



# **WEST DRIED MEAT LAKE REGIONAL SOLID WASTE AUTHORITY AGREEMENT**

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**CAMROSE COUNTY | COUNTY OF WETASKIWIN No. 10  
VILLAGE OF EDBERG | TOWN OF MILLET  
2021**

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This Agreement made effective the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**BETWEEN:**

**CAMROSE COUNTY**  
("Camrose")

- and -

**COUNTY OF WETASKIWIN NO. 10**  
("Wetaskiwin")

- and -

**TOWN OF MILLET**  
("Millet")

- and -

**VILLAGE OF EDBERG**  
("Edberg")

## **AUTHORITY AGREEMENT**

Background:

- A. The Parties wish to establish and operate an efficient and environmentally acceptable solid waste management and disposal system;
- B. The Parties have come together to jointly collaborate for the ownership and operation of a solid waste landfill service under the name of the **"West Dried Meat Lake Regional Solid Waste Authority"**;
- C. Over the course of the relationship, the parties have entered into several agreements respecting their joint relationship and entitlement to receive services;
- D. The parties now wish to revoke all prior agreements and enter into this Agreement regarding the joint ownership and operation of the Authority Property.

The Parties agree as follows.

## ARTICLE 1

### INTERPRETATION

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#### 1.1 DEFINITIONS

In this Agreement (the "Agreement"), including this clause, the recitals, and Schedules attached to this Agreement:

- (a) "**Authority**" means the West Dried Meat Lake Regional Solid Waste Authority between the Parties formed under and for the limited purposes and scope set out in this Agreement;
- (b) "**Authority Account**" means the account set up by the Operator under Article 7, and "**for the Authority Account**" means for the benefit and risk and at the expense of the Parties in accordance with their respective Proportionate Interests;
- (c) "**Authority Property**" means the Regional Landfill, all contributions from time to time to the Authority and any equipment or chattels that are owned by the Authority.
- (d) "**Business Day**" means a day other than a Sunday or a statutory holiday in Alberta;
- (e) "**Current Estimated Closure and Post Closure Costs**" means, at any time, a genuine estimate of any and all costs as determined by the Operator, in its sole discretion, to be incurred upon the abandonment of the Authority Property, at any time, including, without restriction:
  - (i) the cost of performing all closure and post closure activities required under any agreement, right of way, license, permit, or authorization (whether government or private) under which the Authority Property was constructed, operated, and maintained;
  - (ii) the cost of performing all closure and post closure activities that are reasonably anticipated to apply under any Federal or Provincial statute, or any municipal bylaw; and calculated in accordance with Generally Accepted Accounting Principles, as determined from time to time by consultant(s) commissioned jointly by the Parties or by the Management Committee;
- (f) "**Defaulting Party**" has the meaning set out in Section 13.1;
- (g) "**Dispute Resolution Procedure**" means the procedure in Schedule "A";
- (h) "**Event of Default**" has the meaning as ascribed thereto in Section 13.1;
- (i) "**Generally Accepted Accounting Principles**" means those accounting principles which are recognized as being generally accepted in Canada from time to time as described in the handbook published by the Canadian Institute of Chartered Accountants; where the Canadian

- Institute of Chartered Accountants includes a recommendation in its handbook concerning accounting treatment or statement presentation, such recommendation shall be regarded as the only generally accepted accounting principles acceptable to the circumstances that it covers and references herein to "Generally Accepted Accounting Principles" shall be interpreted accordingly;
- (j) "**Interest Income**" means the annual interest income that is earned from the investment of the Authority's reserve account, as described in Section 7.6;
  - (k) "**Management Committee**" means that management committee as established in Section 4.1 hereof;
  - (l) "**Non-Defaulting Party**" has the meaning set out in Section 13.1;
  - (m) "**Operating Costs**" means all expenditures (including, as applicable, capital expenditures) incurred in connection with the Authority under the provisions of this Agreement, as determined by the Operator;
  - (n) "**Operations**" means the collection of Waste, disposal of Waste, recycling of Waste, treatment of Waste, reclamation of the Regional Landfill and otherwise management activities related to the Authority Property as may be required to ensure that the Authority Property is capable of being used in the manner for which the Authority Property is intended by this Agreement, always in accordance with any government or other authorization, consent or approval which may be required by the Operator;
  - (o) "**Operator**" means Camrose;
  - (p) "**Parties**" means each of Camrose, Wetaskiwin, Millet and Edberg and "**Party**" means any one of them;
  - (q) "**Person**" means a person, firm, or corporation and "**People**" means more than one Person;
  - (r) "**Prime Rate**" means the rate of interest per annum which is established from time to time by the main branch of the Alberta Treasury Branches (the "Bank"), at Camrose, Alberta, as its reference point for establishing the interest rates chargeable on commercial loans generally. A statement or statements in writing made by the manager of the main branch of the Bank indicating the Prime Rate shall be final and conclusive as evidencing 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 on which the Bank changes its Prime Rate and such rate of interest shall be changed automatically without notice to the Parties;

- (s) "**Proportionate Interest**" means the undivided tenancy-in-common interests of a Party in the Authority Property, as may be adjusted from time to time under this Agreement, based upon as follows:

Owner	Proportionate Interest
Camrose	25%
Wetaskiwin	25%
Millet	25%
Edberg	25%
TOTAL	100%

- (t) "**Proportionate Share**" means, unless otherwise specifically agreed to within this Agreement, each Party's share of a cost, expense, liability, or other responsibility calculated as follows:  $\text{Number of tonnes of Waste provided over previous fiscal year by relevant Party divided by Number of tonnes of Waste provided over previous fiscal year by all Parties}$ ; (alternative – based on per capita of each of the Parties)

- (u) "**Regional Landfill**" means the following that are being held or used by the Authority:

