



CAPITAL REGION NORTHEAST WATER SERVICES COMMISSION

BYLAW RESPECTING THE PROCESS FOR ADDING AND REMOVING MEMBERS AND CUSTOMERS

BYLAW NO. 2022-04

WHEREAS:

- A. the Commission has been established by Ministerial Order;
- B. pursuant to 602.09(1)(d) of the Municipal Government Act, the Commission must pass a bylaw respecting the process adding or removing Members;

NOW THEREFORE, the Capital Region Northeast Water Services Commission, in the Province of Alberta, in an open meeting of the Commission duly assembled enacts as follows:

CITATION

- 1 This Bylaw is cited as the Capital Region Northeast Water Services Commission Bylaw Respecting Adding and Removing Members and Customers.

DEFINITIONS

- 2 In this Bylaw,
 - (1) "Act" means the Municipal Government Act, RSA 2000, c. M-26, as amended from time to time;
 - (2) "Adjusted Net Book Value" means the value of a particular Physical Asset that is calculated by:
 - a. firstly, determining the original cost of acquiring the particular Physical Asset;
 - b. secondly, subtracting from the valuation of the particular Physical Asset:
 - i. the accumulated amortization of the Physical Asset to the date of the calculation; and
 - ii. the undepreciated portion of the No-Cost Capital that was initially contributed for the acquisition of the particular Physical Asset.
 - (3) "Arbitrator" means the person appointed to act as such to resolve any dispute;

- (4) "Arbitration" means a process whereby each of the Parties to a dispute, with or without legal counsel, agree to jointly engage and meet with an Arbitrator who will render a binding decision in respect of any disputes;
- (5) "Arbitration Notice" has the meaning as set out in Section 5 hereto;
- (6) "Board" means the Board of Directors of the Commission;
- (7) "Commission" means the Capital Region Northeast Water Services Commission;
- (8) "Customer" or "Customers" means the municipal corporations receiving potable water but which are not a Member Municipality or Member Municipalities of the Commission;
- (9) "Customer Application" means that application from a municipal corporation that wishes to receive potable water from the Commission but does not wish to join the Commission as a Member Municipality;
- (10) "Director" means that individual appointed to the Board by a Member Municipality;
- (11) "Disclosed Information" means the information disclosed by a party to a dispute for the purpose of settlement, negotiation, Mediation, or Arbitration;
- (12) "Dispute Notice" has the meaning as set out in Section 5 hereto;
- (13) "Dispute Resolution Procedure" has the meaning as set out in Section 5 hereto;
- (14) "Diversion License" means a water diversion license issued by Alberta Environment and Parks under the *Water Act*, RSA 2000, c W-3, as amended from time to time;
- (15) "Mediation" means a process whereby a Representative of each party to a dispute, with or without legal counsel, agree to jointly engage and meet with a Mediator to participate in a mediation, conciliation, or similar dispute resolution process;
- (16) "Mediation Notice" has the meaning as set out in Section 5 hereto;
- (17) "Mediator" means the person appointed to facilitate the resolution of a dispute between the Parties;
- (18) "Member Municipality" or "Member Municipalities" means a municipal authority, or the municipal authorities, as applicable, that is/are members of the Commission, which include:
 - a. City of Fort Saskatchewan,
 - b. Strathcona County,

- c. Sturgeon County,
 - d. Town of Bon Accord,
 - e. Town of Gibbons, and
 - f. Town of Redwater;
- (19) “Membership Application” means that application from a municipal corporation that wishes to join the Commission as a Member Municipality;
- (20) “No-Cost Capital” means the cost of a Physical Asset paid for either wholly or in part by grants or contributions from the Government of Canada, Province of Alberta, developers (including off-site levies and similar funding) and any person or entity other than any Member Municipality that has contributed to the cost of the work;
- (21) “Parties” means any of the Member Municipalities or Customers of the Commission;
- (22) “Physical Asset” means any tangible asset of the Commission, including any equipment, facilities, and inventory;
- (23) “Proposed Customer” means a municipal corporation that is seeking to obtain potable water services from the Commission but is not seeking to become a Member Municipality of the Commission as further described in Section 2 herein;
- (24) “Proposed Member Municipality” means a municipal corporation that is seeking to obtain potable water from the Commission and is also seeking to become a Member Municipality of the Commission as further described in Section 2 herein;
- (25) “Regional Water Customers Group” means the Regional Water Customers Group Inc., a not-for-profit entity registered under the *Canada Not-for-profit Corporations Act*, as amended from time to time, which holds the RWCG Diversion License in trust for the benefit of the members of the Regional Water Customer Group;
- (26) “Representative” means an individual who has no direct operational responsibility for the matters comprising a dispute, who holds a senior position with a party involved in the dispute and who has full authority to settle a dispute;
- (27) “Results and Request” has the meaning ascribed thereto in Section 4;
- (28) “RWCG Diversion License” means that water diversion license issued by Alberta Environment and Parks under the *Water Act*, RSA 2000, c W-3, as amended from time to time, and held by the Regional Water Customers Group;
- (29) “Water Services Agreement” means an agreement between the Commission and its Member Municipalities or Customers governing the provision of potable water;
- (30) “Withdrawal Motion” has the meaning ascribed thereto in Section 4;

