IN THE MATTER OF an Intermunicipal Collaboration Framework Arbitration pursuant to Part 17.2 of the *Municipal Government Act,* RSA 2000, c M-26

BETWEEN:

WOODLANDS COUNTY

-and-

TOWN OF WHITECOURT

FINAL WRITTEN SUBMISSIONS OF THE TOWN OF WHITECOURT

SEPTEMBER 21, 2021

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A. Introduction and Position Summary

1. This arbitration under Part 17.2 of the *Municipal Government Act* ("*MGA*") concerns an Intermunicipal Collaboration Framework ("ICF") between the Town of Whitecourt (the "Town") and Woodlands County (the "County"). The Town and County have collaborated on offering joint services, facilities and amenities to their populations for many years, and they received awards recognizing their achievement in regional collaboration as recently as 2017. Unfortunately, this relationship has deteriorated recently, largely due to the economic downturn which began in 2014 and affected all of Alberta. The previous Cost Share Agreement (and other related agreements) have been terminated, and the parties have since not been able to reach an agreement on how shared services are to be funded going forward. The purpose of this arbitration is to resolve that dispute and allow for the creation of an ICF between the parties.

General Witness Statement of Peter Smyl dated June 30, 2021 at paragraphs 1-7, Appendices 1-9; pages 000002-000003, 000014-000022.

2. The Town submits that, in general, the previous Cost Share Agreement worked well for the parties for many years, along with other agreements related to Tax Revenue Sharing and other shared services. For the most part, the 2008 Cost Share Agreement represents a fair starting point for developing a new ICF. The previous Cost Share Agreement used a catchment model to calculate cost share contributions for services provided by the Town which benefitted residents in the County, and the Town is, in most cases, seeking to continue that while improving certain components including the system for calculating the catchment area in order to increase certainty and reduce the potential for conflict going forward. The parties had also established an information exchange protocol which provided for transparency to both parties, including mechanisms to address areas of concern proactively through regular meetings between administration, and through the Joint Liaison Committee. These mechanisms, in general, worked reasonably well and while the Town will be suggesting some improvements, key aspects of the previous Cost Share Agreement ought to be continued going forward.

3. In some instances, the Town is also seeking to add other services to the ICF which were not previously cost-shared. Importantly, in addition to unilaterally terminating the Cost Share Agreement, the County also terminated a Tax Revenue Sharing Agreement, and a provision in the previous Cost Share Agreement related to the sharing of linear tax revenues. The Town previously funded certain shared services, in part, through revenues received from these tax sharing arrangements (including costs related to rail crossings in the Town, and development costs associated with the Ecole St. Joseph School). Since the Arbitrator cannot make an award that directs a municipality to transfer revenue to another municipality unless the revenue transfer is directly related to services provided by a municipality that the revenue-transferring municipality derives benefit from, the Arbitrator cannot reinstate the previous Tax Share Agreement or the provision in the Cost Share Agreement which provided for general linear tax revenue sharing. Accordingly, the Town submits that those costs ought to now be considered and included in the new ICF between the parties.

MGA, s 708.36(7)(e) **[Town's Brief at Tab 1]**

4. There are many areas to be addressed in this arbitration, for which a significant amount of evidence has been led. In this written submission, the Town intends to present its position on each issue, and show how its position is supported by the evidence heard in these arbitration proceedings. The table below summarizes the Town's position with respect to each issue in this arbitration:

Issue	**Town's Position**
Fire Services	The County should be required to contribute to all operating and capital costs for equipment associated with WFD based on a three-year rolling average of call hours within the Whitecourt Fire District plus calls for motor vehicle accident responses elsewhere in the County. All operating and equipment costs associated with WFD should be included in this calculation, since the evidence shows that all of WFD's equipment, manpower and training is reasonably required to address emergencies throughout the Whitecourt Fire District, and there is no credible evidence to support the contention that only a portion of WFD's operating or equipment costs are required to meet WFD's service obligations to the County.

Issue	Town's Position
	For responses other than motor vehicle accidents into the County outside of the Whitecourt Fire District, the County should be required to reimburse the Town on a cost-recovery basis for these calls, based on standard rates set by Alberta Transportation. Any revenues received from outside sources (including from the Province for motor vehicle accident responses on provincial highways) should be applied to WFD's operating deficit, before the cost share contributions are calculated, so that both parties benefit from these revenues. This would also include revenues received from the County for mutual aid responses, such that those revenues would be applied to WFD's operating deficit, and the County's cost share percentage would be calculated based on the remaining deficit after these payments are accounted for. The County should be required to retroactively contribute to the purchase of the aerial truck which came into service in 2020, based on the same percentage as the County's overall cost share contribution for 2020. To resolve future disputes regarding equipment purchases, such disputes should be referred to a panel of three external Fire Chiefs to decide whether a particular purchase is required to meet WFD's operational requirements.
Police Services	The County should be required to contribute its prorated share of costs related to the Town's RCMP detachment under the same terms as the previous Cost Share Agreement from January 1, 2020 to March 31, 2020. From April 1, 2020 going forward, the County should be required to contribute to costs associated with the Community Liaison Officer and ancillary police services provided out of the Town's RCMP detachment, based the proportionate share of the County's population which resides within the Whitecourt RCMP detachment's service area.
Recreation, Arts and Culture	The County should be required to contribute to operating and capital costs associated with recreational, arts and cultural facilities and programming that were funded under the previous Cost Share Agreement, based on the proportion of the County's population which resides in a catchment area comprising Electoral Districts 1-6. The County should be required to contribute to operating and capital costs associated with Mountain Bike Park and Eastlink Park, which were previously not formally considered under the Cost Share Agreement as these facilities were constructed more recently, because these facilities are primarily municipally funded, they are unique within the cost share area, and they benefit residents in both the Town and County.

Issue	Town's Position
	The Town should continue to provide contributions to Hard Luck Canyon and the Agricultural Society under the same terms as the previous Cost Share Agreement, but the Town should no longer be required to contribute to the Groat Creek Campground, as similar amenities already exist within the Town.
Family and Community Support Services	The County should be required to contribute to direct costs incurred by the Town to provide FCSS programming in both the Town and County, with contributions calculated based on the percentage of the County's population which resides within a catchment area that comprises Electoral Districts 1-6. The Town and County should continue to operate their own grant funding programs for third parties which provide FCSS-related services, and those grant funding programs would not be subject to cost sharing.
Forest Interpretive Centre	The County should be required to cover 50% of capital and operating costs associated with the Forest Interpretive Centre and related amenities, with the exception of the portion of the facility which houses the Town's Council Chambers, for which the Town would remain responsible (and which is consistent with the previous Cost Share Agreement). The Economic Development Committee should be reconstituted with representation from both the Town and County to oversee the facility and joint economic development initiatives in the Town and County.
Library Services	The County should be required to contribute to direct costs incurred by the Town to provide necessary ancillary services to the Town's Library, based on the percentage of the County's population which resides within Electoral Districts 2, 3 and 4. The County has decided to negotiate an operating agreement with the Whitecourt and District Library Board with respect to providing operating funds to the Town's Library, without involving the Town. To date, no agreement has been executed, and the County has suggested it may decide to not provide operating funds to the Town's Library. The Town is asking for an order allowing it to bring the issue of operating costs for its Library back to the arbitrator for consideration in the future if the County fails to reach an agreement with the Library Board, or otherwise elects to not provide contributions to the Town's Library Board.
Whitecourt Cemetery	The County should be required to contribute to operating and capital costs associated with the Whitecourt Cemetery based on the percentage of the County's population which resides within Electoral Districts 1-6.

Issue	Town's Position
Fringe Roads	The County should be required to adhere to the Public Highway Agreement, which it sought to repudiate in 2020. This would entail requiring the County to cover all maintenance and construction costs associated with West Mountain Road, Tower Road and Blue Ridge Road, which is consistent with the County's obligations under that Agreement. Since the Town had no choice but to do winter maintenance on these roads after the County communicated its intention to no longer observe its obligations under the Public Highway Agreement, the County ought to be required to reimburse the Town for those costs retroactive to January 1, 2020.
Ecole St. Joseph School	The County ought to be required to cover its proportionate share of ongoing debenture payments associated with infrastructure constructed by the Town to enable the construction of the Ecole St. Joseph School on an expedited basis, calculated based on the percentage of the County's population which resides within Electoral Districts 2, 3 and 4.
Municipal Centre	The County ought to be required to contribute to costs associated with the Performing Arts component of the new Municipal Centre based on a catchment area that includes the County's entire population, since the Performing Arts Centre component of this project is unique within the Town and County. The County ought to be required to contribute to costs associated with the construction of the new Library to be housed in the Municipal Centre based on the proportion of the County's population which resides within Electoral Districts 2, 3 and 4. The Town is not seeking any contributions from the County for the portion of the Municipal Centre which will house the Town's administration offices and new Council Chambers.
Rail Crossings	The County ought to be required to pay 50% of costs associated with maintaining rail crossings in the Town. The evidence shows that the County derives a much greater benefit from the presence of the railroad than the Town, and yet the Town is obligated to pay costs associated with these rail crossings.
Transit	The County ought to be required to contribute to the Town's transit service based on a catchment area comprising Electoral Districts 2, 3 and 4.
Whitecourt Airport	The Town is prepared to continue contributing to operating costs associated with the Whitecourt Airport (which is located within the County), but such contributions should be in proportion to the benefit received by Town residents as compared to the benefits received by the County and other municipalities. The County's evidence on the benefits realized by the Town is scant, and the evidence shows that the County realizes significant benefits from the Airport which are not realized by the Town.

Issue	Town's Position
Whitecourt Regional Solid Waste Management Authority	The Town is not seeking any changes to the agreement pertaining to the Whitecourt Regional Solid Waste Management Authority. To the extent the County is seeking changes in the voting membership on the Board, the Town submits there is no evidence to support that request.

B. General Cost-Sharing Principles

5. The Town submits that ICFs are intended to provide mechanisms for municipalities to share in costs associated with the delivery of services funded by one municipality which benefits residents in the other, as well as to create processes to allow the parties to address changes in shared services in the future. Section 708.27 of the *MGA* confirms that ICFs are intended:

> a) To provide for the integrated and strategic planning, delivery and funding of intermunicipal services,
>
> b) To steward scarce resources efficiently in providing local services, and
>
> c) To ensure municipalities contribute funding to services that benefit their residents.