- (i) buildings, structures, process and pollution abatement equipment, vessels, storage facilities, material handling facilities, roadways, pipelines and other installations, and includes the lands legally described as:

(A) Firstly:

THE SOUTH WEST QUARTER OF SECTION FOURTEEN (14)  
TOWNSHIP FORTY FOUR (44)  
RANGE TWENTY ONE (21)  
WEST OF THE FOURTH MERIDIAN,  
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS  
EXCEPTING THEREOUT ALL MINES AND MINERALS

And

(B) Secondly:

MERIDIAN 4 RANGE 21 TOWNSHIP 44 SECTION 14 QUARTER SOUTH  
EAST CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS  
EXCEPTING THEREOUT: 0.813 HECTARES (2.01 ACRES) MORE OR LESS,  
AS SHOWN ON ROAD PLAN 8421445  
EXCEPTING THEREOUT ALL MINES AND MINERALS

- (ii) household hazardous waste storage facility; and  
(iii) surface water management systems
- (v) "**Revenues**" means the total proceeds received by the Operator on behalf of the Authority that is earned from the provision of the Waste Management Services;

- (w) "**Term**" means the term of this Agreement, as set forth in Article 10;
- (x) "**Waste**" has the same meaning as ascribed thereto in Section 1(11) of the Solid Waste Regulation A.R. 192/96;
- (y) "**Waste Management Services**" means within the scope of this Agreement, the business of:
  - (i) acceptance of Waste from both the Parties and other customers for processing at the Regional Landfill; and
  - (ii) operating the Regional Landfill.

## **1.2 AGREEMENT**

The Parties agree and acknowledge that this Agreement shall supersede all previous agreements in which the parties may have executed, which include that:

- (a) Regional Landfill Committee document dated September 7, 1979;
- (b) Agreement dated July 2, 1996;
- (c) Membership Agreement dated July 2, 1996;
- (d) Amending Agreement dated May 1, 1998;
- (e) Amending Agreement dated June 24, 2002.
- (f) Amended and Restated Agreement dated September 8, 2017

## **ARTICLE 2**

### **PURPOSE OF THE AGREEMENT**

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#### **2.1 FORMATION OF AUTHORITY**

As of the effective date of this Agreement, the Parties agree:

- (a) to associate in and form the Authority as described in this Agreement for the purposes set out in Section 2.2; and
- (b) that all of their rights and obligations in and to the Authority and the Authority Property shall be governed by this Agreement.

#### **2.2 PURPOSES**

This Agreement is entered into for the following purposes and for no others, and shall serve as the exclusive means by which the Parties directly or indirectly accomplish such purposes. The Parties hereby form the Authority to:

- (a) provide the Waste Management Services;
- (b) own, operate, and maintain the Authority Property; and
- (c) perform any other activity necessary or incidental to any of the foregoing.

#### **2.3 OPERATION AND MAINTENANCE OF THE AUTHORITY PROPERTY**



The Parties shall cause the Authority Property to be operated and maintained all under this Agreement and following applicable laws, regulations, and standards.

## **2.4 ACKNOWLEDGMENT OF SECTION 54 OF MUNICIPAL GOVERNMENT ACT**

Each one of the Parties agree and acknowledge that the provision of the Waste Management Services hereof constitutes a provision of services by one municipality to another that would otherwise require the approval of a Party pursuant to Section 54 of the Municipal Government Act. Accordingly, each one of the Parties agrees that the other Parties may provide the Waste Management Services within each of their municipal boundaries, for the purposes of compliance with Section 54 of the Municipal Government Act.

# **ARTICLE 3**

## **ESTABLISHMENT OF PROPORTIONATE INTEREST**

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### **3.1 PROPORTIONATE INTEREST**

The Parties acknowledge and agree that their respective interests in the Authority Property and in any and all agreements relating to the Authority Property are undivided and apportioned between them in proportion to their respective Proportionate Interests.

### **3.2 NO ADJUSTMENT**

Unless otherwise agreed by the Parties, no adjustment to the Proportionate Interest of any Party in the Authority Property shall be made.

# **ARTICLE 4**

## **MANAGEMENT COMMITTEE**

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### **4.1 MANAGEMENT COMMITTEE**

The Parties shall supervise and control the Operations under this Agreement through the Management Committee. As soon as possible after execution of this Agreement, each Party shall appoint 1 representative and may appoint 1 or more alternate representatives authorized to represent and bind the Party at meetings of the Management Committee, and shall notify the Operator of the name and address of its representative and alternate representatives. A Party may change any of its representatives from time to time by notice to the Operator.

### **4.2 CHAIRPERSON**

The chairperson of the Management Committee shall be elected annually by the Management Committee at the first meeting of the Management Committee after each Party's annual organizational meeting.

### **4.3 MEETINGS**

- (a) The Management Committee shall hold meetings whenever called by the Operator or whenever requested to do so by one or more Parties.
- (b) Meetings of the Management Committee may be held at any time without formal notice if 1 or both of the representatives (or alternate representative(s)) of the Parties are present in person.
- (c) Except as otherwise stated in this Agreement:
  - (i) matters not contained in the agenda shall not be voted upon at a meeting unless the representatives of all of the Parties, whether or not present at the meeting, agree to add such matters to the agenda; and
  - (ii) no business shall be transacted at any meeting of the Management Committee unless a quorum is present when the meeting proceeds to business.
- (d) A quorum for meetings of the Management Committee shall be the representatives of a majority of the Parties.

#### **4.4 VOTING PROCEDURE**

The Parties, subject to them dealing with issues directly, shall determine all matters properly coming before the Management Committee as follows.

- (a) Voting Interest - The Party's representative or representatives shall have one (1) vote at any meeting of the Management Committee.
- (b) Vote Required - Generally - The Management Committee shall determine all matters properly coming before it under this Agreement by the affirmative vote of the majority or more of the Parties' representatives.

