

Summary of Intermunicipal Cooperation Agreement (IMCA)

The IMCA is an umbrella agreement to be entered between the County and the Town. It provides for general principles to govern the negotiation process for the 4 detailed agreements currently being researched by the Implementation Sub-Teams. In addition, it sets out general terms which will govern each of the four detailed agreements, so that those agreements can focus on the details of those specific agreements.

The entry into this agreement satisfies article 7 of the Memorandum of Understanding which states that the parties will enter an agreement by March 31 relating to cooperative projects between the municipalities.

The IMCA is broken into the following articles:

1. Definitions
2. Scope of Agreement and Acknowledgements
3. Agreement Administration and Amendments
4. Dispute Resolution
5. Arbitration
6. Default, Continuation and Termination of this Agreement
7. Privacy Legislation and Confidentiality
8. Insurance and Indemnity
9. Force majeure
10. General matters

There are 3 key features of this IMCA. The first is that the terms in the IMCA govern each of the 4 detailed agreements and the terms of the 4 detailed agreements must be consistent with the IMCA.

The second is that the parties have agreed upon a dispute resolution process. This process starts with the identification of an issue. The parties attempt resolution with a model that sees the CAOs try to resolve the issue at first instance. If that is not successful, then the CAOs, plus the Reeve, the Mayor and a councillor from each municipality attempt to resolve the issue. If that is not successful, then both councils plus their CAOs attempt to resolve the issue. If that is not successful, then the matter is mediated. The mediation is without prejudice and is non-binding, although both parties agree to give due weight to the mediator's recommendation. If that does not resolve the dispute, it is then arbitrated and the decision of the arbitrator is binding on the parties, subject to the decision being overturned by the Courts.

The third key feature is indemnification. Each party agrees to indemnify the other from any claims arising under the IMCA or any of the detailed agreements, except where the claim arises from the negligence of the party.

THIS INTERMUNICIPAL COOPERATION AGREEMENT MADE EFFECTIVE THE _____ DAY OF MARCH, 2011

BETWEEN:

THE TOWN OF DRAYTON VALLEY
a Municipal Corporation in the Province of Alberta,
("the Town")

and

BRAZEAU COUNTY
a Municipal Corporation in the Province of Alberta,
("the County")

RECITALS

WHEREAS:

The Town and the County recognize that inter-municipal cooperation will benefit the citizens of both municipalities and the region as a whole;

The Town and the County wish to share certain services to the mutual benefit of both municipalities;

The Town and the County recognize that ongoing sustainable development and economic growth may be facilitated by the sharing of services;

The Town and the County agree that duplicate services do not benefit either municipality;

The Town and the County wish to enter an Intermunicipal Cooperation Agreement which will set out the principles governing four separate agreements relating to joint economic development initiatives, joint planning and development services; joint recreational facilities and services and joint water and sewer services and which may govern other future agreements relating to joint services between the Parties;

THE PARTIES AGREE AS FOLLOWS

ARTICLE 1.0 DEFINITIONS

1.1. In this Agreement:

1.1.a. "Act" means the *Municipal Government Act*, R.S.A. 2000, c.M-26;

1.1.b. "Annexation Settlement Agreement" means the annexation settlement agreement signed by the Parties on November 15, 2010;

1.1.c. "Applicable Law" includes all public laws, statutes, codes, acts, orders, by-laws, rules, regulations, regulatory legislation, Governmental Consents, permits, binding policies

County _____
Town _____

and guidelines, and requirements of all Governmental Authorities, which now or hereafter may be lawfully applicable to and enforceable against any Party, including those relating to employment, zoning, building, life/safety, occupancy or possession of land, environment and health;

- 1.1.d. "Chief Administrative Officer" has the meaning attributed to it in section 1(1) of the Act and includes the designate of the Chief Administrative Officer;
- 1.1.e. "Chief Elected Official" has the meaning attributed to it in section 1(1) of the Act;
- 1.1.f. "Concern" includes any matter relating to this Agreement or any agreement contemplated under articles 2.1 and 2.2 that a Party wishes to resolve or discuss with the other Party;
- 1.1.g. "Confidential Information" has the meaning attributed to it in article 7;
- 1.1.h. "Council" means the council of the County or the Town;
- 1.1.i. "County" includes Brazeau County, all County councillors, officers, employees, agents, servants, and authorized contractors; or the area within the boundaries of the County, as the context requires, but does not include the Town of Drayton Valley or the Village of Breton which are located within the boundaries of the County;
- 1.1.j. "County Resident" means any person whose normal place of residence is within the County;
- 1.1.k. "Dispute" means any dispute, claim, difference or question that arises between the Parties concerning the construction, meaning, effect or implementation of this Agreement or any agreement contemplated under articles 2.1 and 2.2 that is referred to mediation or arbitration;
- 1.1.l. "Expert" has the meaning attributed to it in article 4.7(a);
- 1.1.m. "Force Majeure" means an event which is directly or indirectly caused by or is a result of any circumstance beyond the Party's reasonable control, including but not limited to:
 - 1.1.m.1. acts of God,
 - 1.1.m.2. outbreak of hostilities, riots, civil disturbance, acts of terrorism,
 - 1.1.m.3. acts of a government or other authority (that is not caused by an error, omission or breach of law of the Party) and which are resisted by the Party using lawful and reasonable means,
 - 1.1.m.4. fire, explosion, flood, fog or bad weather,
 - 1.1.m.5. power failure or failure of communication lines,
 - 1.1.m.6. theft, malicious damage, strike, lock-out or industrial action of any kind,
 - 1.1.m.7. pandemic or unusual disease outbreak, or

