutberg (DEM)	403-331-4628 emergencyservices@coaldale.ca	519-17	5-Oct-17
M.D of Pincher Creek No. 9	Brett Wuth (DEM)	403-627-3130 pcremo-dem@mdpincercreek.ab.ca	18/411	10-Jul-18
M.D of Ranchland No. 66	Kelly Starling (DEM)	403-625-1185 kelly@mdwillowcreek.com	M060817	15-Aug-17
M.D of Taber				
Vulcan County	Nels Petersen (CAO)	403-485-0329 cao@vulcancounty.ab.ca	CC 2017-08-02-17	2-Aug-17
County of Warner No. 5				
M.D of Willow Creek No. 26	Travis Coleman (DEM)	403-625-9092 travis@mdwillowcreek.com	275/19	17-Jul-19
Town of Bow Island				
Town of Cardston	Jeff Shaw (CAO)	403-653-3366 jeff@cardston.ca	2017-199	8-Aug-17
Town of Claresholm	Jason Hemmaway (DEM)	403-625-9760 jason@claresholr	17-078	14-Aug-17
Town Of Coaldale	Kalen Hastings (CAO)	kalen.hastings@coaldale.ca	N/A	12-Mar-18
Town of Coalhurst	Matt Conte (DEM)	403-892-0223 firechief@coalhu	N/A	20-Feb-18
Municipality of Crowsnest Pass	Patrick Thomas (CAO)	403-561-1251 patrick.thomas@crowsnestpass.com	12-2019-03-26	26-Mar-19
Town of Fort Macleod	Scott Donselaar (DEM)	587-370-0441 s.donselaar@fortm	R 218.2018	23-Jul-18
Town of Granum	David Fehr (DEM)	403-601-9024 david.fehr@live.ca	18-09-10-18	16-Oct-18
Town of Magrath				

Municipality or First Nation	Emergency Contact	Contact Information	Council Resolution	Resolution Date
Town of Milk River	Ryan Leuzinger (CAO)	403-394-5682 cao@milkriver.ca		22-Aug-17
Town of Nanton	Neil Smith (CAO)	403-603-8027 cao@nanton.ca	#2017-08-11	11-Aug-17
Town of Nobleford	Kirk Hofman (CAO)	cao@nobleford.ca	215-2017	1-Sep-17
Town of Picture Butte	Frank West (DEM)	403-795-4623 firechief@picturebutte.ca	252-1807-23	23-Jul-17
Town of Pincher Creek	Brett Wuth (DEM)	403-627-3130 pcremo-dem@mdpincer creek.ab.ca	17-328	28-Aug-17
Town of Raymond	Ken Steed (DEM)	403-752-3816, 403-894-8894 ksteed138@gmail.com	2018-170	17-Jul-18
Town of Redcliff	Derrin Thibault (DEM)	403-548-6387, 403-952-9569 derrint@redcliff.ca	2018-0270	25-Jun-18
Town of Stavely	Clayton Moss (DEM)	403-467-6774 clayrocmoss@gmail.com		12-Feb-18
Town of Taber	Steve Munshaw (Fire Chief)	403-634-7675 steve.munshaw@taber.ca	371-2017	29-Sep-17
Town of Vauxhall				
Town of Vulcan	Kim Fath (CAO)	403-485-0411 kfath@townofvulcan.ca	18.231	9-Jul-18
Village of Arrowwood				
Village of Barnwell				
Village of Barons	Laurie Beck (Administration)	403-757-3633 barons@xplornet.com	N/A	9-Jul-18
Village of Carmangay				
Village of Champion				
Village of Coutts				
Village of Cowley				
Village of Foremost	Kelly Calhoun (CAO)	403-867-3733 vlg4most@telus.net	110/18	16-Jul-18
Village of Glenwood	Marilee Campbell (CAO)	403-626-3233 marilee.campbell@glenwood.ca	2018-07-170	12-Jul-18
Village of Lomond				
Village of Longview	Dale Harrison (CAO)	cao@village.longview.ab.ca	N/A	20-Feb-18
Village of Milo				

Municipality or First Nation	Emergency Contact	Contact Information	Council Resolution	Resolution Date
Village of Stirling				
Village of Warner				
I.D No. 4 (Waterton)				

# APPENDIX E - Model Incident Threshold Notification / Activation Chart



## **APPENDIX F - Incident Management Teams**

Incident management starts as the smallest unit and escalates according to the complexity of the emergency. The five types of IMTs are as follows:

### **Type 1:**

Federal and Provincial Level – a federally or provincially certified team; is the most robust IMT with the most training and experience.

### **Type 2:**

Federal and Provincial Level – a federally or provincially-certified team; has less training, staffing and experience than Type 1 IMTs, and is typically used on smaller national or provincial scale incidents.

### **Type 3:**

Provincial or Metropolitan Area Level – a standing team of trained personnel from different departments, organizations, agencies, and jurisdictions within a Province or large Metropolitan area, activated to support incident management at incidents that extend beyond one operational period. Type 3 IMTs will respond throughout the province or large portions of the province, depending upon provincial-specific laws, policies, and regulations.

### **Type 4:**

City, County or Special District Level – a designated team of fire, EMS, and possibly law enforcement officers from a larger and generally more populated area, typically within a single jurisdiction (city or county), activated when necessary to manage a major or complex incident during the first 6–12 hours and possibly transition to a Type 3 IMT.

### **Type 5:**

Local Village and Township Level – a "pool" of primarily Emergency Services officers from two or more neighboring departments trained to serve in Command and General Staff positions during the first 6–12 hours of a major or complex incident.

## **APPENDIX G - Incident Complexity by Type**

Incident and/or event complexity determines emergency and incident response personnel responsibilities. ICS Public Safety Canada training recommendations reflect the following five levels of incident complexity:

### **Type 1 Incidents or Events:**

- This type of incident is the most complex, requiring provincial/national resources for safe and effective management and operation.
- All command and general staff positions are filled by trained personnel.
- Operations personnel often exceed 500 per operational period and total personnel will usually exceed 1,000.
- Branches need to be established.
- A written incident action plan (IAP) is required for each operational period.
- The agency administrator will have briefings, and ensure that the complexity analysis and delegation of authority are updated.
- Use of resource advisors at the incident base or EOC/ECC is recommended.
- There is a high impact on the local jurisdiction, requiring additional staff for office administrative and support functions.

### **Type 2 Incidents or Events**

- This type of incident extends beyond the capabilities for local control and is expected to go into multiple operational periods. A Type 2 incident may require the response of resources out of area, including regional and/or national resources, to effectively manage the operations, command, and general staffing.
- Most or all of the command and general staff positions are filled.
- A written IAP is required for each operational period.
- Many of the functional units are needed and staffed.
- Operations personnel normally do not exceed 200 per operational period and total incident personnel do not exceed 500 (guidelines only).
- The agency administrator is responsible for the incident complexity analysis, agency administration briefings, and the written delegation of authority.

### **Type 3 Incidents or Events**

- When incident needs exceed capabilities, the appropriate ICS positions should be added to match the complexity of the incident.
- Some or all of the command and general staff positions may be activated, as well as division/group supervisor and/or unit leader level positions.
- A Type 3 IMT or incident command organization manages initial action incidents with a significant number of resources, an extended attack incident until containment/control is achieved, or an expanding incident until transition to a Type 1 or 2 IMT.
- The incident may extend into multiple operational periods.
- A written IAP may be required for each operational period.



**Type 4 Incidents or Events**

- Command staff and general staff functions are activated only if needed.
- Several resources are required to mitigate the incident, including a task force or strike team.
- The incident is usually limited to one operational period in the control phase.
- The agency administrator may have briefings, and ensure the complexity analysis and delegation of authority is updated.
- No written IAP is required but a documented operational briefing will be completed for all incoming resources.
- The role of the agency administrator includes operational plans including objectives and priorities.

**Type 5 Incidents**

- The incident can be handled with one or two single resources with up to six personnel.
- Command and general staff positions (other than the incident commander) are not activated.
- No written IAP is required.
- The incident is contained within the first operational period and often within an hour to a few hours after resources arrive on scene.
- Examples include a vehicle fire, an injured person, or a police traffic stop.

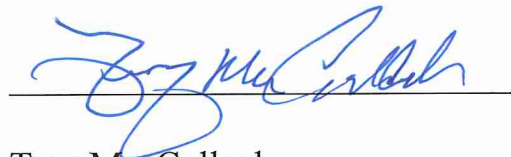


Please note :

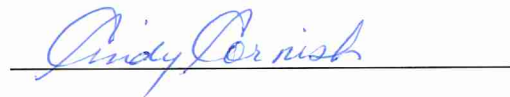
This agreement has been reviewed and deemed still in force.

Date Reviewed

13 Feb 2020



Troy MacCulloch  
CAO, MD of Pincher Creek



Cindy Cornish  
CAO, Village of Cowley

**Next Review Date**

Jan 01, 2023

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**Reviewed by :**

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15-029

(39)

2347



THIS CONTRACT made the 30<sup>th</sup> day of November, 2015.

BETWEEN:

**MUNICIPAL DISTRICT OF PINCHER CREEK No. 9**  
(hereinafter referred to as the "M.D.")

OF THE FIRST PART

- and -

**CROWSNEST / PINCHER CREEK LANDFILL ASSOCIATION**  
(hereinafter referred to as the "Contractor")

OF THE SECOND PART

**WHEREAS** the M.D. requires the Contractor to perform certain work as defined in this contract, which work is to be performed within the M.D. and more particularly described as follows, namely **Waste Removal Services for the M.D. of Pincher Creek No. 9** (hereinafter referred to as "the Work");

**AND WHEREAS** the Contractor is qualified or has in its employment personnel qualified to perform the required Work;

**NOW THEREFORE**, in consideration of the promises, mutual terms, covenants and conditions contained herein, the parties hereto agree as follows:

1. The M.D. hereby retains the Contractor and the Contractor hereby accepts such retainer to provide the Work, which includes, but is not limited to the following, namely:

- 1.1 The Work, in general terms, shall consist of:

- 1.1.1 The contractor shall supply all necessary labour, equipment, expertise, supervision and incidentals to complete this Contract according to the specifications, which are part of this Contract. The work includes as follows:
- Provision of equipment and Waste Removal Services on a scheduled or as required basis as outlined in **Appendix "A"**
- 1.1.2 The M.D. reserves the right to change, add or delete equipment, locations or pickup frequencies at the tendered rate.
- 1.1.3 It will be the responsibility of the contractor ensure public safety and adhere to signage and notification requirements as per M.D. requirement.
- 1.1.4 Equipment required includes, but is not limited to:
- Various Bin Sizes
  - Trucks
- Tenderers are to list the equipment proposed for the work on Appendix "B".
2. The Contractor will provide qualified employees to provide the Work required under this Contract. The obligations of the Contractor performed pursuant to this Contract shall only be performed by the Contractor or an employee or a party acting on behalf of the Contractor who has been approved in advance in writing by the M.D., such approval which may be arbitrarily withheld and which may be terminated or revoked at any time in the discretion of the M.D.
3. In carrying out its obligations hereunder, the Contractor shall be bound by and observe all applicable federal, provincial and municipal legislation and related regulations, which, without limiting the generality of the foregoing, shall comply with the provisions of the *Occupational Health and Safety Act*, R.S.A. 2000, Chapter 0-2 and amendments thereto and Regulations thereunder or any successive legislation, and shall at all times ensure that all employees and Sub-Contractors at the site(s) where the Work is being performed comply with the requirements of the *Occupational Health and Safety Act*, and Regulations thereunder. The Contractor shall be the general representative and agent to the M.D. for the purposes of ensuring compliance with safety regulations for both its own employees and those of any Sub-Contractors. The Contractor shall bring to the attention of Sub-Contractors the provisions of the *Occupational Health and Safety Act* and Regulations thereunder. The Contractor acknowledges that he is an "employer" as defined in the *Alberta Occupational Health and Safety Act*. For the purposes of the Contract, the Contractor is assigned the role of Prime Contractor, pursuant to the *Occupational Health and Safety Act* for the Work site and is responsible for ensuring compliance with the *Occupational Health and Safety Act* by all employers and employees on the Work site.
4. Prior to commencing the Work described hereunder and prior to receiving any payment, the Contractor shall provide evidence of compliance with all requirements of the Province of the place of the Work with respect to Workers' Compensation including payment due thereunder. At any time during the term of this Contract, when requested by the M.D.'s representative, the Contractor shall provide such evidence of compliance by himself and any or all of his Sub-Contractors.



5. The term of the Contract shall be from the date of its final signing or January 1, 2016 to December 31, 2020 (hereinafter referred to as the "Term"). This contract may be extended for a period of up five (5) years, one (1) year at a time, by mutual written consent of the Contractor and the M.D. or at the discretion of Council. Contractors interested in this option should provide additional pricing for the optional years on **Appendix "C"**.
6. The Contractor will submit monthly progress payment applications for the amount of Work performed by the Contractor once the work completed at for the month.
7. In consideration of the proper performance by the Contractor of the Work pursuant to this Contract, and subject to verification of the actual Work performed by the Contractor, the M.D. shall pay the Contractor the amount set out in the Contractor's invoice, within thirty (30) days from the date of receipt of an invoice from the Contractor. The M.D. will make payments in Canadian funds to the Contractor on account of the Contract Price.
8. Payment for the performance of the Work by the Contractor shall be calculated in accordance with the rates and methods set out in **Appendix "A"** or as otherwise indicated. The contractor's invoice shall contain the following information:
  - Date work performed
  - Location
  - Quantity
9. If the M.D. fails to make payments to the Contractor as they become due under the terms of this Contract or in an award by arbitration or court, interest of Prime, as set by the Bank of Canada, plus one percent (Prime plus 1%) per annum on such unpaid amounts shall also become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.
10. Nothing in this Contract shall be construed as:
  - (i) constituting either party as the agent, employer or representative of the other party;
  - (ii) creating a partnership; or
  - (ii) imposing upon either party any partnership duty, obligation or liability to the other party.

The relationship created by this Contract between the M.D. and the Contractor is that of independent contractor.
11. The Contractor has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the M.D., nor to bind the M.D. in any manner whatsoever.
12. All amounts payable by the M.D. to the Contractor for Work hereunder shall be exclusive of any Goods and Work Tax ("GST") payable thereon and the M.D. shall, in addition to the amounts payable, pay to the Contractor all amounts of GST applicable thereon.
13. The Contractor shall be responsible for the payment of all income tax, Canada Pension, employment insurance and all other required payments, contributions or deductions

including, but not limited to, any assessments levied pursuant to the *Workers' Compensation Act* that arise or may hereafter arise with respect to the Work performed by the Contractor under this Contract.

14. The Contractor shall be responsible for all fees, licenses, permits, filings, and all other costs incidental to the performance of the Contractor's obligations under this Contract.
15. The M.D. may, at its discretion, agree in advance to reimburse the Contractor for specific expenses to be incurred by the Contractor in the discharge of its obligations hereunder. Such expenses shall only be paid when approved prior to expenditure and thereafter supported by proper receipts, invoices or vouchers submitted to the M.D. within thirty (30) days from the date upon which such expenses are incurred.
16. For the Term of the Contract, the Contractor will be the priority Contractor engaged by the M.D. to perform the Work as specified in Section 1.1. The M.D. reserves the right to engage other Contractors for the same or similar type of work in the event that the Contractor is unable to perform the Work as assigned to the Contractor by the M.D. The Contractor may accept concurrent contracting retainers from other parties during the Term; provided that they do not interfere, in the opinion of the M.D. acting reasonably, with the Work that the Contractor is required to perform under this Contract.
17. The Contractor will report on a regular basis, as required by the M.D., on the Work provided pursuant to this Contract. The Contractor will make available such information, including trip reports and tonnage, as the M.D. may require from time to time relating to the obligations of the Contractor to allow the M.D. to evaluate the quality and progress of Work provided under this Contract.
18. The Contractor shall have complete control of the Work and shall effectively direct and supervise the Work so as to ensure conformance with the Contract requirements. He shall be solely responsible for service means, methods, techniques, sequences and procedures and for co-ordination of the various parts of the Work under the Contract.
19. The Contractor shall prepare and update as required a service schedule indicating the timing of the major activities of the Work. The schedule shall be designed to ensure conformance with the required Contract Term. The schedule shall be submitted to the M.D. for their information within a reasonable time from the date of Contract award. The Contractor shall monitor the progress of the Work relative to the schedule and advise the M.D. of any revisions required as the result of delays, change of need, indicating the results expected from the resultant change in schedule.
20. Unless otherwise stipulated elsewhere in the Contract Documents, the Contractor shall provide and pay for labour, products, tools, service machinery and equipment, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the Work in accordance with the Contract.
21. The Contractor shall maintain good order and discipline among his employees engaged on the Work and shall not employ on the Work anyone not skilled in the task assigned to him.

22. The Contractor shall confine his apparatus, the storage of products, and the operations of his employees to limits indicated by laws, ordinances, permits or the Contract Documents and shall not unreasonably encumber the premises with his equipment.
23. The Contractor shall maintain the Work in a tidy condition and free from the accumulation of waste products and debris.
24. The M.D. and its authorized agents or representatives shall at all times have access to the Work. If parts of the Work are in preparation at locations other than the site of the Work, the M.D. or its authorized agents or representatives shall be given access to such Work whenever it is in progress.
25. Defective Work or equipment, whether the result of poor workmanship, use of defective products, or damage through carelessness or other act or omission of the Contractor and whether incorporated in the Work or not, which has been rejected by the M.D. as failing to conform to shall be removed promptly from the site of Work by the Contractor and replaced or re-executed promptly at the Contractor's expense.
26. Where the M.D. determines that the Contractor is in default of its obligations as set out in this Contract, the M.D. shall, by written Notice of Default, require the Contractor to remedy such default, at the Contractor's sole expense, within forty-eight (48) hours of the delivery of the Notice of Default to the Contractor. The Contractor shall be in compliance with the M.D.'s instructions if:
  - (a) the Contractor corrects the default within the time specified in the Notice of Default; or
  - (b) if the default cannot be corrected within the time specified in the Notice of Default, the Contractor commences the correction of the default within the time specified in the Notice of Default; and
    - (i) the Contractor provides a schedule to correct the default acceptable to the M.D.; and
    - (ii) the Contractor corrects the default within the time set out in the schedule agreed to by the M.D..

In the event that the default is not corrected in accordance with this clause to the M.D.'s satisfaction, or in the event of urgent circumstances where the giving of a written Notice of Default is impossible, or impracticable, as may be determined by the M.D. in its sole and unfettered discretion, the M.D. may, without prejudice to any other right that the M.D. has pursuant to this Contract, or at law;

- (a) terminate the Contractor's right to continue with the Work of this Contract, in whole or in part; or
- (b) terminate the Contract forthwith; or
- (c) correct the default at the Contractor's expense and deduct the cost of same from any amount of monies that maybe, or become, due and owing to the Contractor, or
- (d) complete the Work, or allow another contractor to complete Work if results are not satisfactory to the M.D.'s Consultant or his representative or in the event that the schedule for the performance of the Work is not being met.

The sum of all damages, expenses, fees, costs, including but not limited to solicitor and client legal costs, incurred or suffered by the M.D. as a result of the Contractor's failure to correct the default, or the termination of the Contractor's right to continue with the Work of this Contract, in whole or in part, or the termination of the Contract forthwith, shall be a debt immediately due and owing by the Contractor to the M.D. which debt may be offset by the M.D. against any monies payable to the Contractor pursuant to this Contract or any other monies payable by the M.D. to the Contractor. The exercise by the M.D. of the rights pursuant to this clause shall not limit any other remedy the M.D. may have pursuant to this Contract or at law.

27. In order to secure the performance of the Contractor's obligations as set out herein, the Contractor shall deliver to the M.D. an irrevocable letter of credit, performance bond or such other form of security ("Security") on such terms and for such an amount as may be deemed acceptable to the M.D., but in any event for an amount no less than **ten percent (10%) of the value of the estimated annual contract (tender)**. The Security shall be delivered to the M.D. accompanying the submitted tender. The Security will be held by the M.D. during the performance of the Contractor's obligations as set out herein. The Security will be returned to the Contractor after the M.D., acting reasonably, determines that the Contractor has satisfactorily performed all of its obligations set out herein. Should the Contractor default in the performance of its obligations set out herein, or should the Contract be terminated by the M.D. as permitted herein, the M.D. will be entitled to draw on, or present demand on the Security for an amount equal to the damages sustained by the M.D. as a result of the Contractor's default or the termination of the Contract by the M.D. as provided for herein.
28. The Contractor acknowledges that the M.D. is subject to the *Freedom of Information and Protection of Privacy Act*, RSA 2000, Chapter M25. Confidentiality for any records compiled or created under this Contract cannot be ensured by the M.D. Provisions exist under the *Freedom of Information and Protection of Privacy Act*, to allow disclosure of personal or business information where disclosure would not be harmful to business interest or would not be deemed an unreasonable invasion of your personal privacy as defined within the *Freedom of Information and Protection of Privacy Act*. The Contractor also acknowledges that information and records compiled or created under this Contract, which are in the custody of the Contractor, are also subject to the *Freedom of Information and Protection of Privacy Act*. If the M.D. receives a request for information under the *Freedom of Information and Protection of Privacy Act*, which includes information provided by the Contractor, the M.D. will give the Contractor notice of such request and the Contractor will respond to such notice in accordance with the *Freedom of Information and Protection of Privacy Act*. If the Contractor does not respond to the notice from the M.D., it will proceed to process the request for information in accordance with its procedures as set forth within the *Freedom of Information and Protection of Privacy Act*. If the M.D.'s response to a request under the *Freedom of Information and Protection of Privacy Act* is appealed to the Office of the Information and Privacy Commissioner, the Contractor shall be responsible for the burden of proof as to exception from disclosure as defined under the *Freedom of Information and Protection of Privacy Act*.
29. The Contractor shall be responsible for all costs related to confidentiality requirements. As applicable, for M.D. records and information under its care, the Contractor shall bear the burden and associated costs of records management practices required under the *Freedom of Information and Protection of Privacy Act*. As well, the Contractor shall be responsible to provide for the protection of confidential M.D. records and information as required by the *Freedom of Information and Protection of Privacy Act*. Neither the M.D., nor the M.D.'s

employees, shall use, copy, disclose or otherwise communicate any information not available to the general public that was gained by them in the course of the duties. Neither the Contractor, nor the Contractor's employees, shall use, copy, disclose or otherwise communicate any information not available to the general public that was gained by them in the course of the duties.