- (31) “Withdrawal Notice” has the meaning ascribed thereto in Section 4;
- (32) “Withdrawal Report” has the meaning ascribed thereto in Section 4;
- (33) “Withdrawal Sub-Committee” has the meaning ascribed thereto in Section 4;
- (34) “Withdrawing Customer” has the meaning ascribed thereto in Section 4; and
- (35) “Withdrawing Member Municipality” has the meaning ascribed thereto in Section 4.

3 PROCESS FOR ADDING MEMBERS AND CUSTOMERS

- (1) Another municipal corporation which is not a Member Municipality may make an application to the Commission to join the Commission as a Member Municipality (the “**Proposed Member Municipality**”) or as a Customer (the “**Proposed Customer**”) by submitting a Membership Application or a Customer Application. Upon the Commission’s receipt of a Membership Application or a Customer Application, the Board shall determine which additional information that is relevant to processing of that Membership Application or Customer Application, which may include but not be limited to:
 - a. A capital payment from the Proposed Member Municipality or the Proposed Customer to the Commission for its anticipated proportionate share of the costs of any capital upgrades required and 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 Municipality or the Proposed Customer to the Commission to fully pay the Commission’s anticipated fees, including, but not limited to, such third party accounting fees, engineering 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 or the Customer Application;
 - c. Receipt of a certified council resolution of the Proposed Member Municipality or the Proposed Customer which acknowledges and approves of the anticipated capital payment owed by the Proposed Member Municipality or the Proposed Customer; and
 - d. Any other information that the Board deems is relevant to consider the Membership Application or the Customer Application.
- (2) Upon the Board’s review that a Membership Application or Customer Application should be forwarded for consideration, the Board shall send same to each Member Municipality for their respective approval. The Member Municipalities agree that approval by at least four of the six Member Municipalities, as evidenced by certified council resolutions from

each of them, shall be sufficient to support the Membership Application or the Customer Application and admit the Proposed Member Municipality or Proposed Customer as a new Member Municipality or Customer of the Commission.

- (3) Upon admittance as a new Member Municipality or Customer, the Proposed Member Municipality or Proposed Customer shall execute a Water Services Agreement with the Commission to govern the provision of the potable water services. The Proposed Member Municipality or Proposed Customer shall also be responsible for:
 - a. paying all costs associated with connection to the Commission's system;
 - b. ensuring that all administrative requirements of the Province of Alberta or the Regional Water Customers Group are met regarding reallocation of potable water within the RWCG Diversion License; and
 - c. obtaining any new or amended Diversion License if allocation is not available.

4 PROCESS FOR WITHDRAWAL OF MEMBERS OR CUSTOMERS

- (1) If a Member Municipality or Customer wishes to withdraw from the Commission (the "**Withdrawing Member Municipality**" or the "**Withdrawing Customer**"), the Withdrawing Member Municipality or Withdrawing Customer must first provide to the Commission a letter identifying their intent to withdraw, the reason(s) for the withdrawal, and evidence of a motion from council addressing such withdrawal (the "**Withdrawal Motion**").
- (2) Within two (2) weeks of the receipt of the Withdrawal Motion by the Commission, the Commission shall strike a sub-committee comprised of one (1) representative from the Withdrawing Member Municipality or Withdrawing Customer, one (1) Director chosen by the Withdrawing Member Municipality or Withdrawing Customer, and one (1) Director chosen by the Board (the "**Withdrawal Sub-Committee**"). For clarity, the representative from the Withdrawing Member Municipality shall be the Director appointed by the Withdrawing Member Municipality.
- (3) The Withdrawal Sub-Committee shall:
 - a. review and discuss the Withdrawal Motion and any other issues which may affect the Commission upon the withdrawal of the Withdrawing Member Municipality or Withdrawing Customer; and
 - b. retain professionals on behalf of the Commission for the purposes of obtaining financial, legal, engineering, or other opinions addressing the effect of the withdrawal of the Withdrawing Member Municipality or Withdrawing Customer on the operation of the Commission, the costs of which shall be borne by the Commission;
- (4) In the event that the Withdrawal Sub-Committee does not unanimously accept the result of any such opinion contemplated in Subsection 4(3)(b) herein, the Withdrawal Sub-

Committee shall promptly seek a second opinion addressing the matter or matters in question.