1.1.m.8. labour shortages in the Alberta market for personnel (if the Party seeking to invoke the benefit of this article offers reasonable compensation and terms to employees),

but in no event shall a lack of funds be an event of Force Majeure for a Party;

1.1.n. "Mediation Period" has the meaning attributed to it in article 4.7(d);

1.1.o. "Memorandum of Understanding Implementation Plan" means the implementation plan approved by resolution of Town Council and County Council on December 7, 2010;

1.1.p. "Party" means the Town or the County;

1.1.q. "Town Resident" means any person whose normal place of residence is within the municipal boundaries of the Town; and

1.1.r. "Town" includes the Town of Drayton Valley, all Town councillors, officers, employees, agents, servants, and authorized contractors or the area within the boundaries of the Town, as the context requires.

ARTICLE 2.0 SCOPE OF AGREEMENT AND ACKNOWLEDGEMENTS

Scope of Agreement

2.1. This Agreement sets out the principles and framework for the relationship between the Parties and for the subsequent agreements to be negotiated separately and entered by the Parties in the areas of:

2.1.a. planning and development services;

2.1.b. economic development;

2.1.c. recreational services and facilities; and

2.1.d. water and wastewater services and infrastructure.

2.2. The Parties acknowledge that they may enter agreements for the provision of joint services between the Town and the County other than the services set out in article 2.1. The Parties agree that any other agreement for the provision of joint services will be consistent with the terms of this Agreement.

2.3. The Parties acknowledge that they have signed the Annexation Settlement Agreement and Memorandum of Understanding Implementation Plan. The background research and preparatory work to assist the Parties in choosing the best model for delivery of the services referenced in article 2.1 shall be as determined in accordance with the Annexation Settlement Agreement and Memorandum of Understanding Implementation Plan.

2.4. Once the Parties have agreed to the best model for the delivery of services, they shall enter a separate agreement setting out the specific terms. The Parties agree that the specific agreements shall be consistent with the terms of this Agreement.

Acknowledgements

2.5. The Parties acknowledge that:

- 2.5.a. duplicate services do not benefit either the Town or the County;
- 2.5.b. shared services provide a sustainable solution for the delivery of services to County Residents and Town Residents;
- 2.5.c. the costs for the provision of shared services should be shared equitably between the Town and the County; and
- 2.5.d. working cooperatively benefits both Parties.

Parties to act honestly and reasonably

2.6. Each of the Parties agrees:

- 2.6.a. to be open, honest and timely in all of their dealings and communications with each other;
- 2.6.b. to act reasonably, fairly and in good faith in carrying out their roles and responsibilities under this Agreement, while being entitled to pursue and protect that Party's own interests,
- 2.6.c. to act reasonably and not arbitrarily in exercising any discretion given under the terms of this Agreement, unless expressly permitted otherwise under this Agreement, and
- 2.6.d. to strive to create a true "win-win" scenario where opportunity reasonably allows and without committing either Party to incur additional costs or make new investments and subject always to the overriding requirement that the Town Residents and County Residents receive quality services.

2.7. The Parties shall provide all services governed by this Agreement and the agreements contemplated in articles 2.1 and 2.2 in accordance with all Applicable Laws.

Warranty of authority

2.8. Each Party to this Agreement represents and warrants to the other Party that it has the full authority, capacity and power to enter into this Agreement and that all necessary actions have been taken to enable it lawfully to enter into this Agreement.

Further assurances

2.9. The Parties shall with reasonable diligence hold all meetings, perform all acts, execute and deliver all documents and instruments, do all such things and provide all such reasonable assurances as may be reasonably necessary or desirable to give effect to the provisions of this Agreement. The Parties agree to pass any bylaws or amendments to bylaws and to provide any

consents or approvals that are within their power or control which may be required to implement this Agreement within a reasonable time of the signing of this Agreement.