30. The M.D. shall furnish to the Contractor such information in its possession reasonably required for the proper performance of the obligations of the Contractor, and shall, in every way provide such cooperation as is reasonable in order for the Contractor to be able to perform the Work required pursuant to this Contract in a satisfactory manner.
31. The Contractor shall retain all information and records received or compiled by the Contractor in accordance with this Contract for a minimum period of one (1) year from the date of termination of this Contract.
32. The Contractor hereby represents and warrants with and to the M.D., and acknowledges that the M.D. is relying upon such representation and warranty, that the Contractor is in compliance with all laws and regulations of any public authority relating to the conduct of its business and has all required approvals, permits, licenses, certificates and authorizations necessary to carry on its business and to carry out its obligations hereunder and there are not any proceedings whatsoever, actual or pending, and whether concerning cancellation, extension or otherwise, relating to the said approvals, permits, licenses, certificates or authorizations.
33. Without in any way limiting the liability of the Contractor under this Contract, the Contractor shall obtain and maintain in force, at the Contractor's own expense, during the existence of this Contract, or any extension thereof, and shall provide evidence of the existence of same to the M.D. prior to commencing any of the Work, the following insurance:
  - (a) standard automobile insurance covering owned, non-owned and rented automotive equipment, bodily injury and property damage insurance providing coverage of at least Five Million (\$5,000,000.00) Dollars inclusive per accident for the injury to or death of one or more persons or damage to or destruction of property;
  - (b) a commercial general liability insurance policy per occurrence providing coverage of not less than Five Million (\$5,000,000.00) Dollars inclusive per occurrence, with an annual general aggregate, if any, not less than \$5,000,000, in respect of any one claim for injury to or death of any one or more persons or damage to or destruction of property. Coverage to include:
    - (i) non-owned automobile liability;
    - (ii) independent sub-contractors;
    - (iii) employees;
    - (iii) contractual liability including this Contract;
    - (iv) contingent employer's liability;
    - (v) broad form property damage endorsement;
    - (vi) cross-liability; and
    - (viii) products and completed operations

- (c) workers compensation coverage for all employees, if any, engaged by the Contractor in accordance with the laws of the Province of Alberta;
- (d) employer's liability insurance respecting employees, if any, of the Contractor with limits of liability of not less than Five Million (\$5,000,000.00) Dollars per employee for each accident, accidental injury or death of an employee or any sub-contractor engaged by the Contractor; and
- (e) such other insurance as the M.D. may from time to time reasonably require.

The Contractor shall be liable for the cost of all of the insurance required to be held by the Contractor as set forth herein and for payment of all deductible amounts from such policies of insurance.

34. The Contractor and the M.D. acknowledge and agree that the M.D. shall not be liable nor responsible for any bodily or personal injury or property damage of any nature whatsoever that may be suffered or sustained by the Contractor, his employees or agents in the performance of this Contract.
35. The Contractor shall be responsible for any loss or damage to property of the M.D. howsoever caused by the Contractor's negligence or that of his employees or agents, or by the Contractor's breach of this Contract. The Contractor shall extend his own "All Risks" property insurance to cover his legal liability for the property of others in his care, custody or control and shall note the interest of the M.D. as applicable.
36. The Contractor shall ensure that:
- (a) all insurance coverage maintained by the Contractor in accordance with this Contract shall include waivers of subrogation by the insurers in favour of the M.D. and shall name the M.D. as an added insured in respect to the Work provided to the M.D. by the Contractor;
  - (b) no such insurance policy may be cancelled without the insurer providing no less than thirty (30) days written notice of such cancellation to the M.D.; and
  - (c) a Certificate of Insurance is furnished, satisfactory to the M.D., evidencing the required insurance coverage.
37. The Contractor shall at all times and without limitation, indemnify and save harmless the M.D., its Councillors, directors, officers, insurers, employees, contractors, agents and representatives from and against any and all liabilities, losses, costs, damages, legal fees (on a solicitor and his own client full indemnity basis), disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands and proceedings, all of whatever nature and kind which any of the M.D., its Councillors, directors, officers, insurers, employees, contractors, agents and representatives may sustain, pay or incur or which may be brought or made against all or any of them, and whether or not incurred in connection with any action or other proceedings or claims or demands made by third parties, with respect to any occurrence, event, incident or matter caused by, and/or arising as a direct or indirect result of:
- (a) any act or omission on the part of the Contractor during the performance or purported performance or non-performance of this Contract; or
  - (b) the failure of the Contractor to remit all applicable tax withholdings, Canada Pension contributions, employment insurance contributions and all other payments, contributions or deductions for which the Contractor is liable.

38. The parties acknowledge and agree that the provisions of this Contract, which, by their context, are meant to survive the termination or expiry of the Term, shall survive the termination or expiration of the Term and shall not be merged therein or therewith.
39. This Contract may be terminated for convenience by the M.D. at any time by giving ninety (90) days written notice of termination for convenience to the Contractor. The effective date of the termination for convenience shall be set out in the Notice of Termination for Convenience. The Contractor's right to consideration shall be limited to payment for Work performed and not previously paid for up to the effective date as set out in the Notice of Termination for Convenience. The Contractor specifically agrees that the Notice of Termination for Convenience and consideration set forth in this clause constitutes reasonable, fair and equitable notice and compensation for damages, if any, which may be suffered by the Contractor as a result of the termination for convenience of this Contract. In the event this Contract is terminated for convenience, the Contractor shall perform the Work required by this Contract up to and including the effective date set out in the Notice of Termination for Convenience and shall, upon request, provide the M.D. with a written report on the Work rendered to the time of termination for convenience. Except for any such report, the Contractor shall not perform any further Work subsequent to the effective date set out in the Notice of Termination for Convenience.
40. No work shall be performed by the Contractor until the Contract has been executed by both parties hereto.
41. 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 on 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.
42. For the purposes of this Contract, the addresses of the parties are:

M.D. of Pincher Creek No.9  
Attention: Leo Reedyk  
P.O. Box 279, Pincher Creek, Alberta T0K 1W0

AND

Crowsnest/Pincher Creek Landfill Association  
Attention: Emile J Saindon  
P.O. Box 668, Pincher Creek, Alberta T0K 1W0

Any communication, notice or service of documents required to be made during the course of this Contract will be good and sufficient if delivered to, or posted by prepaid registered mail addressed to, the above addresses. Notice given in any such manner shall be deemed to have been received by the party on the day of delivery or upon the 3rd day after the date of mailing provided that normal postal service is in existence at the time of mailing and for three (3) days thereafter. Any party may change its address for



service from time to time upon written notice to that effect. In the event of disruption of normal postal Work, any party giving notice hereunder shall be required to deliver the same.

43. The laws of the Province of Alberta shall govern the interpretation of this Contract and the jurisdiction for suite relating to any matters hereunder shall be Alberta.
44. This Contract constitutes the entire Contract between the parties hereto and the parties acknowledge and agree that there are no covenants, representations, warranties, contracts or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Contract save as expressly set out in this Contract.
45. This Contract 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.
46. This Contract shall endure to the benefit of and be binding upon the parties herein and their respective heirs, successors and assigns.
47. Time is of the essence in this Contract, and if either party shall fail to perform the covenants on its part to be performed at fixed times or alternatively within a reasonable time for the performance thereof under the terms of this Contract, the other party may elect to terminate this Contract in accordance with the provisions set out hereinbefore.
48. If any term, covenant or condition of this Contract or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Contract 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 Contract shall be valid and shall be enforceable to the fullest permitted by law.
49. The parties agree all reasonable efforts shall be made to resolve all disputes under this Contract by negotiation and agree to provide, without prejudice, open and timely disclosure of relevant facts, information and documents to facilitate these negotiations. The parties agree that any dispute not resolved through negotiation shall be submitted for arbitration in accordance with the provisions of the relevant arbitration legislation in the Province of Alberta. The parties hereto agree that submission of a dispute dealt with by this section shall be a condition precedent to any application or action brought before any competent court.
50. The Contractor agrees to preserve and protect the rights of the parties under the Contract with respect to work to be performed under and Subcontract and to:
  - (a) enter into contract or written agreements with his Sub-Contractors to require them to perform their work in accordance with and subject to the terms and conditions of the Contract; and,
  - (b) be as fully responsible to the M.D. for acts and omissions of his Sub-Contractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by him.

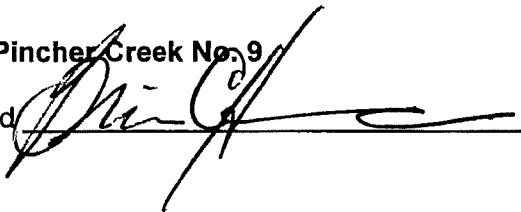
Nothing contained in the Contract shall create a contractual relationship between a Sub-Contractor and the M.D.

51. The Contractor shall protect the Work and the M.D.'s property and property adjacent to the site of the Work from damage and shall be responsible for damage which may arise as the result of his operations under the Contract except damage which occurs as the result of acts or omissions by the M.D., other Contractor, or their agents and employees.
52. Should the Contractor in the performance of this Contract damage the Work, the M.D.'s property or property adjacent to the site of the Work, the Contractor shall be responsible for the making good such damage at his expense.
53. The Contractor shall be responsible for the proper performance of the Work.
54. The Contractor agrees to correct promptly, at his own expense, defects or deficiencies in the Work which appear prior to and during the period of one (1) year from the date of substantial performance of the Work as defined within the *Builders' Lien Act* of the Work, or such longer periods as may be specified for certain products or work.
55. The M.D. shall promptly give the Contractor written notice of observed defects and deficiencies.

**IN WITNESS WHEREOF** the parties have executed this Contract as of the date first above written.

**Municipal District of Pincher Creek No. 9**

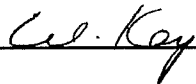
Reeve, Brian Hammond



Date: November 30, 2015

c/s

CAO, Wendy Kay



Date: November 30, 2015

**Crowsnest/Pincher Creek Landfill Association**

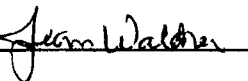
Print Emile J Saindon

Sign Emile J Saindon

Date: Nov 25 2015

c/s

Witness



Per: \_\_\_\_\_

Date: Nov 25 2015

## APPENDIX A

## MD of PINCHER CREEK No. 9

## Waste Removal Services Schedule of Equipment, Services and Fees

Location	Bin Size - Type	Number of Bins	Rental Cost per Month	Cost per Pickup per Bin	Estimated Pickup Interval	Total Estimated Cost per Year
Public Works Yard	3 Yard Bear Proof	1	\$20.00	\$50.00	Weekly	\$2840.00
Public Works Transfer Facility	45 Yard Top Loading	2	\$100.00 per bin	\$160.00	BI-Weekly per Bin	\$35680.00
Pincher Station	45 Yard Top Loading	1	\$100.00	\$160.00	Weekly	\$9520.00
Cowley	6 Yard Bear Proof	1	\$20.00	\$50.00	Weekly	\$2840.00
Castle River Campground May 15 to Sept 15	6 Yard Bear Proof	2	\$ 20.00 per bin	\$50.00	Weekly per Bin	\$1860.00
Castle Mountain Resort	30 Yard	2	\$100.00 per bin	\$275.00	Weekly per Bin	\$31000.00
Castle Mountain Resort - Steel Recycle Bin	3 Yard	1	\$20.00	\$100.00	Annual	\$440.00
Fishburn Park May 15 to Sept 15	3 Yard Bear Proof	1	\$20.00	\$50.00	Weekly / Seasonal	\$930.00
Lundbreck - Weekly door to door	90 Gallon Bear Proof	135	.50 per week	\$1.50	Weekly	\$14040.00
Beaver Mines - Weekly door to door	90 Gallon Bear Proof	58	.50 per week	\$1.75	Weekly	\$6786.00
Lundbreck - Hotel	3 Yard Bear Proof	1	\$20.00	\$50.00	Weekly	\$2840.00
Lundbreck - O'bies Mercantile	3 Yard Bear Proof	1	\$20.00	\$50.00	Weekly	\$2840.00
Stair to Access 30 or 45 Yard Bin	Each	4	No Charge			
<b>Additional Bins</b>						
60 Gallon Bear Proof		Each				
90 Gallon Bear Proof		Each				
3 Yard Bear Proof		Each				
6 Yard Bear Proof		Each				
30 Yard		Each	\$100.00			
45 Yard - Top Loading Doors		Each	\$100.00			
<b>Additional Locations</b>						
Cost per KM from Landfill per Pickup					Each \$ 2.50 per KM	
<b>Additional Contract Costs</b>						
Initial Deployment of Bins						No Charge
Other - Please Explain						
<b>Total Tender Amount Excluding GST</b>	<b>One hundred and eleven thousand six hundred and sixteen dollars</b>					<b>\$ 111616.00</b>

## APPENDIX B

### MD of PINCHER CREEK No. 9

#### Waste Removal Services Schedule of Equipment,

2015 Peterbilt roll off truck fully equipped to handle all sizes of bins available daily as required.

2011 Peterbilt roll off truck as back up unit and specially equipped to handle door to door automated pickup and servicing of all 4 and 6 cu yd Hyd away bear proof waste receptacles. Fully automated service for both bear proof poly carts and Hyd away units.

15 to 45 cu yd roll off bins custom built locally to meet customer requirements. Modifications and final design to be discussed and approved prior to use.

Kodiak manufacturing bear proof approved fully automated 60 or 90 gallon poly carts for weekly residential pick up.

Haul All Hyd Away bear proof metal 4 and 6 cu yd bins with automated dump system. Painted customer colour and installed as required.

Haul All specially designed 24 cu yd side loading bin for residential curbside pick up and Hyd Away service. Unit has 2 seperate compartments for

future curbside recycling services.

Full colour pamphlets of equipment included.

Fully equipped service vehicle to maintain, service and wash all waste handling equipment and bins. Regular inspection and washing of all waste equipment is included in tender package.

Complete review of all equipment, containers and schedule of service will be provided to Municipality officials and residents at open houses throughout

Service area to ensure proper equipment is staged and residents have the necessary information on correct use of all containers.

Contact lists and call out numbers will be made available.

APPENDIX C

MD of PINCHER CREEK No. 9

Waste Removal Services Schedule of Options and Pricing

Custom equipment option

All roll off bins will be modified to meet customers requirements. Lids and doors modified to restrict large item disposal an option.

All steps and walkways will meet OHS standards and be painted customer colours.

Hyd Away waste receptacles come fully equipped and automated for easy loading and unloading, delivery and installation to be supplied by CNPC

Landfill staff. Locations to be reviewed and approved by customer.

Rental charge option

All residential polly cart rental charges are for a period of 60 months. At the end of this term a review of condition and replacement strategy will be done

Rental may continue or be discontinued based of life cycle of equipment.

All roll off bin rental charges are for a period of 60 months. At the end of this term no rental charges will occur for the following 60 months.

CNPC Landfill expects the bins to last a min of 10 years at which point cost and rental can be reviewed based on replacement requirements

All Hyd Away bin rental charges are for a period of 60 months. At the end of this term no rental charges will occur for the following 60 months

CNPC Landfill expects the bins to last a min of 10 years at which point cost and rental can be reviewed based on replacement requirements

Purchase and repayment option

CNPC Landfill offers to purchase all necessary bins and containers for the customer and set up a repayment plan that meets the customers needs

Repayment of principal only no interest charges This offer can be modified to meet customer budget requirements.



**CREDIT UNION LIMITED**

P.O. Box 1660  
Pincher Creek, AB. T0K 1W0  
Phone (403) 627-4431 • Fax (403) 627-5331

**IRREVOCABLE LETTER OF GUARANTEE**

October 19, 2015

Letter of Credit

MD of Pincher Creek No. 9  
PO Box 279  
Pincher Creek, AB  
T0K 1W0

Dear Sir or Madam:

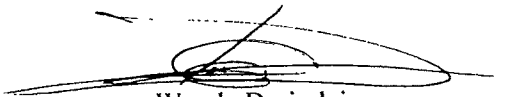
Pursuant to the request of The Crowsnest/Pincher Creek Landfill Association, the Pincher Creek Credit Union, hereby establishes and gives to the MD of Pincher Creek a continuing irrevocable Letter of Guarantee in the Beneficiary's favor and authorizes the Beneficiary to draw on the credit union for the account of the member up to an aggregate amount of Ten Thousand Dollars (\$10,000.00). Partial drawings are permitted.

Drawings under the Letter of Guarantee shall be in the form of a written demand for payment delivered to the credit union at the above branch location, which demand the credit union shall honor without inquiring whether the Beneficiary has a right between the Beneficiary and the member provided such demand shall be accompanied by the Beneficiary's certificate stating that the monies drawn represents a valid claim and entitlement of the Beneficiary as against the member.

The Letter of Guarantee shall continue until the earlier of

1. The Beneficiary demanding payment hereunder and the amount being demanded by the Beneficiary being paid by the credit union to the Beneficiary;
2. or December 31, 2016.

Pincher Creek Credit Union Limited

  
Wendy Desjarlais  
Member Service Specialist II



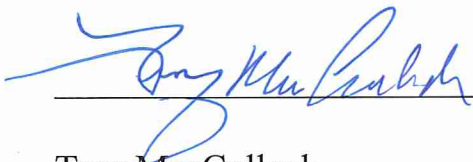


Please note :

This agreement has been reviewed and deemed still in force.

Date Reviewed

13 Feb 2020



Troy MacCulloch  
CAO, MD of Pincher Creek



Cindy Cornish  
CAO, Village of Cowley

**Next Review Date**

Jan 01, 2023

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**Reviewed by :**

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RECEIVED

**USE OF RECYCLE COLLECTIONS SITE AGREEMENT** FEB 13 2011THIS AGREEMENT MADE THIS 1ST DAY OF JANUARY, A.D. 2011: **M.D. OF PINCHER CREEK****BETWEEN****THE MUNICIPAL DISTRICT OF PINCHER CREEK NO.9**  
(hereinafter referred to as the "M.D.")**OF THE FIRST PART**

-and-

**THE VILLAGE OF COWLEY**  
(hereinafter referred to as the "Village")**OF THE SECOND PART****WHEREAS:** the Village owns and operates a recyclable material collection site and transports the material on a regular basis to the Town of Pincher Creek recycle depot;**WHEREAS:** the M.D. has residents that desire to leave their recyclable material at the Village recyclable material collection site and;**NOW THEREFORE:** this Agreement witnesseth that in consideration of the mutual covenants and promises, the Parties hereto agree as follows:

1) The Village agrees to allow M.D. residents to use the recyclable collections site located in the Village of Cowley so long as a site is being maintained for their own residents use.

2) The M.D. agrees to pay to the Village \$1,200.00 annually to help offset the operating costs being incurred by the Village with their recyclable collections site.

**AMENDMENTS**

This agreement may be amended by either party providing written notice that they wish the agreement amended.

**TERMINATION**

The Agreement may be terminated by any Party without cause upon 90 days written notice, delivered to the other Party.

In witness whereof, the Parties have hereunto executed this Agreement, the day and year first above written.

Village of Cowley

Per *Gyatt W. Martin*  
Mayor

Per *Andy Parish*  
C.A.O.

M.D. of Pincher Creek No.9

Per *Madame J. G.*  
Reeve

Per *W. K.*  
C.A.O.

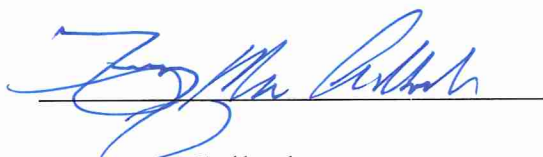
Please note :

This agreement has been reviewed and deemed still in force, with the following amendment(s):

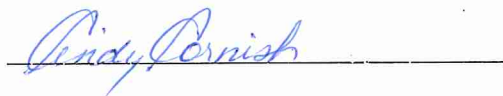
Pg 1, 1st Whereas - ....transports material on a regular basis to the Landfill site for recycling purposes.

Date Reviewed

13 Feb 2020



Troy MacCulloch  
CAO, MD of Pincher Creek



Cindy Cornish  
CAO, Village of Cowley

**Next Review Date**

Jan 01, 2023

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**Reviewed by :**

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74-014  
(100)

## AGREEMENT

MADE THIS 21 DAY OF May, 2004

BETWEEN

THE VILLAGE OF COWLEY

AND

THE MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9

WHEREAS, in 1985 the Municipal District of Pincher Creek No. 9 and the Village of Cowley agreed to provide a public source of water for farmers at a central location in the Lundbreck – Cowley area, and

WHEREAS, the Municipal District of Pincher Creek No. 9 installed a coin operated water meter and standpipe, enclosed in an insulated building, on a parcel of land held under lease by the Village of Cowley from Canadian Pacific Railway Limited, and

WHEREAS, the Village of Cowley provided the source of water from their municipal water distribution system with the drainage from the standpipe tied into the Village's sewage system, and

WHEREAS, the Village of Cowley has operated and maintained the coin operated water standpipe ensuring the service was available to the residents of the Municipal District of Pincher Creek No. 9.