- (5) The Withdrawal Sub-Committee shall compile all opinions obtained in a report which contains the reasons for withdrawal identified in the Withdrawal Motion, any other ancillary issues explored by the Withdrawal Sub-Committee, and the Withdrawal Sub-Committee's recommendations respecting whether the Withdrawing Member Municipality or Withdrawing Customer should withdraw from the Commission (the "**Withdrawal Report**"). The Withdrawal Report must be presented to the Board within six (6) months of the Withdrawal Sub-Committee being struck.
- (6) The Board shall, within two (2) weeks of receipt of the Withdrawal Report, discuss and vote on the recommendations provided by the Withdrawal Sub-Committee within the Withdrawal Report. The results of this vote, a copy of the Withdrawal Report, and a request to make a formal presentation to council of the Withdrawing Member Municipality or Withdrawing Customer (the "**Results and Request**") shall be promptly delivered to the Withdrawing Member Municipality or Withdrawing Customer.
- (7) The Withdrawing Member Municipality or Withdrawing Customer shall, within two (2) weeks of receipt of the Results and Request provide written notice to the Commission of its decision to accept or deny the Board's request to make a formal presentation to council of the Withdrawing Member Municipality or Withdrawing Customer.
- (8) Irrespective of the results of the Withdrawal Report and/or the Results and Request, the Withdrawing Member Municipality or Withdrawing Customer may withdraw from the Commission unilaterally, with no consent required from the remaining Member Municipalities. To effect its withdrawal, the Withdrawing Member Municipality or Withdrawing Customer must provide written notice to the Commission of its decision to withdraw, along with a certified council resolution evidencing the same (the "**Withdrawal Notice**"). The effective date of withdrawal by the Withdrawing Member Municipality or the Withdrawing Customer shall be five (5) years from the date on which the Commission receives the Withdrawal Notice.
- (9) The Withdrawing Member Municipality agrees and acknowledges that any Director as appointed by the Withdrawing Member Municipality shall have no vote at the Board concerning any capital budget or operation budget which shall take effect after the effective date of withdrawal of the Withdrawing Member Municipality.
- (10) The Withdrawing Member Municipality or the Withdrawing Customer acknowledges and agrees that, in the event of its withdrawal from the Commission, it will:
 - a. forfeit all rights and claims to any and all Assets of the Commission, even if these are Assets that were initially provided by the Withdrawing Member Municipality or the Withdrawing Customer to the Commission;
 - b. pay for any and all costs associated with the removal or disconnection of any service pipe(s) connected to the Commission system which will no longer be required upon the withdrawal of the Withdrawing Member Municipality or the Withdrawing Customer;

- c. not terminate any lease of real property that the Withdrawing Member Municipality or Withdrawing Customer has leased to the Commission;
 - d. provide evidence that the Withdrawing Member Municipality or the Withdrawing Customer has obtained a confirmed alternate water source and further address any regulatory issues that will or are likely to affect the Commission, including, but not limited to, the issuance or assignment of any permits or licences required by any regulatory body in relation to the operation of the Commission, to the reasonable satisfaction of the Commission;
 - e. shall meet with the Commission prior to the effective withdrawal date to determine that Withdrawing Member Municipality or Withdrawing Customer's proportionate responsibility for:
 - i. Reclamation obligations of any component of the Commission's system that the Withdrawing Member Municipality or Withdrawing Customer should be responsible for, in accordance with its proportionate amount;
 - ii. The approved 5-year capital plan items that the Commission has committed to incur in contemplation prior to the Withdrawal Notice and in expectation of the Withdrawing Member Municipality or the Withdrawing Customer continuing to be a Member Municipality or Customer of the Commission; and
 - iii. Any other amount that is reasonable for the Withdrawing Member Municipality or Withdrawing Customer to incur.
- (11) The disposition of any Physical Assets of the Commission which are no longer required by the Commission in servicing the Withdrawing Member Municipality or the Withdrawing Customer and which are no longer required in servicing the remaining Member Municipalities and Customers shall be at the sole discretion of the Commission. Such Physical Assets may be purchased by the Withdrawing Member Municipality or Withdrawing Customer at a price to be determined by the Board, using the Adjusted Net Book Value calculation.
- (12) In the event that the Withdrawing Member Municipality or the Withdrawing Customer and the Commission are unable to mutually agree upon those costs as set forth in Section 3(4) hereof, the resolution of this amount shall be determined in accordance with the Dispute Resolution Procedure as set forth herein.
- (13) In the event that the Withdrawing Member Municipality or Withdrawing Customer wishes to become a Member Municipality or Customer of the Commission again after withdrawing from the Commission, the Withdrawing Member Municipality or Withdrawing Customer must follow the processes as outlined in Section 2 of this Bylaw.