#### **4.5 ELECTRONIC MEETINGS**

- (a) Subject to Section 4.5(b), 4.3(b) and 4.3(c) a meeting of the Management Committee may be conducted by electronic means, including telephone if at least a quorum participates, and all decisions are confirmed in writing and provided promptly to each member of the Management Committee.
- (b) If a representative of a Party objects to a particular meeting of the Management Committee being conducted by electronic means, the meeting in question shall be conducted in person.

#### **4.6 PARTIES BOUND BY VOTING**

Determination of a matter by the vote of the Management Committee under this Agreement shall be binding upon all of the Parties.

#### **4.7 EXPENSES**

Each Party will bear the expenses incurred by its representatives and alternate representatives in attending meetings of the Management Committee.

#### **4.8 POWERS OF MANAGEMENT COMMITTEE**

The Management Committee shall determine and exercise overall supervision and control of all matters regarding the Authority which are left to the determination of the Management Committee under this Agreement, including but not limited to, the following:

- (a) approving or rejecting the financial statements of the Authority;
- (b) approve of all operating budgets for the Authority;
- (c) approve of all capital budgets for the Authority;
- (d) direct the Operator to distribute any or all of the Interest Income to the Parties in accordance to the Proportionate Interest of the Parties  
**alternative – Proportionate Share of the Parties**, subject to any right of set-off or deduction hereof, should the Management Committee so resolve;  
**(alternative – direct the Operator to distribute any or all of the Interest Income to qualified community projects, as per the Policy related to the “West Dried Meat Lake Regional Authority Legacy Grant Program.”)**  
**(another alternative - direct the Operator to distribute the Interest Income to the Parties in accordance with the calculation as follows: 1/3 of the distributed funds according to Proportionate Interest, 2/3 of the distributed funds based on per capita as per the most recent Alberta Municipal Affairs Municipal Population Lists. (or alternative Proportionate Share as defined in 1.1 (t))**  
**(another alternative – include a combination of all the options)**
- (e) attempting to settle on behalf of the Authority all disputes, controversies, differences, or other failures to agree that may arise between the Parties;
- (f) making any decision which could reasonably be expected to materially adversely affect operation of the Authority, profitability, cash flow, or the equity value of the Authority;
- (g) ensuring that the Operator pays all costs and expenses properly incurred by the Authority promptly as and when due;
- (h) approving the Operator's forecasts;
- (i) appointing or designating committees or subcommittees to study any problem in connection with operations under this Agreement;
- (j) approving any single capital expenditure in excess of those amounts previously approved;
- (k) taking periodic inventories of the Authority Property;

- (l) directing the Operator to commission a written evaluation of the Current Estimated Closure Post-Closure Costs by a qualified consultant(s) to begin in 2022 and conducted thereafter on a five (5) year cycle;
- (m) generally, dealing with all problems of importance and policy matters which may arise from time to time with respect to operation of the Authority; and
- (n) performing such other duties as may be given to it under this Agreement.

#### **4.9 DISPUTE RESOLUTION FOR CONTRACTUAL INTERPRETATION**

If the Parties are unable to agree upon the interpretation of this Agreement, or where this Agreement requires that the Management Committee decide upon any matter if the Management Committee does not or cannot agree or decide upon the matter in issue, the resolution of such dispute shall be referred to the Dispute Resolution Procedure, (attached as Schedule A), for determination.

### **ARTICLE 5 INSURANCE**

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#### **5.1 INSURANCE COVERAGE**

The Operator shall obtain and maintain:

- (a) Commercial General Liability Insurance with personal injury and property coverage in such amounts and on such terms as the Parties may from time to time require but in any event such insurance shall not be less than a combined single limit of five-million (5,000,000) dollars, inclusive;
- (b) Property Insurance on the Authority Property, to a full replacement value without deduction for depreciation and such insurance shall provide and include normal coverage for fire and extended perils or all-risk coverage, as the Parties shall require;
- (c) Environmental Impairment Liability Insurance in such amounts and on such terms as the Parties may from time to time require but in any event such insurance shall have a limit of not less than two million (\$2,000,000.00) Dollars per occurrence; and
- (d) such other insurance as the Parties think is reasonable, from time to time.

#### **5.2** Any and all such insurances effected under this Agreement shall show Additionally Named Insured as County of Wetaskiwin No. 10, Town of Millet and Village of Edberg operating as the West Dried Meat Lake Regional Solid Waste Authority.

## ARTICLE 6

### SUPERVISION AND CONTROL OF OPERATIONS BY OPERATOR

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#### 6.1 OPERATOR'S DUTIES

Subject to anything contained to the contrary herein, the Operator shall be the sole operator of the Authority and shall conduct the overall management and control of the Authority. The Operator shall have the absolute discretion with respect to the authority and responsibility of the exercise and discharge of the following functions, all to be conducted as would a prudent operator under the same or similar circumstances:

- (a) ensure that the Authority Property is operated and maintained to a safe and consistent quality and in good condition, and in accordance with all applicable governmental orders, laws and regulations;
- (b) supervise the use of the Authority Property to ensure that such use complies with the terms and conditions established by the Operator including without limitation, causing any use to be in accordance with all laws, orders, rules, and regulations;
- (c) take all necessary steps as are reasonable in the circumstances to restrict use of all or any portion of the Authority Property to whomever the Operator so deems;
- (d) provide the Waste Management Services;
- (e) make all necessary reports relating to operations hereunder to the appropriate governmental agency and furnish copies of such reports to each Party when requested to do so;
- (f) keep and maintain for the Authority, proper books of accounts, in accordance with the accrual method of accounting, and entry shall be made of all such matters, transactions and things as are usually entered and written in books of accounts kept by persons engaged in concerns of similar nature to the Authority;
- (g) keep all books, letters and other records belonging, to or concerning the Authority at the offices of the Operator in Alberta;
- (h) extend to each Party, at such Party's sole risk, cost and expense the right to examine and inspect the Authority Property at all reasonable times within normal business hours;
- (i) cause the preparation of annual audited financial statements of the Authority prepared in accordance with Generally Accepted Accounting Principles from the separate books and accounts maintained in connection with the Authority on or before May 1 for the preceding fiscal year of the Authority;