MGA, s 708.27 **[Town's Brief at Tab 1]**

6. Section 708.29 sets broad parameters for what must be included in an ICF:

> 708.29(1) A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.
>
> (2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.
>
> (3) Nothing in this Part prevents a framework from enabling an intermunicipal service to be provided in only part of a municipality.

> (3.1) Every framework must contain provisions establishing a process for resolving disputes that occur while the framework is in effect, other than during a review under section 708.32, with respect to
>
> (a) the interpretation, implementation or application of the framework, and
>
> (b) any contravention or alleged contravention of the framework.
>
> (4) No framework may contain a provision that conflicts or is inconsistent with a growth plan established under Part 17.1 or with an ALSA regional plan.
>
> (5) The existence of a framework relating to a service constitutes agreement among the municipalities that are parties to the framework for the purposes of section 54.

MGA, s 708.29 **[Town's Brief at Tab 1]**

7. In other words, provided a service is municipally funded, and benefits residents of both municipalities, it is just and equitable for an ICF to consider how costs associated with delivering those services are to be shared. In its interlocutory application to strike certain evidence statements submitted by the Town, the County argued that ICFs cannot include provisions which address capital costs, or services funded by municipalities but delivered by third parties, or include any mechanisms addressing the costing and delivery of future shared services. The Town provided fulsome submissions at that time setting out its position on these issues, and the Town maintains that ICFs are intended to be broad and flexible, and allow for capital costs and costs associated with services funded by municipalities but delivered by third parties to be addressed. The Town will not repeat these submissions here, and instead relies on its previous submissions on these areas.

Town's Written Submissions on County's Interim Application dated July 23, 2021 at pages 000005-000019.

8. In determining an equitable cost-sharing arrangement for the delivery of shared services, the Town submits that in most cases, it would be fair and equitable to allocate costs based on the percentage of the County's population which lives within a defined "catchment area" surrounding the Town. Further, the Town submits that it is fair and equitable to

require contributions to administrative costs associated with the delivery of shared services, as well as to funding capital reserves pertaining to lifecycle plans for facilities and equipment associated with delivering shared services. Further, parties ought to be required to contribute to major capital purchases for facilities and equipment related to the provision of shared services. Lastly, parties ought to be required to report regularly to the other on expenditures related to cost-sharing in a way that is transparent, but not overly cumbersome to manage. Each of these general principles will be addressed in turn below.

a. Catchment Areas

9. Under the previous Cost Share Agreement between the Town and County, costs associated with most shared services were allocated based on a "catchment area", whereby costs for services would be allocated based on the percentage of the population which resided within the defined catchment area. The Town submits that this method, generally, is easy to administer and provides greater stability and certainty to all parties for today and into the future. The parties to the ICF would know well in advance what percentage the "paying" municipality would have to pay for costs in different areas, and those percentages would be adjusted periodically to account for changes in population recorded by the federal census every five years.

10. The Alberta Urban Municipalities Association ("AUMA") has publicly supported using catchment areas in ICFs as they are an effective and fair mechanism to calculate cost contributions for shared services. In its overview document concerning catchment areas under ICFs, the AUMA notes that:

> The catchment area model is the most prevalent across the province. This model also best reflects the availability of municipal services to residents in certain areas by acknowledging that not all rural residents have the same access to urban services.

> This model also offers an easy way to quantify the population of a service area and it acknowledges that a service or facility is open and accessible to any residents within a defined area. Catchment areas also recognize the concept of "general benefit" which suggests that even though an individual from another municipality may not use a specific service, they still benefit from the fact that it is publicly available in the region.

Alberta Urban Municipalities Association, "Intermunicipal Collaboration Frameworks: Cost-sharing Principles" **[Recreation Witness Summary of Chelsea Grande dated June 30, 2021 at Appendix 22, pages 00571-000572.**

11. The Rural Municipalities Association ("RMA") has also acknowledged that ICFs "allow municipalities to work together to provide quality community services to their residents at a regional level." This includes services which help to attract and retain a qualified workforce to reside in both urban and rural municipalities. The Town submits that catchment areas are an effective way to achieve these objectives – residents in a rural municipality who live within a reasonable drive time of an urban municipality can either reasonably be expected to use facilities and services in that urban municipality; or even if they do not, these residents benefit indirectly by having these services available to the wider community. For example, trained professionals such as doctors may be more likely to relocate to a more remote municipality if there are robust services available for their family. Accordingly, even if a particular resident does not use all of the services available, that resident does benefit from having a doctor nearby.

Rural Municipalities Association, "Position Statement" **[Recreation Witness Summary of Chelsea Grande dated June 30, 2021 at Appendix 23, pages 00573-000574.**

12. To provide greater certainty in calculating populations which reside within a catchment area, the Town proposes that catchment areas include the entirety of different electoral districts in the County which are located in close proximity to the Town. Practically speaking, the federal census is conducted based on electoral districts, and it is difficult to ascertain where a portion of the population within a given electoral district actually resides within a given area. The County is comprised of seven electoral districts, as follows:

i. District 1 – Anselmo

ii. District 2 – Whitecourt West

iii. District 3 – Central

iv. District 4 – East

v. District 5 – Blue Ridge

vi. District 6 – Goose Lake

vii. District 7 – Fort Assiniboine

13. A map of these seven electoral districts relative to the Town can be found at Appendix 24 of Chelsea Grande's General Evidence Summary dated June 30, 2021. This map also includes radii showing approximate distances and drive times from areas within the County, relative to the Town. Districts 2, 3 and 4 are immediately adjacent to the Town, and districts 1, 5 and 6 are mostly within 40km of the Town. Overall, in most cases, the Town submits that it would be fair and equitable for catchment areas for shared services to include the entirety of electoral districts 1-6, only excluding District 7 for Fort Assiniboine. The Town recognizes that Fort Assiniboine itself has some services that overlap with services provided in the Town, and Fort Assiniboine itself is a significant distance away from the Town, making it less likely that residents in that district use or benefit from facilities and services offered in the Town. Otherwise, electoral districts 1-6 are in relatively close proximity to the Town (and residents are therefore more likely to access services and facilities in the Town), and there are few if any comparable services offered in these districts when compared to what is offered and available in the Town. The Town will outline more specific arguments in the sections which follow explaining why it is fair to use this catchment area to calculate costs associated with the delivery of particular shared services, and it will also outline certain instances where a different calculation method should be used based on the evidence available to the parties.

AUMA/AMSC Catchment Map **[Recreation Evidence Summary of Chelsea Grande dated June 30, 2021 at Appendix 24, page 000575]**

14. In most cases, using a catchment area to calculate proportionate contributions to the costs of shared services is preferable to basing contributions on user statistics. In many instances, user statistics are administratively cumbersome to obtain, and do not capture all users of a particular facility or service. For example, the Town attempted to provide user statistics for its recreational facilities, but it was not possible for this data to capture the frequency that individual users accessed programs and special events, nor individual users who accessed facilities on an ad hoc basis. Similarly, the Town attempted to obtain statistics on who made use of the Whitecourt Cemetery, but found that it was often difficult to ascertain where the deceased person previously resided. The Town also notes that the County attempted to obtain user statistics for some of its own recreational facilities, but the data the County obtained was unreliable and based on an extremely small sample size. In most cases, calculating a cost share percentage based on user data will be difficult to administer, will not capture all users or indirect benefits, and will lead to greater variance and unpredictability, as compared to calculating costs based on a catchment area.

Recreation Evidence Summary of Chelsea Grande dated June 30, 2021 at paragraphs 34-38, pages 000008-000009.

Cemeteries Evidence Summary of Jennine Scheck-Loberg at paragraphs 16-17, page 000005.

Reply Evidence Summary on Recreation of Kara Kennedy at Tab 5; see also Exhibit 23 (Summary Table of Results from County Attendance Survey)

15. Overall, for most of the shared services being considered by the arbitrator in this arbitration, the Town submits that using a catchment area is the most fair and efficient way to calculate cost share contributions.

b. Administrative Overhead

16. The Town submits that it is fair and equitable for administrative overhead costs to be considered and incorporated into cost-sharing agreements pertaining to the delivery of shared services. For services funded by the Town, the Town's administrative staff

expend time and effort to administer and otherwise provide support to those services. In an attempt to capture these costs, the Town has estimated the percentage of its expenditures for insurance, accounting, legal, human resource management, safety, communications, software applications, engineering, planning and support from the Town Office attributable to each cost-shared area. The specific administrative overhead percentage is determined by dividing the operating budget for a particular cost-shared area by the Town's total operating budget. The Town followed the "Full Cost Accounting Program – Utility Approach" that Alberta Environment has recommended in developing water and sewer rates in calculating administrative overhead amounts for each cost-shared area.

Financial Evidence Summary of Judy Barney dated June 30, 2021 at paragraphs 12-16, pages 000005-000006.

Alberta Environment, "Full Cost Accounting Program" **[Financial Evidence Summary of Judy Barney dated June 30, 2021 at Appendix 2, pages 000069-000078.**

17. There was some confusion with respect to the use of the Full Cost Accounting Program guide from Alberta Environment raised in cross-examination. The Town used this model only for the purpose of offering a reasonable means of capturing those administrative overhead costs relating to the shared services; not as a means of determining user fees or other costs associated with the services.

18. James Richardson, a Partner from MNP LLP retained by the Town to provide expert evidence in this hearing, concluded that the Town's overall approach in calculating administrative overhead amounts for different cost-shared areas is appropriate.

Expert Report of MNP LLP dated August 5, 2021 at page 000007.

19. While both financial experts agreed the approach used by the Town is not the only method available to calculate administrative overhead, it is a reasonable and acceptable means of doing so. While Ms. Colette Miller of Wilde and Company suggests other methods such as agreeing on a lump sum may be available to the parties, that is clearly not the case here where the parties require direction from the Arbitrator on this issue.

20. There is no debate that the Town necessarily incurs administrative costs to operate those services which are not fully reflected in the operating costs shown in the budget. Ms. Miller also agreed that those indirect administrative items are necessary for the delivery of services by the Town.

Cross-Examination of Colette Miller on September 16, 2021 (Part 1) starting at 02:25:00.