Government Funding

- 2.10. The Parties shall use their reasonable efforts to facilitate and obtain all available government funding support and funding assistance for the provision of joint infrastructure and service projects contemplated under articles 2.1 and 2.2.
- 2.11. The Parties shall
 - 2.11.a. aide each other and co-operate in carrying out the intent of the agreements contemplated in articles 2.1 and 2.2; and
 - 2.11.b. shall take all actions necessary to ensure the continued fulfillment of the intent and purpose of the agreements contemplated in articles 2.1 and 2.2.

ARTICLE 3.0 AGREEMENT ADMINISTRATION AND AMENDMENTS

- 3.1. The Parties agree that they shall formally review this Agreement every 5 years, with the first review in 2016 and the second review in 2021.
- 3.2. The agreements contemplated in articles 2.1 and 2.2 shall contain provisions specifically addressing the review period for each agreement.
- 3.3. The Parties shall use the process in Schedule A for the formal review of this Agreement and the agreements contemplated in articles 2.1 and 2.2.

Amendments to this Agreement

- 3.4. An amendment to this Agreement:
 - 3.4.a. requires the agreement of both Parties; and
 - 3.4.b. shall be in writing.

ARTICLE 4.0 DISPUTE RESOLUTION

Concern addressed by Chief Administrative Officers

- 4.1. If an issue of concern (a “Concern”) arises between the Parties regarding any matter governed by this Agreement or any agreement contemplated under articles 2.1 and 2.2 :
 - 4.1.a. Either Chief Administrative Officer may provide a notice of Concern to the other Chief Administrative Officer.
 - 4.1.b. The Chief Administrative Officers shall meet and consult in good faith to attempt to resolve the Concern as soon as possible after receipt of the notice of Concern.

- 4.1.c. If the Concern is addressed to the reasonable satisfaction of the Party giving the notice (as confirmed by such Party in writing), the Concern shall be deemed to be cured and may not be the basis for further remedies.

Concern addressed by Representatives of Parties

- 4.2. If the Chief Administrative Officers are not able to resolve the Concern within thirty (30) days of receipt of the notice of Concern referenced in article 4.1.a:
 - 4.2.a. The representatives from each Party set out in article 4.2.b shall meet and consult in good faith to attempt to resolve the Concern as soon as possible.
 - 4.2.b. The following representatives from each Party shall meet to discuss the Concern:
 - 4.2.b.1. the Chief Administrative Officer;
 - 4.2.b.2. the Chief Elected Official; and
 - 4.2.b.3. the Deputy Chief Elected Official.
 - 4.2.c. The quorum for a meeting to discuss a Concern is composed of the Chief Administrative Officer and one elected official from each Party. The Chief Elected Official and the Deputy Chief Elected Officials may send a delegate.
 - 4.2.d. If the Concern is addressed to the reasonable satisfaction of the Party giving the notice (as confirmed by such Party in writing), the Concern shall be deemed to be cured and may not be the basis for further remedies.

Concern addressed by Councils of Parties

- 4.3. If the Parties' representatives listed in article 4.2.b. are not able to resolve the Concern within sixty (60) days of a Party's receipt of the notice of Concern referenced in article 4.1.a:
 - 4.3.a. The Councils of each Party plus each Party's Chief Administrative Officers shall meet and consult in good faith to attempt to resolve the Concern as soon as possible.
 - 4.3.b. The quorum for a meeting to discuss a Concern is composed of the Chief Administrative Officer and four elected officials from each Party.
 - 4.3.c. If the Concern is addressed to the reasonable satisfaction of the Party giving the notice (as confirmed by such Party in writing), the Concern shall be deemed to be cured and may not be the basis for further remedies.

Mediation

- 4.4. If the Parties are not able to resolve the Concern within 90 days of a Party's receipt of the notice of Concern referenced in article 4.1.a, the Concern becomes a Dispute. The Party which issued the original notice of Concern must confirm in writing the nature and scope of the Dispute.

- 4.5. The Dispute must be sent to mediation in accordance with the process in article 4.7, unless both Parties agree to extend the time for discussion under article 4.3 or both Parties agree to forego mediation and have the Dispute arbitrated pursuant to article 5.
- 4.6. If only one Party wishes to extend the time for discussion or to forego mediation, the Dispute must follow the process set out in articles 4 and 5.
- 4.7. If an acceptable resolution is not achieved pursuant to articles 4.1 through 4.3:
 - 4.7.a. The Dispute shall, unless the Parties otherwise agree, be the subject of non-binding and without prejudice mediation by recourse to a person generally recognized as having familiarity with and expertise in the matter which is the subject of the Dispute (an “Expert”).
 - 4.7.b. Within fifteen (15) days after the delivery of the confirmation provided for in article 4.4, the Parties shall meet and attempt to appoint a single Expert for non-binding and without prejudice mediation of such Dispute.
 - 4.7.c. If the Parties are unable to agree on a single Expert within such fifteen (15) days period in article 4.7.b., either Party may apply to the Court of Queen’s Bench for the appointment of an Expert
 - 4.7.d. The Expert selected by the Court shall promptly mediate the Dispute between the Parties and shall render its recommendation within thirty (30) days of its appointment (the “Mediation Period”).
 - 4.7.e. The Parties shall agree to mediation protocols at the start of each mediation.
 - 4.7.f. The Parties shall share equally the costs related to a mediation, unless the Expert recommends otherwise.
 - 4.7.g. Each Party agrees that it will give substantial weight and due regard for the recommendation of the Expert. Notwithstanding the foregoing, following the Mediation Period, each of the Parties shall be entitled to seek resolution of such Dispute in accordance with this Agreement.
- 4.8. The Parties may agree to have a single mediator mediate more than one Dispute at the same time.

