

MEMBERSHIP AGREEMENT

THIS AGREEMENT made effective the 19th day of October, 2017

AMONG:

Each of:
**MOUNTAIN VIEW COUNTY
TOWN OF CARSTAIRS
TOWN OF DIDSBURY
TOWN OF OLDS
TOWN OF SUNDRE
VILLAGE OF CREMONA**
(hereinafter referred to as the "**Members**")

- and -

MOUNTAIN VIEW REGIONAL WASTE MANAGEMENT COMMISSION
(hereinafter referred to as the "**Commission**")

WHEREAS:

- A. This Agreement replaces the previously signed Agreement dated December 31, 2015;
- B. The Members have caused the Commission to be formed to provide solid waste management services for the benefit of the Members; and
- C. The Members wish to establish their respective obligations to each other and to the Commission, all as set forth in this Membership Agreement.

NOW THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the mutual agreements and conditions herein contained the parties hereby agree as follows:

ARTICLE 1 – INTERPRETATION

Section 1.01 – Definitions

In this Agreement, the following terms have the following meanings:

- (a) "**Board**" means the Board of Directors of the Commission;
- (b) "**Bylaws**" means the Bylaws of the Commission as from time to time amended or restated;
- (c) "**Commission**" means Mountain View Regional Waste Management Commission;
- (d) "**Defaulting Member**" has the meaning as ascribed thereto in Section 2.05;
- (e) "**Deficiency**" has the meaning as ascribed thereto in Section 2.02;
- (f) "**Deficiency Funding**" means the amount of money required by the Commission to pay for or partially pay for, a Deficiency. Deficiency funding shall be governed by Section 602.21 of the Municipal Government Act.
- (g) "**Director(s)**" means the person(s) who is/are from time to time elected or appointed as Director(s) of the Commission;
- (h) "**Fees for Service**" means the fees that will be established by the Board as part of the budget by September 30th each year.
- (i) "**Funding Formula**" means that amount of a Deficiency Funding that shall be set and levied against each Member, which shall be based on the population of each Member in accordance with the census information as published by Federal Census. Payments are based on a per capita.

- (j) "**Hazardous Waste**" has the meaning as ascribed to both the following terms;
 - (i) "hazardous recyclable", and
 - (ii) "hazardous waste",
in the *Waste Control Regulation*, Alberta Regulation 192/96 as enacted pursuant to the *Environmental Protection and Enforcement Act* (Alberta), as amended from time to time;
- (k) "**Interest Rate**" means the Alberta Treasury Branches prime rate, plus six (6%) percent;
- (l) "**Liquid**" has the meaning as the term "liquid" has in the *Waste Control Regulation*, Alberta Regulation 192/96 as enacted pursuant to the *Environmental Protection and Enforcement Act* (Alberta), as amended from time to time;
- (m) "**Members**" mean collectively, the Mountain View County, Town of Carstairs, Town of Didsbury, Town of Olds, Town of Sundre and Village of Cremona and "**Member**" means any one of them;
- (n) "**Membership Application**" mean that application from a municipality who wishes to join the Commission as a Member;
- (o) "**MGA**" means the Municipal Government Act RSA 2000 c. M-26, as amended from time to time;
- (p) "**Parties**" means the parties to this Agreement;
- (q) "**Proposed Member**" has the meaning as ascribed thereto in Section 3.01;
- (r) "**Regulation**" means Mountain View Regional Waste Management Commission Regulation, Alberta Regulation 43/2001, as amended from time to time;
- (s) "**Waste**" means any solid material or product or combination of them that is intended to be treated or disposed of or that is intended to be stored and then treated or disposed of, that originates from within the Members' municipal boundaries, with the exception of Hydrocarbon Contaminated Soil from within the province of Alberta that is acceptable for the sole purpose of Daily or Intermediate Cover, but expressly excludes:
 - (i) any Liquid; and
 - (ii) Hazardous Waste;
- (t) "**Waste Agreement**" means any agreement between the Commission and a Member for the Commission's acceptance and treatment of Waste as delivered to it by a Member;
- (u) "**Waste Management Facilities**" means the methods and tools used to achieve the purposeful, systematic control of the generation, separation, treatment, processing, recycling, recovery and disposal of waste at landfill located at NW 25-31-2-W5;
- (v) "**Withdrawal Notice**" has the meaning as ascribed thereto in Section 5.01; and
- (w) "**Withdrawing Member**" has the meaning as ascribed thereto in Section 5.01.