21. Accordingly, for areas which are operated and funded by the Town, it is appropriate for administrative overhead costs to be included in calculating the portion of costs the County ought to pay for access to those services. Using the utility approach to calculate administrative overhead amounts is a straightforward, fair and effective way to determine overhead costs associated with providing administrative support to different cost shared areas. For each cost shared area, the Town's evidence includes its administrative overhead calculations for that area, and the Town asks that those calculations be considered and incorporated into the amount the County is required to contribute for services which benefit its residents.

c. Lifecycle Plans

22. ICFs are intended to ensure that municipalities which benefit from and use services provided by other municipalities contribute fairly to costs associated with those services. The Town submits that this necessarily must include consideration for both capital and operating costs. In its interim application to exclude certain witness statements from consideration in this hearing, the County took the position that capital costs fall outside the scope of ICFs. The Town disputes this, and in fact, a review of the legislative history and the statute's plain and ordinary meaning, in light of section 10 of the *Interpretation Act*, support an interpretation which allows for capital costs associated with the delivery of shared services to be included in an ICF. The Town will not repeat its arguments previously addressed in its response brief to the County's interim application, but it will rely on those arguments again to the extent this remains contested.

See Part A(iii) of the Town's Written Submissions on County's Interim Application dated July 23, 2021 at pages 000016-000019.

23. The Town has developed "lifecycle plans" to anticipate future capital and operating costs associated with maintaining its facilities and equipment, including facilities and equipment associated with delivering shared services which benefit County residents. These lifecycle plans estimate when certain "big ticket" maintenance items will be required based on the anticipated useful life of a particular piece of equipment, or component of a facility, and it estimates when that item will either need to be replaced or otherwise have significant maintenance performed, and how much that is expected to cost. This allows the Town to properly budget for its reserves, as it knows when more significant maintenance and capital items are coming due. This is a prudent process which properly accounts for necessary maintenance and replacements going forward, to ensure sufficient capital reserves are available to fund these capital and operating costs.

Financial Witness Statement of Judy Barney dated June 30, 2021 at paragraphs 1-4, page 000002.

24. MNP LLP reviewed the Town's processes for developing lifecycle plans, and concluded that "the Town has an asset management / lifecycle management approach/program that is more advanced [than] many of their peers in Canada." MNP LLP confirms that preparing lifecycle plans is prudent and appropriate for asset management purposes.

Expert Report of MNP LLP dated August 5, 2021 at page 000009.

25. In each section for which the Town is seeking cost sharing with the County, the Town has included lifecycle plans which show equipment and facilities related to the provision of that service, and the anticipated costs associated with maintaining and replacing that equipment and maintaining those facilities over the next 20 years. The Town submits that it is fair for the County to contribute to reserves intended to fund maintenance and other capital costs as reflected in the lifecycle plans. This provides the County with predictability in terms of how much it will be required to contribute to certain lifecycle-related costs going forward, so that the County can take appropriate steps to plan and budget for those expenses by maintaining reserves before those expenses are incurred. Particular details of how life cycle plans are developed with respect to each cost-shared area are set out in Judy Barney's June 30, 2021 witness statement. If the County wishes

to maintain its own reserves pertaining to cost-shared areas, the Town is not opposed to that provided the County also provides an annual reserve report to the Town showing any reserves set aside for cost-sharing.

Financial Witness Statement of Judy Barney dated June 30, 2021 at paragraph 5, page 000003.

d. Major Capital Purchases

26. Under the previous Cost Share Agreement, major capital purchases of new facilities and equipment which were intended to be cost-shared were to be presented for consideration to the Joint Liaison Committee, and approved by Councils for both the Town and County. This was reflected in the Information Exchange Protocol established by the Town and County in August 2015.

Town of Whitecourt / Woodlands County Cost Share Budget and Year End Schedule for Information Exchange **[Reply Witness Statement of Judy Barney dated July 31, 2021 at Appendix 4; page 000019.]**

27. The Town believes that this process, in general, has worked well up until recent years. As is discussed in greater detail in individual sections below, in recent years the County has refused to contribute to certain equipment purchases and facility construction which, in the Town's view, was unsupported with a valid rationale as to why the County should not contribute. Accordingly, the Town is asking the arbitrator to confirm that major capital purchases (outside the lifecycle plans) of new facilities and equipment related to the provision of shared services are properly cost-shared, but the Town and County must propose those purchases to the Joint Liaison Committee, and if that committee confirms that a purchase is in the parties' best interests, the parties ought to contribute to that purchase either under the same terms as typically governs cost sharing of routine maintenance and operating expenses of that cost share area, or as otherwise agreed. If one party refuses to contribute to a particular purchase which the other disagrees with, that matter ought to be referred to the applicable binding dispute resolution process under the ICF.

28. The Town does not seek to have the arbitrator order either municipality to retroactively contribute to the purchase of a capital item (either a facility or equipment) that was

purchased or constructed prior to January 1, 2020. However, it is clear the arbitrator has jurisdiction to order a party to contribute to a purchase that has occurred since that date (the effective date of this ICF by agreement of the parties) if the arbitrator is satisfied that such a purchase benefits residents of both municipalities. In the sections below, the Town will detail any purchases going back to January 1, 2020 for which it believes the County should properly be required to contribute.

29. Otherwise, as is detailed in the section above regarding Lifecycle and capital Plans, the Town submits that it is fair and equitable, and within the arbitrator's jurisdiction, to require a municipality to contribute to lifecycle and capital costs for existing facilities and equipment from January 1, 2020 onwards, provided the arbitrator is satisfied that the ongoing use of that equipment or facility benefits residents of that municipality.

e. Financial Reporting

30. The Town agrees that a properly-functioning cost share arrangement ought to include a reporting process whereby the parties exchange information regularly on expenditures related to cost-sharing to ensure transparency. In general, services will be delivered by one municipality which benefit the other; the party delivering the service will have primary responsibility to run the service, and make decisions pertaining to it. Regular financial reporting from the party running the service to the other party enhances transparency to show that funds are being allocated and spent prudently and in a way that meets service expectations. However, the reporting requirements ought not be too cumbersome or inefficient, as that could impede the proper operation of the ICF and unduly increase staff time and costs associated with the administration of the ICF.

31. The Town submits that, until recently, the reporting processes used by the Town and County under the previous Cost Share Agreement worked well, and these ought to be used again going forward. In August 2015, the Town and County agreed to a Schedule for Information Exchange protocol which governed the exchange of information between the Town and County for cost-shared services. This protocol included deadlines and

expectations surrounding all aspects of the cost share agreement, including, among other things:

- Setting deadlines for when new capital items would be discussed between the CAOs of the Town and County;
- Requiring the parties to bring capital budgets for approval to the Joint Liaison Committee in November;
- Requiring the parties to provide an estimated cost share amount for the next fiscal year by December 1, 2015 based on actual cost-share amounts for the previous year, plus a 3% adjustment;
- Requiring the parties to incorporate cost share amounts in interim budgets based on interim estimates in January of each year;
- Requiring the Director of Corporate Services and the CAOs of the Town and County to review capital plans and major operating changes together for shared services in February, before Councils approve final budgets for the year;
- Requiring the parties to provide final operating and capital budgets for cost shared areas in March, before final budgets are adopted;
- Requiring the parties to finalize actual billing for services by June 30 after financial statements have been adopted.
- Implementing a process to adjust cost share amounts based on actual billing.

Reply Witness Statement of Judy Barney dated July 31, 2021 at paragraph 17, Appendix 4; pages 000005, 000019-000020.

32. Estimated cost share amounts for each area were routinely reported from the Town to the County using a simple spreadsheet which was appended to Appendix C of the 2008 Cost

Share Agreement. This spreadsheet provided sufficient detail, in conjunction with the Town's budget for cost shared areas.

General Witness Statement of Peter Smyl dated June 30, 2021 at Appendix 11; page 000035.

33. The information exchange protocol operated well for a number of years, and it was simple and transparent. It did not require, for example, that the party delivering the service (typically, the Town) provide all backup invoices and documentation for all cost shared areas, as that would be overly cumbersome to administer, and would not achieve greater transparency in any event. Both municipalities are already required to audit their financial statements each year, so it would not be in either party's interests to, in essence, duplicate the work of their accountants through the cost sharing process.

34. In his witness statement, Mr. Frank suggested that the process for calculating cost share amounts each year was "administratively cumbersome and unpredictable." The Town submits that the evidence does not support this assertion. The information exchange protocol requires the Town to provide information about its budget and estimated cost share amounts each year by specified deadlines, and the Town was always willing to answer any questions from the County which arose.

General Witness Statement of Gordon Frank dated June 30, 2021 at paragraph 22; page 00007.

Reply Witness Statement of Judy Barney dated July 31, 2021 at paragraphs 17-27; pages 000005-000007, and related Appendices.

35. Further, Mr. Frank asserts that the Town's "actuals routinely exceed the estimates by hundreds of thousands of dollars per year." This statement is entirely unsubstantiated, and is incorrect. As Ms. Barney's reply witness statement demonstrates, the "actuals" for cost-shared areas routinely came in less than the Final budget amounts for those areas between 2015 and 2018. The Actual amount for 2019 was higher than what was originally budgeted due to adjustments made to update the County population in the catchment area (which increased the percentage payable by the County) and corrections to linear revenue sharing. The Town has consistently budgeted for cost shared areas in a prudent and predictable fashion, and this will continue under the new ICF.

General Witness Statement of Gordon Frank dated June 30, 2021 at paragraph 55; page 00015.

Reply Witness Statement of Judy Barney dated July 31, 2021 at paragraphs 14-15, Appendix 3; pages 000004-000005, 000018.

36. Overall, the Town submits that the same information exchange processes should be implemented going forward for cost shared areas under the ICF, as these processes have historically functioned well. It would not be in the parties' interests to require the Town to send all backup documentation for all financial statements each year to the County, as that would be administratively cumbersome, and is unnecessary. The most important thing is to foster regular communication and dialogue, which was amply provided for under the previous information exchange protocol. Through the Joint Liaison Committee, the Community Services Advisory Board, and other committees which have joint Town and County representation, the lines of communication are open for the parties to proactively address issues pertaining to cost shared areas.