ARTICLE 5.0 ARBITRATION

- 5.1. Subject to the specific terms of the agreements contemplated under article 2.1 and 2.2, any Dispute relating to this Agreement or the agreements contemplated under articles 2.1 and 2.2 that cannot be resolved pursuant to article 4 is arbitrable.
- 5.2. If either Party requests binding arbitration of a Dispute under this Agreement, the Dispute shall be arbitrated in accordance with Schedule B.

- 5.3. The powers of the arbitrator include the power to direct specific performance. The arbitrator shall not alter, amend or change the terms of this Agreement or an agreement contemplated under articles 2.1 and 2.2.

ARTICLE 6.0 DEFAULT, CONTINUATION AND TERMINATION OF THIS AGREEMENT

Notice of Default

- 6.1. If either Party believes that the other Party has failed to perform or observe any covenant contained in this Agreement that the Party is required to perform or observe, the Party not in default shall treat the default as a Concern and must follow the process under articles 4 and 5.
- 6.2. Article 6.1 applies only to this Agreement and does not apply to an agreement contemplated under articles 2.1 and 2.2.
- 6.3. The agreements contemplated under articles 2.1 and 2.2 shall each contain provisions dealing with default and termination of each specific agreement.

Continuation of IMCA

- 6.4. This Agreement continues for so long as any of the agreements contemplated under articles 2.1 and 2.2 continues in existence.
- 6.5. This Agreement terminates concurrently with the termination or expiry of the last of the agreements contemplated under articles 2.1 and 2.2.
- 6.6. If the Town and the County do not enter any of the agreements contemplated under articles 2.1 and 2.2, this Agreement expires three (3) years from final report of the subcommittees referenced in the Memorandum of Understanding Implementation Plan.

Termination of IMCA

- 6.7. If either Party changes corporate structure, the other Party and the new municipality are not bound by the terms of this Agreement and any agreement contemplated in articles 2.1 and 2.2 unless they both specifically agree to be bound by the terms of this Agreement and any agreement contemplated in articles 2.1 and 2.2. Notwithstanding the foregoing, if the Town changes corporate structure to become a City or if either Party changes its number of councilors or its council structure, it remains bound by the terms of this Agreement and any agreement contemplated in articles 2.1 and 2.2.

ARTICLE 7.0 PRIVACY LEGISLATION AND CONFIDENTIALITY

Recognition of duty to comply with privacy legislation

- 7.1. Notwithstanding the termination or expiry of this Agreement, the Parties acknowledge that information and records compiled or created under this Agreement which are in the custody of either Party are subject to the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25.
- 7.2. TheTown and the County shall collect, use and disclose any personal information in relation to this Agreement and the agreements contemplated by articles 2.1 and 2.2 only in accordance

with the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25 and any other similar or related legislation.

- 7.3. If a Party receives a third party request for any of the records held by it arising from the provisions of this Agreement or an agreement contemplated under articles 2.1 and 2.2, the Party shall notify the other Party as soon as possible about the request and shall respond to the third party request in accordance with the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25.

Confidentiality

- 7.4. The Town and the County agree that any data or other information obtained by them in the course of this Agreement and any of the agreements contemplated under articles 2.1 and 2.2 are confidential (the "Confidential Information") and are to be used only for the purpose of fulfilling this Agreement and the agreements contemplated under articles 2.1 and 2.2.
- 7.5. The Town and the County shall ensure that any and all Confidential Information is not disclosed or made known to any other person by the Town or the County or anyone employed by or under them, except for the purpose of fulfilling this Agreement and the agreements contemplated under articles 2.1 and 2.2.

Injunctive Relief Available

- 7.6. The Parties each acknowledge that:
- 7.6.a. in the event of an unauthorized disclosure of any Confidential Information by or through the other Party, the damage incurred by the Party whose Confidential Information is disclosed will be difficult, if not impossible to ascertain, will cause irreparable harm, and will not be compensable in damages, and
- 7.6.b. notwithstanding any other provision of this Agreement, such Party may seek injunctive relief against the disclosing Party for breaching the obligations set out in this article.