Section 1.02 - Conflict

In the event of any conflict between the provisions of this Agreement and the Bylaws, the provisions of this Agreement shall govern. The Member agrees to vote so as to cause the Bylaws to be amended to resolve any such conflict in favour of the provisions of this Agreement. If there is a conflict with the Member, then it is between the Member and that Member municipality. It does not affect the decisions of the Commission.

ARTICLE 2 – MEMBER’S FINANCING

Section 2.01 - Statement of Intention

The Commission and its Members covenant and agrees to:

- (a) Provide capital, operating and reserve funds required to construct, maintain, manage, operate, use and replace the Waste Management Facilities and all ancillary assets, shall be provided pursuant to the revenue that the Commission receives for the operation of the Waste Management Facilities.
- (b) Meet annually with the Commission.

Section 2.02 - Determination of Deficiency

- (a) Notwithstanding the statement of intention in Section 2.01 hereof, upon completion of the Commission's capital budget or operating budget, the Board will determine if there is a deficiency of funds to pay for expenditures that the Board determines is necessary, which may include, but is not limited to the proper operation of the Waste Management Facilities, payment for particular capital upgrades or payment for certain operational expenditures (the "Deficiency"). Upon the Board resolving that there is a Deficiency, the Deficiency Funding request will be forwarded to each Council:
 - (i) The Parties acknowledge that in the establishment of a capital budget or an operating budget that they must comply with Section 602.21 of the Act.
 - (ii) All Deficiency Funding will be paid based on the Funding Formula.

Section 2.03 - Payment of Deficiency Funding

Upon receipt of written notice provided by the Board to the Members for a Deficiency Funding to pay for all, or a portion of the Deficiency, each Member shall pay to the Commission its Advance, as calculated in accordance with the Funding Formula invoiced quarterly and paid within 30 days of the invoice.

Section 2.04 - Obligation to Pay Deficiency Funding

Each Member shall have the responsibility to pay an Advance, upon receipt of a notice herein, even if at the time:

- (a) a Member disagrees with:
 - (i) the need for payment of the Deficiency Funding; or
 - (ii) the determination of the amount of the Deficiency;
- (b) a Member is in default of any of its obligations to the Commission;
- (c) the Director that was appointed by a Member, disagrees with:
 - (i) the need for payment of the Deficiency Funding; or
 - (ii) the determination of the amount of the Deficiency; or
- (d) a Member is no longer a Member of the Commission.

Section 2.05 - Non-Payment

Should a Member (a "Defaulting Member") not pay any amount owing to the Commission, which shall include, but not be limited to, any amounts owing to the Commission pursuant to either this Agreement or a Waste Agreement, the Commission may, at the Commission's sole discretion:

- (a) Avail itself of its rights pursuant to the terms of the Waste Agreement, which may include, but not be limited to, the suspension of acceptance of Waste from the defaulting Member;
- (b) Charge interest to the Defaulting Member on the outstanding amounts at the Interest Rate. Any unpaid amount and the accrued interest thereon are recoverable as a debt due to the Commission; and
- (c) Serve notice on the Defaulting Member that the director that it has appointed to the Board shall have no vote on any matters put before the Board until the default is remedied.

ARTICLE 3 – NEW MEMBERS

Section 3.01 – Applying for Membership

Another municipality who is not a Member may make an application to the Commission to join the Commission as a Member (the "**Proposed Member**") by submitting a Membership Application. Upon the Commission's receipt of an application, the Board shall determine which additional information that is relevant to processing of that application for Membership, which may include, but not be limited to:

- (a) A capital payment from the Proposed Member to the Commission for its anticipated proportionate share of the value of the capital assets of the Commission. The Board shall be the party to determine what this respective proportion shall be;
- (b) Such additional fees that shall be payable by the Proposed Member to the Commission to fully pay the Commission's anticipated fees, including, but not limited to, such third party accounting fees and legal fees on a solicitor and his own client full indemnity basis, such that the Commission can properly review and consider the Membership Application;
- (c) Receipt of a certified council resolution of the Proposed Member which acknowledges and approves of the anticipated capital payment owed by the Proposed Member to the Commission and the anticipated tippage rates to be charged by the Commission to the Proposed Member for the acceptance of Waste by the Commission; and
- (d) Any other information that the Board deems is relevant to consider the Membership Application.