5 DISPUTE RESOLUTION

- (1) In the event that the Withdrawing Member Municipality and the Commission are unable to mutually agree upon those costs as set forth in Section 4 hereof, the resolution of this amount shall be determined in accordance with the Dispute Resolution Procedure as set forth herein.
 - a. first, by negotiation;
 - b. second, by way of Mediation; and
 - c. third, if agreed to mutually by the Parties, by way of Arbitration.
- (2) 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 in person or by electronic means 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.
- (3) If the Representatives cannot resolve the dispute through negotiation within such thirty (30) day period, then the dispute shall be referred to Mediation. In such event, either Party shall be entitled to provide written notice to the other Party ("**Mediation Notice**") specifying:
 - a. the subject matter(s) remaining in the dispute, and the details of the matter(s) in the dispute which are to be mediated; and
 - b. the nomination of an individual to act as the Mediator.
- (4) The Parties shall, within thirty (30) days of the Mediation Notice, jointly nominate or agree upon a Mediator.
- (5) 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 in person or by electronic means 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.
- (6) In the event that:
 - a. the Parties do not agree on the appointment of a Mediator within thirty (30) days of the Mediation Notice;
 - b. the Mediation is not completed within thirty (30) days after the appointment of the Mediator; or

- c. the dispute has not been fully resolved within sixty (60) days from the date of receipt of the Mediation 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.

- (7) 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:
 - a. the subject matter(s) remaining in the dispute, and the details of the matter(s) in the dispute which are to be arbitrated; and
 - b. the nomination of an individual to act as the Arbitrator.
- (8) Within fourteen (14) days following the 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 which matters it disagrees with, 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, the Dispute Resolution Process shall come to an end.
- (9) 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.
- (10) 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 to have the Arbitrator appointed.
- (11) 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.
- (12) 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 in writing to modify the same. The *Arbitration Act* (Alberta), as amended from time to time, shall apply to the Arbitration 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.
- (13) The Arbitrator shall proceed to hear and render a written decision concerning any dispute within:
 - a. forty-five (45) days, if the subject matter of the dispute is less than \$250,000.00; or

- b. ninety (90) days, if the subject matter of the dispute is greater than \$250,000.00.
- (14) 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.
- (15) 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.
- (16) 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 judicial acceptance of the Award and an enforcement order, as the laws of such jurisdiction may require or allow.
- (17) 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 Section or may apply to the appropriate court for relief.
- (18) 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.
- (19) The place for Mediation and Arbitration shall be within the municipal boundaries of the Party which is or was a Member Municipality, or such other location as the Parties may agree. Any of the Parties may attend by telephone or electronically with the consent of all Parties to the dispute, with the requirement that all Parties must be able to hear one another and the Mediator or Arbitrator, as applicable.
- (20) Subject to Section 4.14 hereto, 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 expense of the Mediator and Arbitrator and the cost of the facilities required for Mediation and Arbitration.
- (21) All Disclosed Information shall be treated as confidential and neither its delivery or disclosure shall represent any waiver of privilege by a Party disclosing such Disclosed Information. Subject only to the rules for discovery, each party agrees not to disclose the Disclosed Information to any other person or for any other purposes. Such Disclosed Information cannot be used in any other 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 the Dispute Resolution Procedure. Nothing in this Dispute Resolution Procedure shall require a Party to disclose information that is subject to confidentiality provisions with third parties.

6 ENACTMENT

- (1) Bylaw 2021-004 is repealed and replaced by this Bylaw.
- (2) This Bylaw shall become effective upon approval of the Board.

7 AMENDMENTS

- (3) A bylaw to amend this Bylaw does not come into force until the bylaw is passed by a majority of the Board.

**ADOPTED BY THE CAPITAL REGION NORTHEAST WATER SERVICES
COMMISSION THIS 25th DAY OF April 2022.**



Commission Chair



Commission Manager