C. Cost-Sharing Areas

I. Fire Services

37. The Whitecourt Fire Department ("WFD") plays an integral role in providing emergency response services to both the Town and County for fire emergencies, and other emergencies including responses to motor vehicle accidents. In this arbitration, the Town is seeking the following for inclusion in the ICF:

- The County should be required to contribute to all operating costs and capital costs for equipment associated with WFD based on a three-year rolling average of call hours within the Whitecourt Fire District plus calls for motor vehicle accident responses elsewhere in the County.

- All operating and equipment costs associated with WFD should be included in this calculation, since the evidence shows that all of WFD's equipment, manpower and training is reasonably required to address emergencies throughout the Whitecourt Fire District, and there is no credible evidence to support the contention that only

a portion of WFD's operating or equipment costs are required to meet WFD's service obligations to the County within the Whitecourt Fire District.

- For responses into the County outside of the Whitecourt Fire District (not including motor vehicle accidents), the County should be required to reimburse the Town on a cost-recovery basis for these calls, based on standard rates set by Alberta Transportation.

- Any revenues received from outside sources (including from the Province for motor vehicle accident responses on provincial highways) should be applied to WFD's operating deficit, before the cost share contributions are calculated, so that both parties benefit from these revenues. This would also include revenues received from the County for mutual aid responses, such that those revenues would be applied to WFD's operating deficit, and the County's cost share percentage would be calculated based on the remaining deficit after these payments are accounted for.

- The County should be required to retroactively contribute to the purchase of the aerial truck which came into service in December, 2020, based on the same percentage as the County's overall cost share contribution for 2020.

- To resolve future disputes regarding equipment purchases, such disputes should be referred to a panel of three external Fire Chiefs to decide whether a particular purchase is required to meet WFD's operational requirements.

38. The Town is not seeking any changes with respect to the lease agreement for WFD's fire hall in these arbitration proceedings.

Fire Hall Lease Agreement **[Fire Services Witness Statement of Doug Tymchyshyn at Appendix 31; pages 000331-000334].**

39. In Mr. Frank's witness statement on Fire Services, he states that the County has approached an unidentified third party which apparently confirmed it could provide adequate fire response services to the County at a cost of $41,000 to $48,500 per month.

All of this evidence is impermissible hearsay and ought to be entirely disregarded – Mr. Frank failed to even identify the name of the private company, or what services that private company would be providing, for the cost quoted. While arbitrators do have discretion to depart from the strict rules of evidence under the *Arbitration Act*, the Town submits that, in this instance, the evidence provided by Mr. Frank on the County's apparent discussions with a third-party fire service is too unreliable to give any credence or weight to. Since no credible or admissible evidence has been tendered to suggest the County has any viable option to replace the services provided by WFD, this arbitration should focus on how to fairly allocate WFD's costs between the parties to account for the services it provides to both the Town and County.

Fire Witness Statement of Gordon Frank dated June 30, 2021 at paragraph 20; page 000007.

a. Calculating the Cost Share Amount based on Call Hours

40. For most cost share areas in this arbitration, the Town is seeking a cost sharing arrangement based on a catchment area, as outlined in general terms in section B of this argument. For Fire Services, the Town submits that it is fair and more equitable to calculate the cost sharing arrangement using call volumes based on hours. This is because, unlike most other cost sharing areas, the Town has comprehensive and reliable data in the form of Incident Summary reports documenting everything pertaining to emergency calls in both the Town and County (examples of which are provided in Appendices 36 and 37 of Mr. Tymchyshyn's Witness Statement). Each incident summary documents the amount of time expended in responding to each incident, the type of incident, and the number of personnel called on to respond to each incident. The records are comprehensive and reliable, and therefore form a fair and reasonable basis to calculate cost sharing contributions for fire services.

Fire Services Witness Statement of Doug Tymchyshyn at Appendices 36 and 37.

41. In addition to including all calls within the Whitecourt Fire District in calculating the cost share percentage, the Town also submits that it is fair and reasonable to include calls elsewhere in the County responding to motor vehicle accidents in this calculation. Mr.

Webb's evidence confirms that the County's fire departments in Blue Ridge, Anselmo and Goose Lake are not permitted to perform vehicle extraction or provide medical services – within the County, only the Fort Assiniboine fire department is equipped to handle these emergencies. WFD is often required to respond to motor vehicle accidents elsewhere in the County on a primary basis since it is often the closest fire district with the operational capabilities to respond to these types of emergencies, especially when motor vehicle accidents occur in the Blue Ridge and Anselmo fire districts which are closer in proximity to the Town relative to Fort Assiniboine. Since WFD is the district which provides primary responses to motor vehicle accidents elsewhere in the County (especially in Blue Ridge and Anselmo fire districts), it is fair and appropriate to include those calls in calculating the County's cost share percentage, since the cost share percentage is intended to approximate how much the County should pay to ensure WFD has the necessary training, manpower and equipment to respond to emergencies on a primary basis that it is required to respond to.

Fire Services Witness Statement of Scott Webb dated July 31, 2021 at paragraphs 22-23; page 000005.

Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at paragraphs 13-15, 29; pages 000004, 000008.

42. For example, in calculating the County's cost share contribution for 2020, a three-year rolling average from 2017-2019 of the amount of time WFD staff spent on responding to calls in the County (within WFD's regular service area) plus calls responding to motor vehicle accidents elsewhere in the County, as compared to call responses in the Town, would be used for the entire year. For 2021, that rolling average would shift one year to include calls from 2018-2020. By using a rolling average, this will help "smooth out" changes in call volumes from year to year (since it can be reasonably anticipated that the number of calls will fluctuate somewhat from year-to-year), providing a greater degree of stability and predictability to the cost share percentage. The following table summarizes the number of staff hours spent responding to calls in the Town and County from 2017 to 2019, based on the raw data provided in Mr. Tymchyshyn's witness statement at Appendices 36 and 37.

	2017	2018	2019	3-year Total
# Staff Hours in Town	1,469	1,645	1,846	4,960
# Staff Hours in County (including Mutual Aid)	1,365	1,733	1,452	4,550
# Staff Hours in County (Mutual Aid)	222	22	76	320
# Staff Hours in County (Less Mutual Aid)	1,143	1,711	1,376	4,230

43. The # of Staff Hours in the County (Less Mutual Aid) (4,230) constitutes 46.0% of staff hours over this three-year period when compared against the # of Staff Hours in the Town. Accordingly, the Town proposes that, for 2020, the County pay 46.0% of operating and capital costs associated with the Whitecourt Fire District. This would be adjusted for 2021, where a new percentage would be calculated based on the total number of staff hours between 2018 and 2020.

44. The cost share percentage would be allocated to the net operating deficit for the year, after other sources of revenue are applied to offset the deficit. For instance, if WFD receives funds from Alberta Transportation in responding to a motor vehicle accident on a highway, those funds would be applied to WFD's operating deficit before the net deficit is calculated. Similarly, any payments received by the Town from the County for "mutual aid" fire responses elsewhere in the County outside of the Whitecourt Fire District would be allocated to WFD's operating deficit for the year before the cost share percentage is calculated on the net deficit. This way, the County and Town both benefit from revenues

received from outside sources, and the County is not double-charged for services provided by WFD both within and outside the Whitecourt Fire District.

45. Basing this calculation on call hours, as opposed to the raw number of calls, is fair because the amount of time expended to respond to calls will vary considerably depending on the nature of the call. For example, attending to a false alarm will be far less time- and resource-intensive than responding to a fire or a motor vehicle accident. Accordingly, basing the cost share calculation on call hours accurately captures the true extent to which WFD's resources are being utilized to respond to emergencies of varying scales and severity in both the Town and County.

46. Further, it is appropriate to calculate the cost share percentage based on call hours because, in this case, that is a more accurate measurement of the amount the Town and County are utilizing fire services in a given year. While the previous Cost Share Agreement calculated cost contributions on the basis of the same catchment area that was used for Recreation services and other areas, a catchment model is imperfect for fire services since such models only account for where people reside, and do not account for things like the presence of industrial or commercial properties. Since superior, objective, and transparent data is available to calculate cost sharing for Fire Services using call volume data, that method should be preferred.

b. Past Cost Share Agreements and Requirements to Meet Service Standards

47. In Mr. Frank's witness statement on Fire Services, he makes the assertion that responding to emergencies in the County requires less resources, training, equipment and manpower than to respond to emergencies within the Town. These lay opinions are given in support of the County's assertion that it should only be required to contribute to certain expenses tied to what is actually required to provide adequate fire and emergency services to the area of the County within the Whitecourt Fire District (which they contend is less than what is required to provide emergency services to the Town). The Town strongly disputes this, and submits that the evidence tendered in this arbitration overwhelmingly demonstrates that WFD requires *all* of its manpower, equipment and

personnel to provide adequate fire suppression and emergency response services to the entire Whitecourt Fire District, including the portion of the County included in that area. The following is an explanation of the history of the Town's fire department and the services it has provided and continues to provide to the County, and an explanation of why the evidence shows that all of WFD's manpower, equipment and personnel are required to provide adequate emergency services to the Whitecourt Fire District. Overall, the Town submits that the cost share contribution described in the subsection above should be applied to *all* equipment and operating costs for WFD in each year, without any reduction to account for any "lower service requirements" alleged by the County.

Fire Services Witness Statement of Gordon Frank dated June 30, 2021 at paragraphs 24-28.

48. WFD has provided primary response services to the area now known as Woodlands County since the early 1980s. Under the 2008 Cost Share Agreement, the Town was obligated to provide "primary fire protection service to that portion of the County indicated in Area No. 1 on Schedule 'D'." Cost share contributions were calculated based on a catchment area, and included all operating costs associated with WFD's operations. In addition, both municipalities were required to provide "secondary" fire responses to assist each other in responding to larger emergencies outside their usual service areas. "Area No. 1" is shown both in Schedule D of the Cost Share Agreement, as well as in separate maps showing the WFD service area alone, and in a service map showing all of the County's fire departments and their respective service areas.

Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 a paragraphs 7-8; page 000003.