THEREFORE, the parties hereto agree as follows:

The Village of Cowley agrees to continue operating and maintaining the coin operated water standpipe ensuring the service is available to the residents of the Municipal District of Pincher Creek No. 9.

The Village of Cowley shall, from time to time, set the fee for the water used on a cost recovery basis with a maximum of a 15% profit margin and shall retain all revenue.

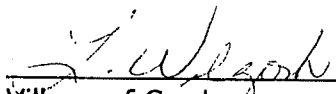
The Village reserves the right to shut off the supply of water to the said standpipe in the event of an emergency, which causes an extreme shortage of water supply to the Village.

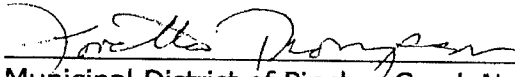
The Municipal District of Pincher Creek No. 9 shall be responsible for capital improvements agreed to and approved by Council.

The Municipal District of Pincher Creek No. 9 shall share in major maintenance costs in excess of \$500.00 at the request of the Village of Cowley and approval of Council.

This agreement may be amended from time to time with the consent of both parties.

SIGNED AND SEALED this 21 day of April, 2004

  
\_\_\_\_\_  
Village of Cowley

  
\_\_\_\_\_  
Municipal District of Pincher Creek No. 9

Please note :

This agreement has been reviewed and deemed still in force, with the following amendments:

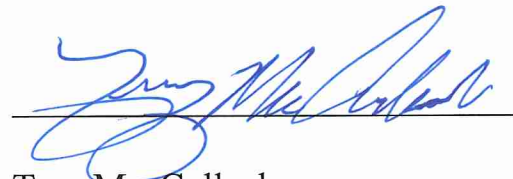
Pg 1, Para 2 - ... the parcel of land held under Lease by the MD of Pincher Creek  
from CPR

Pg 1, Para 6 - the MD of Pincher Creek maintains the infrastructure for the standpipe

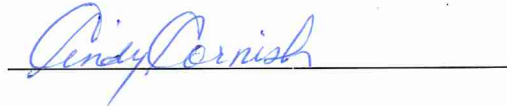
Pg 2, Para 2 - can be omitted completely since the MD performs all maintenance at  
this point in time.

Date Reviewed

13 Feb 2020



Troy MacCulloch  
CAO, MD of Pincher Creek



Cindy Cornish  
CAO, Village of Cowley

**Next Review Date**

Jan 01, 2023

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**Reviewed by :**

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**MASTER TRANSFER AGREEMENT**

**VILLAGE OF COWLEY**

**and**

**MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9**

© Brownlee LLP

This Agreement made the 28<sup>th</sup> day of NOV, 2014.

BETWEEN:

**VILLAGE OF COWLEY**  
(hereinafter referred to as the "Village")

OF THE FIRST PART

AND:

**MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9**  
(hereinafter referred to as the "MD")

OF THE SECOND PART

**MASTER TRANSFER AGREEMENT**

**WHEREAS:**

- A. The Village is the owner of the Water Assets; and
- B. The Village is agreeable to transferring the Water Assets to the MD, upon and subject to the terms, covenants and conditions contained within this Agreement;

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

**ARTICLE 1 - DEFINITIONS**

**1.1 Definitions**

In this Agreement, the following words and expressions shall have the meanings herein set forth unless inconsistent with the subject matter or context:

- (a) "**Agreement**" means this agreement as the same may be amended from time to time and the expressions "herein", "hereof", "hereto", "above", "below" and similar expressions if used in any article, section or paragraph of this agreement refer to this agreement including the Schedules attached hereto and do not refer solely to a particular article, section or paragraph unless specifically stated herein;
- (b) "**Closing Date**" means upon the coming into force of the:
  - (i) Village's bylaw that it must enact in order to facilitate its portion of this transaction; and
  - (ii) MD's bylaw that it must enact in order to facilitate its portion of this transaction;
- (c) "**Existing Water Treatment Plant**" means the existing water treatment plant located on the Existing Water Treatment Plant Lands and the additional appurtenances such as all:

- (i) pumps, pipes, valves, meters, measurement instruments, and related assemblies and facilities housed within steel and/or brick clap concrete block buildings located on concrete foundations, within below grade concrete structures, and surrounding station yard sites;
  - (ii) other connected facilities and assemblies used and required for operation of the water treatment plant described above and its connecting assemblies and facilities; and
  - (iii) security fencing and gating surrounding or otherwise security all or any of the foregoing;
- (d) **"Existing Water Treatment Plant Lands"** means lands legally described as:
- WATER RESERVOIR SITE PLAN 8510212  
CONTAINING 0.975 HECTARE (2.41 ACRES) MORE OR LESS  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- (e) **"Lease"** means that lease of a portion of the Existing Water Treatment Plant Lands for the operation of both the Reservoir and the Existing Water Treatment Plant, in form and in content as attached hereto as Schedule "A";
- (f) **"Lands"** means:
- (i) the Existing Water Treatment Plant Lands, but not the Existing Water Treatment Plant located thereon which will continue to be owned and operated by the Village, pursuant to the Lease;
  - (ii) the lands legally described as:

MERIDIAN 5 RANGE 1 TOWNSHIP 7  
SECTION 2  
THAT PORTION OF THE SOUTH EAST QUARTER  
WHICH LIES EAST OF AREA 'A' ON PLAN 1898EZ  
SOUTH OF ROAD PLAN 9311142 AND WEST OF THE  
CASTLE RIVER AS SHOWN ON PLAN 9311142  
CONTAINING 3.42 HECTARES (1.38 ACRES) MORE OR LESS  
EXCEPTING THEREOUT ALL MINES AND MINERALS;
  - (iii) raw water pump and infiltration gallery located on lands noted in Section 1.1(e)(ii) hereof and all additional appurtenances such as all:
    - (A) pumps, pipes, valves, meters, measurement instruments, and related assemblies and facilities housed within steel and/or brick clap concrete block buildings located on concrete foundations, within below grade concrete structures, and surrounding station yard sites;
    - (B) other connected facilities and assemblies used and required for operation of the facilities described above and its connecting assemblies and facilities; and

- (C) security fencing and gating surrounding or otherwise security all or any of the foregoing;

but excluding the Reservoir;

- (g) **"Promissory Note"** means that promissory note attached hereto as Schedule "B";
- (h) **"Purchase Price"** means \$1,400,000.00;
- (i) **"Reservoir"** means that reservoir located on the Lands and all associated, pumps, pipes, valves, meters, measurement instruments and all other connected facilities used with respect to the reservoir;
- (j) **"Rights of Way"** means the entire right, title and interest of the Village in and to all lands, interests in land, rights to use the surface of lands and all rights and interests ancillary thereto which relate to the construction, ownership, operation, maintenance, expansion and improvement of the Water Assets as described in Schedule "C" attached hereto, including, without restriction:
- (i) any and all agreements to allow for use and occupation of all road right of ways existing under a road plan or subdivision plan registered at the Land Titles Office;
  - (ii) any and all agreements to allow for use and occupation all government road allowances existing under an township plan registered at the Land Titles Office;
  - (iii) all utility right of way and/or easement agreements, and any related right of way plans, whether or not registered at the Land Titles Office; and
  - (iv) any and all Crossing Agreements;
- respecting or relating to the Water Assets; and
- (k) **"Service Agreements"** means those certain bulk water supply agreements, if any, between the Village and third parties which are accepted by the MD pursuant to the satisfaction of the Conditions, and are to be assigned to the MD pursuant to this Agreement;
- (l) **"Surrender and Termination of Lease"** means that Surrender and Termination of Lease Agreement between the MD and the Village, thereby mutually agreeing to the termination of that Water Facilities Lease and Operations Agreement entered into between the parties;
- (m) **"Water Assets"** means the raw water intake leading from the raw water source to the Existing Water Treatment Plant Lands, the Lands and all other associated property, as more particularly described in Schedule "A" attached hereto and without limiting the generality of the foregoing, includes:
- (i) the Rights of Way;

- (ii) all other necessary approvals, licenses and permits respecting the raw water intake and the operation of the Water Assets;
- (iii) all pipelines, service lines, meters and regulating facilities and related fixtures;
- (iv) all equipment, tools and inventories related to the maintenance and operation of the Water Assets; and
- (v) all pump stations, including all buildings, land and machinery thereon.

## 1.2 **Preamble and Schedules Incorporation**

The parties hereby confirm and ratify the matters contained and referred to in the preamble and in the various schedules to this Agreement and agree that the same are expressly incorporated into and form part of this Agreement.

## **ARTICLE 2 - AGREEMENT TO TRANSFER**

### 2.1 **Transfer**

The Village and the MD hereby covenant and agree that subject to and in consideration of the performance of the other party's concurrent transfer obligations contained within this Agreement, the Village shall transfer to the MD all of its ownership rights, titles, and interests in the Lands free and clear of any and all claims, liens, encumbrances, charges or security interests whatsoever as at the Closing Date.

The Village and the MD agree that notwithstanding the transfer of the Water Assets from the Village to the MD, the ownership of the Reservoir and the Existing Water Treatment Plant shall continue to remain with the Village.

### 2.2 **Purchase Price/Consideration**

The Village and the MD hereby covenant and agree that:

- (a) save and except for as specifically contained within this Section, no further or other consideration, compensation, purchase price or other payment shall be due or owed by either party as a result of the transfers contemplated within Section 2.1 of this Agreement; and
- (b) upon and subject to the performance of the Village's concurrent transfer obligations contained within Section 2.1 of this Agreement, the MD shall pay to the Village the Purchase Price as follows:
  - (i) \$140,000.00 payable by the MD to the Village, on the Closing Date; and
  - (ii) the balance of the Purchase Price shall be payable in accordance with the Promissory Note.

### 2.3 Adjustments

The parties agree that all necessary adjustments relating to the Water Assets, including, without limitation, adjustments of prepaid expenses, taxes and other necessary adjustments shall be made as of the Closing Date. In the event that figures are not ascertainable for necessary adjustments at the Closing Date the parties shall calculate and resolve the adjustments as soon thereafter as figures are ascertainable.

### 2.4 Employees

The Village shall be responsible for the termination or relocation of any and all employees applicable to the operation of the Water Assets as direct employer, successor employer, or otherwise. The Village shall indemnify and hold the MD harmless from any and all costs, claims, costs or damages whatsoever related to any and all compensation due or accruing due to any such employees, which indemnity shall survive the Closing Date and remain binding after any registration, closing, completion, payment of consideration contemplated within this Agreement.

## ARTICLE 3 - REPRESENTATIONS & WARRANTIES

### 3.1 Village's Representations and Warranties

The Village represents and warrants with and to the MD and acknowledges that the MD is relying upon such representations and warranties, as follows:

- (a) the Village has been incorporated and organized under the laws of the Province of Alberta and is a valid and subsisting municipality;
- (b) proceedings have been taken by the Village, to approve this Agreement and its execution and delivery and to authorize the closing of the within transactions and the performance of the obligations of the Village hereunder;
- (c) the respective interests of the Village in the Water Assets have not been assigned by the Village other than to the MD pursuant to the provisions hereof;
- (d) the Village has good and marketable title to and is the beneficial owner of the Water Assets, free and clear of all encumbrances and security interests whatsoever;
- (e) the Village is not a party, directly or indirectly, to any existing claims, proceedings, actions or lawsuits which would have a material adverse effect on the Water Assets;
- (f) the Village is not a non-resident of Canada within the meaning of the Income Tax Act (Canada);
- (g) to the best of the Village's knowledge without making diligent inquiry, there are no existing or threatened lawsuits involving the Water Assets, whether environmentally related or otherwise, which would have a material adverse effect on the MD;
- (h) this Agreement is not in conflict with any other agreement or transaction to which the Village is a party or is bound, subject to all third party consents being obtained as herein set forth;

- (i) to the best of the Village's knowledge, the descriptions in the Schedules, together with any plans, drawings, designs or schematics that have been provided to the MD, are materially accurate in recording the Water Assets as built and existing;
- (j) subject to the Lease, the MD shall be entitled to quiet enjoyment of the Water Assets from and after the Closing Date; and

The representations and warranties of the Village shall survive the closing and the execution or registration of conveyances.

### 3.2 **MD's Representations and Warranties**

The MD represents and warrants with and to the Village and acknowledges that the Village is relying upon such representations and warranties, as follows:

- (a) the MD has been incorporated and organized under the laws of the Province of Alberta and is a valid and subsisting commission;
- (b) proceedings have been taken by the members of the MD, to approve this Agreement and its execution and delivery and to authorize the closing of the within transactions and the performance of the obligations of the MD hereunder;
- (c) the MD is not a party, directly or indirectly, to any existing claims, proceedings, actions or lawsuits which would have a material adverse effect on the Water Assets;
- (d) the MD is not a non-resident of Canada within the meaning of the Income Tax Act (Canada); and
- (e) this Agreement is not in conflict with any other agreement or transaction to which the MD is a party or is bound, subject to all third party consents being obtained as herein set forth.

The representations and warranties of the MD shall survive the closing and the execution or registration of conveyances.

### 3.3 **Acknowledgment and Agreement**

The parties each acknowledge and agree that:

- (a) there are no representations or warranties given by the parties, express or implied, as to any matter, cause or thing other than as specifically given in Section 3.1 and 3.2 of the Agreement;
- (b) except as otherwise specifically set forth in Section 3.1 and 3.2 of this Agreement, all of the Water Assets are transferred and accepted "as is, where is" and the MD in each case is relying totally upon its own investigations and inspections of the respective assets and not upon any representation, warranty or statement, express or implied, of the Village; and
- (c) the parties shall operate and maintain the respective assets to be transferred in the same manner as the said party operates the balance of its respective water system assets.



### 3.4 Crossing Agreements

The Parties acknowledge and agree that the MD has not reviewed the status of all crossing agreements affecting the Water Assets and the Rights of Way. However, the MD shall be solely responsible for revisions to or replacements of any and all such crossing agreements after the Closing Date. The Village acknowledges that it will be obligated to execute assignments of all crossing agreements effecting the Water Assets and Rights of Way after the Closing Date, of which assignments shall be prepared at the MD's sole expense. However, should the Village desire to negotiate the content of the assignments, the negotiation will be done at the Village's expense.

## ARTICLE 4 - LIABILITIES

### 4.1 Risk

The Water Assets shall be and remain at the risk of the Village until the Closing Date. In the event of any loss or destruction to any of the said assets the Village shall retain any insurance proceeds received with respect to such loss or destruction, if any, in trust for the MD, and upon the conclusion the purchase and sale contemplated herein such funds shall be applied to the repair and replacement of the damaged or destroyed portions of the said assets. Further, the Village shall keep such of its insurance as existed prior to the Closing Date in place until the risk has passed to the MD upon the Closing Date, at which point the MD will obtain and maintain its own insurance coverage.

### 4.2 Costs

The Village and the MD shall each be responsible to pay for their own respective costs and expenses incidental to the preparation and carrying out of this Agreement and the completion of the transactions contemplated hereby.

## ARTICLE 5 - COMPLETION

### 5.1 Completion – Village

As soon as reasonably practicable and prior to the Closing Date, the Village shall deliver or cause to be delivered to the MD:

- (a) a duly executed registerable transfer of land respecting the Lands;
- (b) two (2) copies of each of the following closing documents, all executed in counterpart:
  - (i) general conveyance for the Village's interest in the Water Assets executed by the Village;
  - (ii) assignment of any necessary approvals for the operation of the Water Assets;
  - (iii) Application to transfer necessary approvals for the operation of the Water Assets;
  - (iv) the Lease;
- (c) all keys, security codes, and other devices required to permit the MD to have full and uninterrupted access to the Water Assets (or in lieu thereof, reasonable arrangements

acceptable to the parties to allow for delivery of some or all of the said items on the Closing Date);

- (d) all computer files and software, all files, as-built plans and records respecting the operation of the Water Assets, and all original copies of all construction agreements and warranties respecting the Water Assets (or in lieu thereof, reasonable arrangements acceptable to the parties to allow for delivery of some or all of the said items on the Closing Date; and
- (e) written evidence of the payment in full by the Village of any and all debts or accounts owed to any contractors or service providers respecting the Water Assets; and

in order to complete the transfers as contemplated within this Agreement.

## 5.2 **Completion - MD**

Upon registration of any and all transfer documentation at the Land Titles Office, the MD shall deliver or cause to be delivered to the Village:

- (a) a duly executed copy of the Lease, executed in counterpart;
- (b) a duly executed copy of the Promissory Note;
- (c) two (2) copies of each of the following closing documents, all executed in counterpart:
  - (i) general conveyance for the Village's interest in the Water Assets executed by the Village;
  - (ii) assignment of any necessary approvals for the operation of the Water Assets;
  - (iii) Application to transfer necessary approvals for the operation of the Water Assets;
  - (iv) the Lease;

whereupon the transfers of the respective interests in the Water Assets shall be fully completed and all documentation releasable from trust conditions of closing.

## **ARTICLE 6 - GENERAL**

### 6.1 **Notices**

Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing.

Any Notice required or permitted hereunder shall be sent to the intended recipient at its address as follows:

- (a) if to the Village:

Village of Cowley  
PO Box 40  
Cowley, Alberta T0K 0P0  
Attention: CAO  
Fax: (403) 628-2807  
E-mail: vilocow@shaw.ca

- (b) if to the MD:

Municipal District of Pincher Creek No. 9  
PO Box 279  
Pincher Creek, Alberta T0K 1W0  
Attention: CAO  
Fax: (403) 627-5070  
E-mail: wkay@mdpinchercreek.ab.ca

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

Notice shall be served by one of the following means:

- (c) by delivering it to the Party on whom it is to be served. Notice delivered in this manner shall be deemed received when actually delivered to such Party;
- (d) if delivered to a corporate party, by delivering it to the address specified in (a) during normal business hours. Notice delivered in this manner shall be deemed received when actually delivered;
- (e) by fax or email to the Party on whom it is to be served. Notice delivered in this manner shall be deemed received on the earlier of:
  - (i) if transmitted before 3:00 p.m. on a business day, on that business day; or
  - (ii) if transmitted after 3:00 p.m. on a business day, on the next business day after the date of transmission; or
- (f) by mailing via first class registered post, postage prepaid, to the party to whom it is served. Notice so served shall be deemed to be received five (5) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received.

## 6.2

### **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 irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Alberta.

**6.3 Time of Essence**

Time shall be of the essence of this Agreement.

**6.4 Preamble and Schedules**

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

Schedule "A"	-	The Lease
Schedule "B"	-	Promissory Note
Schedule "C"	-	The Utility Rights of Way.

**6.5 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.

**6.6 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.

**6.7 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.

**6.8 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.

**6.9 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.

**6.10 Counterparts**

This Agreement may be executed and delivered in any number of counterparts, by facsimile copy, by electronic or digital signature or by other written acknowledgement of consent and

agreement to be legally bound by its terms. Each counterpart when executed and delivered will be considered an original but all counterparts taken together constitute one and the same instrument.

6.11 **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.

6.12 **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.

6.13 **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.

6.14 **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 of more of such remedies generally or in combination, such remedies being cumulative and not alternative.

6.15 **Payment of Monies**

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

6.16 **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.

6.17 **Binding Effect**

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

**6.18      Assignment**

Neither party shall assign its interest in this Agreement, or any part hereof, in any manner whatsoever without having first received written consent from the other party, such consent which may be arbitrarily withheld by either party.

**6.19      Requests for Consent**

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

**6.20      Construction**

This Agreement shall be interpreted according to its fair construction and shall not be construed as against any party hereto.

**6.21      Enurement**

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

**IN WITNESS WHEREOF** the corporate parties have this Agreement Closing the date first above written.

**VILLAGE OF COWLEY**

Per: Margaret T. Henderson  
Mayor

Per: Cindy Cornish  
CAO

**MUNICIPAL DISTRICT OF PINCHER  
CREEK NO. 9**

Per: Brian Hammond  
Reeve

Per: W. Kay  
CAO

**SCHEDULE "A"**

**THE LEASE**

**LEASE AGREEMENT**

**MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9**

**TO**

**VILLAGE OF COWLEY**

{27/09/2013.E1388223.DCC.3}

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THIS LEASE made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

BETWEEN:

MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9  
(hereinafter referred to as the "Landlord")

AND:

VILLAGE OF COWLEY  
(hereinafter referred to as the "Tenant")

WHEREAS:

- A. The Landlord is or is entitled to become the registered owner of the Lands,
- B. The Landlord and the Tenant desire to enter into a lease of the Leased Premises allowing for management and operation of the Facilities located upon the Leased Premises;
- C. The Tenant is to own the Facilities, but the Landlord is to continue to own the Lands;

#### ARTICLE 1- DEFINITIONS

##### **1.1 Definitions**

In this Lease the following terms have the following meanings:

- (a) "Applicable Laws" means any and all municipal, provincial and federal codes, guidelines, statutes, laws, regulations, rules, permits, licenses, orders and directions of any government, regulatory or administrative body, agency, board or commission having jurisdiction over the Leased Premises, the Lands, the Permitted Use on the Lands and the Facilities;
- (b) "Commencement Date" means the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.
- (c) "Facilities" means both
  - (i) that water reservoir located on the Leased Premises and all associated, pumps, pipes, valves, meters, measurement instruments and all other connected facilities used with respect to the reservoir; and
  - (ii) the existing water treatment plant located on the Existing Water Treatment Plant Lands and the additional appurtenances such as all
    - (A) pumps, pipes, valves, meters, measurement instruments, and related assemblies and facilities housed within steel and/or brick clay concrete block buildings located on concrete foundations, within below grade concrete structures, and surrounding station yard sites,
    - (B) other connected facilities and assemblies used and required for operation of the water treatment plant described above and its connecting assemblies and facilities, and

- (C) security fencing and gating surrounding or otherwise security all or any of the foregoing.
- (d) "**Hazardous Substances**" means toxic, hazardous, dangerous or potentially dangerous substances of any kind whatsoever including, without restricting the generality of the foregoing, urea formaldehyde, asbestos, PCB transformers and those elements, materials, substances or compounds which are regulated by federal, provincial or local statute, law, ordinance, code, rule, regulation order or decree including, but not limited to, the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c E-12, as amended from time to time, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous or potentially dangerous waste, substance or material of any kind or nature whatsoever.
- (e) "**Lands**" means those lands legally described as
- WATER RESERVOIR SITE PLAN 8510212  
CONTAINING 0.975 HECTARE (2.41 ACRES) MORE OR LESS  
EXCEPTING THEREOUT ALL MINES AND MINERALS,
- (f) "**Lease**" means this lease agreement, as from time to time amended in writing by agreement between the Landlord and the Tenant.
- (g) "**Leased Premises**" means only that portion of the Lands reasonably required for the operation of the Facilities by the Tenant.
- (h) "**Permitted Use**" means the operation of the Facilities and any service ancillary thereto.
- (i) "**Rent**" means the rent as set forth in Article 5 hereof, and
- (j) "**Term**" means the term of this Lease as set forth in Paragraph 3.1 of this Lease;

## ARTICLE 2 – DEMISE

### **2.1 Demise of Leased Premises**

- (a) In consideration of the rents, covenants, conditions and agreements contained within this Lease to be paid, observed and performed by the Tenant, the Landlord hereby demises and leases the Leased Premises to the Tenant and the Tenant leases the Leased Premises from the Landlord.
- (b) The Tenant acknowledges and agrees that the Tenant shall not be entitled to occupy the entirety of the Lands, but rather, only that portion of the Lands that is reasonably necessary for the Tenant's Permitted Use.