- (j) make, for and on behalf of all Parties, application for any and all approvals or orders of governmental bodies or duly constituted authorities having jurisdiction which are necessary or convenient for this Agreement and Operations, and shall supply a copy of all such applications and submissions to any Party upon such Party's request;
- (k) perform its duties and obligations under this Agreement, and conduct all Operations, in a good, safe, and workmanlike manner, following good operating practices and in compliance with this Agreement and all applicable laws, orders, rules, and regulations;
- (l) procure and maintain for the Authority the insurance set forth in this Agreement and use every reasonable effort to have all contractors and subcontractors employed by it to carry third party liability insurance. Nothing herein contained shall prevent a Party from carrying, at its sole cost and expense and for its sole benefit, such insurance as it shall determine; provided that each such Party's insurance policy shall contain a waiver by the insurer of all rights of recovery, by subrogation or otherwise, against any Party;
- (m) pay and discharge promptly for and on behalf of the Parties all costs and expenses incurred in connection with Operations and activities of the Operator under this Agreement;
- (n) prepare and let contracts for construction, maintenance and operation of the Authority Property or portions thereof, or use its own facilities and equipment for such work and charge for such equipment and use of facilities;
- (o) prepare all financial reports, budgets and business plans with respect to the Authority, to be approved of by the Management Committee;
- (p) coordinate and monitor all sub-contracting and hiring practices and training programs of the Authority;
- (q) award subcontracts to any Person to provide the assistance that the Operator deems is necessary for the Authority;
- (r) monitor the achievement of approved business plans and budgets;
- (s) monitor the financial performance of the Authority;
- (t) as directed by the Management Committee, distribute the Interest Income to the Parties in accordance with Section 4.8 (d), subject to any right of set-off or deduction hereof;
- (u) as directed by the Management Committee, execute, and deliver all instruments and documents and give all undertakings and assurances required to be executed and delivered;

- (v) comply with all agreements or instruments of title under which the Authority Property is held;
- (w) use all reasonably endeavors to keep the Authority Property free and clear of all liens, charges, or encumbrances arising out of Operations and in the event of any lien, charge, or encumbrance being filed as aforesaid, proceeding with diligence to contest or discharge the same;
- (x) prosecute claims, or where a defense is available, defending litigation arising out of Operations, provided that any Party may join in the prosecution or defense at its own expense;
- (y) designate a representative to appear before any court or regulatory body considering matters pertaining to operations hereunder, but not so as to prevent any Party from having its own representative appear on its own behalf;
- (z) within the ordinary course of business, sell, salvage or otherwise dispose of the Authority Property or any portion thereof, or any item of surplus material or equipment that the Operator deems is necessary, acting reasonably;
- (aa) opening and maintaining one or more bank accounts in such bank or banks as the Management Committee may from time to time decide and authorizing signatories for the Authority bank accounts;
- (bb) generally, deal with all problems of importance and policy matters which may arise from time to time with respect to Operations;
- (cc) commission a written evaluation of the Current Estimated Closure Post-Closure Costs by a qualified consultant(s) to begin in 2022 and conducted thereafter on a five (5) year cycle;
- (dd) perform such other duties as may be given to it under this Agreement or by the Management Committee; and
- (ee) to generally monitor and assess the overall Operations of the Authority.

## **6.2 COMPENSATION**

The Operator shall be entitled to a fee as determined from time to time by agreement between the Operator and the Authority as compensation for its provision of the Waste Management Services, which shall be collected by the Operator by way of four (4) quarterly deductions, from the Revenues earned from Waste Management Services. Additionally, the Operator shall be entitled to reimbursement of all appropriate expenses, subject to the approval of the Management Committee, which shall be paid from deductions from Revenues.

### **6.3 EMPLOYEES**

The number, selection, hours of labour and remuneration of employees, contractors, subcontractors, and agents used by the Operator in conducting Operations shall be determined by the Operator, acting reasonably. Such employees, contractors, subcontractors, and agents shall be solely responsible to and solely under the direction of the Operator.

### **6.4 DISPUTE RESOLUTION**

Where the Parties are unable to agree upon the interpretation of this Agreement, the resolution of such dispute shall be referred to the Dispute Resolution Procedure for determination. This provision shall not apply to a decision regarding the use of the Authority Property by third parties which must be approved by the Operator in writing at its sole and unfettered discretion.

### **6.5 NO ASSIGNMENT OF OPERATOR'S OBLIGATIONS**

The Operator shall not assign or otherwise dispose of its rights or obligations as Operator under this Agreement, except with the consent of all the Parties.