Section 3.02 – Member' Support of Membership Application

Upon the Board's review that a Membership Application should be forwarded for consideration, the Board shall send same to each Member for their respective approval. The Members agree that a simple majority of the Members, as evidenced by certified council resolutions from each of them, shall be sufficient to support the Membership Application.

Section 3.03 – Ministerial Review

- (a) Only if the Proposed Member has obtained the consent as set forth in Section 3.01 and 3.02 hereof, shall the Commission and Proposed Member jointly make a recommendation to the Minister of Municipal Affairs to support the addition of the Proposed Member as another Member of the Commission in accordance with the terms and conditions as deliberated upon by both the Members and the Board.
- (b) In the event that the Minister of Municipal Affairs proposes different terms regarding the:
 - i) governance;
 - (ii) operations;
 - (iii) administration; or
 - (iv) financing;

of the Commission than what the Board and the Members deliberated upon, any of the Members or the Board may rescind their support for the Proposed Member's application.

Section 3.04 – Acknowledgment

All parties agree and acknowledge that despite any support provided for a Membership Application that the approval of same shall be within the sole and absolute discretion of the Minister of Municipal Affairs.

ARTICLE 4 - DISPUTE RESOLUTION PROCEDURE

Section 4.01 - Dispute Resolution Procedure

Any dispute which may arise between the Members hereto, shall be determined in accordance with the provisions of the dispute resolution procedure attached hereto as Schedule "A".

ARTICLE 5 – WITHDRAWAL OF MEMBERS

Section 5.01 – Withdrawal Notice

- (a) Any Member (a "**Withdrawing Member**") may submit a written notice along with a certified council resolution evidencing the same, to the Commission of its withdrawing from the Commission (a "**Withdrawal Notice**").
- (b) The written notice as aforesaid by the Withdrawing Member must be received by the Commission and the other Member municipalities by June 30th of a Calendar year. The effective date of withdrawal may only be December 31st of any year.
- (c) Notwithstanding the foregoing notice, the notice shall only be effective as of the date that the Minister of Municipal Affairs amends the Regulation, removing the Withdrawing Member from the Regulation.

Section 5.02 – Effect of Withdrawal Notice

- (a) Upon a Withdrawing Member providing the Withdrawal Notice, that Withdrawing Member:
 - (i) Agrees and acknowledges that any director as appointed by the Withdrawing Member shall have no vote at the Board concerning any capital budget or operation budget which shall take effect after when the Withdrawing Member's departure from the Commission;
 - (ii) Shall meet with the Commission to determine that Withdrawing Member's proportionate responsibility for:
 - (A) Reclamation obligations of any component of the Waste Management Facilities that the Withdrawing Member should be responsible for, in accordance with its proportionate amount as set forth in the Funding Formula;
 - (B) Any unfunded capital obligations of the Commission that the Commission has committed to incur in contemplation prior to the Withdrawal Notice, but in expectation of the Withdrawing Member continuing to be a Member of the Commission; and
 - (C) Any other amount that is reasonable for the Withdrawing Member to incur.
- (b) In the event that the Withdrawing Member and the Commission are unable to mutually agree upon those costs as set forth in Section 2.05 hereof, the resolution of this amount shall be determined as accordance with the Dispute Resolution Procedure as set forth herein.

ARTICLE 6 - GENERAL PROVISIONS

Section 6.01 - Notices

- (a) Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing.
- (b) Any Notice required or permitted hereunder shall be sent to the intended recipient at its address as follows:
 - (i) **Mountain View County:**
PO Bag 100
Didsbury, Alberta
T0M 0W0
Attention: Chief Administrative Officer
Fax: (403) 335-9207
E-mail: mvadmin@mvcounty.com
 - (ii) **Town of Carstairs:**
PO Box 370
Carstairs, Alberta
T0M 0N0
Attention: Chief Administrative Officer
Fax: (403) 337-3343
E-mail: amyp@carstairs.ca
 - (iii) **Town of Didsbury:**
PO Box 790
Didsbury, Alberta
T0M 0W0
Attention: Chief Administrative Officer
Fax: (403) 335-9794
E-mail: inquiries@didsbury.ca
 - (iv) **Town of Olds:**
4512 – 46 Street
Olds, Alberta
T4H 1R5
Attention: Chief Administrative Officer
Fax: (403) 556-6537
E-mail: admin@olds.ca
 - (v) **Town of Sundre:**
PO Box 420
Sundre, Alberta
T0M 1X0
Attention: Chief Administrative Officer
Fax: (403) 638-2100
E-mail: townmail@sundre.com
 - (vi) **Village of Cremona:**
PO Box 10
Cremona, Alberta
T0M 0R0
Attention: Chief Administrative Officer
Fax: (403) 637-2101
E-mail: inquiry@cremona.ca