ARTICLE 8.0 INSURANCE AND INDEMNITY

Town and County to carry insurance

- 8.1. Each Party shall, at its own cost and expense and without limiting its obligations in this Agreement, obtain and maintain annual policies of insurance, providing for coverage at least as extensive as the following:
- 8.1.a. comprehensive general liability insurance in the amount of not less than \$5,000,000.00 (FIVE MILLION DOLLARS) inclusive per occurrence for bodily injury (including death) and property damage, including loss of use thereof. The insurance shall include coverage for all operations of the insured in so far as they may be insurable and shall include premises and operations liability, products and completed operations liability, blanket contractual liability, cross liability, contingent employer's liability, and owner's and contractor's liability. The insurance shall be in the name of the Party, and also include as unnamed insureds, all officers, directors, agents and employees of the Party,

- 8.1.b. standard automobile insurance, covering bodily injury (including death) and property damage in the amount of not less than \$2,000,000.00 (TWO MILLION DOLLARS) per accident or occurrence,
 - 8.1.c. non-owned automobile insurance covering bodily injury (including death) and property damage in the amount of not less than \$2,000,000.00 (TWO MILLION DOLLARS) per occurrence,
 - 8.1.d. all risk insurance covering direct physical loss or damage to the insured Party's equipment, inventory and stock in trade in an amount that is reasonable having regard for the obligations of the Parties under this Agreement, and
 - 8.1.e. such other insurance in amounts and upon terms agreed by the Parties, each acting reasonably.
- 8.2. The agreements contemplated under articles 2.1 and 2.2 shall each contain provisions dealing with:
- 8.2.a. waivers of subrogation; and
 - 8.2.b. which party shall bear any deductible.

Insurers that may be used

- 8.3. All policies required under article 8.1 or under any agreement contemplated under article 2.1 and 2.2 shall be through an insurer authorized to provide insurance in the Province of Alberta and in a form satisfactory to the other Party acting reasonably or may be through and in the form used by the collective plan of the Alberta Urban Municipalities Association (AUMA) or the Alberta Association of Municipal District and Counties (AAMD&C).

Evidence of insurance required

- 8.4. Each Party shall provide the other Party, on reasonable advance notice, with evidence of all or any of the insurance policies required under article 8.1 or under any agreement contemplated under article 2.1 and 2.2 upon request.

Duty to notify of cancellation, change etc.

- 8.5. Each Party shall notify their respective insurers of the terms of this Agreement, and, when completed, the terms of the agreements contemplated under articles 2.1 and 2.2, and obtain from their insurers confirmation that their insurers are aware of the terms of these agreements.
- 8.6. Each Party shall provide the other Party with 30 days prior written notice of any cancellation, material change or Intent to lapse of any policies of insurance required under article 8.1.

Indemnity by the County

- 8.7. Except as otherwise provided in the agreements contemplated under articles 2.1 and 2.2, the County shall indemnify and hold harmless the Town, its councillors, officers and employees and each of them from and against, any and all liabilities, claims, suits or actions, costs, damages and expenses (and without limiting the generality of the foregoing, any direct or indirect losses, costs, damages and expenses of the Town or such individuals including costs as between solicitor and client) which may be brought or made against the Town or such individual or which the Town or such individuals may pay or incur as a result of or in connection with any breach, violation or non-performance of any covenant, condition or agreement of this Agreement required to be fulfilled, kept, observed or performed by the County or any negligent act or omission of the County, its agents, officers, servants or employees, its sub-contractors or

suppliers in connection with or arising out of this Agreement or the performance of this Agreement.

Indemnity by the Town

- 8.8. Except as otherwise provided in the agreements contemplated under articles 2.1 and 2.2, the Town shall indemnify and hold harmless the County, its councillors, officers and employees and each of them from and against, any and all liabilities, claims, suits or actions, costs, damages and expenses (and without limiting the generality of the foregoing, any direct or indirect losses, costs, damages and expenses of the County or such individuals including costs as between solicitor and client) which may be brought or made against the County or such individual or which the County or such individuals may pay or incur as a result of or in connection with any breach, violation or non-performance of any covenant, condition or agreement of this Agreement required to be fulfilled, kept, observed or performed by the Town or any negligent act or omission of the Town, its agents, officers, servants or employees, its sub-contractors or suppliers in connection with or arising out of this Agreement or the performance of this Agreement.
- 8.9. Articles 8.7 and 8.8 survive the termination or expiry of this Agreement and the termination or expiry of any of the agreements contemplated under articles 2.1 and 2.2.