### **6.6 INDEMNITY AND LIABILITY OF OPERATOR**

- (a) As a statement of principle, the Parties agree that:
  - (i) to the extent possible, the Operator shall discharge all liabilities out of the Authority Account; and
  - (ii) should the Authority Account be insufficient to discharge the respective liability, the Parties shall each be severally liable for that liability, only to the extent of their Proportionate Interest. (alternative – Proportionate Shares – see Section 6.7)
- (b) Only if the Authority Account has insufficient resources, the Operator shall be liable for, and shall indemnify and save harmless the other Parties from any action, cause of action, suit, claim, demand, cost (including, without limitation, legal fees on a solicitor and his own client full indemnity basis), loss, expense, injury, death or damage (a "Loss"), whether contractual or tortious, suffered or incurred by the other Parties resulting directly or indirectly from, or in any way attributable to, or arising out of any breach of, this Agreement by the Operator, or any other negligent act or wilful misconduct of the Operator or any of its councillors, officers, servants, consultants, agents, contractors, or employees in conducting or carrying out Operations, except as applicable to a Party who is not the Operator, when and to the extent that such Loss is a result of, directly or indirectly, or is attributable to, any breach of this Agreement or the negligence or wilful misconduct of such Party or of any of such Party's councillors, officers, servants, consultants, agents, contractors or employees. However, in no event shall the responsibility of the Operator described by this Section 6.6(b) extend to



indirect, economic, or consequential losses suffered by a Party, including without restricting the generality of the foregoing, loss of profits, or other consequential or indirect losses applicable to such loss or delay of production.

- (c) Only if the Authority Account has insufficient resources, subject to Section 6.6(b), each Party (the "Indemnifying Party") shall indemnify and save harmless each other Party, including the Operator, (the "Indemnified Party") and its councillors, officers, servants, consultants, agents and employees from any Loss incurred or suffered by any Indemnified Party and any its councillors, officers, servants, consultants, agents, or employees or which an Indemnified Party or any of its councillors, officers, servants, consultants, agents, or employees may sustain, pay or incur by reason of, or which may be attributable to or arise out of, any breach of this Agreement, negligence, or wilful misconduct of an Indemnifying Party or any of its councillors, officers, servants, consultants, agents, contractors, or employees. However, in no event shall the responsibility of an Indemnifying Party prescribed by this Section extend to indirect, economic or consequential losses suffered by an Indemnified Party from the loss or delay or production from any lands served by the Authority Property, including, without restricting the generality of the foregoing, loss of profits or other consequential or indirect losses applicable to such loss or delay of production.

## **6.7 BURDEN OF RESPONSIBILITY**

Except and to the extent where a Party or the Operator is to be held liable under Section 6.6, all liabilities and indemnities arising from Operations shall be for the Authority Account and shall be borne by proportions of their respective Proportionate Shares (alternative – Proportionate Interests).

## **6.8 CONTINUATION OF LEGAL RESPONSIBILITIES**

In the event that the assignment by a Party of all or a portion of its Proportionate Interest is permitted in accordance with Section 9.2, such Party shall, as regards the other Parties (other than the assignee or the first-mentioned Party) and notwithstanding the terms of such assignment, remain liable for its Proportionate Share of all liabilities and indemnities in respect of the Authority Property for matters arising prior to the date that such Party's assignee becomes a Party with respect to the assigned interest. (alternative – Proportionate Interests).

## **6.9 ENVIRONMENTAL RESPONSIBILITIES**

Without limitation, the provisions of this Article shall apply to environmental liabilities arising in relation to Operations. Any Person who becomes a Party shall be responsible for its Proportionate Share (alternative – Proportionate Interest)

of such liabilities (and the associated indemnities, if any) whether they accrued before or after such Person became a Party.

## **ARTICLE 7**

### **COST OF OPERATIONS**

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#### **7.1 AUTHORITY ACCOUNT**

The Operator shall set up an Authority Account for the Authority, to be managed solely by the Operator. All proper costs and expenses incurred by the Operator in connection with Operations, shall be for the Authority Account as described in Section 7.2.

#### **7.2 COSTS OF AUTHORITY**

Except as otherwise provided in this Agreement, the Operator initially shall pay and discharge all costs and expenses incurred for the Authority Account.

#### **7.3 COMMINGLING OF FUNDS**

- (a) The Operator may commingle funds received by it under this Agreement with its own funds and with other funds in its possession.
- (b) For clarity, for the purpose of Section 7.3(a), to "commingle funds" means to mix, or put together, funds from different sources, including, without restriction, by depositing such funds into a single account.

#### **7.4 MINIMUM FEE PAYABLE**

- (a) Each Party shall be responsible for paying an annual minimum fee that is calculated by applying the following formula:  
  
That minimum rate established by the Management Committee from time to time X Number of tonnes of Waste provided by the Party in that fiscal year (the "Minimum Fee").
- (b) If total payments made by a Party in a given year, for Waste Management Services, exceeds that Party's Minimum Fee, that Party shall not be entitled to a refund of any excess amount that was paid.

#### **7.5 REQUISITIONS**

In the event that the annual Operating Costs and that year's Current Estimated Closure and Post Closure Costs of the Authority are in excess of the Revenues of the year, the Operator shall requisition each Party to pay its share of the requisition for that year based on each Party's Proportionate Share (alternative – Proportionate Interest).

#### **7.6 INTEREST INCOME**

- (a) The Parties acknowledge that:

- (i) The provision of the Waste Management Services may, in a fiscal year, generate revenues in excess of Operating Costs (the "Excess Revenues");
  - (ii) The Excess Revenues shall be set aside by the Operator in a separate reserve account to be applied only to:
    - (A) Capital expenditures pertaining to the Regional Landfill;
    - (B) Capital expenditures pertaining to the Waste Management Services; or
    - (C) Reclamation, closure and post-closure expenditures respecting the Regional Landfill;
  - (iii) The Excess Revenues will generate Interest Income.
- (b) Subject to Section 4.8, only the Interest Income that is generated from the investment of the Excess Revenues shall be distributed to the Parties.

## **ARTICLE 8**

### **OWNERSHIP AND USE OF THE AUTHORITY PROPERTY**

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#### **8.1 OWNERSHIP**

- (a) The Parties each own an undivided percentage interest in the Authority Property equal to its Proportionate Interest.
- (b) Each Party that holds, or comes to hold, legal title to any Authority Property agrees that it holds that Authority Property in trust for the benefit of all of the Parties, with the beneficial interest of each Party in that Authority Property being equal to that Party's Proportionate Interest.