2008 Cost Share Agreement, clauses 4.4 and 6.2 **[General Witness Statement of Peter Smyl dated June 30, 2021 at page 000030.]**

Woodlands County Fire Services Area Map **[Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at Appendix 6; page 000083.]**

WFD Service Area Map **[Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at Appendix 17; page 000277.]**

49. The type of services WFD is required to provide within its service area was further elaborated on in Schedule "B" of the previous Cost Share Agreement, at clause 2:

> The operation, maintenance, repair and provision of fire prevention services, including, but not limited to:
>
> (a) The deployment of fire suppression personnel;
>
> (b) Fire investigation and
>
> (c) Vehicle rescue and extraction.

2008 Cost Share Agreement, Schedule B **[General Witness Statement of Peter Smyl dated June 30, 2021 at page 000034.]**

50. Unlike other cost share areas, the previous Cost Share Agreement contained separate clauses which addressed the importance of equipment and facility purchases, and how equipment would be allocated by WFD's fire chief to address emergencies when called upon. Clauses 6.7 and 6.8 of the previous Cost Share Agreement state as follows:

> 6.7 The Town and County recognize that the Whitecourt Fire Department is operated as a single department with the sole discretion of equipment allocations being left to the Town of Whitecourts' Fire Chief. Each Municipality shall be responsible, however, to ensure that adequate fire suppression apparatus are purchased to meet the fire fighting needs for each respective Municipality. The jointly purchased pumper (P1) along with the County owned mini-pumper (P4) and the County owned tanker (T202) is recognized as providing the County's pumper requirements for the extent of their useful life.
>
> 6.8 The Town and County recognize the importance of sharing resources with respect to Fire Department operations and recognize that both parties shared the construction costs of the Fire Hall addition which houses both Town and County equipment.

2008 Cost Share Agreement, clauses 6.7, 6.8 **[General Witness Statement of Peter Smyl dated June 30, 2021 at page 000031.]**

51. Having responsibility for "primary" emergency responses means WFD is the main fire department which is required to respond to any emergency which arises within the

defined service area, the only exception being green zone grass fires, in which case WFD may be required to assist. As indicated above, Schedule B of the Cost Share Agreement included a more comprehensive (though not exhaustive) list of emergency services WFD was required to provide throughout its service area, including the area of the County located within "Area No. 1."

Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at paragraph 29; page 000008.

52. During cross examination in this hearing, much confusion was sown regarding who has jurisdiction to set the "level of service" in the area of the County serviced by WFD, and what that "level of service" is. The 2008 Cost Share Agreement is clear on this point – WFD has the obligation to provide *primary* fire responses within the entire geographic region it is responsible for (which is the entirety of the Town, plus the area identified as "Area No. 1" in Appendix D to the Cost Share Agreement), and Schedule B further elaborates on this and provides a more detailed (though not exhaustive) list of emergency services WFD is expected to provide, which includes emergency responses to motor vehicle accidents. Further, clause 6.7 recognizes that WFD's Fire Chief has the sole discretion to allocate equipment to respond to particular emergencies which WFD is called on to respond to, which includes both primary fire responses, and secondary responses. Accordingly, WFD must have the equipment, manpower and resources to adequately respond to any emergency within its service area, which includes motor vehicle accidents and fire responses.

53. The County has put forward a document which it claims sets the service levels throughout the County, including the area of the County serviced directly by WFD. That is not the case – this document does not set the "service level" applicable to the area of the County located within the Whitecourt Fire District. It is important to recognize that the "Emergency / Fire Responses Level of Service" document defines "Fire Department" as "Blue Ridge, Fort Assiniboine, Anselmo and Goose Lake fire services." These are the County's other fire districts that are independently operated by the County, separate from the area of the County serviced directly by WFD. Further, the document references "County Fire Protection and Emergency Services" – this, again, is in reference to fire protection and

emergency services provided directly by the County, and does not include the Town or WFD. Accordingly, when reading this document, any reference to "CFPES" or "fire department" is only referencing those fire districts which are directly serviced by the County, and does not include WFD or the area of the County directly serviced by WFD. With this in mind, it is clear this document only sets service levels and standards within the County's other fire districts, and not the area of the County serviced directly by WFD.

Reply Fire Services Witness Statement of Scott Webb dated July 31, 2021 at Appendix 3; pages 000011-000016.

54. The purpose of this Policy is addressed at the beginning of the document:

> The County Fire Protection and Emergency Services (CFPES) were created to assist, whenever possible, persons within the County in protecting their health and property when those emergencies described listed within arise. County Council and the CFPES recognize however, that emergency response cannot be guaranteed for each and every emergency incident that arises due to the limited resources Council can expend on emergency services and the difficulty in ensuring that volunteer staff will be available in sufficient number and with sufficient training on a 24 hour basis to respond to every call for assistance received in a timely and safe fashion.

55. The Policy then defines "Operations Level" as: "Responders will take defensive action to contain and control the incident and seek assistance from outside agencies equipped to mitigate the incident." Accordingly, the purpose of this document is to set service levels within the areas directly serviced by the County's four fire departments, recognizing that the County's fire departments may lack the manpower and resources to effectively contain and deal with a particular emergency, requiring other, outside, fire departments to respond.

56. There is only one direct reference to the Town's fire department in this policy document - the document recognizes that WFD is a "Level One" service station equipped with a

County-owned Pumper and Tanker, along with a Rescue unit. Otherwise, the remainder of the document only references "fire departments", which as indicated above, are defined to only include the four fire districts directly operated by the County, and not the area of the County directly serviced by WFD. So, for example, when the document indicates that Fort Assiniboine's fire department will provide motor vehicle crash responses at the technician level, and "All other fire departments shall provide motor vehicle crash rescue at the awareness level", the document is only referring to the other three fire departments directly operated by the County, and not the Town's fire department. This is the only logical interpretation of this document, in light of the fact that the Cost Share Agreement separately and expressly states that WFD is to provide primary motor vehicle accident responses within the area of the County it services directly.

Reply Fire Services Witness Statement of Scott Webb dated July 31, 2021 at Appendix 3; pages 000013-000014.

57. With respect to the example set out above, it would be absurd to interpret the County's policy document as saying that only the Fort Assiniboine Fire Department is permitted to provide "technician" level responses to motor vehicle accidents throughout the County, including within the area of the County directly serviced by WFD. Mr. Webb's own evidence recognizes that "The fire services provided in Fort Assiniboine are functionally equivalent to those provided by the Town" (paragraph 22), and "Firefighters in other County departments are not permitted to perform vehicle extrication or provide medical services" (paragraph 23). In cross-examination, Mr. Webb acknowledged that Fort Assiniboine's fire department is the only County fire department equipped and trained to respond to motor vehicle accidents, and while other County departments may be called, he acknowledged they "are not trained, and can only provide backup." If the County's Policy document was interpreted to mean that WFD is not permitted to provide primary responses to motor vehicle accidents within its service area, then that means all such motor vehicle accidents would have to be addressed by the Fort Assiniboine fire department, but that is both impossible, and it also does not reflect the expectations set for WFD in the previous Cost Share Agreement. As the evidence clearly shows, the Town's fire department regularly responds to motor vehicle accidents both within its

service area, and outside its service area in other areas of the County (especially in those County fire districts which Mr. Webb acknowledges lack the training and equipment to properly respond), as it is required to do under the Cost Share Agreement.

Cross-Examination of Scott Webb on August 17, 2021 starting at 01:10:00.

See generally, Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at Appendix 36, starting at page 000346.

58. The Policy document appended to Mr. Webb's evidence summary does not set the "service levels" WFD is required to meet within its service area. Rather, those service levels are set by the previous Cost Share Agreement, wherein the parties agreed that WFD has the responsibility to provide a "primary" emergency response to the area of the County identified as "Area No. 1." While this provides little in the way of detail, it is clear that WFD's fire department must be adequately staffed and equipped to provide an adequate primary emergency response within the entirety of its service area.

c. WFD's Training Requirements

59. WFD's entire complement of equipment and manpower is required to respond to emergencies within its service area, including within the Town and the area of the County that WFD is primarily responsible for. This is the opinion reached by Trent West of Transitional Solutions, who gave expert evidence in this hearing. The Town submits that Mr. West's evidence is compelling and reliable. He demonstrated both in his report and in his cross-examination that he is well-qualified to give opinions on what equipment, manpower and training is required to adequately respond to emergencies within WFD's service area, and he clearly demonstrated his opinions were impartial and based on his professional experience. The Town submits that the arbitrator ought to give considerable weight to the opinion evidence given by Mr. West.

60. While Mr. West's report covered many areas regarding the Whitecourt Fire Department's operations, his opinions with respect to training and equipment are most relevant to this hearing. In his direct examination, Mr. West confirmed that his report was confined to reviewing the Whitecourt Fire Department, and what is required for it to adequately service the rural and urban areas in both the Town, and the area of the County which falls

within the Whitecourt Fire District. His report did not look at the County's fire departments, or WFD's activities in other fire districts. Accordingly, his opinions regarding training and equipment address what is required to adequately respond to emergencies on a primary basis within "Area No. 1" of the previous Cost Share Agreement, which is the area identified as the "Whitecourt Fire District" in the Fire District Map appended to Mr. Tymchyshyn's witness statement.

Direct Examination of Trent West on August 23, 2021 starting at 01:25:00.

WFD Fire District Map **[Fire Services Witness Statement of Doug Tymchyshyn at Appendix 6; page 000083.]**

61. With respect to training, Mr. West stated that "[t]he risks identified in the County specific to the designated response area contracted to the Town, requires the same levels of training as response in the Town, if not more" (emphasis in original). He provided a chart which listed different National Fire Protection Association ("NFPA") training standards, and the area within WFD's service area which requires those standards. For instance, he notes that WFD's service area includes the Whitecourt Airport, and Mr. West has recommended that WFD train its members to the NFPA 1003 standard to provide adequate emergency responses to the airport. This is a training requirement that is only required because the County's airport is located within WFD's service area (costs of this training are estimated at Appendix 22 of Mr. Tymchyshyn's evidence summary). Furthermore, Mr. West confirmed that the "technical rescue" training standard is required for advanced emergencies, such as responding to emergencies on water. Mr. West notes there are "lakes and rivers throughout the response area" and he suggests that, if WFD is not contracted to respond to these types of emergencies, that should be made explicit. As is noted above, the previous Cost Share Agreement simply stated that WFD is to provide primary emergency responses within its response area, and Schedule B did not expressly state that technical rescues are included (although Schedule B is also not intended to provide an exhaustive list of emergency services provided by WFD). The County's other fire departments in Goose Lake, Blue Ridge and Anselmo lack the training and equipment to respond to emergencies requiring "technical rescue" training. In the circumstances, WFD must have members trained to this standard to respond to

emergencies within its service area (and also potentially to other areas of the County outside its service area), since it is clear the County otherwise has no capability to address these types of emergencies within WFD's service area without relying on WFD.