## ARTICLE 3 - TERM OF LEASE

### **3.1 Term**

The term of this Lease shall be for fifteen (15) years commencing on the Commencement Date and expiring on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, subject always to earlier termination or renewal of this Lease and the Term as provided in this Lease.

## ARTICLE 4 - EXAMINATION OF LANDS

### **4.1 Satisfactory Condition**

The Tenant agrees that the Leased Premises are in good condition and agrees to accept possession of the Leased Premises on an "as is - where is" basis.

**ARTICLE 5 - RENT****5.1      Base Rent**

The base rent payable by the Tenant to the Landlord for the initial Term of this Lease shall be the sum of ONE (\$1.00) DOLLAR per year, and the total rent over the entire Term of the Lease has been paid by the Tenant to the Landlord, payment of which has been acknowledged by the Landlord

**ARTICLE 6 - TAXES****6.1      The Tenant's Taxes**

The Tenant shall pay when due all real estate taxes, assessments, rates and charges and other government impositions, general or special, ordinary or extraordinary, foreseen or unforeseen, of every kind, including assessments for local or public improvements and school taxes which may at any time during the Term be imposed, assessed or levied, in respect of the Leased Premises and all fixtures and improvements from time to time thereon, or which, howsoever imposed, might constitute a lien on the Leased Premises or any part thereof or a liability of the Landlord. The Tenant shall furnish to the Landlord, within thirty days of receipt of a written request from the Landlord, official receipts or other proof satisfactory to the Landlord evidencing the payment of the taxes

**ARTICLE 7 - QUIET ENJOYMENT****7.1      The Tenant's Quiet Enjoyment**

Subject to the terms, covenants and conditions contained in this Lease, the Landlord covenants that upon duly performing and observing all its covenants and obligations contained in this Lease the Tenant shall and may peaceably possess and enjoy the Leased Premises for the Term without any interruption or disturbance from the Landlord or any other person lawfully claiming by, from or under the Landlord.

**ARTICLE 8 - OPERATION OF LANDS****8.1      Management**

The Tenant shall operate and manage the Leased Premises consistent with the Permitted Use and shall comply with all obligations imposed upon by the Tenant pursuant to the Applicable Laws. Without limiting the generality of the foregoing, the Tenant shall:

- (a) supply all necessary equipment and personnel reasonably required for the purpose of managing and operating the Facilities,
- (b) maintain reasonable records of maintenance and repairs,
- (c) undertake all activities and provide all services reasonably required for the efficient management and operation of the Leased Premises and the Facilities as a prudent operator would in similar circumstances,
- (d) promptly pay all charges, impositions, costs and expenses of every nature and kind relating to the Leased Premises and the maintenance, operation, cleaning, repair and replacement of the Facilities, including, without restriction, all costs relating to window cleaning, garbage disposal, repairing damaged components of the Leased Premises and Facilities, heating, ventilating and air-conditioning the Facilities, provision of hot and cold water, and provision of electricity,
- (e) use the Lands solely for the Permitted Use and shall not use or permit or suffer the use of the Leased Premises or any part thereof for any other business or purpose whatsoever.

- (f) not do, omit to do or permit to be done or omit to be done any act or thing which may render void or voidable or conflict with the requirements of any policy or policies of insurance, including any regulations of fire insurance underwriters applicable to such policy or policies, under which the Leased Premises or the contents of the Leased Premises are insured or which may cause any increase in premium to be paid in respect of any such policy.

## 8.2 Evidence of Payments

The Tenant shall produce upon the reasonable request of the Landlord, satisfactory evidence of the due payment by the Tenant of all payments required to be made by the Tenant under this Lease

## 8.3 No Nuisance

The Tenant shall not at any time during the Term, use, exercise or carry on or permit or suffer to be used, exercised or carried on, in, about or upon the Leased Premises or any part thereof any waste or any offensive act, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the Term be done in, about or upon the Leased Premises or any part thereof which shall be inconsistent or incompatible with the intended use of a public Facilities or which may be or grow to the annoyance, nuisance, damage or disturbance of the users of the Leased Premises

## 8.4 Ownership of Fixtures and Facilities

- (a) Subject to Section 8.4(b), the Landlord and the Tenant agree that anything in the nature of leasehold improvements, installations, alterations, additions and partitions and all other fixed improvements which the Tenant may construct upon the Lands from time to time are and shall be fixtures to the Leased Premises and are intended to be and become the absolute property of the Landlord upon the expiration or termination of this Lease, but shall be deemed, as between the Landlord and the Tenant during this Lease, to be the separate property of the Tenant and not of the Landlord but subject to and governed by all the provisions of this Lease notwithstanding the right of the Tenant. Provided always that the Landlord's absolute right of property in all such fixed improvements upon the Lands which will arise upon the expiration or termination of this Lease takes priority over any other interest in the said fixed improvements which may now or hereafter be created by the Tenant, and that all dealings by the Tenant with the fixed improvements which in any way affect title thereto shall be made expressly subject to this right of the Landlord. The Tenant shall not assign, encumber or otherwise deal with the fixed improvements separately from any dealing with the leasehold interest under this Lease which has been authorized by the Landlord in writing.
- (b) The Landlord and the Tenant agree that the Facilities shall at all times remain the sole ownership of the Tenant and that upon the expiration or termination of this Lease, should the Facilities or any part thereof remain operational, the Landlord and the Tenant shall negotiate how the Facilities shall continue to remain operational or the entitlement to compensation therefore.

## 8.5 Termination

The Tenant shall, upon the expiration or sooner termination of the Term

- (a) surrender and yield up to the Landlord the Leased Premises, together with all fixtures, improvements and equipment in as good condition and repair as the Tenant is required to maintain as set forth in this Lease, and the Tenant shall deliver to the Landlord all keys to the Facilities which the Tenant has in its possession;
- (b) provide the Landlord with an inventory of all warranties on equipment acquired by the Tenant during the Term and assign to the Landlord all such warranties requested by the Landlord, and

- (c) not leave upon the Leased Premises any rubbish or waste material and will leave the Lands in a clean and tidy condition.

#### 8.6 Builders' Liens

The Tenant shall not permit any lien under the *Builders' Lien Act* or any like statute to be filed or registered against the Leased Premises, the Lands, the Facilities, or any fixtures or improvements on the Lands, by reason of work, labour, services or materials supplied or claimed to have been supplied to the Tenant or anyone holding any interest in any part thereof through or under the Tenant. If any lien is at any time filed or registered the Tenant shall procure registration of its discharge within forty-five (45) days after the lien has come to its notice or knowledge.

#### 8.7 Discharge of Builders' Liens

The Landlord may, but is not obliged to, after the expiration of the period set forth in the preceding paragraph, discharge any lien filed or registered and all disbursements incurred and costs paid by or on behalf of the Landlord in respect the discharge of any lien shall be immediately due and payable to the Landlord as Rent.

#### 8.8 Alterations

The Tenant shall not without the prior written consent of the Landlord, which consent may not be unreasonably withheld, make any installations, additions, partitions, alterations or improvements to the Lands.

### ARTICLE 9- INSURANCE AND INDEMNITY

#### 9.1 Insurance

- (a) The Tenant shall throughout the Term and during any other time the Tenant occupies the Leased Premises or a part thereof, at its sole cost and expense, take out and keep in full force and effect, the following insurance:
- (i) "all risks" insurance upon property of every kind and description owned by the Tenant, or for which the Tenant is legally liable, or installed by or on behalf of the Tenant and which is located within the Leased Premises, in an amount not less than the full replacement cost thereof;
  - (ii) standard owner's form automobile policy providing not less than third party liability insurance with \$2,000,000.00 inclusive limits and accident benefits coverage where compulsory by law, covering all licensed vehicles owned or operated by or on behalf of the Tenant;
  - (iii) any other form of insurance as the Tenant or Landlord may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant under similar circumstances would insure; and
  - (iv) comprehensive general liability insurance with inclusive limits of not less than \$5,000,000.
- (b) Each insurance policy referred to in Section 9.1(a) shall name the Landlord as additional named insureds as their interest may appear and such policies will contain where appropriate
- (i) a waiver of any subrogation rights which the Tenant's insurers may have against the Landlord;
  - (ii) a severability of interests clause or a cross liability clause, and
  - (iii) a waiver in favour of the Landlord of any breach of warranty clause such that the insurance policies in question shall not be invalidated with respect to their interest, by reason of any

breach or violation of any warranty, representation, declaration or condition contained in the policies

- (c) All policies shall be taken out with insurers and shall be in a form acceptable to the Landlord acting reasonably. The Tenant agrees that certificates of insurance acceptable to the Landlord, certified copies of each such insurance policy, will be delivered to the Landlord as soon as practicable after the placing of the required insurance. All policies shall contain an undertaking by the insurers to notify the Landlord in writing, of any material change, cancellation or termination of any provision of any policy, not less than thirty (30) days prior to the material change, cancellation or termination thereof
- (d) All insurance policies to be taken out by the Tenant shall be reviewed by the Landlord and the Tenant no less than once every five (5) years to determine the sufficiency of the insurance policies and the limits of insurance policies. In the event that the Landlord determines that the insurance policies held by the Tenant at the time of the periodic review are insufficient, the Tenant shall obtain such additional amounts of insurance to be consistent with what a prudent owner of property similar to the Lands or that provides similar operations to the Permitted Use would so obtain in similar circumstances.

#### **9.2      The Tenant Pays Premiums**

The Tenant shall be responsible for the costs of all premiums of insurance relating to the coverage purchased and maintained as required in this Lease, and shall forthwith reimburse the Landlord for such costs within thirty (30) days of receipt of an invoice from the Landlord, failing which such costs shall be immediately due and payable to the Landlord as Rent.

#### **9.3      Additional Premiums**

If the occupancy of the Lands or the activities of the Tenant on the Leased Premises cause or result in any increase in premiums for any of the insurance policies obtained pursuant to this Lease, the Tenant shall pay the premium increase to the Landlord as Rent forthwith upon the Landlord rendering an invoice for the additional premium.

#### **9.4      Proceeds of Insurance**

The proceeds of insurance which may become payable under any policy of insurance effected pursuant to this Lease shall be payable to the Landlord and the Tenant as their interests may appear

#### **9.5      Repair Obligations**

- (a) Where repairs are necessary due to damage or destruction of the Leased Premises or any fixtures, equipment and improvement on the Leased Premises, the Tenant shall effect the repairs. The Landlord shall bear all costs of repairs and the Landlord shall apply the proceeds of insurance under the relevant policy upon the completion of the repairs, to the reasonable satisfaction of the Landlord
- (b) Any contract to be entered by the Tenant for any repair work required pursuant to this Paragraph 9.5 shall be subject to the reasonable approval of the Landlord, and the Tenant shall submit to the Landlord for its review copies of all estimates for all work and the contracts for the completion of such repair work for review by the Landlord

#### **9.6      Indemnity to Landlord**

The Tenant shall indemnify and save harmless the Landlord from any and all liabilities, damages, expenses, costs, fees (including all legal and other professional costs on a solicitor and his own client full indemnity basis), claims, suits or actions arising out of

- (a) any breach, violation, or non-performance of any covenant, condition or agreement in this Lease on the part of the Tenant to be fulfilled, kept, observed and performed,
- (b) any damage to property occasioned by the use or occupation of the Leased Premises or any part thereof;
- (c) any injury to any person or persons including death resulting at any time arising in connection with or out of the use or occupation of the Leased Premises by the Tenant or any part thereof;
- (d) any act or omission of the Tenant, its agents, employees, licensees, servants, invitees or other persons from time to time in, on or about the Leased Premises, and

this indemnity shall survive the expiry or sooner termination of this Lease.

#### **ARTICLE 10 - DAMAGE AND DESTRUCTION**

##### **10.1 Damage or Destruction of Facilities**

In the event that the Facilities is damaged or destroyed as a result of the negligent act of the Tenant or its invitees, the Tenant shall repair the Facilities, subject to the following provisions if, in the reasonable opinion of the Landlord's architects, the Facilities cannot be rebuilt or made fit for the purposes of the Tenant within three hundred and sixty five (365) days of the damage or destruction, instead of requiring the Tenant to rebuild or make the Facilities fit for the Tenant, the Landlord may, at its option, terminate this Lease by giving the Tenant one hundred and twenty (120) days' notice of termination and the Tenant shall deliver up possession of the Lands to the Landlord on or before the expiry of such one hundred and twenty (120) days.

##### **10.2 Notice of Accidents, Defects or Damages**

The Tenant shall immediately advise the Landlord, and promptly thereafter by notice in writing confirm such advice to the Landlord, of any accident to or defect in the plumbing, gas pipes, water pipes, heating, ventilating, ice making and air conditioning apparatus, electrical equipment, conduits, or wiring, or of any damage or injury to the Lands, or any part thereof, howsoever caused.

#### **ARTICLE 11 - SUB-LETTING AND ASSIGNMENT**

##### **11.1 Sub-letting**

The Tenant shall not, without the written consent of the Landlord, such consent which may be arbitrarily withheld by the Landlord, sub-let a portion of the Lands provided that in no event shall any sub-letting to which the Landlord may have consented release or relieve the Tenant from the full performance of all of its obligations under this Lease throughout the Term and any renewal or extension of the Term

##### **11.2 Assignment**

The Tenant shall not, without the written consent of the Landlord, assign its interest in this Lease, or any part hereof, in any manner whatsoever

#### **ARTICLE 12 - DEFAULT BY THE TENANT AND TERMINATION**

##### **12.1 Events of Default**

Each and every of the following events shall constitute an event of default (hereinafter referred to as an "Event of Default")

- (a) if the Tenant fails to make any payment, in whole or in part, of any amount payable to the Landlord as provided in this Lease;



- (b) if a petition in bankruptcy is filed and presented against the Tenant, or if a receiver, receiver and manager, custodian or similar agent is appointed or takes possession of any property or business of the Tenant;
- (c) if the interest of the Tenant in the Lands becomes liable to be taken or sold under any letter of execution, writ of enforcement, or other like process;
- (d) if the Tenant ceases to carry on its business; or
- (e) if the Tenant neglects or fails to observe, perform or comply with any of its obligations pursuant to this Lease, howsoever arising.

#### 12.2 Opportunity to Cure

Written notice of an Event of Default shall be provided by the Landlord to the Tenant. The Tenant shall have a period of sixty (60) days from the date of receipt of the notice to cure the default or to provide evidence satisfactory to the Landlord, in its unfettered discretion, that the Tenant has taken all reasonable steps in order to cure the default.

#### 12.3 Termination

If an Event of Default occurs and continues for sixty (60) days, subject to Paragraph 12.2, the Landlord may terminate this Lease by delivery of notice in writing to that effect to the Tenant. Such termination shall not limit in any way the Landlord's recourse to any remedies available to it at law, equity or otherwise.

#### 12.4 Collection of Costs

In addition to any other rights available to the Landlord pursuant to this Lease, the Landlord shall be entitled to collect from the Tenant the following costs as Rent.

- (a) all payments made by the Landlord or costs incurred by the Landlord which ought to have been paid or incurred by the Tenant, or for which the Landlord is entitled to be paid or to be reimbursed by the Tenant pursuant to the terms of this Lease;
- (b) all disbursements and costs (including legal and other professional costs on a solicitor and his own client full indemnity basis) and all fees and costs related to recovery or collection of such sums;
- (c) interest at the prime lending rate of the Landlord's primary financial institution on all outstanding amounts owed by the Tenant to the Landlord, from the 31st day following the date they are invoiced by the Landlord to the Tenant to the date of payment in full to the Landlord.

#### 12.5 Set-Off

In the event that the Tenant fails to make any payment or provide any sum to the Landlord as Rent, that amount may, at the election of the Landlord and without limiting or waiving any right or remedy against the Tenant under this Lease, be set off against and shall apply to any sum of money owed by the Landlord to the Tenant from time to time until all amounts owing to the Landlord have been completely set off.

### ARTICLE 13 - LANDLORD'S PERFORMANCE

#### 13.1 Landlord may Perform the Tenant's Covenants

If the Tenant shall fail to perform or cause to be performed any of the covenants or obligations of the Tenant in this Lease contained, on the part of the Tenant to be observed or performed, the Landlord shall have the right, but shall not be obligated, to perform or cause the same to be performed, and to do or cause not to be done such things as may be necessary or incidental thereto, including without limiting the foregoing, the right to make repairs, installations,

erections and expend monies, and all payments, expenses, costs, charges, fees, including all legal fees on a solicitor and his own client full indemnity basis, and disbursements incurred or paid by or on behalf of the Landlord in respect thereof shall be immediately due and payable to the Landlord as Rent

**13.2      Waiver of Exemptions**

Notwithstanding anything contained in any statute in existence as at the date of this Lease or from time to time during the Term none of the goods or chattels of the Tenant at any time during the continuance of the Term on the Lands shall be exempt from levy by distress for Rent in arrears by the Landlord and upon any claim being made for such exemption by the Tenant or on distress being made by the Landlord this covenant and agreement may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying upon any such goods and the Tenant hereby waives all and every benefit that could or might have accrued to the Tenant under and by virtue of any such statute

**13.3      Overlooking and Condoning**

Any condoning, excusing or overlooking by the Landlord of any default, breach or non-observance by the Tenant at any time or times in respect of any covenant, proviso or condition contained in this Lease shall not operate as a waiver of the Landlord's rights under this Lease in respect of any subsequent default, breach or non-observance nor so as to defeat or affect in any way the rights of the Landlord in respect of any subsequent default, breach or non-observance.

**13.4      Forcible Re-entry**

In the event that the Landlord shall be entitled under the terms of this Lease or by law to enter the Lands, then the Landlord shall be at liberty to effect such re-entry forcibly, and for such purpose the Landlord, or its servants or agents duly authorized in writing may break open locks, doors, windows, or otherwise, as may be deemed necessary for such purposes, without in any way incurring any liability or becoming responsible for damages or otherwise to the Tenant.

**13.5      Remedies Generally**

Mention in this Lease of any particular remedy of the Landlord in respect of the default by the Tenant does not preclude the Landlord from any other remedy in respect of any such default, whether available at law or in equity or by statute or expressly provided for in this Lease. No remedy shall be exclusive or dependent upon any other remedy, but the Landlord may from time to time exercise any one of more of such remedies generally or in combination, such remedies being cumulative and not alternative. Whenever the Tenant seeks a remedy in order to enforce the observance or performance of one of the terms, covenants, agreements and conditions contained in this Lease on the part of the Landlord to be observed or performed, the Tenant's only remedy, if any, shall be for such damages as the Tenant shall be able to prove in a court of competent jurisdiction that it has suffered as a result of a breach of this Lease by the Landlord.

**ARTICLE 14 – RESPONSIBILITY**

**14.1      Landlord not Responsible for Injuries, Loss or Damage**

The Landlord shall not be responsible in any way or under any circumstances whatsoever for any injury to any person, including death, however caused or for any loss of or damage to any property belonging to the Tenant, any sub-lessee, or to other occupants of the Lands or to their respective invitees, licensees, agents servants or other persons from time to time attending at the Lands, damage to any such property caused by theft or breakage, failure to keep the Leased Premises in repair and free from refuse, obnoxious odours, vermin or other foreign matter, plumbing, water or other pipes or fixtures, or from any part of the Leased Premises or any adjacent or neighbouring lands and premises or otherwise, acts or negligence of guests, invitees or employees of the Tenant or other occupants of the Leased Premises, acts or negligence of any owners or occupants of adjacent or contiguous premises or property of their guests, invitees or employees, acts of God, acts or negligence of any person or for any loss whatsoever with respect to the Leased Premises and/or any business carried on therein, unless such damage, injury,

death or loss is caused solely by the negligence, omission or default of the Landlord or those for whom the Landlord is in law responsible.

#### ARTICLE 15 - GENERAL

##### 15.1 Notices

Whether or not stipulated in this Lease, all notices, communication, requests and statements (the "Notice") required or permitted under this Lease 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 in this Lease, provided such delivery shall be during normal business hours. Personally delivered Notice shall be deemed received when actually delivered as aforesaid, or
- (b) by telecopier or by any other like method by which a written or recorded message may be sent, directed to the party on whom it is to be served at that address set out in this Lease. 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 of delivery, or
- (c) by mailing via first class registered post, postage prepaid, to the party on whom it is served. Notice so served shall be deemed to be received 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.