#### **8.2 RESTRICTED ACCESS TO AUTHORITY PROPERTY BY PARTIES**

Notwithstanding the ownership of a Proportionate Interest in the Authority Property, the Parties acknowledge that the Operator shall have the sole and unfettered right to set all the rules and regulations respecting the usage of the Authority Property and shall restrict all access to the developed areas of the Authority Property in order for the Operator to ensure the safety of all users and to ensure the efficient usage of the Authority Property.

## **ARTICLE 9**

### **TRANSFERS AND EXITS**

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#### **9.1 ADDITION OF NEW PARTIES**

If any Person who is not a Party desires to become a Party and so informs the Operator or a Party, then the Operator or Party shall, in turn, inform the other Parties.

## **9.2 NO ASSIGNMENT OR TRANSFER**

- (a) No Party shall assign its interest under this Agreement or any part thereof, or transfer or otherwise dispose of its Proportionate Interest, or any part thereof, without having first obtained the prior unanimous written consent of all other Parties. The decision to grant, or refuse to grant, the consent required by Section 9.2(a) shall be in the sole and absolute discretion of each Party.
- (b) In the event that an assignment, transfer or disposal is unanimously approved in accordance with Section 9.2(a), the assignment, transfer or disposal, as the case may be, shall be subject to and governed by any and all terms, conditions and restrictions that are established by and agreed upon by the Parties.

## **9.3 EXITS**

- (a) If a Party terminates its membership with the Authority, including a dissolution of the Party, the Party shall have no claim to any assets or operating surpluses (tangible or intangible) of the Authority in any manner and the Party's name shall be stricken from the Agreement.
- (b) In the case where a Party to the agreement terminates its membership or in the case of a dissolution, the Proportionate Interest of the Party shall be distributed equally between the remaining Parties.
- (c) In the case of termination for any reason, Section 6.8 would continue to survive the Party's membership.

# **ARTICLE 10**

## **TERM**

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### **10.1 TERM**

The Term of this Agreement shall be for such period of time until either:

- (a) the unanimous consent of the Parties to terminate this Agreement;
- (b) the ownership of the Authority Property become vested in one Person pursuant to the provisions of this Agreement; or
- (c) the Authority Property has been abandoned or disposed of and all property or the proceeds thereof have been distributed to the Parties, and all material, equipment, and personal property used in connection with operations under this Agreement have been removed and disposed of, and all clean-up, reclamation, and other work as is necessary to fulfill applicable government requirements, and all other obligations of the Operator and the other Parties have been performed, and final settlement made among the Operator, and the other Parties in

liquidating all accounts by prompt payment each to the other of any balance which may be due and outstanding,

provided that the provisions of this Agreement shall survive to the extent necessary to give effect thereto.

## **ARTICLE 11**

### **FORCE MAJEURE**

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#### **11.1 FORCE MAJEURE**

- (a) The Operator shall not be deemed to be in default with respect to non-performance of its obligations under this Agreement, other than financial, if and so long as its non-performance is due, in whole or in part, to any cause beyond its commercially reasonable control. Lack of funds shall be deemed conclusively and irrebuttably not to be a cause beyond the Operator's reasonable control. The Operator obtaining relief from its obligations under this Section 11.1 shall use commercially reasonable efforts to overcome or remove the event. The performance of such obligations shall begin or be resumed within a reasonable time after such cause has been removed. Nothing herein contained shall be construed to require the Operator to settle a strike or end a lockout or other labour difficulty by acceding against its judgment to the demands of opposing persons in any labour dispute.
- (b) Where the performance of the Operator is prevented or materially affected as aforesaid, the Operator affected shall give notice and full particulars to the Parties within a reasonable time after the occurrence of the cause relied upon.

## **ARTICLE 12**

### **CONFIDENTIALITY**

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#### **12.1 NO DISCLOSURE**

All information and data of any nature acquired by any of the Parties as a result of this Agreement or furnished by Parties to any of the other Parties under this Agreement is confidential and will be for the sole and exclusive use and benefit of the Parties and will not be disclosed or disseminated during a period expiring two (2) years after the termination of this Agreement or expiry of the Term and none of the Parties will issue any public statement relative to the terms and conditions of this Agreement without the prior consent of the other Parties.

#### **12.2 EXCEPTIONS**

Any Party may disclose or disseminate without consent any or all of the information referred to in Section 12.1:

- (a) to its officers, directors, employees, agents, and consultants only for the purposes of this Agreement;
- (b) to independent professional consultants if prior to such disclosure or dissemination they agree in writing to maintain the confidentiality of such data and information;
- (c) to or in response to the requirements of any governmental agency or similar authority having jurisdiction over the disclosing Party or any stock exchange upon which such Party's securities are listed or in response to a lawful subpoena or other legal process;
- (d) to a bank or other financial institution from whom the disclosing Party is seeking financing if prior to such disclosure and dissemination they agree in writing to maintain the confidentiality of such data and information; and
- (e) to a potential purchaser of all or substantially all the assets of a Party or a purchaser of a controlling interest of a Party if, prior to such disclosure and dissemination, the potential purchaser agrees in writing to maintain the confidentiality of such data and information;

provided that if a Party intends to disclose or disseminate any of the information and data referred to in Section 12.1 under this Section 12.2, such Party will first give notice thereof to the other Parties.