Expert Report of Trent West at pages 000007-000008.

Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at Appendix 22; page 000307.

Fire Services Witness Statement of Scott Webb dated July 31, 2021 at paragraph 11; page 000003.

62. In general, the Town submits that it would be fair for both the Town and County to share in training costs for all NFPA standards Mr. West identified as being necessary for WFD's operations. This includes any required training for officers, industrial firefighting, and technical rescues. In cross-examination, Mr. West confirmed his opinion that WFD needs this training to properly respond to emergencies in both the Town and County on a primary basis, which is what WFD is contracted to do. He confirmed that the presence of the business park located on the fringe of the Town justifies training to the NFPA 1081 standard in the event WFD is called on to respond to an industrial fire in this area. Mr. West has significant expertise which is reliable, and the Town submits it would be appropriate to follow his recommendations in terms of the training standards that are required for WFD's service members.

Expert Report of Trent West at page 000007.

Cross-Examination of Trent West on August 23, 2021 at 2:56:00.

63. In contrast, the County has put forward no credible evidence to suggest that training requirements to respond to emergencies in the County are less than what is required for emergency responses within the Town. The County did not put forward its own expert to speak to these issues, and any lay opinions opining on training levels provided by Mr. Webb or Mr. Frank ought to be disregarded in favour of relying on Mr. West's opinion. As indicated previously, WFD is contracted to provide primary emergency responses throughout Area No. 1, so the Town submits that WFD must be both properly trained and equipped to provide a primary emergency response to address emergencies throughout this area. The evidence is clear that, if anything, WFD's firefighters require more training

to respond to certain types of emergencies in the County within its service area, than to respond to emergencies in the Town, and accordingly it is more than fair for the County to be required to contribute to all of WFD's training costs.

d. WFD's Equipment Requirements

64. With respect to equipment, the previous Cost Share Agreement included a clause which stated: "the jointly purchased pumper (P1) along with the County owned mini-pumper (P4) and the County owned tanker (T202) is recognized as providing the County's pumper requirements for the extent of their useful life." Notably, this agreement was signed in 2008, before the Woodlands Business Park and industrial developments surrounding the Whitecourt Airport were constructed. All of those improvements were constructed only after the County was permitted to connect to the Town's water and wastewater services in 2013. Accordingly, the Town submits that circumstances have changed, and the new ICF from January 1, 2020 onwards should recognize that. The Town submits, in particular, that all of WFD's equipment, including the recently purchased aerial truck, are required to provide an adequate level of service to the entire Whitecourt Fire District, not just within the Town.

2008 Cost Share Agreement, clauses 6.7 **[General Evidence Summary of Peter Smyl dated June 30, 2021 at page 000031.]**

General Witness Statement of Peter Smyl dated June 30, 2021 at paragraphs 22-24; pages 000007-000008.

65. This position is supported by Mr. West. In reviewing WFD's equipment complement, Mr. West confirmed that, overall, "the Town's Fire Department is reasonably equipped to deliver councils approved levels of service." However, when looking only at those pieces of fire suppression equipment the County either entirely or partially owns, Mr. West concluded that such equipment "is only sufficient in providing initial 'defensive' fire suppression to single family structures", and he also notes that water supply issues would also require additional equipment and personnel when responding to certain areas of the County, beyond the single water tender owned by the County. Mr. West concludes that "[w]ith the current equipment, response by the Town into the County to anything more

than a single-family home would not be effective and only add potential risk to something more than just a single building and additional property, firefighters and equipment."

Expert Report of Trent West at pages 000007-000008.

66. The County has put forward no credible evidence to suggest that the County's mini-pumper, tender and jointly-owned tanker are sufficient for WFD to meet its operational requirements to respond to emergencies in the County in 2020 and beyond. Mr. Frank testified that "[r]ural and urban municipalities have different needs for fire services," and he gave numerous lay opinions to suggest that WFD requires less equipment to respond to emergencies located in the County. For example, he stated in his witness statement that the aerial truck purchased by the Town in 2020 is "not necessary to respond to rural fires that might occur in the County." In cross-examination, Mr. Frank confirmed this was simply Council's decision, and was not based on any particular service requirement study undertaken by the County or on any other principled basis. When he was referred to the County's letter dated January 28, 2019, Mr. Frank agreed that the County's position was simply based on what was stated in Clause 6.7 of the previous Cost Share Agreement, and his own opinion was not based on any study or operational review.

Fire Services Witness Statement of Gordon Frank dated June 30, 2021 at paragraphs 24, 27; pages 00008-00009.

Cross-Examination of Gordon Frank on August 18, 2021 starting at 01:01:00.

Letter dated January 28, 2019 from County to Town **[Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at Appendix 24; page 000321]**

67. Mr. Webb largely agreed that more equipment beyond the County-owned mini-pumper, tender and partially owned tanker is required to address emergencies beyond a fire at a single-family home.

Cross-Examination of Scott Webb on August 16, 2021 starting at 03:29:00.

68. The situation involving the purchase of the aerial truck demonstrates that the County is solely relying on the former outdated agreement to take unreasonable positions with respect to equipment purchases for WFD. The evidence is clear that the County is not

relying on any principled opinion on what equipment is actually necessary for WFD to properly respond to emergencies in the area of the County WFD services, and it certainly does not recognize the changed circumstances in the County since 2008. Rather, the evidence supports the proposition that the aerial truck is necessary to fight fires in the County as well as the Town. For example, the aerial has already been used in responding at least twice to emergencies in the County. The County ought to have contributed to the purchase of the aerial truck, and since the truck was not delivered until well after January 1, 2020 (coming into service at the end of that year), the Town submits that the arbitrator has jurisdiction to require the County to contribute to the purchase of the aerial truck on the same percentage basis as the County contributes to operating funds for WFD in 2020.

Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at paragraphs 56-61, Appendices 26, 27; pages 000017, 000323, 000327-000328.

69. The evidence supports that the aerial truck is reasonably required for WFD to meet service levels in the Whitecourt Fire District. In cross-examination, James Richardson was asked questions about how municipalities make decisions about sharing costs related to particular pieces of fire equipment. Mr. Richardson noted that, generally speaking, Fire Departments are required to meet particular service standards, and municipalities rely on the expertise of the Fire Department to determine what equipment is required to meet those standards. As noted above, the evidence supports that the aerial truck is reasonably required for WFD to meet its service standards within the Whitecourt Fire District, and the County has put forward no credible or principled evidence to support its assertion that the aerial truck or other equipment at WFD is superfluous or not reasonably required for WFD to meet service levels within the Whitecourt Fire District.

Cross-Examination of James Richardson on September 16, 2021 (Part 1) starting at 01:25:00.

70. The situation involving the purchase of the aerial truck also demonstrates that this ICF ought to include a specific dispute-resolution process to determine whether the County is required to contribute to the purchase of a particular piece of equipment in the future. Rather than attempting to define the pieces of equipment that are required to service the County (which is simply not possible), the ICF ought to provide that the County contribute

to any purchase of firefighting equipment which is reasonably necessary to provide an adequate primary emergency response in the area of the County located within the Whitecourt Fire District. If the Town and County cannot come to an agreement with respect to a particular purchase, the Town is proposing that the dispute be referred to a panel of three Fire Chiefs drawn from outside municipalities. This way, the independent panel will have the necessary expertise to determine whether a particular equipment purchase is necessary for WFD to respond to emergencies in the County within its fire district, and if the panel so determines, that decision would be binding on the parties.

71. With respect to the County-owned mini-pumper, the evidence amply demonstrates that the mini-pumper is of little to no value in responding to emergencies in either the Town or County and is at the end of its useful life. Both Mr. Tymchyshyn and Mr. West agree that the mini-pumper is unrated with respect to responding to structure fires, and generally, it is only useful to respond to grass fires. In cross-examination, Mr. Webb also confirmed that mini pumpers generally are used for grass fires, and not to fight structure fires. He also confirmed that the mini-pumper housed at Anselmo is not used to fight structure fires. In Mr. Frank's cross-examination, he confirmed that, despite the County's statement that its mini-pumper is at the end of its useful life as of 2021, no arrangements have been made to replace it. The evidence shows that the County-owned mini-pumper is not particularly useful to address emergencies beyond grass fires, and as such, it may not be worth replacing.

Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at paragraph 25; page 000007.

Expert Report of Trent West at page 000007.

Cross-Examination of Scott Webb on August 16, 2021 starting at 3:19:00.

Cross-Examination of Gordon Frank on August 18, 2021 starting at 1:06:00.

72. Mr. Frank has no particular expertise in fire services, and he certainly does not have the qualifications to provide reliable opinions on the type of equipment required to respond to emergencies in the County on a primary basis (unlike Mr. West, who is well-qualified to provide those opinions). In cross-examination, Mr. Frank confirmed he has no specific

training or education in fire services. Further, the various opinions he makes in his witness statement are unsupported by evidence, and as the above example regarding the purchase of the aerial truck and the mini-pumper are concerned, Mr. Frank's statements with respect to these simply parrot the opinion of Council, and are not founded on any principled basis or expertise. For these reasons, the Town submits that the arbitrator should disregard all of Mr. Frank's lay opinions given regarding fire services, and instead prefer the expert evidence provided by Mr. West.

Cross-Examination of Gordon Frank on August 18, 2021 at 00:16:20.