All Notices to be sent in accordance with this paragraph shall be addressed as follows:

- (d) to the Landlord at: Municipal District of Pincher Creek No. 9  
PO Box 279  
Pincher Creek, Alberta T0K 1W0  
Attention: Chief Administrative Officer  
Fax: 403-627-5070
- (e) to the Tenant at: Village of Cowley  
PO Box 40  
Cowley, Alberta T0K 0P0  
Attention: Chief Administrative Officer  
Fax: 403-628-2807

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

##### 15.2 Governing Law

This Lease shall be construed and governed by the laws of the Province of Alberta. All of the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate article, paragraph and sub-paragraph of this Lease, and all of such covenants and agreements shall be deemed to run with the Land and the reversion therein. Should any provision of this Lease be illegal or not enforceable they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the illegal or unenforceable provisions had never been included. The schedules shall form part of this Lease.

**15.3 Time of Essence**

Time shall be of the essence throughout this Lease

**15.4 Captions**

The headings, captions, paragraph numbers, sub-paragraph numbers, article numbers and indices appearing in this Lease 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 Lease or any provisions of this Lease

**15.5 Relationship between Parties**

Nothing contained herein shall be deemed or construed by the Landlord or the Tenant, nor by any third party, as creating the relationship of principal and agent or of partnership, or of a joint venture agreement between the Landlord and the Tenant, it being understood and agreed that none of the provisions contained in this Lease nor any act of the parties shall be deemed to create any relationship between the Landlord and the Tenant other than the relationship of a landlord and tenant

**15.6 Binding Effect**

This Lease and everything contained within this Lease shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors, permitted assigns and other legal representatives, as the case may be, of each of the Landlord and the Tenant, subject to the granting of consent by the Landlord as provided to any assignment or sublease.

IN WITNESS WHEREOF each of the Landlord and the Tenant have executed this Lease on the day and year first written above

**MUNICIPAL DISTRICT OF PINCHER CREEK  
NO. 9**

Per \_\_\_\_\_

Per: \_\_\_\_\_

**VILLAGE OF COWLEY**

Per \_\_\_\_\_

Per \_\_\_\_\_

**SCHEDULE "B"**

**PROMISSORY NOTE**

**PROMISSORY NOTE**

BETWEEN:

**MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9**  
(the "MD")

- and -

**VILLAGE OF COWLEY**  
(the "Village")

WHEREAS:

A. The MD has acquired certain waterworks systems from the Village, pursuant to that Master Transfer Agreement between the parties;

B. As of the date of execution of the Promissory Note, the MD owes One Million Two Hundred Sixty Thousand (\$1,260,000.00) Dollars to the Village for the acquisition of those waterworks systems;

D. The MD has agreed to the granting of this Promissory Note as evidence of indebtedness of the outstanding purchase price to the Village in accordance with the terms, covenants and conditions contained within this Promissory Note

NOW THEREFORE IN CONSIDERATION of the Village transferring the waterworks systems to the MD, and the MD's promise to pay sums required within this Promissory Note, and the and the mutual covenants contained within this Promissory Note, the MD and the Village covenant, promise and agree as follows.

1. Loan

The MD hereby promises to pay to, or to the order of, the Village at its address of Box 40, Cowley, Alberta T0K 0P0, the sum of One Million Two Hundred Sixty Thousand (\$1,260,000.00) Dollars in lawful money of Canada and upon the following terms:

- (a) payments of principal and interest shall be in accordance with the attached Schedule "A"; and
- (b) interest on the balance outstanding of the foregoing amounts at the interest rate of 2.942%, payable annually, calculated and compounded annually not in advance, both before and after default, maturity and the taking of any judgment hereon

2. Overdue Payment

All sums of interest on becoming overdue, shall be forthwith treated (as to the payment of further interest thereon) as principal monies and shall bear compound interest at the rate aforesaid

3. Waiver of Presentment

The Village hereby waives demand and presentment for payment, notice of non-payment and notice of protest of this Promissory Note

DATED at Pincher Creek, in the Province of Alberta, this \_\_\_\_ day of \_\_\_\_\_, 2013

**MUNICIPAL DISTRICT OF PINCHER CREEK  
NO. 9**

Per \_\_\_\_\_

{27/09/2013.E1388260.DOC.3}

SCHEDULE "A"**MD/Cowley Waterworks Purchase Agreement****Financial Arrangements**

Purchase price of \$1,400,000.00.

10% (\$140,000.00) due at signing

Balance paid over 10 years starting June 15th, 2014 at 2.042% interest  
Calculated January 1st each year on outstanding balance.

	Balance Remaining	Principal	Interest	Payment
October 2013*	1,400,000.00	140,000.00	0.00	140,000.00
June 15th, 2014	1,260,000.00	126,000.00	37,069.20	163,069.20
June 15th, 2015	1,134,000.00	126,000.00	33,362.28	159,362.28
June 15th, 2016	1,008,000.00	126,000.00	29,655.36	155,655.36
June 15th, 2017	882,000.00	126,000.00	25,948.44	151,948.44
June 15th, 2018	756,000.00	126,000.00	22,241.52	148,241.52
June 15th, 2019	630,000.00	126,000.00	18,534.60	144,534.60
June 15th, 2020	504,000.00	126,000.00	14,827.68	140,827.68
June 15th, 2021	378,000.00	126,000.00	11,120.76	137,120.76
June 15th, 2022	252,000.00	126,000.00	7,413.84	133,413.84
June 15th, 2023	126,000.00	126,000.00	3,706.92	129,706.92
	0.00	1,400,000.00	203,880.60	1,603,880.60

{3709/2013.E1388360.DOC.3}

**SCHEDULE "C"****Rights of Way**

The following instrument numbers registered at the Land Titles Office:

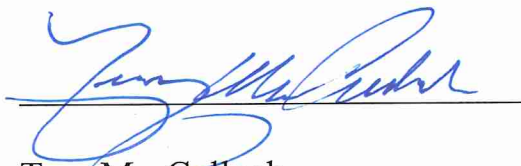
	<b>Instrument No.</b>	<b>Description</b>
1.		
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Please note :


This agreement has been reviewed and deemed still in force.

Date Reviewed

13 Feb 2020



Troy MacCulloch  
CAO, MD of Pincher Creek



Cindy Cornish  
CAO, Village of Cowley

**Next Review Date**

Sept 30, 2020

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**Reviewed by :**

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14-013  
(24)

2340

**LEASE AGREEMENT**

**MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9**

**TO**

**VILLAGE OF COWLEY**

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THIS LEASE made the 28<sup>th</sup> day of NOV, 2014

BETWEEN:

MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9  
(hereinafter referred to as the "Landlord")

AND:

VILLAGE OF COWLEY  
(hereinafter referred to as the "Tenant")

WHEREAS:

- A. The Landlord is or is entitled to become the registered owner of the Lands;
- B. The Landlord and the Tenant desire to enter into a lease of the Leased Premises allowing for management and operation of the Facilities located upon the Leased Premises;
- C. The Tenant is to own the Facilities, but the Landlord is to continue to own the Lands;

#### ARTICLE 1- DEFINITIONS

##### 1.1 Definitions

In this Lease the following terms have the following meanings:

- (a) "Applicable Laws" means any and all municipal, provincial and federal codes, guidelines, statutes, laws, regulations, rules, permits, licenses, orders and directions of any government, regulatory or administrative body, agency, board or commission having jurisdiction over the Leased Premises, the Lands, the Permitted Use on the Lands and the Facilities;
- (b) "Commencement Date" means the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_;
- (c) "Facilities" means both:
  - (i) that water reservoir located on the Leased Premises and all associated, pumps, pipes, valves, meters, measurement instruments and all other connected facilities used with respect to the reservoir; and
  - (ii) the existing water treatment plant located on the Existing Water Treatment Plant Lands and the additional appurtenances such as all:
    - (A) pumps, pipes, valves, meters, measurement instruments, and related assemblies and facilities housed within steel and/or brick clap concrete block buildings located on concrete foundations, within below grade concrete structures, and surrounding station yard sites;
    - (B) other connected facilities and assemblies used and required for operation of the water treatment plant described above and its connecting assemblies and facilities; and

- (C) security fencing and gating surrounding or otherwise security all or any of the foregoing;
- (d) **"Hazardous Substances"** means toxic, hazardous, dangerous or potentially dangerous substances of any kind whatsoever including, without restricting the generality of the foregoing, urea formaldehyde, asbestos, PCB transformers and those elements, materials, substances or compounds which are regulated by federal, provincial or local statute, law, ordinance, code, rule, regulation order or decree including, but not limited to, the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c.E-12, as amended from time to time, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous or potentially dangerous waste, substance or material of any kind or nature whatsoever;
- (e) **"Lands"** means those lands legally described as:
- WATER RESERVOIR SITE PLAN 8510212  
CONTAINING 0.975 HECTARE (2.41 ACRES) MORE OR LESS  
EXCEPTING THEREOUT ALL MINES AND MINERALS;
- (f) **"Lease"** means this lease agreement, as from time to time amended in writing by agreement between the Landlord and the Tenant;
- (g) **"Leased Premises"** means only that portion of the Lands reasonably required for the operation of the Facilities by the Tenant;
- (h) **"Permitted Use"** means the operation of the Facilities and any service ancillary thereto
- (i) **"Rent"** means the rent as set forth in Article 5 hereof; and
- (j) **"Term"** means the term of this Lease as set forth in Paragraph 3.1 of this Lease;

## ARTICLE 2 – DEMISE

### **2.1 Demise of Leased Premises**

- (a) In consideration of the rents, covenants, conditions and agreements contained within this Lease to be paid, observed and performed by the Tenant, the Landlord hereby demises and leases the Leased Premises to the Tenant and the Tenant leases the Leased Premises from the Landlord.
- (b) The Tenant acknowledges and agrees that the Tenant shall not be entitled to occupy the entirety of the Lands, but rather, only that portion of the Lands that is reasonably necessary for the Tenant's Permitted Use.

## ARTICLE 3 - TERM OF LEASE

### **3.1 Term**

The term of this Lease shall be for fifteen (15) years commencing on the Commencement Date and expiring on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, subject always to earlier termination or renewal of this Lease and the Term as provided in this Lease.

## ARTICLE 4 - EXAMINATION OF LANDS

### **4.1 Satisfactory Condition**

The Tenant agrees that the Leased Premises are in good condition and agrees to accept possession of the Leased Premises on an "as is - where is" basis.

## **ARTICLE 5 - RENT**

### **5.1           Base Rent**

The base rent payable by the Tenant to the Landlord for the initial Term of this Lease shall be the sum of ONE (\$1.00) DOLLAR per year, and the total rent over the entire Term of the Lease has been paid by the Tenant to the Landlord, payment of which has been acknowledged by the Landlord.

## **ARTICLE 6 - TAXES**

### **6.1           The Tenant's Taxes**

The Tenant shall pay when due all real estate taxes, assessments, rates and charges and other government impositions, general or special, ordinary or extraordinary, foreseen or unforeseen, of every kind, including assessments for local or public improvements and school taxes which may at any time during the Term be imposed, assessed or levied, in respect of the Leased Premises and all fixtures and improvements from time to time thereon, or which, howsoever imposed, might constitute a lien on the Leased Premises or any part thereof or a liability of the Landlord. The Tenant shall furnish to the Landlord, within thirty days of receipt of a written request from the Landlord, official receipts or other proof satisfactory to the Landlord evidencing the payment of the taxes.

## **ARTICLE 7 - QUIET ENJOYMENT**

### **7.1           The Tenant's Quiet Enjoyment**

Subject to the terms, covenants and conditions contained in this Lease, the Landlord covenants that upon duly performing and observing all its covenants and obligations contained in this Lease the Tenant shall and may peaceably possess and enjoy the Leased Premises for the Term without any interruption or disturbance from the Landlord or any other person lawfully claiming by, from or under the Landlord.

## **ARTICLE 8 - OPERATION OF LANDS**

### **8.1           Management**

The Tenant shall operate and manage the Leased Premises consistent with the Permitted Use and shall comply with all obligations imposed upon by the Tenant pursuant to the Applicable Laws. Without limiting the generality of the foregoing, the Tenant shall:

- (a)     supply all necessary equipment and personnel reasonably required for the purpose of managing and operating the Facilities;
- (b)     maintain reasonable records of maintenance and repairs;
- (c)     undertake all activities and provide all services reasonably required for the efficient management and operation of the Leased Premises and the Facilities as a prudent operator would in similar circumstances;
- (d)     promptly pay all charges, impositions, costs and expenses of every nature and kind relating to the Leased Premises and the maintenance, operation, cleaning, repair and replacement of the Facilities, including, without restriction, all costs relating to window cleaning, garbage disposal, repairing damaged components of the Leased Premises and Facilities, heating, ventilating and air-conditioning the Facilities, provision of hot and cold water, and provision of electricity;
- (e)     use the Lands solely for the Permitted Use and shall not use or permit or suffer the use of the Leased Premises or any part thereof for any other business or purpose whatsoever;

- (f) not do, omit to do or permit to be done or omit to be done any act or thing which may render void or voidable or conflict with the requirements of any policy or policies of insurance, including any regulations of fire insurance underwriters applicable to such policy or policies, under which the Leased Premises or the contents of the Leased Premises are insured or which may cause any increase in premium to be paid in respect of any such policy;

**8.2            Evidence of Payments**

The Tenant shall produce upon the reasonable request of the Landlord, satisfactory evidence of the due payment by the Tenant of all payments required to be made by the Tenant under this Lease.

**8.3            No Nuisance**

The Tenant shall not at any time during the Term, use, exercise or carry on or permit or suffer to be used, exercised or carried on, in, about or upon the Leased Premises or any part thereof any waste or any offensive act, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the Term be done in, about or upon the Leased Premises or any part thereof which shall be inconsistent or incompatible with the intended use of a public Facilities or which may be or grow to the annoyance, nuisance, damage or disturbance of the users of the Leased Premises.

**8.4            Ownership of Fixtures and Facilities**

- (a) Subject to Section 8.4(b), the Landlord and the Tenant agree that anything in the nature of leasehold improvements, installations, alterations, additions and partitions and all other fixed improvements which the Tenant may construct upon the Lands from time to time are and shall be fixtures to the Leased Premises and are intended to be and become the absolute property of the Landlord upon the expiration or termination of this Lease, but shall be deemed, as between the Landlord and the Tenant during this Lease, to be the separate property of the Tenant and not of the Landlord but subject to and governed by all the provisions of this Lease notwithstanding the right of the Tenant. Provided always that the Landlord's absolute right of property in all such fixed improvements upon the Lands which will arise upon the expiration or termination of this Lease takes priority over any other interest in the said fixed improvements which may now or hereafter be created by the Tenant, and that all dealings by the Tenant with the fixed improvements which in any way affect title thereto shall be made expressly subject to this right of the Landlord. The Tenant shall not assign, encumber or otherwise deal with the fixed improvements separately from any dealing with the leasehold interest under this Lease which has been authorized by the Landlord in writing.
- (b) The Landlord and the Tenant agree that the Facilities shall at all times remain the sole ownership of the Tenant and that upon the expiration or termination of this Lease, should the Facilities or any party thereof remain operational, the Landlord and the Tenant shall negotiate how the Facilities shall continue to remain operational or the entitlement to compensation therefore.

**8.5            Termination**

The Tenant shall, upon the expiration or sooner termination of the Term:

- (a) surrender and yield up to the Landlord the Leased Premises, together with all fixtures, improvements and equipment in as good condition and repair as the Tenant is required to maintain as set forth in this Lease, and the Tenant shall deliver to the Landlord all keys to the Facilities which the Tenant has in its possession;
- (b) provide the Landlord with an inventory of all warranties on equipment acquired by the Tenant during the Term and assign to the Landlord all such warranties requested by the Landlord; and



- (c) not leave upon the Leased Premises any rubbish or waste material and will leave the Lands in a clean and tidy condition.

**8.6 Builders' Liens**

The Tenant shall not permit any lien under the *Builders' Lien Act* or any like statute to be filed or registered against the Leased Premises, the Lands, the Facilities, or any fixtures or improvements on the Lands, by reason of work, labour, services or materials supplied or claimed to have been supplied to the Tenant or anyone holding any interest in any part thereof through or under the Tenant. If any lien is at any time filed or registered the Tenant shall procure registration of its discharge within forty-five (45) days after the lien has come to its notice or knowledge.

**8.7 Discharge of Builders' Liens**

The Landlord may, but is not obliged to, after the expiration of the period set forth in the preceding paragraph, discharge any lien filed or registered and all disbursements incurred and costs paid by or on behalf of the Landlord in respect the discharge of any lien shall be immediately due and payable to the Landlord as Rent.

**8.8 Alterations**

The Tenant shall not without the prior written consent of the Landlord, which consent may not be unreasonably withheld, make any installations, additions, partitions, alterations or improvements to the Lands.

**ARTICLE 9- INSURANCE AND INDEMNITY**

**9.1 Insurance**

- (a) The Tenant shall throughout the Term and during any other time the Tenant occupies the Leased Premises or a part thereof, at its sole cost and expense, take out and keep in full force and effect, the following insurance:
  - (i) "all risks" insurance upon property of every kind and description owned by the Tenant, or for which the Tenant is legally liable, or installed by or on behalf of the Tenant and which is located within the Leased Premises, in an amount not less than the full replacement cost thereof;
  - (ii) standard owner's form automobile policy providing not less than third party liability insurance with \$2,000,000.00 inclusive limits and accident benefits coverage where compulsory by law, covering all licensed vehicles owned or operated by or on behalf of the Tenant;
  - (iii) any other form of insurance as the Tenant or Landlord may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant under similar circumstances would insure; and
  - (iv) comprehensive general liability insurance with inclusive limits of not less than \$5,000,000.
- (b) Each insurance policy referred to in Section 9.1(a) shall name the Landlord as additional named insureds as their interest may appear and such policies will contain where appropriate:
  - (i) a waiver of any subrogation rights which the Tenant's insurers may have against the Landlord;
  - (ii) a severability of interests clause or a cross liability clause; and
  - (iii) a waiver in favour of the Landlord of any breach of warranty clause such that the insurance policies in question shall not be invalidated with respect to their interest, by reason of any

breach or violation of any warranty, representation, declaration or condition contained in the policies.

- (c) All policies shall be taken out with insurers and shall be in a form acceptable to the Landlord acting reasonably. The Tenant agrees that certificates of insurance acceptable to the Landlord, certified copies of each such insurance policy, will be delivered to the Landlord as soon as practicable after the placing of the required insurance. All policies shall contain an undertaking by the insurers to notify the Landlord in writing, of any material change, cancellation or termination of any provision of any policy, not less than thirty (30) days prior to the material change, cancellation or termination thereof.
- (d) All insurance policies to be taken out by the Tenant shall be reviewed by the Landlord and the Tenant no less than once every five (5) years to determine the sufficiency of the insurance policies and the limits of insurance policies. In the event that the Landlord determines that the insurance policies held by the Tenant at the time of the periodic review are insufficient, the Tenant shall obtain such additional amounts of insurance to be consistent with what a prudent owner of property similar to the Lands or that provides similar operations to the Permitted Use would so obtain in similar circumstances.

## **9.2            The Tenant Pays Premiums**

The Tenant shall be responsible for the costs of all premiums of insurance relating to the coverage purchased and maintained as required in this Lease, and shall forthwith reimburse the Landlord for such costs within thirty (30) days of receipt of an invoice from the Landlord, failing which such costs shall be immediately due and payable to the Landlord as Rent.

## **9.3            Additional Premiums**

If the occupancy of the Lands or the activities of the Tenant on the Leased Premises cause or result in any increase in premiums for any of the insurance policies obtained pursuant to this Lease, the Tenant shall pay the premium increase to the Landlord as Rent forthwith upon the Landlord rendering an invoice for the additional premium.

## **9.4            Proceeds of Insurance**

The proceeds of insurance which may become payable under any policy of insurance effected pursuant to this Lease shall be payable to the Landlord and the Tenant as their interests may appear.

## **9.5            Repair Obligations**

- (a) Where repairs are necessary due to damage or destruction of the Leased Premises or any fixtures, equipment and improvement on the Leased Premises, the Tenant shall effect the repairs. The Landlord shall bear all costs of repairs and the Landlord shall apply the proceeds of insurance under the relevant policy upon the completion of the repairs, to the reasonable satisfaction of the Landlord.
- (b) Any contract to be entered by the Tenant for any repair work required pursuant to this Paragraph 9.5 shall be subject to the reasonable approval of the Landlord, and the Tenant shall submit to the Landlord for its review copies of all estimates for all work and the contracts for the completion of such repair work for review by the Landlord.

## **9.6            Indemnity to Landlord**

The Tenant shall indemnify and save harmless the Landlord from any and all liabilities, damages, expenses, costs, fees (including all legal and other professional costs on a solicitor and his own client full indemnity basis), claims, suits or actions arising out of:

- (a) any breach, violation, or non-performance of any covenant, condition or agreement in this Lease on the part of the Tenant to be fulfilled, kept, observed and performed;
- (b) any damage to property occasioned by the use or occupation of the Leased Premises or any part thereof;
- (c) any injury to any person or persons including death resulting at any time arising in connection with or out of the use or occupation of the Leased Premises by the Tenant or any part thereof;
- (d) any act or omission of the Tenant, its agents, employees, licensees, servants, invitees or other persons from time to time in, on or about the Leased Premises; and

this indemnity shall survive the expiry or sooner termination of this Lease.

