


THIS AGREEMENT made effective as of the 18th day of February, ~~2024~~ 2025 

SHIRLEY McCLELLAN REGIONAL WATER SERVICES COMMISSION
(the "Commission")

- and -

VILLAGE OF DONALDA
(the "Village")

WHEREAS:

- A. The Village is a member of the Commission that has entered into an agreement with the Commission dated July 15, 2014 for the Commission to supply water to the Village (the "Supply Agreement").
- B. The Village has qualified for an Alberta Municipal Water/Wastewater Partnership grant in the sum of \$2,975,000.00 to support the construction of a new underground water reservoir (the "AMWWP Grant").
- C. The Commission is prepared to construct the new underground water reservoir and contribute to the costs of such construction, which upon completion will be transferred to and owned by the Commission.
- D. The Commission is prepared to operate and maintain the new underground water reservoir to provide water services to the Village, on and subject to the terms and conditions set out herein.

NOW THEREFORE In consideration of the terms and conditions described in this Agreement, the Commission and the Village covenant and agree as follows:

1. Definitions

In this Agreement, capitalized terms shall have the meanings defined throughout the agreement and as expressly set out below:

- (a) **Agreement** means this Reservoir Infrastructure Agreement including preamble and all attached Schedules and all documents produced or delivered according to the terms of this Agreement;
- (b) **Best Efforts** means, in relation to the performance of an obligation, efforts that are sensible and practical, and involve the exercise of reasoned and sound judgement having regard to all of the relevant circumstances;
- (c) **Effective Date** means the date first set out above;
- (d) **Reservoir Infrastructure** shall have the meaning as set out in section 3(a) and further described in Schedule "A";
- (e) **Surcharge** means the price for the provision of the Services by the Commission as established from time to time according to the provisions of the attached Schedule "C";
- (f) **Term** means a period commencing on the Effective Date, and ending December 31, 2034, or as otherwise extended or renewed by mutual agreement of the Parties;



(g) **Schedules** means those Schedules attached hereto which form part of this Agreement including:

- (i) Schedule "A" - Reservoir Infrastructure Specifications and Requirements
- (ii) Schedule "B" - Description of the Services
- (iii) Schedule "C" - How the Surcharge is Determined
- (iv) Schedule "D" - Dispute Resolution Process

2. General Terms

- (a) This Agreement may not be assigned without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- (b) This Agreement is for the benefit of and binds the parties and their respective successors and permitted assigns.
- (c) Any term of this Agreement which is determined to be void, unenforceable or illegal shall be severed from this Agreement. The remaining terms shall be effective and enforceable.
- (d) The headings are for reference only and shall not be used to interpret or construe this Agreement.
- (e) Any notice, consent or communication required by this Agreement must be in writing and shall be delivered by hand or by courier to the following addresses or shall be telecopied to the following telecopier numbers, as the case may be:
 - (i) To the Commission at:
Shirley McClellan Regional Water Services Commission
Box 1270
Stettler, AB T0C 2L0
Attention: Commission Manager
Telecopier / Fax No.: (403) 742-1277
 - (i) To the Village at:
Village of Donalda
Box 160
Donalda, Ab T0B 1H0
Attention: CAO
Telecopier / Fax No. 403-883-2022
- (f) This Agreement shall be governed by and construed according to the laws in force in the Province of Alberta and Bylaws of the Commission.

3. Construction of Water Reservoir

- (a) The Commission agrees to construct the underground water reservoir and related infrastructure as described in Schedule "A" to this Agreement (the "Reservoir Infrastructure").
- (b) The Commission shall be entitled to retain any contractors or suppliers it deems necessary in its discretion to complete the Reservoir Infrastructure, provided it complies with all applicable laws and the requirements of the AMWWP Grant specified in Schedule "A".



- (c) The Village will authorize the Commission to manage and receive all funds under the AMWWP Grant. The Commission will be responsible for all additional costs required to complete the Reservoir Infrastructure.
- (d) The Village agrees that it shall have no further right, title or interest of any kind in the Reservoir Infrastructure.