73. The Town submits it is fair in the circumstances to continue to require the County to contribute to capital and lifecycle costs for all of WFD's equipment going forward, based on the same percentages as would govern the division of operating costs between the Town and County. This also means that the Town would contribute to the capital and lifecycle costs associated with the equipment that was jointly or solely purchased by the County (although, as is explained above, the Town may retire the County's mini-pumper and not replace it as it is not particularly useful to respond to emergencies in WFD's fire district). Mr. West's opinion is the best evidence put forward in this hearing to demonstrate that WFD requires far more than the three pieces of equipment the County has either solely or jointly purchased to respond to emergencies in the County, but within WFD's service area, and accordingly, it is fair to require the County to contribute to all capital and lifecycle costs associated with WFD's equipment.

e. WFD's Personnel Requirements

74. With respect to manpower, Mr. Frank stated "[i]t is often adequate for a two-person crew to respond to a fire in the County, whereas in the Town four-person or larger crews are required." This opinion was given to support the proposition that "[r]ural and urban municipalities have different needs for fire services", and more specifically that "[u]rban municipalities often have higher service standard requirements than rural municipalities." Mr. Frank's opinion on the number of people that are required to respond to fires is completely unreliable, and ought to be entirely disregarded. In cross-examination, Mr. Frank explained that his opinion on the number of personnel required to respond to a fire

in the County was not based on any particular outside report, it was "based on [his] opinion on the level of service that is provided by rural municipalities." He then states that this response is sufficient to initially respond "and then from there determine what additional resources are required." He later attempted to explain that a two-person crew could be sufficient to respond to a false alarm call, and was evasive when questioned on whether more than two firefighters would be required to respond to an actual fire. Mr. Frank's evidence on the number of personnel required to respond to emergencies in the Town and County is entirely unreliable and ought to be disregarded. Furthermore, in cross-examination, Mr. Webb agreed that, based on his review of emergency calls in the County, more than two firefighters are typically required to respond to emergencies in the County.

Fire Services Witness Statement of Gordon Frank dated June 30, 2021 at paragraph 24; page 00008.

Cross-Examination of Gordon Frank on August 18, 2021 starting at 00:31:00.

Cross-Examination of Scott Webb on August 17, 2021 starting at 00:07:30.

75. On the contrary, there is ample evidence to demonstrate that, if anything, more firefighters are required to respond to incidents in the County, as compared to the Town. Mr. Tymchyshyn notes that more firefighters are often required to respond to fires in the County where there is no supply of water (thereby requiring water to be supplied via tender trucks, operated by additional personnel). Since much of the rural area of the County lacks access to a municipal water supply, water tenders would be required to respond to a fire emergency there, in addition to other firefighting equipment. Further, in Mr. Webb's cross-examination, Mr. Webb agreed that only Fort Assiniboine is equipped and trained to respond to motor vehicle accidents among the County's fire departments (not including WFD), and that a minimum of eight personnel would be required to respond to such an incident, using at minimum a rescue truck and an engine, and potentially requiring additional personnel to handle traffic control on the highway.

Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at paragraphs 34-35; page 000012.

Cross-Examination of Scott Webb on August 17, 2021 starting at 00:01:30.

76. Mr. Tymchyshyn's witness statement appends incident summaries of incidents the WFD responded to from 2017 to 2019 in both the Town and County. As a cursory review of the incident reports shows, far more than two or three firefighters are required to respond to actual fires and motor vehicle accidents, regardless of whether these emergencies occur in the Town or County.

Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at Appendices 35-37.

77. In cross-examination, Mr. Webb was asked whether he agreed that service levels vary from one part of the County to another. He responded that he didn't "believe that structural fire protection needs will vary depending on whether it is in Whitecourt or somewhere else in the County." When asked whether he would agree that service levels would vary from one area of the County to another depending on different circumstances, Mr. Webb indicated he did not agree with that statement, and he also confirmed that a uniform fire response is necessary in each district in the County, and there is no real difference between what is required to fight fires in urban or rural settings. The Town agrees with Mr. Webb's evidence on these points, and his evidence here is consistent with the evidence given by Mr. Tymchyshyn and Mr. West – the reality is that a similar response will be required to fight fires in the County and the Town. The evidence, including that of Mr. Webb, supports the proposition that there is no appreciable difference between fighting fires or responding to emergencies in "urban" or "rural" environments, and certainly Mr. Frank's suggestion that emergency responses in the County require fewer resources is entirely unsupported by the evidence.

Cross-Examination of Scott Web dated August 17, 2021 starting at 00:15:30.

78. Overall, the Town submits that it is fair for the County to contribute its proportionate share for all operating expenses associated with WFD, including all salaries and other overhead expenses. The evidence amply demonstrates that the entirety of WFD's staff and resources are required to respond to emergencies in the County within WFD's service area.

f. "Mutual Aid" Fire Responses Outside the Whitecourt Fire District

79. Lastly, the evidence supports that WFD serves an important role in providing essential firefighting services to other County fire districts, especially the Blue Ridge and Anselmo fire districts. Mr. Webb's evidence confirms that only the Fort Assiniboine fire department is functionally equivalent to WFD, and the County's other fire departments lack essential training, equipment and manpower to respond to many types of advanced emergencies, including motor vehicle accidents and technical rescues. WFD is often called on either to assist other County fire departments in a secondary role, or to assume primary command of the emergency response outside of its service area. The Town's evidence confirms that WFD is sometimes required to "take over" a scene in fire districts outside its own service area because the local fire district lacks the manpower, equipment and training to respond (especially in the Anselmo, Blue Ridge and Goose Lake fire districts). For this reason, it is accurate to describe WFD as a critical "safety net" for emergency responses located outside its regular service area, given that the County's other fire departments near Whitecourt lack the training, manpower and equipment to respond to certain types of emergencies.

Fire Evidence Summary of Doug Tymchyshyn dated June 30, 2021 at paragraphs 13-16, Appendix 15; pages 000004, 000275.

80. An informal convention had been established between the Town and County that they would not charge each other for "mutual aid" responses outside of their regular fire response areas. A (very old) agreement between Improvement District No. 15 (the predecessor to the County), the Town of Swan Hills, and Whitecourt indicated that mutual aid fire responses would be reimbursed on a cost-recovery basis to the party providing the aid on a case-by-case basis, but in practice, this agreement had fallen into disuse.

Mutual Aid Agreement between Swan Hills, Whitecourt and Improvement District No. 15 **[Fire Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at Appendix 21; page 000304]**

81. The Town is asking for the ICF to include a provision requiring the parties to reimburse each other for mutual aid responses made by each party's respective fire departments outside of their regular service areas, based on rates set by Alberta Transportation for

emergency responses. Mr. Tymchyshyn's witness statement includes the current rates which fire departments may charge to the Province for reimbursement for motor vehicle accidents on highways. This document, which is prepared by the Province and updated periodically, includes rates which could be applied to any emergency involving fire suppression and rescue equipment and manpower. The Town submits this is a fair, third party policy the parties can rely on to charge for "mutual aid" responses outside of their respective fire districts. This would mean that, anytime WFD is required to respond to a fire in an area of the County which is outside of its regular service area, WFD would be compensated based on the rates established by Alberta Transportation as amended from time to time, and the same process would apply in the event a County fire department provides mutual aid within the Whitecourt Fire District. It is fair and prudent for both parties to compensate each other in the event their fire departments are required to respond to emergencies outside of their regular service areas.

Fire Services Witness Statement of Scott Webb dated July 31, 2021 at paragraph 28; page 000006.

Alberta Transportation Emergency Response Reimbursement Rates **[Fire Services Witness Statement of Doug Tymchyshyn at Appendix 18; pages 000278-000281]**

82. In conclusion, the Town submits it is fair and reasonable to require the County to contribute to operating and equipment costs associated with WFD based on call volume by number of hours on a three-year rolling average. This method of calculating the cost share contribution is more reliable than a catchment area in this particular instance in estimating the actual use of fire services by the Town and County. The evidence amply supports the Town's position that all equipment, manpower and training costs ought to be included when determining the amount the County is required to contribute to, as all of these costs benefit the County, and are necessary to provide an adequate emergency response within the Whitecourt Fire District, and to respond to motor vehicle accidents in other County districts. For calls outside the Whitecourt Fire District, it is fair and reasonable to require the County to reimburse the Town for costs based on the rates established by Alberta Transportation for these calls, and the same would apply if the County's fire departments were ever required to attend to calls in the Whitecourt Fire District. This is a fair and reasonable arrangement which fairly allocates costs as between

the Town and County, and ensures that an adequate level of fire protection services is available to residents in the Town and County.

II. Police Services

83. The Town is seeking an award requiring the County to contribute its prorated share of policing costs provided by the Town to the area of the County serviced by the Whitecourt RCMP detachment from January 1, 2020 to April 1, 2020 (when the Province's *Police Funding Regulation* came into force), on the same terms as were provided under the previous Cost Share Agreement. From April 1, 2020 going forward, the Town is seeking an award requiring the County to contribute to the staffing of a Community Resource Officer within the Town's RCMP detachment, and to other ancillary police services provided at the Whitecourt RCMP detachment which are available and accessible to County residents, but which are currently paid for by the Town.

84. Police services in the Town are provided under contract with the Royal Canadian Mounted Police ("RCMP"). Since its population is greater than 5,000, the Town is required to enter into its own contract with the RCMP to provide general police services within its borders. The Town's RCMP detachment services the entirety of the Town, and a defined area within the County.

***Police Act*, RSA 2000, c P-17, s 4 [Town's Brief at Tab 2]**

Municipal Police Service Agreement **[Police Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at Appendix 1; pages 000009-000047.]**

Whitecourt RCMP Service Area Map **[Police Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at Appendix 6; page 000070.]**

85. Under the previous Cost Share Agreement, the County contributed to costs associated with policing services provided by the Whitecourt RCMP detachment to the area of the County serviced by the RCMP detachment. In addition to municipal contributions to police funding, RCMP services are also partially funded by the Government of Canada and the Province. Up until April 2020, smaller municipalities (with populations less than 5,000) were not required to pay for policing costs provided by the RCMP within their borders, and those services were provided by the Province through the Province's

contract with the RCMP (as is set out in section 4 of the *Police Act*). As of April 1, 2020, the *Police Funding Regulation* came into force, which requires smaller municipalities with populations less than 5,000 (including the County) to contribute to police services provided within their borders directly. The *Police Funding Regulation* establishes a formula to calculate the amount smaller municipalities are now required to pay directly to the Province for police services provided to the County through the Royal Canadian Mounted Police ("RCMP"). The County does not have a separate contract with the Province or the RCMP under section 22 of the *Police Act*, and so the County is required to pay a portion of those policing costs directly to the Province as of April 1, 2020 on a graduated basis over a three-year period.