## **ARTICLE 13**

### **DEFAULT**

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#### **13.1 EVENT OF DEFAULT**

Each of the following events constitutes an "Event of Default" with respect to the Party in question (the "Defaulting Party"):

- (a) any representation or warranty of such Party contained in this Agreement is untrue in any material respect;
- (b) if an execution shall be filed against a Party which is not vacated or discharged within thirty 30 days after the same comes to the attention of such Party;
- (b) if a Party shall default in providing any funds within such time limits as set out in this Agreement, including, without limitation, a default pursuant to Article 13 hereof;
- (c) if a Party shall fail to execute and deliver, without lawful excuse, any deed or other instrument which may be necessary to accomplish any purpose of this Agreement within 30 days of a reasonable request in writing from another Party;

- (d) if a Party appears to have abandoned the Authority and fails to give reasonable evidence that it has not abandoned the Authority within 30 days of receiving a request in writing to do so from another Party; and
- (e) if a Party shall fail in any other material respect to observe, perform, or comply with any agreement, condition or obligation required by this Agreement to be observed, performed or complied with by such Party, and such failure shall continue for a period of 30 days after notice of such failure and a demand for performance, observance or compliance shall have been given by the other Party (the "Non-Defaulting Party"); provided, however, that if the nature of such failure is such that it cannot be cured by a payment of money and cannot be cured within a period of 30 days, such Party shall have such additional time as may be reasonably necessary as long as the curing of such default is commenced promptly and is prosecuted with due diligence to completion.

### **13.2 REMEDIES**

If an Event of Default under Section 13.1 occurs, the Non-Defaulting Party(ies) may do one or more of the following:

- (a) pursue any remedy available to it in law or equity, it being acknowledged by each of the Parties that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy for an Event of Default; or
- (b) if the Event of Default is curable, take all actions in its own name or in the name of the Defaulting Party or the Authority as may reasonably be required to cure the Event of Default, in which event all payments, costs, and expenses incurred therefore shall be payable by the Defaulting Party to the Non-Defaulting Party(ies) on demand with interest at the Prime Rate; or
- (c) waive the Event of Default, but any waiver of the particular Event of Default shall not operate as a waiver of any subsequent or continuing Event of Default.

### **13.3 NON-DEFAULTING PARTY CAN PERFORM**

A Non-Defaulting Party shall have the right, but shall not be obliged, to perform, comply or observe any obligation or covenant in question on behalf of the Defaulting Party as provided for in this Agreement.

### **13.4 REMEDIES NOT EXCLUSIVE**

The provision in this Agreement of certain remedies which are available after the occurrence of an Event of Default is not intended to be exclusive, and the remedies contained in this Agreement are intended to be cumulative and in addition to any other remedies which may at the time be available at law or

equity. Without limiting the generality of the foregoing, in the event that a Party shall at any time commit or be subject to an Event of Default, then the Non-Defaulting Party shall be entitled to specific performance or an order restraining and enjoining such Event of Default, as the case may be, and the Defaulting Party shall not plead in defence thereto that there would be an adequate remedy at law, it being recognized and agreed that the injury and damage resulting from an Event of Default would be impossible to measure monetarily.

## **ARTICLE 14**

### **MISCELLANEOUS PROVISIONS**

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#### **14.1 NOTICES**

- (a) Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing.
- (b) Any Notice required or permitted hereunder shall be sent to the intended recipient at its address as follows:
  - (i) if to Camrose:  
Camrose County  
3755 - 43 Avenue  
Camrose, AB T4V 3S8  
Attention: County Administrator  
E-mail: [pking@county.camrose.ab.ca](mailto:pking@county.camrose.ab.ca)
  - (ii) if to Wetaskiwin:  
County of Wetaskiwin  
PO Box 6960  
Wetaskiwin, AB T9A 2G5  
Attention: Chief Administrative Officer  
Fax: (780) 352-3486  
E-mail: [rhawken@county10.ca](mailto:rhawken@county10.ca)
  - (iii) if to Millet:  
Town of Millet  
PO Box 270  
Millet, AB T0C 1Z0  
Attention: Chief Administrative Officer  
Fax: (780) 387-4459  
E-mail: [cao@millet.ca](mailto:cao@millet.ca)
  - (iv) if to Edberg:  
Village of Edberg



PO Box 160  
Edberg, AB T0B 1J0  
Attention: Chief Administrative Officer  
Fax: (780) 877-2562  
E-mail: [vledberg@syban.net](mailto:vledberg@syban.net)

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 (a) during normal business hours. Notice delivered in this manner shall be deemed received when actually delivered;
- (d) 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
- (e) 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.

## **14.2 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.

## **14.3 TIME OF ESSENCE**

Time shall be of the essence of this Agreement.

## **14.4 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:

#### **14.5 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.

#### **14.6 NO AUTHORITY**

Except as may from time to time be expressly stated in writing by the one Party or as otherwise stated in this Agreement, the other Parties have 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.

#### **14.7 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.

#### **14.8 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.

#### **14.9 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.

#### **14.10 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.

#### **14.11 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.

#### **14.12 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.

#### **14.13 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 or solicitor's trust cheque is tendered instead of cash.

#### **14.14 GST EXCLUSIVE**

All amounts payable by hereunder will be exclusive of any goods and services tax ("GST") payable thereon and any Party that owes money to someone else hereunder, shall in addition the amounts payable hereunder, pay to such Party all amounts of GST applicable thereon.

#### **14.15 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.

#### **14.16 BINDING EFFECT**

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

#### **14.17 REQUESTS FOR CONSENT**

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

#### **14.18 CONSTRUCTION**

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

The Parties have executed this Agreement effective the date first written above.