4. Operation of Reservoir and Water Surcharge

- (a) The Commission as owner will be solely responsible for operating, maintaining and repairing the Reservoir Infrastructure.
- (b) Upon completion and commissioning of the Reservoir Infrastructure and for the duration of the Term, the Commission will operate the Reservoir Infrastructure to provide water services to the Village, as further described in Schedule "B" (the "Services").
- (c) In consideration for the Services, the Village will pay to the Commission a surcharge on the price paid for water to the Commission in the Supply Agreement, as calculated in accordance with the provisions of Schedule "C" of this Agreement (the "Surcharge").
- (d) The Village and the Commission are individually responsible for obtaining, at their sole expense, all necessary consents, approvals or orders from any level of government, board, tribunal, the Village or other regulatory authority which is or are required in order for each of them to enter into this Agreement or to perform and satisfy their respective obligations described herein. The Village and the Commission shall cooperate with each other and shall provide reasonable assistance to each other, when requested.

5. Repairs, Maintenance and Replacements

- (a) The Commission may interrupt or curtail the Services for period of time as it may reasonably require for the purpose of effecting any repairs, maintenance, replacement, upgrading or other work related to the Reservoir Infrastructure under this Agreement provided that:
 - (i) the Commission has given the Village at least forty-eight (48) hours prior notice or, in the event of unforeseen circumstances, the Commission gives notice of such interruption or curtailment as soon as is reasonably possibly possible; and
 - (ii) the Commission acts reasonably in using best efforts to restore the Services as soon as reasonably possible.
- (b) The Commission shall use Best Efforts to coordinate the repairs, maintenance, replacement, upgrading and other work referred to in paragraph 5(a), above, with the Village so as to minimize to the extent reasonable the inconvenience to the Village and its residents of interruptions and curtailments.
- (c) During periods of interruption or curtailment provided for in paragraph 5(a), above, the Commission may reduce the level, quality or quantity of service provided to the Village under this Agreement, provided that the Commission shall act reasonably and the Commission and the Village shall use Best Efforts to keep each other apprised of and up-to-date in respect of the relevant circumstances during each interruption or curtailment.



6. Force Majeure

The Commission shall not be liable for any failure of or delay in performance of its obligations hereunder or be deemed to be in breach of this Agreement if such failure or delay arise from "force majeure".

- (a) For the purposes of this Agreement, "force majeure" shall mean any cause not reasonably within the Commission's control and shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, storms, floods, high waters, washouts, inclement weather, orders or acts of evil or military authorities, civil disturbances, or any other causes, whether of the kind herein enumerated or otherwise, not within the reasonable control of the Commission and which, by the exercise of due diligence, the Commission is unable to overcome, provided that lack of funds shall not be a cause beyond control.
- (b) The Commission shall give the Village prompt notice of such circumstances and shall take all reasonable steps to remove such disability. The Commission shall not be entitled to the benefit of this force majeure clause to the extent the failure to provide Services was caused by the Commission having failed to remedy the force majeure condition where it was reasonably able to do so and to resume the supply of water with reasonable dispatch.
- (c) The Commission may impose reasonable restrictions on the delivery of the Services, consistent with any operating constraints then in effect.
- (d) The parties agree that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the particular party involved therein and such party may make settlement thereof in such time and on such terms and conditions as it may deem to be advisable and no delay in making such settlement shall deprive such party of the benefits of this section.
- (e) A force majeure event shall merely suspend contractual obligations, and not bring this Agreement or any portion thereof to an end.

7. Liability, Damages and Mutual Indemnity

- (a) Unless the cause is proven to be due directly to the negligence of the Commission, its employees or agents, the Commission shall have no liability to the Village whatsoever for any damage, loss, cost or expense resulting from, arising out of or associated with:
 - (i) a break of any Reservoir Infrastructure;
 - (ii) the interference or suspension of the Services due to maintenance work to, repair work to or replacement work for the Reservoir Infrastructure or an emergency situation; and
 - (iii) any accident to or failure of any part of the Reservoir Infrastructure.
- (b) Notwithstanding any other provision of this Agreement, neither the Village nor the Commission shall be liable to the other for:
 - (i) 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
 - (ii) any indirect, consequential or punitive damages, including loss of profits or



revenues or other similar damages.

- (c) 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 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 is 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.

8. Arbitration and Remedies

- (a) If a dispute arises between the Village and the Commission regarding the interpretation, application, operation or breach of this Agreement or any part of it the dispute must be submitted to the dispute resolution process described in the attached Schedule "F" before either 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, the Alberta Energy and Utilities Board or any successor tribunal or entity, provided however that either party may file a complaint or other document required to be filed with the courts, Board or any successor 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.