#### **ARTICLE 10 - DAMAGE AND DESTRUCTION**

##### **10.1 Damage or Destruction of Facilities**

In the event that the Facilities is damaged or destroyed as a result of the negligent act of the Tenant or its invitees, the Tenant shall repair the Facilities, subject to the following provisions if, in the reasonable opinion of the Landlord's architects, the Facilities cannot be rebuilt or made fit for the purposes of the Tenant within three hundred and sixty five (365) days of the damage or destruction, instead of requiring the Tenant to rebuild or make the Facilities fit for the Tenant, the Landlord may, at its option, terminate this Lease by giving the Tenant one hundred and twenty (120) days' notice of termination and the Tenant shall deliver up possession of the Lands to the Landlord on or before the expiry of such one hundred and twenty (120) days.

##### **10.2 Notice of Accidents, Defects or Damages**

The Tenant shall immediately advise the Landlord, and promptly thereafter by notice in writing confirm such advice to the Landlord, of any accident to or defect in the plumbing, gas pipes, water pipes, heating, ventilating, ice making and air conditioning apparatus, electrical equipment, conduits, or wiring, or of any damage or injury to the Lands, or any part thereof, howsoever caused.

#### **ARTICLE 11 - SUB-LETTING AND ASSIGNMENT**

##### **11.1 Sub-letting**

The Tenant shall not, without the written consent of the Landlord, such consent which may be arbitrarily withheld by the Landlord, sub-let a portion of the Lands provided that in no event shall any sub-letting to which the Landlord may have consented release or relieve the Tenant from the full performance of all of its obligations under this Lease throughout the Term and any renewal or extension of the Term.

##### **11.2 Assignment**

The Tenant shall not, without the written consent of the Landlord, assign its interest in this Lease, or any part hereof, in any manner whatsoever.

#### **ARTICLE 12 - DEFAULT BY THE TENANT AND TERMINATION**

##### **12.1 Events of Default**

Each and every of the following events shall constitute an event of default (hereinafter referred to as an "Event of Default"):

- (a) if the Tenant fails to make any payment, in whole or in part, of any amount payable to the Landlord as provided in this Lease;

- (b) if a petition in bankruptcy is filed and presented against the Tenant, or if a receiver, receiver and manager, custodian or similar agent is appointed or takes possession of any property or business of the Tenant;
- (c) if the interest of the Tenant in the Lands becomes liable to be taken or sold under any letter of execution, writ of enforcement, or other like process;
- (d) if the Tenant ceases to carry on its business; or
- (e) if the Tenant neglects or fails to observe, perform or comply with any of its obligations pursuant to this Lease, howsoever arising.

#### **12.2      Opportunity to Cure**

Written notice of an Event of Default shall be provided by the Landlord to the Tenant. The Tenant shall have a period of sixty (60) days from the date of receipt of the notice to cure the default or to provide evidence satisfactory to the Landlord, in its unfettered discretion, that the Tenant has taken all reasonable steps in order to cure the default.

#### **12.3      Termination**

If an Event of Default occurs and continues for sixty (60) days, subject to Paragraph 12.2, the Landlord may terminate this Lease by delivery of notice in writing to that effect to the Tenant. Such termination shall not limit in any way the Landlord's recourse to any remedies available to it at law, equity or otherwise.

#### **12.4      Collection of Costs**

In addition to any other rights available to the Landlord pursuant to this Lease, the Landlord shall be entitled to collect from the Tenant the following costs as Rent:

- (a) all payments made by the Landlord or costs incurred by the Landlord which ought to have been paid or incurred by the Tenant, or for which the Landlord is entitled to be paid or to be reimbursed by the Tenant pursuant to the terms of this Lease;
- (b) all disbursements and costs (including legal and other professional costs on a solicitor and his own client full indemnity basis) and all fees and costs related to recovery or collection of such sums;
- (c) interest at the prime lending rate of the Landlord's primary financial institution on all outstanding amounts owed by the Tenant to the Landlord, from the 31st day following the date they are invoiced by the Landlord to the Tenant to the date of payment in full to the Landlord.

#### **12.5      Set-Off**

In the event that the Tenant fails to make any payment or provide any sum to the Landlord as Rent, that amount may, at the election of the Landlord and without limiting or waiving any right or remedy against the Tenant under this Lease, be set off against and shall apply to any sum of money owed by the Landlord to the Tenant from time to time until all amounts owing to the Landlord have been completely set off.

### **ARTICLE 13 - LANDLORD'S PERFORMANCE**

#### **13.1      Landlord may Perform the Tenant's Covenants**

If the Tenant shall fail to perform or cause to be performed any of the covenants or obligations of the Tenant in this Lease contained, on the part of the Tenant to be observed or performed, the Landlord shall have the right, but shall not be obligated, to perform or cause the same to be performed, and to do or cause not to be done such things as may be necessary or incidental thereto, including without limiting the foregoing, the right to make repairs, installations,

erections and expend monies, and all payments, expenses, costs, charges, fees, including all legal fees on a solicitor and his own client full indemnity basis, and disbursements incurred or paid by or on behalf of the Landlord in respect thereof shall be immediately due and payable to the Landlord as Rent.

**13.2            Waiver of Exemptions**

Notwithstanding anything contained in any statute in existence as at the date of this Lease or from time to time during the Term none of the goods or chattels of the Tenant at any time during the continuance of the Term on the Lands shall be exempt from levy by distress for Rent in arrears by the Landlord and upon any claim being made for such exemption by the Tenant or on distress being made by the Landlord this covenant and agreement may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying upon any such goods and the Tenant hereby waives all and every benefit that could or might have accrued to the Tenant under and by virtue of any such statute.

**13.3            Overlooking and Condoning**

Any condoning, excusing or overlooking by the Landlord of any default, breach or non-observance by the Tenant at any time or times in respect of any covenant, proviso or condition contained in this Lease shall not operate as a waiver of the Landlord's rights under this Lease in respect of any subsequent default, breach or non-observance nor so as to defeat or affect in any way the rights of the Landlord in respect of any subsequent default, breach or non-observance.

**13.4            Forcible Re-entry**

In the event that the Landlord shall be entitled under the terms of this Lease or by law to enter the Lands, then the Landlord shall be at liberty to effect such re-entry forcibly, and for such purpose the Landlord, or its servants or agents duly authorized in writing may break open locks, doors, windows, or otherwise, as may be deemed necessary for such purposes, without in any way incurring any liability or becoming responsible for damages or otherwise to the Tenant.

**13.5            Remedies Generally**

Mention in this Lease of any particular remedy of the Landlord in respect of the default by the Tenant does not preclude the Landlord from any other remedy in respect of any such default, whether available at law or in equity or by statute or expressly provided for in this Lease. No remedy shall be exclusive or dependent upon any other remedy, but the Landlord may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative. Whenever the Tenant seeks a remedy in order to enforce the observance or performance of one of the terms, covenants, agreements and conditions contained in this Lease on the part of the Landlord to be observed or performed, the Tenant's only remedy, if any, shall be for such damages as the Tenant shall be able to prove in a court of competent jurisdiction that it has suffered as a result of a breach of this Lease by the Landlord.

**ARTICLE 14 – RESPONSIBILITY**

**14.1            Landlord not Responsible for Injuries, Loss or Damage**

The Landlord shall not be responsible in any way or under any circumstances whatsoever for any injury to any person, including death, however caused or for any loss of or damage to any property belonging to the Tenant, any sub-lessee, or to other occupants of the Lands or to their respective invitees, licensees, agents servants or other persons from time to time attending at the Lands, damage to any such property caused by theft or breakage, failure to keep the Leased Premises in repair and free from refuse, obnoxious odours, vermin or other foreign matter, plumbing, water or other pipes or fixtures, or from any part of the Leased Premises or any adjacent or neighbouring lands and premises or otherwise, acts or negligence of guests, invitees or employees of the Tenant or other occupants of the Leased Premises, acts or negligence of any owners or occupants of adjacent or contiguous premises or property of their guests, invitees or employees, acts of God, acts or negligence of any person or for any loss whatsoever with respect to the Leased Premises and/or any business carried on therein, unless such damage, injury,

death or loss is caused solely by the negligence, omission or default of the Landlord or those for whom the Landlord is in law responsible.

## **ARTICLE 15 – GENERAL**

### **15.1        Notices**

Whether or not stipulated in this Lease, all notices, communication, requests and statements (the "Notice") required or permitted under this Lease 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 in this Lease, provided such delivery shall be during normal business hours. Personally delivered Notice shall be deemed received when actually delivered as aforesaid; or
- (b) by telecopier or by any other like method by which a written or recorded message may be sent, directed to the party on whom it is to be served at that address set out in this Lease. 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 of delivery; or
- (c) by mailing via first class registered post, postage prepaid, to the party on whom it is served. Notice so served shall be deemed to be received 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.

All Notices to be sent in accordance with this paragraph shall be addressed as follows:

- (d) to the Landlord at:        Municipal District of Pincher Creek No. 9  
   PO Box 279  
   Pincher Creek, Alberta T0K 1W0  
   Attention: Chief Administrative Officer  
   Fax:        403-627-5070
- (e) to the Tenant at :        Village of Cowley  
   PO Box 40  
   Cowley, Alberta T0K 0P0  
   Attention: Chief Administrative Officer  
   Fax:        403-628-2807

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

### **15.2        Governing Law**

This Lease shall be construed and governed by the laws of the Province of Alberta. All of the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate article, paragraph and sub-paragraph of this Lease, and all of such covenants and agreements shall be deemed to run with the Land and the reversion therein. Should any provision of this Lease be illegal or not enforceable they shall be considered separate and several from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the illegal or unenforceable provisions had never been included. The schedules shall form part of this Lease.

**15.3            Time of Essence**

Time shall be of the essence throughout this Lease.

**15.4            Captions**

The headings, captions, paragraph numbers, sub-paragraph numbers, article numbers and indices appearing in this Lease 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 Lease or any provisions of this Lease.

**15.5            Relationship between Parties**

Nothing contained herein shall be deemed or construed by the Landlord or the Tenant, nor by any third party, as creating the relationship of principal and agent or of partnership, or of a joint venture agreement between the Landlord and the Tenant, it being understood and agreed that none of the provisions contained in this Lease nor any act of the parties shall be deemed to create any relationship between the Landlord and the Tenant other than the relationship of a landlord and tenant.

**15.6            Binding Effect**

This Lease and everything contained within this Lease shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors, permitted assigns and other legal representatives, as the case may be, of each of the Landlord and the Tenant, subject to the granting of consent by the Landlord as provided to any assignment or sublease.

**IN WITNESS WHEREOF** each of the Landlord and the Tenant have executed this Lease on the day and year first written above.

**MUNICIPAL DISTRICT OF PINCHER CREEK  
NO. 9**

Per: *Dorian Hammond*

Per: *W. Kay*

**VILLAGE OF COWLEY**

Per: *Mayor Linda Sundt*

Per: *Mayor Sundt*

Please note :

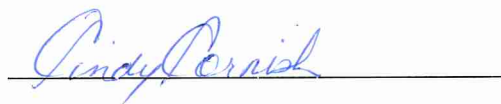
This agreement, 14-013 is a 15 year lease between the MD and the Village of Cowley for the former Water Reservoir and water treatment plant. By nature of this lease there is no review date.

Date Reviewed

13 Feb 2020



Troy MacCulloch  
CAO, MD of Pincher Creek



Cindy Cornish  
CAO, Village of Cowley

**Next Review Date**

n/a

**Reviewed by :**

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14-014  
(25)

2340

**OPERATIONS AGREEMENT**

**MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9**

**AND**

**VILLAGE OF COWLEY**



**B R O W N L E E**  
**L L P**  
*Chartered Accountants & Solicitors*

THIS AGREEMENT made this 28<sup>th</sup> day of May, 2013. <sup>4</sup>

BETWEEN:

MUNICIPAL DISTRICT OF PINCHER CREEK No. 9  
(hereinafter referred to as the "MD")

and

VILLAGE OF COWLEY  
(hereinafter referred to as the "Village")

**OPERATIONS AGREEMENT**

**WHEREAS:**

- A. The New WTP is being constructed on the Lands, for the ownership and operation by the MD;
- B. The Existing WTP is owned by the Village, but will be operated by the MD until the New WTP becomes operational;
- C. Village and the MD have agreed that the MD will operate for the joint benefit of the Village and the MD:
  - a. the Existing WTP until the New WTP is operational; and
  - b. the New WTP once it becomes operational;
- D. The Village and the MD also agree that the Village will permit the MD to transmit some of its Treated Water through the Village Water System to be able to deliver the Treated Water to the MD's Secondary System;
- E. The Village and the MD have agreed to enter into this Agreement respecting the terms and conditions of the above;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the promises, mutual terms, covenants and conditions contained within this Agreement, the parties hereto agree as follows:

**1. Definitions**

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

- (a) **"Agreement"** means this Operations Agreement and the schedules attached hereto, together with such amendments, extensions and renewals as may be evidenced in writing and executed by the parties from time to time;
- (b) **"Connection Point"** means that point of delivery where the MD's Secondary System and the Village Water System are connected and the MD's Treated Water is delivered into the MD's Secondary System;
- (c) **"Defaulting Party"** has the meaning as ascribed thereto in Section 14.1 hereof;
- (d) **"Dispute Resolution Procedure"** means that dispute resolution procedure as set in Schedule "A" hereof;
- (e) **"Existing WTP"** means the existing water treatment plant as located on the Lands and the additional appurtenances such as all;

- (i) pumps, pipes, valves, meters, measurement instruments, and related assemblies and facilities housed within steel and/or brick clad concrete block buildings located on concrete foundations, within below grade concrete structures, and surrounding station yard sites;
  - (ii) other connected facilities and assemblies used and required for operation of the water treatment plant described above and its connecting assemblies and facilities; and
  - (iii) security fencing and gating surrounding or otherwise security all or any of the foregoing;
- (f) **"Event of Default"** has the meaning as ascribed thereto in Section 14.1 hereof;
- (g) **"Fees to MD"** means that Eighty Eight Cents (\$0.88) per cubic meter payable by the Village to the MD, for the MD to treat the Village's Raw Water at either the Existing WTP or the New WTP, as the case may be. This amount will be monitored by the MD, by determining how much of the Village's Raw Water is treated at the either the Existing WTP or the New WTP, as the case may be and as flows through that Cowley distribution flow meter as further illustrated in the attached Schedule "B" as the "Cowley Dist. Flow Meter";
- (h) **"Fees to Village"** means Ninety Cents (\$0.90) per cubic meter for that amount of the MD's Treated Water that is transmitted through the Village Water System to the Connection Point;
- (i) **"Force Majeure"** means any cause not reasonably within the relevant party's control and will include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, storms, floods, high waters, washouts, inclement weather, orders or acts of civil or military authorities, civil disturbances, or any other causes, whether of the kind herein enumerated or otherwise, not within the reasonable control of the party and which, by the exercise of due diligence, the party is unable to overcome, provided that lack of funds shall not be a cause beyond control;
- (j) **"Hazardous Substances"** means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing:
  - (i) any form of radioactive materials;
  - (ii) explosives;
  - (iii) any substance that, if added to any Raw Water or Treated Water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant;
  - (iv) any solid, liquid, gas or odor or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that:
    - (A) endangers the health, safety or welfare of persons or the health of animal life;
    - (B) interferes with normal enjoyment of life or property; or
    - (C) causes damage to plant life or to property; and
    - (D) substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the parties hereto;
- (k) **"Indemnified Party"** has the meaning as ascribed thereto in Section 11.3 hereof;

- (l) **"Indemnifying Party"** has the meaning as ascribed thereto in Section 11.3 hereof;
- (m) **"Insolvency Default"** has the meaning as ascribed thereto in Section 14.1(c) hereof;
- (n) **"Lands"** means those lands legally described as:

WATER RESERVOIR SITE PLAN 8510212  
CONTAINING 0.975 HECTARE (2.41 ACRES) MORE OR LESS  
EXCEPTING THEREOUT ALL MINES AND MINERALS;

- (o) **"Lease"** means that ground lease entered into between the MD as landlord and the Village as tenant, dated effective \_\_\_\_\_, 20\_\_\_\_, to permit the Village to operate its reservoir and Existing WTP on a portion of the Lands;
- (p) **"MD's Secondary System"** means that portion of the MD's water system that is not directly connected to either the Existing WTP or the New WTP, as the case may be, but is connected to the Village Water System;
- (q) **"New WTP"** means that new water treatment plant that is to be constructed on the Lands and the additional appurtenances thereto such as all:
  - (i) pumps, pipes, valves, meters, measurement instruments, and related assemblies and facilities housed within steel and/or brick clad concrete block buildings located on concrete foundations, within below grade concrete structures, and surrounding station yard sites;
  - (ii) other connected facilities and assemblies used and required for operation of the water treatment plant described above and its connecting assemblies and facilities; and
  - (iii) security fencing and gating surrounding or otherwise security all or any of the foregoing;
- (r) **"Non-defaulting Party"** has the meaning as ascribed thereto in Section 14.1 hereof;
- (s) **"Notice"** has the meaning as ascribed thereto in Section 17.1 hereof;
- (t) **"Notice of Default"** has the meaning as ascribed thereto in Section 16.1 hereof;
- (u) **"Parties"** means the MD and the Village collectively and **"Party"** means any one of them;
- (v) **"Payment Default"** has the meaning as ascribed thereto in Section 14.1(a) hereof;
- (w) **"Performance Default"** has the meaning as ascribed thereto in Section 14.1(b) hereof;
- (x) **"Prime Rate"** means the percentage rate of interest per annum which is established and charged from time to time by Alberta Treasury Branches on loans to its most creditworthy and preferred commercial borrowers. A statement or statements in writing made by the manager of the said Alberta Treasury Branches' main branch, in Pincher Creek, Alberta, as to the Prime Rate, from time to time, shall be final and conclusive evidence of the Prime Rate during the operative time of the statement and shall not be open to dispute or challenge by the Parties. Any change in the Prime Rate shall be effective on the banking day upon which the said Bank changes its Prime Rate, and such rate of interest shall be changed automatically without notice to the Parties;
- (y) **"Raw Water"** means that non-potable water which has not yet been treated at either the Existing WTP or the New WTP, as the case may be;
- (z) **"MD Services"** means the provision of supervision, administration, labour, transportation, tools, equipment and operational and maintenance staff necessary to fulfill all the MD's requirements of

this Agreement, which, without limitation, includes the operation of either the Existing WTP or the New WTP, as the case may be;

- (aa) **"Transfer Provisions"** means those provisions pertaining to the transfer of the New WTP and the raw water pump and infiltration gallery, as contained in that Master Transfer Agreement dated effective November 1, 2013 between the Village and the MD;
- (bb) **"Treated Water"** means that water which has been treated for human consumption through the either the Existing WTP or the New WTP, as the case may be, which is in compliance with all applicable laws and regulations respecting the treatment of Raw Water;
- (cc) **"Village's Approval"** means that approval as issued by Alberta Environment on May 14, 2009 as further attached hereto as Schedule "B";
- (dd) **"Village Services"** means the provision of supervision, administration, labour, transportation, tools, equipment and operational and maintenance staff necessary to fulfill all the Village's requirements of this Agreement, which, without limitation, includes the transmission of the MD's Treated Water through the Village Water System and delivering same to the Connection Point; and
- (ee) **"Village Water System"** means the particular distribution system owned and operated by the Village consisting of its reservoir, water mains, metering facilities and associated piping, connections, equipment.

## 2. Preamble And Schedules

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

- Schedule "A" - Dispute Resolution Procedure
- Schedule "B" - Location of Flow Meter
- Schedule "C" - Village's Approval.

## 3. Acknowledgements

### 3.1 The Parties agree and acknowledge:

- (a) that is more advantageous due to benefits earned from economies of scale to have the MD operate:
  - (i) the Existing WTP for the joint benefit of the MD and the Village until such time as the New WTP becomes operational; and
  - (ii) and own the New WTP, once it becomes operational;
- (b) although the MD's Secondary System is connected downstream to either the Existing WTP or the New WTP, as the case may be, a portion of this connection is through the Village Water System and the MD is reliant upon the Village transmitting Treated Water through the Village Water System to the Connection Point for the benefit of the MD;
- (c) that this Agreement pertains solely to the two issues of the:
  - (i) the MD's operations of the:
    - (A) Existing WTP until the New WTP becomes operational; and
    - (B) New WTP once it becomes operational;

- (ii) Village agreeing to transmit a portion of the MD's Treated Water through the Village Water System to the MD's Secondary System;
- (d) a portion of the Treated Water that flows through the Village Water System belongs to the MD and is intended to be delivered to the MD at the Connection Point;
- (e) that this Agreement does not constitute a sale of water or a supply of Treated Water or Raw Water. Both Parties are solely responsible for:
  - (i) delivering their own supply of Raw Water to either the Existing WTP or the New WTP, as the case may be, in accordance with their own respective water licenses; and
  - (ii) selling their own Treated Water to their own customers on their own accounts;
- (f) that the Village has a vested interest in the MD ensuring that both the Existing WTP and the New WTP, as the case may be at the relevant time, will be operational as the Village's ability to treat its Raw Water is dependent upon either of them being operational at their respective times;
- (g) that the MD has a vested interest in the Village ensuring that the Village Water System is operational as the MD's ability to receive Treated Water at the Connection Point for the MD's Secondary System is dependent upon:
  - (i) the Village delivering Treated Water throughout the Village Water System; and
  - (ii) the Village Water System being operational; and
- (h) at not time, even if the MD is to be responsible for the operation of the Existing WTP, shall it be responsible for the operation of the Village's reservoir as located on the Lands.