ARTICLE 9.0 FORCE MAJEURE

- 9.1. A Party shall not be considered in breach of this Agreement or an agreement contemplated under articles 2.1 or 2.2 or under any liability to the other Party for non-performance, part performance, defective performance or delay in the performance of its obligations under this Agreement or an agreement contemplated under articles 2.1 or 2.2, as a result of an event of Force Majeure.
- 9.2. Notwithstanding any other provision of this Agreement, if, by reason of Force Majeure, a Party is unable to perform in whole or in part its obligations under this Agreement or an agreement contemplated under articles 2.1 or 2.2, then in such event and only during such period of inability to perform, such Party shall be relieved of those obligations to the extent it is unable to perform. Such inability to perform caused by the Force Majeure shall not make such Party liable to any other, and any time period in which such obligation is to be performed shall be extended for such period of inability to perform.
- 9.3. Despite the relief granted by articles 9.1 and 9.2, the Party who invokes the benefit of that article shall nevertheless endeavour, acting reasonably, in any situation to perform its obligations to the extent possible and as soon as possible.
- 9.4. A Party shall not be entitled to relief under articles 9.1 and 9.2 in any circumstances where it has caused or substantially contributed to any delay or failure in the performance of its obligations by any default on its part.
- 9.5. In the event a Party wishes to invoke the benefit of article 9.1 and 9.2, that Party shall promptly notify the other Party in writing of the reasons and the likely duration of the period during which

there will be non-performance, part performance, defective performance or delay in the performance of its obligations.

- 9.6. Immediately the circumstances giving rise to the event of Force Majeure cease, the Party who has invoked the benefit of Force Majeure must notify the other Party of the cessation.

ARTICLE 10.0 GENERAL MATTERS

General

- 10.1. Articles 10.1 through 10.32 apply to the interpretation of this Agreement.

Agreement not to be interpreted as fettering statutory duties

- 10.2. This Agreement is not to be interpreted as fettering any power granted to either Party by statute that the Party is required to exercise.

Headings

- 10.3. The captions and headings appearing in this Agreement are inserted merely to facilitate reference and shall have no bearing on the interpretation of its provisions.

Conflicts

- 10.4. If there is any conflict between the body of this Agreement and an agreement as contemplated under articles 2.1 and 2.2, the agreement contemplated under articles 2.1 or 2.2 shall govern.

Statute references

- 10.5. A reference to a statute or a regulation includes all amendments and substitutions made from time to time.

Inclusive terminology

- 10.6. "Including" and "includes" means "including without limitation" and "includes without imitation" respectively.

Interpretation of Shall and May

- 10.7. In this Agreement and in the agreements contemplated in articles 2.1 and 2.2, the word "may" shall be construed as permissive and empowering. The words "must" and "shall" are to be construed as imperative.

Number

- 10.8. Words in the singular include the plural and words in the plural include the singular, unless the context requires otherwise.

Gender

- 10.9. Words importing gender include both genders, and words importing persons include natural persons, firms, partnerships, corporations and other entities.

Contra Proferentum

- 10.10. The "contra proferentum" rule shall not apply to the interpretation of this Agreement.

Schedules

10.11. The following Schedules form part of this Agreement:

Schedule A – Agreement Review Procedure

Schedule B – Arbitration Procedures

Severability

10.12. If any part of this Agreement is void, prohibited or unenforceable, this Agreement shall be construed as if such part had never been part of this Agreement.

Severability and Enforceability

10.13. If any provision of this Agreement is determined to be invalid, illegal or unenforceable as written, such provision shall be enforced to the maximum extent permitted by Applicable Law, failing which such provision will be deemed to be severable from this Agreement and will not affect the remainder of this Agreement.

Whole Agreement

10.14. Except for the agreements set out below, this Agreement shall, when duly executed, supersede and replace all other existing agreements between the Parties with respect to the subject matter of this Agreement:

- 10.14.a. Settlement Agreement;
- 10.14.b. Memorandum of Understanding Implementation Plan;
- 10.14.c. Memorandum of Agreement dated August 23, 1989 (Joint Fire Fighting Operations);
- 10.14.d. Master Agreement dated January 16, 1990 (Seniors Housing);
- 10.14.e. Cost Sharing Agreement dated July 11, 1995;
- 10.14.f. Cost Sharing Agreement dated September 20, 2007 (Recreation);
- 10.14.g. Memorandum of Agreement dated January 1, 1999 (Library Agreement)
- 10.14.h. Memorandum of Agreement for Supply of Water and Sanitary Sewer Services dated May 2, 2002;
- 10.14.i. Sand and Salt Storage Shed Joint Use Agreement dated March 15, 2006;
- 10.14.j. Memorandum of Agreement for Transportation Networks and Storm Management Infrastructure dated June 25, 2002; and
- 10.14.k. Protocol of Principles dated February 24, 2010.

10.15. The Parties agree that there are no representations, warranties or agreements, either written or oral, relating to the subject matter of this Agreement which:

County _____
Town _____

10.15.a. are binding on the Parties, and

10.15.b. are not contained in or referred to in this Agreement.

Modification and Changes

10.16. This Agreement cannot be changed or modified except by another agreement in writing signed by the Parties.

Availability of remedies

10.17. The duties and obligations imposed by this Agreement and the rights and remedies available under this Agreement shall be in addition to, and shall not operate in limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law unless expressly stated to the contrary.