(vii) **Mountain View Regional Waste Management Commission:**
PO Box 2130
Didsbury, Alberta
T0M 0W0
Attention: Chief Administrative Officer
Fax: (403) 335-2061
E-mail: mvrwmc@airenet.com

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

(c) Notice shall be served by one of the following means:

- (i) 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;
- (ii) if delivered to a corporate party, by delivering it to the address specified in (b) during normal business hours. Notice delivered in this manner shall be deemed received when actually delivered;
- (iii) 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:
 - (A) if transmitted before 3:00 p.m. on a Business Day, on that Business Day; or
 - (B) if transmitted after 3:00 p.m. on a Business Day, on the next Business Day after the date of transmission; or
- (iv) 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.

Section 6.02 - 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.

Section 6.03 - Time of Essence

Time shall be of the essence of this Agreement.

Section 6.04 - 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.

Section 6.05 - 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.

Section 6.06 - 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.

Section 6.07 - 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.

Section 6.08 - 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.

Section 6.09 - 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.

Section 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.

Section 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.

Section 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.

Section 6.13 - Survival

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

Section 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.

Section 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.

Section 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.

Section 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.

Section 6.18 - Assignment

No 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 parties, such consent which may be arbitrarily withheld.

Section 6.19 - Requests for Consent

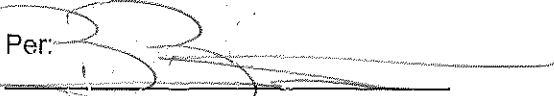
Each party shall provide any decision with regard to a request for consent in a timely manner.

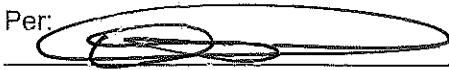
Section 6.20 - Construction

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

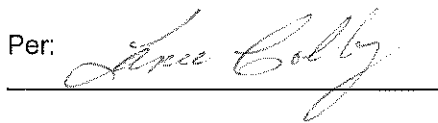
IN WITNESS WHEREOF the parties have hereunto executed this Agreement under their respective corporate seals and by the hands of their proper officers duly authorized in that regard effective as of the day and year first above written notwithstanding the actual date or dates of execution hereof.

MOUNTAIN VIEW COUNTY

Per: 

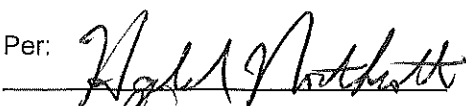
Per: 

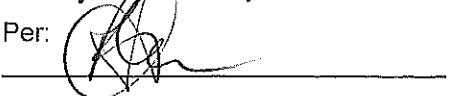
TOWN OF CARSTAIRS

Per: 

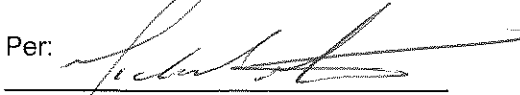
Per: 

TOWN OF DIDSBURY

Per: 

Per: 

TOWN OF OLDS

Per: 

Per: 

TOWN OF SUNDRE

Per: L. Deppa

Per: [Signature]

VILLAGE OF CREMONA

Per: Jim Wagner

Per: [Signature]

MOUNTAIN VIEW REGIONAL WASTE
MANAGEMENT COMMISSION

Per: [Signature]

Per: [Signature]

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 Parties acknowledge and agree that:

- (a) in any business relationship a difference of opinion or interpretation or a divergence of interest may arise;
- (b) the Parties 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 with thirty (30) days of the Mediation Notice;
 - (ii) the Mediation is not completed within thirty (30) days after the appointment of the Mediator; or
 - (iii) the Dispute has not been resolved within sixty (60) days from the date of receipt of the 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 Alternative Dispute Resolution 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 Mountain View County, 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 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.