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CAPITAL REGION NORTHEAST WATER SERVICES COMMISSION BYLAW RESPECTING THE PROCESS FOR DISESTABLISHMENT AND THE TREATMENT OF LIABILITIES AND ASSETS UPON DISESTABLISHMENT

BYLAW NO. 2022-003

WHEREAS:

- A. the Commission has been established by Ministerial Order;
- B. pursuant to 602.09(1)(g) of the Municipal Government Act, the Commission must pass a bylaw respecting the process for disestablishment of the Commission and the treatment of liabilities and assets upon the disestablishment of the Commission;

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 Disestablishment Bylaw.

DEFINITIONS

- 2 In this Bylaw,
 - (1) "Act" means the Municipal Government Act, RSA 2000, c. M-26, as amended from time to time;
 - (2) "Arbitrator" means the person appointed to act as such to resolve any dispute;
 - (3) "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;
 - (4) "Arbitration Notice" has the meaning as set out in Section 4 hereto;
 - (5) "Board" means the Board of Directors of the Commission;
 - (6) "Commission" means the Capital Region Northeast Water Services Commission;

- (7) "Disclosed Information" means the information disclosed by a party to a dispute for the purpose of settlement, negotiation, Mediation, or Arbitration;
- (8) "Dispute Notice" has the meaning as set out in Section 4 hereto;
- (9) "Dispute Resolution Procedure" has the meaning as set out in Section 4 hereto;
- (10) "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;
- (11) "Mediation Notice" has the meaning as set out in Section 4 hereto;
- (12) "Mediator" means the person appointed to facilitate the resolution of a dispute between the Parties;
- (13) "Member Municipality" or "Member Municipalities" means a municipal authority, or the municipal authorities, as applicable, that is/are members of the Commission, which includes:
 - 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;
- (14) "Parties" means any of the Member Municipalities or Customers of the Commission; and
- (15) "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;

3 PROCESS FOR DISESTABLISHMENT

- (1) Upon the agreement of at least five of the six Member Municipalities of the Commission to disestablish the Commission, the Commission shall liquidate all of its capital assets, and the following shall apply:
 - a. The amount received for the capital assets in excess of any required repayments of provincial grants and the complete discharge of all associated debts and liabilities would be distributed to the Member Municipalities based on the Member Municipality's contributions of those assets to the Commission.
 - b. The distribution of any accumulated surplus in operating funds or reserves after the settlement of all operating liabilities would be based on the Member

Municipality's proportional contribution to those balances as determined by the water consumption for the prior ten years.

- c. The intent of this clause is to recognize the right of longer-term Commission Member Municipalities to a greater share of assets on dissolution than more recent Member Municipalities. This clause does not extend to the responsibilities of the Member Municipalities should the disestablishment of the Commission result in an outstanding liability.
- d. In the event that disestablishment of the Commission was to be pursued after it was determined that such a disestablishment would result in an outstanding liability, the responsibility for the outstanding liability would need to be determined as part of a disestablishment agreement.

4 DISPUTE RESOLUTION

- (1) In the event that the Parties are unable to agree on the distribution of assets or the proportionate share of liabilities as outlined in Section 3 hereof or as to be determined in the disestablishment agreement, 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.

5 ENACTMENT AND REPEAL

- (1) Bylaw 2021-003 is repealed and replaced by this Bylaw.
- (2) This Bylaw shall become effective upon approval of the Board.

6 AMENDMENTS

- (1) 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