Waiver

10.18. To be effective, any waiver of a covenant under this Agreement or an agreement contemplated under articles 2.1 and 2.2 shall be in writing signed by the Party waiving the rights under that covenant.

10.19. A failure by a Party to insist on the strict performance of any covenant in this Agreement or an agreement contemplated under articles 2.1 and 2.2 in anyone or more instances shall not be construed as a waiver or relinquishment of that covenant in a subsequent instance.

Governing law and attornment

10.20. The law of the Province of Alberta shall govern this Agreement and the agreements contemplated under articles 2.1 and 2.2 and the interpretation of this Agreement and the agreements contemplated under articles 2.1 and 2.2. The Parties attorn solely to the jurisdiction of the courts in the Province of Alberta.

Time

10.21. Time is of the essence under this Agreement.

Extensions or Abridgements of Time

10.22. The time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Parties or by their respective counsel who are hereby expressly appointed in that regard.

Survival

10.23. Any provisions of this Agreement which, expressly or by their nature, extend beyond the termination of this Agreement, shall survive any termination or expiry of this Agreement or any agreement contemplated by articles 2.1 and 2.2.

No partnership or Joint Venture

10.24. This Agreement shall not constitute, create, give effect to or imply a partnership, joint venture or formal business organization of any kind and no other relationship shall be created between the Parties by virtue of this Agreement or any acts of the Parties.

No agency

10.25. Except as expressly provided for in this Agreement, a Party shall not make commitments of any kind for or on behalf of the other Party without the prior written consent of the other Party, it being expressly agreed that one Party cannot act as an agent for the other.

Notices

10.26. All notices under this Agreement or any agreement contemplated under articles 2.1 and 2.2 must be in writing and must be delivered to:

10.26.a. the Town at:

Town of Drayton Valley
Box 6837
5120 – 52nd Street
Drayton Valley, AB T7A 1A1

WITH A CONCURRENT COPY TO:

Kennedy Agrios LLP
Barristers and Solicitors
1325-10180 101 St NW
Edmonton, AB T5J 3S4

Attention: Chief Administrative Officer
Phone: 780-514-2200
Fax: 780-542-5753

Attention: Janice Agrios, Q.C.
Phone: 780-969-6900
Fax: 780-969-6901

10.26.b. the County at:

Brazeau County
Box 77
5516 Industrial Road
Drayton Valley, AB T7A 1R1

WITH A CONCURRENT COPY TO:

Shores Jardine LLP
Barristers and Solicitors
1800- 10250 - 101 Street
Edmonton, AB T5J 3P4

Attention: Chief Administrative Officer
Phone: 780-542-7777
Fax: 780-542-7770

Attention: Gwendolyn J. Stewart-Palmer
Phone: 780-448-9275
Fax: 780-423-0163

10.27. To be effective, a notice under this Agreement must be:

10.27.a. properly addressed, and

10.27.b. delivered by hand, sent by courier, sent by registered mail or sent by facsimile transmission.

Assignment

10.28. This Agreement is not assignable, in whole or in part, by either Party without the written consent of the other Party, which consent may not be unreasonably withheld.

Enurement

10.29. This Agreement is binding on the Parties and shall enure to the benefit of and be binding upon the approved assigns and successors of each of the Parties.

Third Parties

10.30. None of the rights or obligations of any Party under this Agreement or any agreement contemplated by articles 2.1 and 2.2 shall enure to the benefit of or be enforceable by or against

any Party other than the Parties to this Agreement and their respective successors and permitted assigns.

Compliance with laws

10.31. Each Party shall:

10.31.a. comply with Applicable Laws, and

10.31.b. obtain and maintain in force all licenses, permits and certificates required in the performance and fulfillment of its obligations under this Agreement.

Counterparts

10.32. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

This Intermunicipal Cooperation Agreement approved by resolution of Council of the Town of Drayton Valley and Brazeau County this ____ day of March, 2011.

Executed by the Parties this ____th day of March 2011.