#### 4. Obligations

##### 4.1 The Village shall:

###### Water Treatment Plant Obligations

- (a) not deliver any volumes of Raw Water to either the Existing WTP or the New WTP, as the case may be at the relevant time, for treatment that is in excess of the Village's Approval;
- (b) pay to the MD within thirty (30) days of receipt of the monthly invoice from the MD, the Fees to MD as set forth in such monthly invoice with respect to the MD's provision of the MD Services;
- (c) once the New WTP becomes operational, it shall accept responsibility regarding the maintenance and care of the Existing WTP;

###### Village Water System Obligations

- (d) perform the Village Services diligently, in good faith, and in a professional and prudent manner in accordance with and subject to the terms and conditions contained in this Agreement;
- (e) ensure that continuous Village Services are provided through the Village Water System within their design capabilities and in accordance with this Agreement;
- (f) give the MD prior notice of any scheduled interruption as soon as is reasonably possible and at least forty-eight (48) hours prior to such interruption, and shall restore the Village Services as soon as reasonably possible. During periods of interruption the Village may reduce the level, quality or quantity of Village Services provided; however the Village shall treat all users affected

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

- (g) provide the MD with an invoice on a monthly basis setting out all Village Services performed by the Village together with all details relating to the provision of such Village Services satisfactory to the MD in its discretion, from time to time;
- (h) permit the MD's Treated Water to be transmitted through the Village Water System and deliver it to the MD's Secondary System, in substantially the same quality as the MD produces the Treated Water at either the Existing WTP or the New WTP, as the case may be;
- (i) be directly and fully responsible for all operating and maintenance costs relating to the Village Water System;
- (j) give the MD prior notice of any scheduled interruption as soon as is reasonably possible and at least forty-eight (48) hours prior to such interruption, and shall restore the transmission of Treated Water to the Connection Point as soon as reasonably possible. During periods of interruption the Village may reduce the level, quality or quantity of this service provided; however the Village shall treat all users affected by the interruption fairly, equitably and without preference, subject to any operating constraints then in effect;
- (k) keep the MD apprised of the relevant circumstances during each interruption of the Village's Water System and coordinate with the MD the repairs, maintenance, replacement, upgrading and other work referred to above, in order to minimize the inconvenience to the MD's Secondary Water System;
- (l) employ staff and employees experienced in water transmission and distribution systems, operations and maintenance procedures to enable the Village to provide the Village Services;
- (m) operate the Village Water System only under the direct supervision of personnel who possess valid certificates of competency as required by all applicable regulatory requirements;
- (n) complete or cause to be completed all required maintenance, repairs, replacements and enhancements to the Village Water System;
- (o) comply with all material regulatory requirements regarding the operation and maintenance of the Village Water System;
- (p) respond immediately to any emergency throughout the year including:
  - (i) any hazardous or unsafe condition; and
  - (ii) blockages, malfunction or failure of any type in the Village Water System that affects one or more users;
- (q) respond to all correspondence or written inquiries from the MD, within 5 business days respecting the Village Water System or their management, operation and maintenance;
- (r) comply with all leases, road licenses, utility rights of way, franchise agreements and utility bylaws that may affect the Village Water System;

**Other Obligations**

- (s) be bound by and observe all applicable federal, provincial and municipal legislation and related regulations and the Village shall cause all of its employees and approved subcontractors to be so bound;



- (t) obtain and maintain at its sole expense all necessary permits, licenses, consents and approvals required by all authorities having jurisdiction incidental to the performance of the Village's obligations under this Agreement; and
- (u) pay all fees and all other costs incidental to the performance of the Village's obligations under this Agreement.

4.2 The MD shall, in respect of the operation, maintenance and management of the Existing WTP or the New WTP, as the case may be:

**Water Treatment Plant Obligations**

- (a) perform the MD Services diligently, in good faith, and in a professional and prudent manner in accordance with and subject to the terms and conditions contained in this Agreement;
- (b) until such time as the New WTP is operational, it shall operate the Existing WTP and ensure that continuous MD Services are provided at the Existing WTP within their design capabilities and in accordance with this Agreement;
- (c) once the New WTP is operational;
  - (i) it shall operate the New WTP and ensure that continuous MD Services are provided at the New WTP within their design capabilities and in accordance with this Agreement; and
  - (ii) it shall relinquish control of the Existing WTP over to the Village, for its own operations;
- (d) give the Village prior notice of any scheduled interruption as soon as is reasonably possible and at least forty-eight (48) hours prior to such interruption, and shall restore MD Services as soon as reasonably possible. During periods of interruption the MD may reduce the level, quality or quantity of MD Services provided; however the MD shall treat all users affected by the interruption fairly, equitably and without preference, subject to any operating constraints then in effect;
- (e) provide the Village with an invoice on a monthly basis setting out all MD Services performed by the MD together with all details relating to the provision of such MD Services satisfactory to the Village in its discretion, from time to time;
- (f) keep the Village apprised of the relevant circumstances during each interruption of MD Services and coordinate with the Village the repairs, maintenance, replacement, upgrading and other work referred to above, in order to minimize the inconvenience to the users;
- (g) employ staff and employees experienced in water treatment and distribution systems, operations and water treatment plant maintenance procedures to provide the MD Services;
- (h) operate the Existing WTP and New WTP as the case may be only under the direct supervision of personnel who possess valid certificates of competency as required by all applicable regulatory requirements;
- (i) provide the results of the water testing to the Village when the MD completes the results of its water testing;
- (j) maintain the existing security systems and any new security systems deemed necessary by the MD for the:
  - (i) Existing WTP until it is no longer operational; and

- (ii) New WTP once it becomes operational;
- (k) complete or cause to be completed all required maintenance, repairs, replacements and enhancements to the New WTP. Unless such matters are essentially required for the proper operation of the Existing WTP until the New WTP is operational, The MD shall not conduct any required maintenance, repairs, replacements or enhancements to the Existing WTP, as the Existing WTP will be decommissioned;
- (l) maintain records of operation and maintenance activities and provide access to such records for inspection by the Village;
- (m) keep clean and neat all existing buildings, structures and grounds:
  - (i) until the New WTP is operational, the portion of the lands in which the Existing WTP is needed for its operations; and
  - (ii) once the New WTP is operational, the portion of the lands in which the New WTP is needed for its operations;
- (n) comply with all material regulatory requirements regarding the operation and maintenance of the Existing WTP or New WTP, as the case may be, including but not limited to:
  - (i) providing the routine testing and laboratory analyses required by currently existing and future regulations, licenses and approvals;
  - (ii) preparing and signing all regulatory agency-required monitoring and operating reports and submitting them to the proper agencies having jurisdiction and providing copies of such reports to the Village; and
  - (iii) submitting samples to an authorized regulatory agency in compliance with Regulatory Requirements and Standards;
- (o) respond immediately to any emergency throughout the year including:
  - (i) any hazardous or unsafe condition; and
  - (ii) blockages, malfunction or failure of any type in the Existing WTP or New WTP, as the case may be, which affects one or more users;
- (p) respond to all correspondence or written inquiries from the Village, within 5 business days respecting the:
  - (i) Existing WTP until the New WTP is operational; and
  - (ii) New WTP once it becomes operational; and
- (q) comply with all leases, road licenses, utility rights of way, franchise agreements and utility bylaws that may affect either the Existing WTP or the New WTP, as the case may be;

**Other Obligations**

- (r) pay to the Village within thirty (30) days of receipt of the monthly invoice from the Village, the Fees to Village as set forth in such monthly invoice with respect to the Village's provision of the Village Services;

- (s) be bound by and observe all applicable federal, provincial and municipal legislation and related regulations and the MD shall cause all of its employees and approved subcontractors to be so bound;
  - (t) obtain and maintain at its sole expense all necessary permits, licenses, consents and approvals required by all authorities having jurisdiction incidental to the performance of the MD's obligations under this Agreement; and
  - (u) pay all fees and all other costs incidental to the performance of the MD's obligations under this Agreement.
- 4.3 The MD shall be solely responsible for the operation, maintenance and management of the MD's Secondary System.
- 4.4 Upon the second anniversary of execution of this Agreement and every two years thereafter, the Parties agree and acknowledge that the Fees to MD and the Fees to Village will be subject to a periodic review. Both the Fees to MD and the Fees to Village will be adjusted and amended to reflect the actual costs incurred by the MD and the Village for their respective provision of their services herein. Should the Parties not agree upon the amended Fees to MD or Fees to Village, as the case may be, the determination of the appropriate Fees to MD or Fees to Village shall be resolved by the Dispute Resolution Procedure, with the principle that the appropriate determination shall address the actual costs of provision of the services.
5. **TRANSFER OF NEW WTP**
- 5.1 The Village and the MD shall take such steps as is necessary to transfer the New WTP from the Village to the MD in accordance with the Transfer Provisions.
- 5.2 Concurrently with the transfer of the New WTP from the Village to the MD, the MD shall grant the Village that Lease.
6. **CONDITIONS PRECEDENT**
- 6.1 The obligations of the MD to provide the MD Services are conditional upon the true condition precedent of the New WTP being transferred by the Village to the MD in accordance with the Transfer Provisions. This is a true condition precedent which cannot be waived by either the Village or the MD.
7. **HAZARDOUS SUBSTANCES**
- 7.1 Without limiting anything herein, the Village hereby represents, covenants and warrants to and in favour of the MD that in carrying out its obligations hereunder the Village shall not:
- (a) deliver any Raw Water to either the:
    - (i) Existing WTP; or
    - (ii) New WTP;as the case may be, that contains Hazardous Substances in excess of any regulatory requirements that are permitted to be present at either the Existing WTP or the New WTP; and
  - (b) cause any of the MD's Treated Water that is transmitted through the Village Water System and delivered to the MD at the Connection Point to contain any Hazardous Substances that exceed the parameters of the MD's License.
- 7.2 Without limiting anything herein, the MD hereby represents, covenants and warrants to and in favour of the Village that in carrying out its obligations hereunder the MD shall not cause any of the Raw Water that is being treated by the MD at either the:

- (a) Existing WTP; or
- (b) New WTP;

as the case may be, and delivered to the Village as Treated Water to contain any Hazardous Substances that exceed the parameters of the Village's Approval.

## **8. TERM OF AGREEMENT**

- 8.1** The reciprocal obligations of the Village and the MD shall continue until one Party provides the other Party with no less than two (2) years' notice of its intention to terminate this Agreement.

## **9. WARRANTIES AND REPRESENTATIONS**

- 9.1** The MD hereby represents and warrants with and to the Village, and acknowledges that the Village is relying upon such representations and warranties, that the MD:

- (a) is in and will continue to be in, compliance with all laws and regulations of any public authority relating to the operation of:
  - (i) the Existing WTP until the New WTP is operational; and
  - (ii) the New WTP once it becomes operational;
- (b) the MD has all required approvals, permits, licenses, certificates and authorizations necessary to operate:
  - (i) the Existing WTP until the New WTP is operational; and
  - (ii) the New WTP once it becomes operational;

- 9.2** The Village hereby represents and warrants with and to the MD, and acknowledges that the MD is relying upon such representations and warranties, that the Village:

- (a) is in and will continue to be in, compliance with all laws and regulations of any public authority relating to the operation of the Village Water System, so it can deliver the MD's Treated Water at the Connection Point; and
- (b) the Village has all required approvals, permits, licenses, certificates and authorizations necessary to operate the Village Water System.

## **10. INSURANCE**

- 10.1** Without in any way limiting the liability of the MD under this Agreement, the MD shall obtain and maintain in force during the term of this Agreement:

- (a) until the New WTP is operational, sufficient insurance on the Existing WTP in such amounts that a reasonably prudent operator of a water treatment plant similar to the Existing WTP would so obtain in similar circumstances; and
- (b) once the New WTP is operational, sufficient insurance on the New WTP in such amounts that a reasonably prudent operator of a water treatment plant similar to the New WTP would so obtain in similar circumstances.

- 10.2** Without in any way limiting the liability of the Village under this Agreement, the Village shall obtain and maintain in force during the term of this Agreement sufficient insurance on the Village Water System in

such amounts that a reasonably prudent operator of a water distribution system similar to the Village Water System would so obtain in similar circumstances.

## 11. LIABILITY, DAMAGES AND MUTUAL INDEMNITY

11.1 Unless the cause is proven to be due directly to the negligence of either Party, their employees or agents, the Parties will have no liability to each other whatsoever for any damage, loss, cost or expense resulting from, arising out of or associated with:

- (a) a break of any water main, defect in either the Existing WTP while it is operational or the New WTP once it becomes operational, service pipe or collapse of any ditch or trench;
- (b) the interference or suspension of the supply of Treated Water due to maintenance work to, repair work to or replacement work for:
  - (i) in the case of the MD:
    - (A) the Existing WTP until the New WTP becomes operational; and
    - (B) the New WTP once the New WTP becomes operational;
  - (ii) in the case of the Village, the Village Water System;
  - (iii) or an emergency situation regarding any portion of the foregoing; and
  - (iv) any accident to or failure of any portion of the foregoing.

11.2 Notwithstanding any other provision of this Agreement, neither the MD nor the Village will be liable to the other for:

- (a) any losses or costs arising from third party claims or causes of action, including claims or causes of action of the other's customers; or
- (b) any indirect, consequential or punitive damages, including loss of profits or revenues or other similar damages.

11.3 Each Party (the "**Indemnifying Party**") agrees to indemnify and save harmless the other Party (the "**Indemnified Party**"), its agents and employees from and against any and all damage, injury, loss, costs, causes of action, including legal costs on solicitor and own client full indemnity basis, and claims suffered or incurred by the Indemnified Party, its agents or employees which are in any way connected with the performance or nonperformance of this agreement and which are caused either directly or indirectly or contributed to in whole or in Part by any act or failure to act of the Indemnifying Party, its agents and employees, in respect of which Indemnifying Party, its agents or employees are liable or otherwise responsible in law, provided that such indemnity shall be limited to an amount in proportion to which the Indemnifying Party, its agents and employees are at fault or otherwise held responsible in law.

## 12. FORCE MAJEURE

12.1 If the Parties shall fail to meet their respective obligations hereunder within the respective time prescribed therefor and such failure shall be directly caused or materially contributed to by Force Majeure, such failure shall be deemed not to be a breach of the obligations of such Party, provided however, in such event, such Party shall use its best efforts to put itself in a position to carry out its obligations hereunder as soon as reasonably possible.

### 13. DISPUTE RESOLUTION MECHANISM

- 13.1 Except for the occurrence of an Event of Default in which case the provision of Sections 16.1 and 16.2 shall govern over this Section 16.1, if any dispute arises between the Parties hereto regarding the interpretation, application or operation of this Agreement or any part of it shall be determined in accordance with the provisions of the Dispute Resolution Procedure before any Party may take any other action or step or pursue any available remedy in relation to the dispute regardless of whether such action, steps or remedy involves the courts, or any other tribunal or entity, provided however that any Party may file a complaint or other document required to be filed with the courts, any board, tribunal or entity and take any other action or step prior to submitting any dispute to the dispute resolution process if such filing, action or step is necessary to preserve its right to pursue the dispute in the event that the dispute resolution process is unsuccessful in resolving the dispute.
- 13.2 Notwithstanding that the Dispute Resolution Procedure is involved, the Parties shall continue to perform their obligations described in this Agreement until such time as the Dispute Resolution Procedure is complete.

### 14. PERFORMANCE BY EITHER PARTY

- 14.1 A Party shall be deemed to be in default hereunder if any of the following events occur (each of the following events to be referred to as an "Event of Default", the Party in default to be referred to as the "Defaulting Party" and the Party not in default to be referred to as the "Non-defaulting Party"):
- (a) a Party fails to make a payment as required by any provision of this Agreement including failure to pay an indemnity amount required to be paid pursuant to the terms of this Agreement (a "Payment Default");
  - (b) a Party fails to perform any of its obligations under Section 4 of this Agreement or fails to perform any other material obligation imposed upon such Party under this Agreement (which, for greater certainty, shall not include obligations resulting in a Payment Default if not performed) (each such event being a "Performance Default"); or
  - (c) a Party experiences any of the following events (an "Insolvency Default"):
    - (i) the Party institutes voluntary liquidation, dissolution or winding-up procedures;
    - (ii) the Party takes any voluntary proceedings under any bankruptcy or insolvency legislation to be adjudicated a bankrupt or for any other relief;
    - (iii) the Party makes a compromise with or an assignment for the benefit of creditors;
    - (iv) a receiver is appointed with regard to the Party or to any material part of the Party's property;
    - (v) a court adjudges the Party to be bankrupt or makes an order requiring the liquidation, dissolution or winding up of the Party; or
    - (vi) if the corporate existence of the Party is otherwise terminated.

### 15. NOTICE OF DEFAULT

- 15.1 If a Party claims that there has been a Payment Default or Performance Default committed by or affecting the other Party, the Party making the claim shall give to the Party alleged to be in default a notice (hereinafter referred to as the "Notice of Default"). The Notice of Default shall specify and provide particulars of the alleged Event of Default.
- 15.2 In the event the alleged Event of Default is capable of being remedied, the Party alleged to be in default shall:

- (a) have no cure period in respect of an Insolvency Default;
- (b) have a cure period of Thirty (30) days after receipt of the Notice of Default with respect to a Payment Default;
- (c) subject to Sections 15.2(d) and Section 15.3 have a cure period of Thirty (30) days after receipt of the Notice of Default with respect to a Performance Default; or
- (d) if a Performance Default is such that it cannot be reasonably remedied within Thirty (30) days after receipt of the Notice of Default, have a reasonable period of time to cure the Performance Default provided that the Defaulting Party promptly commences and diligently continues thereafter to remedy the Event of Default.

15.3 If before the expiry of the later of the cure period (if any) referred to in Section 15.2 or the time to cure specified in the Notice of Default the Defaulting Party cures the Event of Default, the Default Notice shall be inoperative and the Defaulting Party shall lose no rights hereunder.

## 16. REMEDIES

16.1 Upon the occurrence of an Insolvency Default, or in the event that a Notice of Default has been given and the Party alleged to be in default does not cure or remedy the Event of Default in the manner contemplated by Section 17.3, the Non-defaulting Party shall have the rights and remedies set out in Section 16.2 or 16.3, as the case may be, the Non-defaulting Party shall have the following rights and remedies:

- (a) in the case of a Payment Default, to charge the Defaulting Party interest at the Prime Rate with respect to the unpaid amount until it is paid, calculated daily, regardless of whether the Non-defaulting Party has notified the Defaulting Party in advance of its intention to charge interest at the Prime Rate with respect to the unpaid amount; and/or
- (b) in the case of a Performance Default, the Non-defaulting Party may but shall not be obligated to, either directly or indirectly by engaging a third party or otherwise, as the case may be, do all such things in order to rectify such Event of Default at the sole cost and expense of the Defaulting Party; and/or
- (c) in the case of any Event of Default, the Non-defaulting Party may:
  - (i) suspend performance of its obligations under this Agreement, including the right to suspend any payment owing pursuant to this Agreement; and/or
  - (ii) set-off against the unpaid amount any sums due or accruing to the Defaulting Party by the Non-defaulting Party in accordance with this Agreement; and/or
  - (iii) maintain an action or actions for the unpaid amount and Interest thereon on a continuing basis as the amounts become payable but are not paid by the Defaulting Party, as if the obligation to pay those amounts and the Interest thereon was a liquidated demand due and payable on the date the amounts were due to be paid, without any right or resort of the Defaulting Party to set-off or counter-claim; and/or
  - (iv) terminate this Agreement; and/or
  - (v) avail itself of any other remedy whether available at law or in equity or by statute or expressly provided for in this Agreement.

16.2 A Non-defaulting Party may, at its discretion, exercise the remedies referenced in Section 16.1 applicable to it in the alternative, concurrently or cumulatively, except where inconsistent with the express provisions contained in this Agreement and provided that in the case of a Payment Default the concurrent or cumulative exercise of remedies shall not result in duplication or a recovery on the Part of the Non-defaulting Party based

on an amount (excluding Interest) in excess of the Payment Default. No delay or omission by a Non-defaulting Party in exercising its rights or remedies hereunder shall operate as a waiver of those rights or remedies or of any other right or remedy and no single or Partial exercise thereof shall preclude any other or future exercise thereof or the exercise of any other right or remedy.

**17. General**

**17.1 Notices**

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

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

(b) Except as herein otherwise provided, notice required to be given pursuant to this Agreement shall be deemed to have been received by the addressee on the date received when served by hand or courier, or seven (7) days after the same has been mailed in a prepaid envelope by single registered mail to:

- (i) if to the MD:
 

Municipal District of Pincher Creek No. 9  
PO Box 279  
Pincher Creek, Alberta T0K 1W9  
Attention: Chief Administrative Officer  
Telephone No.: (403) 627-3130  
Fax No.: (403) 627-5070
- (ii) if to the Village:
 

Village of Cowley  
PO Box 40  
Cowley, Alberta T0K 0P0  
Attention: Chief Administrative Officer  
Telephone No.: (403) 628-3808  
Fax No.: (403) 628-2807

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

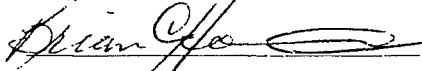


- 17.2 **Governing Law** - This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Alberta.
- 17.3 **Time of Essence** - Time shall be of the essence of this Agreement.
- 17.4 **Headings** - The headings, captions, section numbers, subsection numbers, article numbers and indices appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, construct or enlarge the scope or meaning of this Agreement or any provisions hereof.
- 17.5 **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.
- 17.6 **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.
- 17.7 **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.
- 17.8 **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.
- 17.9 **Counterparts** - This Agreement may be executed in several counterparts each of which when so executed shall be deemed to be an original, and such counterparts shall constitute the one and same instrument and notwithstanding their date of execution shall be deemed to bear date as of the date first above written.
- 17.10 **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.
- 17.11 **Unenforceability** - If any term, covenant or condition of this Agreement or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.
- 17.12 **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 agreement, shall survive the termination or expiry of the agreement and shall not be merged therein or therewith.
- 17.13 **Payment of Monies** - The parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds and that any tender of monies or documents hereunder may be made upon the solicitors acting for the party upon whom the tender is desired and it shall be sufficient that a negotiable bank draft is tendered instead of cash.
- 17.14 **GST Exclusive** - All amounts payable by one party to the other hereunder will be exclusive of any goods and services tax ("GST") and the party providing payment will, in addition the amounts payable hereunder, pay to the other party all amounts of GST applicable thereon. The MD's GST number is 107747347 RT0001 and the Village's GST number is 108176579 RP001.