Notwithstanding that the dispute resolution process is involved, the parties shall continue to perform their obligations described in this Agreement until such time as the dispute resolution process is complete.

- (b) Subject to paragraph 8(a), if a party breaches this Agreement, then the other party shall have all available legal, equitable and other remedies.

In witness whereof the parties have signed this Agreement to be effective from and after the Effective Date notwithstanding the actual date(s) of execution.

**SHIRLEY McCLELLAN REGIONAL WATER
SERVICES COMMISSION**

Per: _____

Per: _____

VILLAGE OF DONALDA

Per: _____

Per: _____

SCHEDULE "A"

RESERVOIR INFRASTRUCTURE SPECIFICATIONS AND REQUIREMENTS

The Reservoir Infrastructure shall consist of potable water storage of no greater than 2000m³ or a capacity as recommended by an engineer registered to practice with the Association of Professional Engineers and Geoscientists of Alberta, with distribution pumps capable of providing domestic pressure throughout the Village of Donalda.

The Reservoir Infrastructure shall include the ability for vehicular loading of bulk water through a self-serve panel for the sale of bulk water to the general public.

RC if DA

SCHEDULE "B"

DESCRIPTION OF THE SERVICES

The Commission shall provide treated, tested, potable water under pressure from the Reservoir Infrastructure.

AC if CM

SCHEDULE "C"

HOW THE SURCHARGE IS DETERMINED

1. How the Rate is Determined

The Surcharge payable by the Village shall be as established annually by the Commission through its Bylaws during the Term, and shall be calculated by dividing the estimated costs of the operating, maintaining, repairing and replacing the Reservoir System by the total volume of water requested by the Village and anticipated to be sold to the customers.

The estimated costs of the Reservoir System shall be calculated on a cost of service basis utilizing the principles set out in the American Water Works Association (AWWA) manuals of practice dealing with water rates and charges, as revised and updated from time to time, and in accordance with the findings and directives of the Alberta Energy and Utilities Board and may include:

- (i) operations of the Commission's Board and Manager;
- (ii) operations of the Reservoir System;
- (iii) non cash expenditures; and
- (iv) allocations for present or future capital expenditures

Principles and practices to be applied to determine the Surcharge may be changed from time to time by way of negotiated agreement between the Parties.

2. Minimum Payment to the Commission

Notwithstanding the actual volume of water purchased, the Member shall be responsible for a minimum payment to the Commission of 90% of the volume requested by the Member times the rate set out in Paragraph 1.



SCHEDULE "D"

DISPUTE RESOLUTION PROCESS

The Village and the Commission acknowledge that in any business relationship a difference of opinion or interpretation or a divergence of interest may arise. The Village and the Commission are committed to resolving any disputes in a non-adversarial, informal, and cost efficient manner. Therefore the Village and the Commission agree as follows:

1. The Village and the Commission shall attempt to resolve any dispute through direct negotiation.
2. Failing successful negotiation they shall resort to mediation as follows:
 - (a) Either party may be written notice to the other, request that the parties select a mediator. The parties shall endeavor to select a mediator agreeable to both form a list of suitable mediators maintained by the Alberta Arbitration and Mediation Society.
 - (b) Within 7 days of his or her selection, the Mediator shall designate a time for a meeting among the Mediator and a representative of each the Village and the Commission. Each representative must have authority to agree to a resolution of the dispute.
 - (c) Subject to paragraph 8(b) of the Agreement, for a 45 day period of time from the written notice requesting the selection of a mediator, neither the Village nor the Commission shall take any action or step or pursue any available remedy other than to use its best efforts to participate in the mediation process.
 - (d) The cost and expense of the Mediator and the mediation process shall be paid for equally by the Village and the Commission.
 - (e) The mediation process, including all discussions, proposals and written materials made or prepared, shall be strictly confidential and cannot be used or referred to in any subsequent action, step or proceedings.
 - (f) The Mediator cannot be called by either party as a witness in any subsequent action, step or proceeding.
3. Notwithstanding section 2(c), either party may take such legal or regulatory action as may be necessary to preserve the right to any legal or regulatory remedy should a resolution of the dispute under the process in Section 2 of this Schedule be unsuccessful.