Town of Drayton Valley

Per: _____
Mayor Moe Hamdon

Brazeau County

Per: _____
Reeve Wes Tweedle

Per: _____
Manny Deol, CAO

Per: _____
Ron McCullough, CAO

SCHEDULE A FORMAL REVIEW PROCESS FOR THE AGREEMENT

1. Each Party shall identify the areas of the Agreement which it believes requires amendment or discussion.
2. By no later than June 30 of each year, the Chief Administrative Officers for the Parties shall:
 - a. send notice to the other Party regarding any areas of the Agreement which the Party wishes to discuss;
 - b. meet to discuss any items identified by either Party.
3. The Chief Administrative Officers will use their best efforts to resolve any issues which have arisen during the past twelve month period which do not require an amendment to the Agreement.
4. If they cannot resolve the issues identified and the matter requires an amendment to the Agreement, the Chief Administrative Officers will report back to their respective Councils regarding the items which require amendment.
5. If a matter requires an amendment to the Agreement, each Party shall create a negotiating committee comprised of the Chief Elected Official, the Chief Administrative Officer and one member of Council and an alternate member of Council to negotiate the amendment.
6. Every five years, the Councils of the Parties shall meet to review the Agreement. No less than 30 days prior to that meeting, each Party shall provide to the other written notice of
 - a. any items which it wishes to discuss, including any suggested amendments and the text of any proposed changes to the Agreement; and
 - b. those items raised by its Chief Administrative Officer at the yearly meetings and the resolution of those items.
7. The first review by the Councils of the Parties shall occur in 2016.
8. The second review by the Councils of the Parties shall occur in 2021.

SCHEDULE B ARBITRATION

1. In accordance with the requirements of section 5(2) of the *Arbitration Act*, R.S.A. 2000, c.A-43, if a Dispute arises between the Parties then such Dispute shall be settled by arbitration in accordance with the following terms and conditions.
2. The Parties have agreed to a Dispute resolution mechanism as follows.

Nature of the Dispute

3. The Party desiring to refer the Dispute for arbitration (the "Disputing Party") shall notify the other Party (the "Other Party") in writing of the details of the nature and extent of the Dispute.
4. Within fifteen (15) days of receipt of such notice, the Other Party shall, by written notice, advise the Disputing Party of all matters referred to in the initial notice which the Other Party takes issue.
5. The terms of reference for arbitration shall be those areas of Dispute referred to in the initial notice which remain in dispute.
6. The Parties shall have the power to obtain the assistance, advice or opinions of such engineers, surveyors, appraisers, or other experts as they may think fit to present to the arbitrator.

Selection of the Arbitrator

7. Immediately following the identification of the terms of reference, the Parties shall meet and attempt to appoint a single arbitrator.
 - a. If the Parties refuse to meet, or are unable to agree on a single arbitrator after having met, then the Disputing Party shall notify the Other Party, naming three (3) persons that the Disputing Party would accept to have as a single arbitrator.
 - b. If such a request is made, the Other Party shall respond in writing within five (5) business days of receipt of the request to arbitrate, either accepting one of the persons named by the Disputing Party or naming three (3) persons that the Other Party would accept to have act as single arbitrator.
 - c. If the Disputing Party finds one or more of the persons suggested as arbitrator acceptable, the Parties shall proceed to arbitration in accordance with Schedule B.
 - d. If the Disputing Party finds none of the arbitrators suggested by the Other Party acceptable, then within five (5) business days' of receiving the list of persons, the Disputing Party shall respond in writing naming three (3) alternative persons that it would accept to have act as a single arbitrator.
 - e. The Other Party shall respond within a further five (5) business days.

- f. Both Parties shall act reasonably throughout.
- g. If the Parties cannot agree to an arbitrator in accordance with the above procedure, either Party may proceed on application to the Court of Queen's Bench of Alberta to have arbitrator appointed with a minimum of 5 business days' notice to the other party.
- h. If the Parties have elected to have their Dispute settled by arbitration, then they shall appoint one of the arbitrators chosen in accordance with paragraph 7 within five (5) business days of receipt of the name of an acceptable arbitrator.

Nature of the Dispute

- 8. Once the arbitrator has been appointed and has accepted the appointment, the Disputing Party shall provide the arbitrator and the Other Party with a written submission outlining the Disputing Party's position in relation to the matters identified to be in dispute pursuant to sections 4-6 of Schedule B within twenty (20) business days of the appointment of the arbitrator.
- 9. The Other Party shall provide its response to the written submission within twenty (20) business days of receipt of the Disputing Party's written submission.
- 10. The Disputing Party may, within fifteen (15) business days of receipt of the Other Party's submission, provide the arbitrator and the Other Party with a rebuttal in writing.
- 11. Thereafter, if the Parties agree, the arbitrator may hear oral submissions.
- 12. Within twenty (20) business days of receipt of the rebuttal or, if oral submissions are provided, within twenty (20) business days of the conclusion of such oral submissions, the arbitrator shall deliver his/her written decision with reasons which shall be final and binding on the Parties.
- 13. Both Parties shall pay the cost of the arbitration equally unless the arbitrator determines that one Party should bear all of the costs of the arbitration and so indicates in his decision.
- 14. Notwithstanding that a matter has become the subject of arbitration, the Parties shall, where reasonably possible, proceed with all other matters and things under this Agreement as if such matter had been settled and the Dispute determined to the intent that no arbitration procedure shall delay the expeditious operation of the terms of this Agreement.
- 15. The time taken for any arbitration that further delays a Party in the performance of anything or act shall be added to the time of performance unless the arbitrator finds that the delay in performance was not beyond the reasonable control of the Party required to perform.

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