- 17.15 **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.
- 17.16 **Binding Effect** - This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.
- 17.17 **Assignment** - Neither party shall assign its interest in this Agreement, or any part hereof, in any manner whatsoever without having first received written consent from the other party which consent may be not be arbitrarily withheld.
- 17.18 **Requests for Consent** - Each party shall provide any decision with regard to a request for consent in a timely manner.

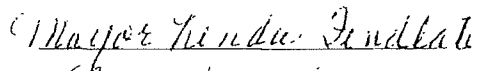
IN WITNESS WHEREOF the parties hereunto have hereunto executed this Agreement all effective as of the date and year first set forth above, notwithstanding the actual date or dates of execution hereof.

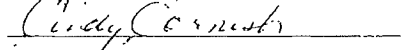
MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9

Per: 

Per: 

VILLAGE OF COWLEY

Per: 

Per: 

SCHEDULE "A"

**DISPUTE RESOLUTION PROCEDURE**

**1. Definitions**

In this Schedule, in addition to terms defined elsewhere in the Agreement, the following words and phrases have the following meanings:

- (a) **"Arbitrator"** means the person appointed to act as such to resolve any Dispute;
- (b) **"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;
- (c) **"Disclosed Information"** means the information disclosed by a Party for the purpose of settlement, negotiation, Mediation or Arbitration;
- (d) **"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;
- (e) **"Mediator"** means the person appointed to facilitate the resolution of a Dispute between the Parties;
- (f) **"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 MD and the Village acknowledge and agree that:

- (a) in any business relationship a difference of opinion or interpretation or a divergence of interest may arise;
- (b) the MD and the Village 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 to, or are 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, 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 the Agreement.

#### 4. Negotiation

A Party shall give written notice ("**Dispute Notice**") to the other Party of a Dispute and outline in reasonable detail the relevant information concerning the Dispute. Within seven (7) days following receipt of the Dispute Notice, the Parties shall each appoint a Representative, who shall meet and attempt to resolve the Dispute through discussion and negotiation. If the Dispute is not resolved within thirty (30) days of the appointment of a Representative by each Party, the negotiation shall be deemed to have failed.

#### 5. Mediation:

- (a) If the Representatives cannot resolve the Dispute through negotiation within such thirty (30) day period, then the Dispute shall be referred to Mediation.
- (b) In such event, either Party shall be entitled to provide the other Party with a written 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 to act as the Mediator.
- (c) The Parties shall, within thirty (30) days of the Mediation Notice, jointly nominate or agree upon a Mediator.
- (d) 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.
- (e) In the event that
  - (i) the Parties do not agree on the appointment of a Mediator within 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 Dispute 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 Mediation fails to resolve the Dispute, the Dispute shall be submitted to binding Arbitration. Either of the Parties may provide the other Party with written notice ("Arbitration Notice") 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 to act as the Arbitrator.
- (b) 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 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. Should the Parties fail to agree to resolve any disputed items by Arbitration, this Dispute Resolution Process shall come to an end.
- (c) 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.
- (d) Should the Parties fail to agree on a single arbitrator within the fourteen (14) day period referred to above, then either Party may apply to a Justice of the Court of Queen's Bench of Alberta to have the arbitrator appointed.
- (e) 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.
- (f) 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., 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.
- (g) 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 \$250,000.00; or
  - (ii) ninety (90) days, if the subject matter of the Dispute is greater than \$250,000.00.
- (h) 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.
- (i) 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.
- (j) 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.

- (k) 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 MD of Pincher Creek, or such other location as the Parties may agree.

**9. Selection of Mediator and Arbitrator**

Without restricting any of the foregoing, if the Parties are unable to agree upon the appointment of a single Mediator or Arbitrator, 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 for appointment by the executive director or other individual fulfilling that role for the ADR Institute of Canada, Inc. The executive director shall be requested to make this determination within five (5) days of receipt of the request.

**10. Costs**

Subject to clause 6(h) of this Schedule, in the case of an Arbitration the Parties shall bear their respective costs incurred in connection with the negotiation, Mediation and, if applicable, Arbitration except 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 provisions with third parties.



SCHEDULE "C"

VILLAGE'S APPROVAL



LICENCE TO DIVERT WATER  
PROVINCE OF ALBERTA  
WATER RESOURCES ACT, R.S.A. 1980, c.W-5, as amended

LICENCE NO. 00188070-00-00

FILE NO. 23592

PRIORITY NO. 1989-03-31-16

EFFECTIVE DATE: MAY 14 2009

SOURCE OF WATER: Castle River

POINT OF DIVERSION: SE 2-07-01-W5

LICENSEE Village of Cowley

Pursuant to the *Water Resources Act*, R S A 1980, c W-5, as amended, a licence is issued to the Licensee to:

operate a works and to divert up to 50 cu. Meters 61,700 cubic meters of water annually at a maximum rate of diversion of 0.008 cubic meters per second from the source of water for the purpose(s) of Municipal.

subject to the attached terms and conditions.

Designated Director under the Act: [Signature]

Rob Burland

Date Signed. MAY 14 2009



Licence No. 00188070-00-00

File No. 23592

Page 1 of 7

**DEFINITIONS**

- 1.0 All definitions from the Act and the Regulations apply except where expressly defined in this licence.
- 1.1 In all parts of this licence:
- (a) "Act" means the Water Resources Act, RSA 1980, c W-5, as amended;
  - (b) "Application" means the written submissions to the Director in respect of application number 00188070-00-00,
  - (c) "Director" means an employee of the Government of Alberta designated as a Director under the Act,
  - (d) "Point(s) of diversion" means the location(s) where water is diverted from the source of water;
  - (e) "Point of use" means the location(s) in which the diverted water is used by the Licensee for the licenced purpose;
  - (f) "Regulations" means the regulations, as amended, enacted under the authority of the Act,
  - (g) "Instream Objective" means the water flow in the source of water that remains in the source of water immediately downstream of the point of diversion, during the diversion of water by the licensee.

**GENERAL**

- 2.0 The Licensee shall immediately report to the Director by telephone any contravention of the terms and conditions of this licence at 1-780-422-4505.
- 2.1 The terms and conditions of this licence are severable. If any term or condition of this licence is held invalid, the application of such term or condition to other circumstances and the remainder of this licence shall not be affected thereby.
- 2.2 The Licensee shall not deposit or cause to be deposited any substance in, on or around the source of water that has or may have the potential to adversely affect the source of water.
- 2.3 Within six months after permanently ceasing operation of the works or diversion of the water, the licensee shall submit an application to the Director for the decommissioning of the works.

Licence No 00188070-00-00

File No. 23592

Page 2 of 7

**DIVERSION OF WATER**

- 3.0 This licence is appurtenant to the undertakings described as the diversion works located on SE 2-07-01-W5, the water supply pipeline, water treatment system and water distribution network in association with the Village of Cowley municipal water supply within the municipal boundary of the Village of Cowley "
- 3.1 The Licensee shall divert water only for the purpose(s) specified in this licence
- 3.2 The Licensee shall divert water only from the source of water specified in this licence.
- 3.3 The Licensee shall divert water only from the following point(s) of diversion:
- (a) SE 2-07-01-W5
- 3.4 The works used to divert the water authorized by this licence shall include but is not limited to the diversion structure, water delivery, water treatment and municipal distribution system as described in the following plans:


PLAN/REPORT NUMBER	TITLE	PLAN DATE	AUTHOR/DRAWING NUMBER
23592-1	Well Site Plan and Details	March 1989	Reid Crowther/002965/519-0
23592-4	Key Plan and Plan/Profile Drawing Index	April 1989	Reid Crowther/002965/500-1
23592-5	Station 0+240 to station 0+980 Plan/Profile	April 1989	Reid Crowther/002965/502-1
23592-6	Crossing Details at Creek, Railway and Highway	April 1989	Reid Crowther/002965/520-1
23592-7	Station 0+000 to Station 0+420 Plan/Profile.	April 1989	Reid Crowther/002965/501-1
23592-8	Village of Cowley - approximate Point of Return Flow	May 1990	Alberta Environment
23592-9	Water Supply Replacement 1995 Well No. 2 - Siter Plan and Details	January 1996	Cicon Engineering

- 3.5 The Licensee shall not divert more than 61,700 cubic metres of water per year
- 3.6 The Licensee shall not divert water at a rate of diversion greater than 0.008 cubic metres per second.

Licence No. 00188070-00-00  
File No. 23592  
Page 3 of 7

- 3.8 Prior to diverting any water from the source of water, the Licensee shall equip the point of diversion with a meter, which measures:
- (a) cumulatively, the quantity of all water diverted; and
  - (b) the instantaneous rate of diversion.
- 3.9 The Licensee shall maintain each measuring device referred to in 3.8 at all times.
- 3.10 The Licensee shall calibrate each measuring device referred to in 3.8 in accordance with manufacturer's specifications.
- 3.11 The Director may amend this license to establish or change the In-stream Objectives upon a minimum of 12 months written notice to the licensee.
- 3.12 The In-stream Objectives are as set out in Schedule 1 for the periods of time specified.
- 3.13 The licensee shall divert the water authorized by this licence only when there is sufficient water flow in the source of water to meet or exceed the In-stream Objectives as set out in 3.12
- 3.14 Unless otherwise authorized in writing by the Director, the Instream Objectives in 3.12 is to be met at the specified point of diversion.

#### **MONITORING AND REPORTING**

- 4.0 Unless otherwise authorized in writing by the Director, the Licensee shall:
- (a) measure the total volume of water diverted each month using the measuring device specified in 3.8(a); and
  - (b) measure the rate of diversion on a continuous basis using the measuring device specified in 3.8(b).
- 4.1 The Licensee shall record and retain all of the following information for a minimum of 5 years after being collected:
- (a) the place, date and time of all monitoring, measuring and sampling;
  - (b) the results obtained pursuant to 4.0; and
  - (c) the name of the individual who conducted the monitoring, measuring and sampling stipulated in (a) and (b).
- 4.2 The licensee shall compile an Annual Water Use Report on or before February 28<sup>th</sup> of each year following the year in which the information on which the report is based was collected.
- 4.3 The licensee shall retain each Annual Water Use Report for a minimum of 5 years.
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Licence No. 00188070-00-00  
File No. 23592  
Page 4 of 7

- 4.4 The Licensee shall submit an Annual Water Use Report to the Director:
- (a) on or before February 28<sup>th</sup> of each year following the year in which the information on which the report is based was collected; or
  - (b) within a time period specified in writing by the Director.
- 4.5 The Annual Water Use Report shall include, at a minimum, the following information collected during the previous year:
- (a) the total annual number of cubic metres of water diverted from the source of water;
  - (b) the results obtained pursuant to 4.0; and
  - (c) any other information required in writing by the Director.

**COMPLAINT INVESTIGATION**

- 5.0 The Licensee shall:
- (a) provide to all water users, within a distance specified in writing by the Director from the point of diversion, the contact name(s) and telephone numbers of the licensee or representative(s);
  - (b) investigate all written complaints accepted by the Director relating to allegations of surface water and groundwater interference as a result of the diversion of the water or operation of the works; and
  - (c) provide a written report to the Director, within a time specified in writing by the Director, detailing the results of the investigation relating to the complaint accepted by the Director in 5.0(b).
- 5.1 The Licensee shall satisfy the Director that the report submitted pursuant to 5.0(c) has identified remedial and/or mitigative measures relating to the alleged interference.

DATE SIGNED: MAY 14 2009

  
DESIGNATED DIRECTOR UNDER THE ACT  
Rob Burland

Licence No 00188070-00-00

File No 23592

Page 5 of 7

**Schedule 1****Weekly Instream Flow Objectives for Castle River**

Point of Measurement: Water Survey of Canada, Gauging Station No. 05AA022,  
 ("Castle River at Beaver Mines")

January 1 to December 31

WEEK	Instream Flow Objectives cubic meters per second (cubic feet per second)
January 1 - January 7	3 19 (113)
January 8 - January 14	2 97 (105)
January 15 - January 21	2 82 (100)
January 22 - January 28	2 80 ( 99)
January 29 - February 4	2 78 ( 98)
February 5 - February 11	2 75 ( 97)
February 12 - February 18	2 76 ( 98)
February 19 - February 25	2 91 (103)
February 26 - March 4	3 07 (108)
March 5 - March 11	3 23 (114)
March 12 - March 1	3 44 (121)
March 19 - March 25	3 99 (141)
March 26 - April 1	4 62 (163)
April 2 - April 8	5 25 (185)
April 9 - April 15	5 87 (207)
April 16 - April 22	8 10 (286)
April 23 - April 29	11 93 (421)
April 30 - May 6	15 75 (556)
May 7 - May 13	19 58 (691)
May 14 - May 20	22 57 (797)
May 21 - May 27	23 26 (821)
May 28 - June 3	23 81 (841)
June 4 - June 10	24 36 (860)
June 11 - June 17	24 72 (873)
June 18 - June 24	21 76 (768)

Licence No 00188070-00-00

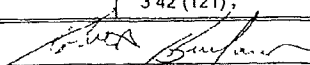
File No 23592

Page 6 of 7

WEEK	Instream Flow Objectives cubic meters per second (cubic feet per second)
June 25 - July 1	17.59 (621)
July 2 - July 8	13.42 (474)
July 9 - July 15	9.25 (327)
July 16 - July 22	7.05 (249)
July 23 - July 29	6.83 (241)
July 30 - August 5	6.61 (233)
August 6 - August 12	6.39 (226)
August 13 - August 19	6.15 (217)
August 20 - August 26	5.81 (205)
August 27 - September 2	5.45 (192)
September 3 - September 9	5.09 (180)
September 10 - September 16	4.74 (167)
September 17 - September 23	4.72 (167)
September 24 - September 30	4.89 (173)
October 1 - October 7	5.06 (179)
October 8 - October 14	5.24 (185)
October 15 - October 21	5.33 (188)
October 22 - October 28	5.28 (187)
October 29 - November 4	5.23 (185)
November 5 - November 11	5.19 (183)
November 12 - November 18	5.11 (181)
November 19 - November 25	4.85 (171)
November 26 - December 2	4.53 (160)
December 3 - December 9	4.22 (149)
December 10 - December 16	3.91 (138)
December 17 - December 23	3.66 (129)
December 24 - December 31	3.42 (121)

MAY 14 2009

DATE SIGNED

  
 DESIGNATED DIRECTOR UNDER THE ACT

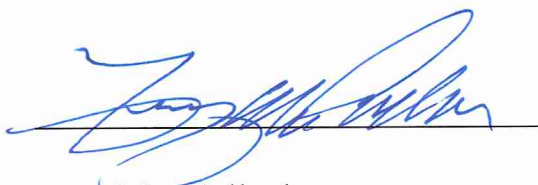


Please note :

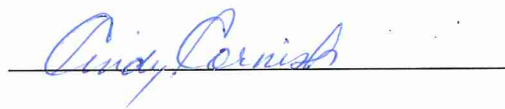
This agreement has been reviewed and deemed still in force.

Date Reviewed

13 Feb 2020



Troy MacCulloch  
CAO, MD of Pincher Creek



Cindy Cornish  
CAO, Village of Cowley

**Next Review Date**

Sept 30 2020

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**Reviewed by :**

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This Agreement made this 25<sup>th</sup> day of January 2016.<sup>7</sup>

BETWEEN

Municipal District of Pincher Creek No. 9  
(hereinafter referred to as the "MD")

And

Village of Cowley  
(hereinafter referred to as the "Village")

The municipalities agree to amend the Operations Agreement, signed May 28, 2014 as follows:

1. In Section 1 Part G to say:

"Fees to MD" means that One Dollar and Three Cents (\$1.03) per cubic meter payable by the Village to the MD, for the MD to treat the Village's Raw Water.

This amendment will remain in effect from January 1, 2017 to December 31, 2019.

Municipal District of Pincher Creek No. 9

Per: [Signature]

Per: W. Kay

Village of Cowley

Per: [Signature]

Per: [Signature]

This Agreement made this 25<sup>th</sup> day of January 2016.<sup>7</sup>

BETWEEN

Municipal District of Pincher Creek No. 9

(hereinafter referred to as the "MD")

And

Village of Cowley

(hereinafter referred to as the "Village")

The municipalities agree to a further amendment of the Operations Agreement, signed May 28, 2014 as follows:

1. In Section 1 Part H to say:

"Fees to Village" means that One Dollar and Five Cents (\$1.05) per cubic meter for the amount of the MD's Treated Water that is transmitted through the Village Water System to the Connection Point.

This amendment will remain in effect from January 1, 2017 to December 31, 2019.

Municipal District of Pincher Creek No. 9

Per: [Signature]

Per: W. Kay

Village of Cowley

Per: G. Hackler

Per: C. Bernish

*Council  
In-Camera*

**RECEIVED**

DEC 23 2016

M.D. OF PINCHER CREEK



## **VILLAGE OF COWLEY**

518 Railway Avenue

Box 40, Cowley, Alberta T0K 0P0

Phone: 403.628.3808 Fax: 403.628.2807 E-mail: [vilocow@shaw.ca](mailto:vilocow@shaw.ca)

December 19, 2016

Mayor and Council  
Box 279  
Pincher Creek, Alberta  
T0K 1W0

Dear Mayor and Council,

Re: Cowley Water Rates

This is to advise that the Council at their meeting held Tuesday, December 13, 2016 agreed to amend the Operations Agreement, signed May 28, 2014; Section 1 Part G.

At that time a further resolution was passed:

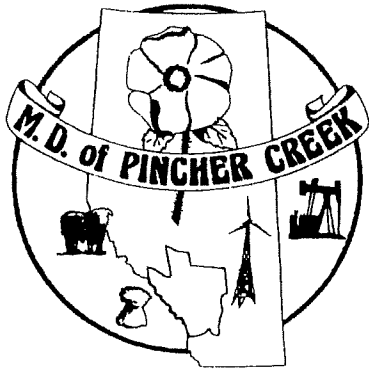
*"Moved that a further amendment to the Operations Agreement be presented to the MD for their approval; Section 1 Part H to read "Fees to Village" means that One Dollar and Five Cents (\$1.05) per cubic meter for the amount of the MD's Treated Water that is transmitted through the Village Water System to the Connection Point. "*

Enclosed are signed copies of each amending agreement, trusting the additional amendment will be accepted.

Sincerely,

Cindy Cornish, CAO

Village of Cowley



P.O. BOX 279  
PINCHER CREEK, ALBERTA  
T0K 1W0  
phone 627-3130 • fax 627-5070  
email: info@mdpincercreek.ab.ca  
www.mdpincercreek.ab.ca

February 3, 2017

Cindy Cornish, CAO  
Village of Cowley  
PO Box 40  
Cowley, AB T0K 0P0

Dear Ms Cornish:

Reference: Cowley Water Rates

Please find enclosed executed documents, related to amendments to the Operations Agreement of the Regional Water System.

Yours truly,

Wendy Kay  
Chief Administrative Officer

Enclosures

cc: Janene Felker, Director of Finance

## Intermunicipal Development Plan

As a requirement under Sections 631 and 692 of the *Municipal Government Act*, RSA 2000, an Intermunicipal Development Plan will be adopted by separate bylaws between the Village of Cowley and the Municipal District of Pincher Creek No. 9. The Village of Cowley and the Municipal District of Pincher Creek Intermunicipal Development Plan is a statutory planning document that fosters ongoing collaboration and cooperation between both municipalities regarding planning matters and clarifies land use expectations within the Plan area.

This plan is scheduled to be completed in 2020 via Old Man River Regional Services Commission.

## Commitment to Collaboration

The Village of Cowley and the Municipal District of Pincher Creek acknowledge and affirm that they will seek to fulfill both the intent and the spirit of this agreement by seeking opportunities to collaborate where practical as well as to honour all applicable legislation with respect to intermunicipal collaboration within the Province of Alberta.

**IN WITNESS WHEREOF** the parties have hereunto set their hands and affixed their corporate seals as witnessed by the hand or hands of its proper signing officers duly authorized in that behalf as of

the 4 day of March, 20 . (MD of PC)

the 25 day of February, 20 . (Vill. of Cowley)

FOR MUNICIPAL DISTRICT OF PINCHER CREEK No.9

FOR THE VILLAGE OF COWLEY

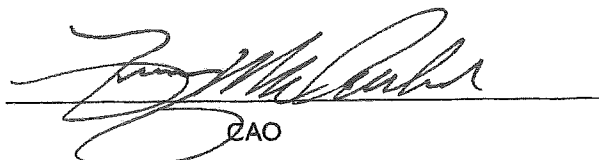
PER:

  
REEVE

PER:

  
MAYOR

PER:

  
CAO

PER:

  
CAO



Please note :

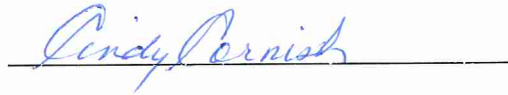
This agreement has been reviewed and deemed still in force.

Date Reviewed

13 Feb 2020



Troy MacCulloch  
CAO, MD of Pincher Creek



Cindy Cornish  
CAO, Village of Cowley

**Next Review Date**

Dec 31 2020

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**Reviewed by :**

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