CAMROSE COUNTY

COUNTY OF WETASKIWIN NO. 10

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

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

TOWN OF MILLET

VILLAGE OF EDBERG

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

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

**SCHEDULE "A"**  
**ATTACHED TO AND MADE PART OF THE**  
**AUTHORITY AGREEMENT**  
**DISPUTE RESOLUTION PROCEDURE**

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**1. Definitions**

In this Schedule, the following words and phrases have the following meanings:

- (a) "**Agreement**" means the agreement to which this Dispute Resolution Procedure is attached;
- (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) "**Arbitrator**" means the person appointed to act as such to resolve any Dispute;
- (d) "**Disclosed Information**" means the information disclosed by a Party for the purpose of settlement, negotiation, Mediation or Arbitration;
- (e) "**Dispute**" means, save and except for as otherwise provided within this Agreement, any disagreement or controversy between the Parties concerning any matter arising out of this Agreement;
- (f) "**Mediation**" means a process whereby a Representative of each Party, with or without legal counsel, agrees to jointly engage the services and meet with a Mediator to participate in a mediation, conciliation or similar dispute resolution process;
- (g) "**Mediator**" means the person appointed to facilitate the resolution of a Dispute between the Parties; and
- (h) "**Party**" means a party to the Agreement to which this Dispute Resolution Procedure is attached, and "**Parties**" means more than one of them.

**2. Dispute Process**

Except as otherwise stated in the Agreement, 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 as described in Section 3 to this Schedule A;
- (b) second, by way of Mediation; and
- (c) third, by Arbitration, if mutually agreed to in writing at the time of the Dispute, by the Parties.

**3. Negotiation**

A Party shall give written notice ("Dispute Notice") to the other Parties of a Dispute and outline in reasonable detail the relevant information concerning the Dispute. The Parties shall make all reasonable efforts to resolve the Dispute by negotiation and shall provide frank, candid and timely disclosure of relevant facts, information and documents to facilitate the negotiations. All negotiations held pursuant to this Section 3 to this Schedule A shall be held on a without prejudice basis and shall not be used by either party as evidence at any Mediation, Arbitration or other proceedings related to the Dispute. If the Dispute is not resolved within 45 days of receipt of the Dispute Notice, the negotiation shall be deemed to have failed.

#### **4. Mediation**

If negotiation under Section 3 to this Schedule "A" is deemed to have failed and a Party seeks to attempt to have the Dispute resolved by Mediation, such Party may, by written notice given to the other Party (the "Mediation Notice") refer the Dispute to mediation specifying the details of the matters in Dispute that are to be mediated. If, in response to a Mediation Notice, a Party declines or refuses to participate in Mediation, any Party may invoke Arbitration as described in Section 5 to this Schedule "A". The Mediation shall be continued until the earlier of written agreement between the Parties on the full and final resolution of the Dispute or 60 days after the Mediation Notice has been given to a party. Except as otherwise stated herein, the Mediation shall be conducted and determined according to the code of ethics and any other rules regarding mediation of the ADR Institute of Canada, Inc. in place from time to time. Except as agreed by the Parties in writing, the Mediator shall not be asked to, and shall not, make any decision or recommendation.

#### **5. Arbitration**

If a Dispute has not been resolved by Mediation by the time referred to in Section 4 to this Schedule "A" hereof, or Mediation has not commenced by the issuance of a Mediation Notice, or a Party has declined Mediation, the Dispute may be submitted to Arbitration by one of the Parties providing the other Parties with written notice ("Arbitration Notice") specifying the subject matters in Dispute and the details of the matters in Dispute that are to be arbitrated. If the other Party agrees to proceed to Arbitration within ten (10) days of receipt of the Arbitration Notice, such Dispute shall proceed to Arbitration. A failure to respond to the Arbitration Notice within such time shall be deemed to constitute a refusal to proceed with Arbitration.

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.

The Arbitrator shall proceed to hear and render a written decision concerning any Dispute within:

- (a) 45 days, if the subject matter of the Dispute is less than \$50,000.00; or
- (b) 120 days, if the subject matter of the Dispute is greater than \$50,000.00.

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.

The Arbitrator's decision is final and binding but is subject to appeal or review by any court of tribunal on points of law.

## **6. Participation**

The Parties will participate in good faith in the negotiation and, if applicable, Mediation and Arbitration processes and provide such assistance and Disclosed Information as may be reasonably necessary and notwithstanding that litigation may have commenced as contemplated in Section 11 to this Schedule.

## **7. Location**

The place for Mediation and Arbitration, if applicable, shall be Camrose, Alberta.

## **8. Selection of Mediator and Arbitrator**

If the Parties are unable to agree upon the appointment of a single Mediator or Arbitrator within 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 and experience and who in respect of the subject matter of the Dispute has a reasonable practical understanding, be appointed 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 5 days of receipt of the request.

## **9. Costs**

Subject to the Arbitrator's authority respecting costs within Section 5 to this Schedule "A" in the case of an Arbitration, the Parties shall bear their respective costs incurred in connection with the negotiation and, if applicable, Mediation and 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.

## **10. 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, or otherwise compelled by law or court of competent authority, 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 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.

## **11. Litigation and Limitations Act**

No Party shall commence litigation concerning the Dispute until the negotiation process has concluded. The Parties agree that during the time any Dispute is subject to the negotiation process, the limitation periods set forth in the Limitations Act (Alberta) shall be stayed. The limitation periods shall be reinstated once the negotiation terminates or is deemed terminated so that each of the Parties shall have the respective rights and remedies that were available to them before the commencement of these processes. These provisions constitute an agreement to extend the limitation periods under the Limitations Act (Alberta). Any Party may commence litigation on any date, if necessary, to preserve its legal rights and remedies if the commencement of litigation after that date would otherwise be banned by any applicable limitation period or if the commencement of litigation is otherwise necessary to prevent irreparable harm to that Party.

## **12. Confidentiality**

The Parties agree that there is a real risk that substantial damage to a Party's commercial interests may result if Disclosed Information or Confidential Information is obtained by third parties because a Dispute becomes the subject matter of litigation. The Parties agree not to contest or oppose, directly or indirectly, an application by a Party to the court, that the court's file relating to such litigation, including this Agreement and supporting financial information, be sealed upon commencement of the litigation.