***Police Funding Regulation*, Alta Reg 7/2020 [Town's Brief at Tab 3]**

***Police Act*, RSA 2000, c P-17, ss 4, 21-22 [Town's Brief at Tab 2]**

Police Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at paragraph 6; page 000003.

86. In this arbitration, the Town is asking for an award to require the County to contribute a pro-rated amount to RCMP services provided by the Town under the same terms as were provided under the previous Cost Share Agreement up to April 1, 2020, when the new police funding model came into effect. This is fair and reasonable, since the previous Cost Share Agreement required the County to contribute to policing costs, and there is no basis to exempt the County from that requirement until the funding model changed on April 1, 2020.

87. The Town is currently paying all costs associated with community programming for crime prevention (which comprises 1.0 police officer FTE, and 0.5 FTE for a crime prevention coordinator position), plus all costs related to ancillary services provided out the Town's RCMP detachment building, including criminal record checks, fingerprinting service, fine and fee collections, recovered property, security clearances, and other services set out in Mr. Tymchyshyn's witness statement at paragraph 11. These positions and services fall outside the general policing services provided by the Province to the County under the *Police Funding Regulation*.

Police Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at paragraphs 4, 11; pages 000002, 000004.

88. The Town's evidence shows that, under the previous Cost Sharing Agreement, the Town and County agreed to jointly fund new police FTEs to provide crime prevention services to both the Town and County, over and above basic police functions provided by the Whitecourt RCMP police detachment. For instance, in the September 15, 2011 minutes from the Joint Liaison Committee, the Committee expressed support for the idea of creating a Community Liaison Officer position within the Town's RCMP detachment. The new FTE for a Community Liaison Officer was created in 2012, and this position focuses on crime prevention within schools (which include students from both the Town and County) and other crime prevention initiatives throughout the Whitecourt RCMP detachment's service area. This position is beyond the "general" policing services provided by the RCMP to the County, and since it is a position that was created at the request of both the Town and County to benefit residents in both the Town and County, the County ought to be required to contribute to staffing costs associated with this position based on the proportion of the County's population which resides within the Whitecourt RCMP detachment's service area.

Police Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at paragraphs 5, 13; Appendix 4; pages 000003-000005, 000066-000067.

89. Further, the 0.5 FTE paid for by the Town at the Town's RCMP detachment for a Crime Prevention Coordinator is directly related to coordinating and organizing crime prevention strategies in both the Town and County, in conjunction with the Community Liaison Officer. Crime prevention activities which are coordinated and organized through the Town's RCMP detachment are summarized at paragraph 13 of Mr. Tymchyshyn's witness statement. Since the Crime Prevention Coordinator position is directly related to providing crime prevention services both within the Town and County, it is fair and appropriate that the County help cover costs associated with that position, and with the programming provided by that position.

Police Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at paragraph 13; pages 000004-000006.

90. Further, the Town's contract with the RCMP requires it to pay 100% of support staff costs at the Whitecourt RCMP detachment (comprising 3.5 FTEs). These support staff provide essential ancillary services to residents in both the Town and County out of the RCMP's detachment office in the Town (which are summarized in Mr. Tymchyshyn's witness statement at paragraph 14). These ancillary services are not provided anywhere else in the Town or County, so individuals in the County looking to obtain a criminal record check, or fingerprinting, or other services must access those services at the Town's RCMP detachment. While user fees are charged for some of these services, they do not cover all costs associated with those services. Approximately 0.48 FTEs from the support staff paid for exclusively by the Town are dedicated to providing these ancillary services to residents in both the Town and County. Accordingly, the County ought to be required to contribute its prorated share of these staffing costs to provide essential ancillary services, based on the portion of the County's population which resides within the Whitecourt RCMP's service area.

Police Services Witness Statement of Doug Tymchyshyn dated June 30, 2021 at paragraph 14; pages 000006-000008.

91. Overall, despite recent changes in how police services are funded, the Town continues to bear costs beyond the basic policing services covered by the *Police Funding Regulation* which benefit residents in the County. These include:

- The 1.0 FTE for a Community Liaison Officer which was created over and above the Town's basic policing complement as a joint initiative of the Town and County to provide crime prevention services to the community, as well as to provide police-related programming to schools;

- The 0.48 FTE is support staff costs which are 100% borne by the Town, which are associated with the provision of essential ancillary services provided by the Whitecourt RCMP detachment to residents in both the Town and County.

- Costs associated with providing crime prevention programming in both the Town and County, as summarized in Mr. Tymchyshyn's witness statement at paragraph 13 (pages 000004-000006).

92. Since these costs are beyond basic policing services, are currently borne by the Town, and benefit residents in both the Town and County, it is fair and appropriate for the County to contribute its pro-rated share of these costs based on a catchment area that comprises the area serviced out of the Whitecourt RCMP detachment. While it is true that the County is now paying the Province for basic policing services provided within its borders, these additional services provided by the Town's RCMP detachment are beyond the scope of basic policing services and accordingly should be cost shared between the Town and County.

III. Water and Wastewater Services

93. With respect to Water and Wastewater Services provided by the Town to the County, the Town is asking for an award requiring the County to contribute 30% of non-residential property tax revenues generated from properties in the County which are capable of connecting to the Town's Water and Wastewater system. As well, the Town is asking that the existing terms of the Water/Wastewater Agreement be maintained from January 1, 2020 onwards, including provisions with respect to utility rates, and the payment of connection fees by new non-residential developments constructed within the Woodlands Business Park. The Town is not seeking any modifications to the Sak de Wah and Deer Park Intermunicipal Services Agreements.

Sak-de-Wah Intermunicipal Services Agreement, Deer Park Intermunicipal Services Agreement
[Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at Appendices 29-30]

94. The Water/Wastewater Agreement between the Town and County was executed on March 11, 2013 by the Mayor and CAO of both the Town and County. The County has put forward evidence which suggests County Council may not have approved certain elements of the Water/Wastewater Agreement before it was signed (specifically, the clauses referring to how connection fees were to be calculated). The evidence does not

support this. The Town's reply evidence clearly shows that County Council voted to approve the Water/Wastewater Agreement at a meeting on March 5, 2013, shortly before the final agreement was executed. In direct examination, Ms. Slootweg confirmed that she was unable to confirm or deny whether the revised version of the Water/Wastewater Agreement is what was reviewed and approved by County Council on March 5, 2013, or some other version, because she could not find a copy of the agreement which was provided to Council on that date. In cross-examination, Ms. Slootweg confirmed that it was the responsibility of Luc Mercier (then the County's CAO) to negotiate the Water/Wastewater Agreement on the County's behalf, and ensure that the correct version of the agreement was put before County Council when it was approved. The evidence shows that Mr. Mercier executed the final version of the Agreement, and that he was present during County Council's meeting on March 5, 2013. There is simply no credible evidence to support the contention that the Water/Wastewater Agreement was not properly approved by the County in its final form. In any case, the Agreement was signed by both the County's Mayor and CAO, and is accordingly binding on the County, as the Mayor and CAO have ostensible authority to bind the County to legal agreements.

2013 Water/Wastewater Agreement **[Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 3.**

Water/Wastewater Witness Statement of Joan Slootweg dated June 30, 2021 at paragraph 17; page 00005.

Reply Witness Statement of Peter Smyl dated July 31, 2021 at paragraph 27, Appendix 8; pages 000006, 000091-000092.

Direct and Cross-Examination of Joan Slootweg on August 16, 2021 starting at 00:19:00, 00:34:30.

95. Under the Water/Wastewater Agreement, the Town charges the County the same utility rates as are charged to local customers under the Town's Water and Sewer Bylaw (Bylaw 411). The County is then responsible for charging ratepayers in the County for water and wastewater services. While the County is contractually prohibited from charging its ratepayers less than what is charged to the Town's ratepayers, the County could elect to charge its ratepayers more, and the Town would have no say or control over that decision. The County also paid a lump sum fee of $400,000.00 to the Town in recognition of past

capital costs incurred by the Town to ensure its water and wastewater plant had sufficient capacity to allow for the County to connect to it at the outset. The Town is not seeking any modification to these terms.

Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at paragraph 6, Appendix 7; pages 000003, 000117-000133.

Water/Wastewater Agreement, Schedule A **[Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 3; page 000042.]**

96. The Town served notice to terminate the Water/Wastewater Agreement in accordance with clause 55 on August 29, 2019. Prior to that letter being sent, the Town's Mayor sent a letter to the County advising of the Town's intention to terminate the Water/Wastewater Agreement, but expressly noting that the Town recognized the potential adverse impact a disruption of service could cause, and the intent was to renegotiate the overall framework for the provision of water and wastewater services to include a revenue sharing component. In other words, the intent of terminating the agreement was never to disrupt water and wastewater services – it was to open the door to further negotiations on the terms by which the Town would provide water and wastewater capacity to the County. This intention was further reaffirmed by the Town's mayor in a letter dated January 12, 2021, which indicated the Town was willing to withdraw its termination notice as it wished to "ensure affected County residents are not left without water when that agreement is set to expire next fall."

Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at paragraphs 16-17, Appendices 18-19; pages 000005, 000195-000198.

a. Connection Fees for Woodlands Business Park

97. In addition to the basic charges set out in Schedule A of the Water/Wastewater Agreement, the Agreement expressly contemplates that the County pay a connection fee for non-residential properties within the Woodlands Business Park at the time they are connected to the Town's water and wastewater systems. Clause 29 requires the County to pay double the current Offsite Levy rate as established by the Town for water services, and Clause 51 includes a similar provision with respect to wastewater services. In both cases, the payment of the connection fee is expressly stated to account for both the offsite

levy and provincial grant funding that the Town is not able to receive for the County, and in paying the connection fee, such properties will not be limited to the volume restrictions set out in Clauses 20 and 44 of the Agreement. Since the County is paying these fees, it is conceivable it could apply for grant funding from the Province to cover ½ of the connection fee, and invoice the remainder to the ratepayer themselves (although the County has full discretion to determine what portion of the connection fee would be charged to the ratepayer). The volume restrictions in clause 20 sets a maximum amount of water that can be purchased by the County under the agreement, and clause 44 sets a maximum amount of wastewater that can be sent to the Town's wastewater treatment facility, but these maximums do not apply to non-residential developments in the Woodlands Business Park provided the County pays the specified connection fees to the Town.

Water/Wastewater Agreement, Clauses 20, 29, 44, 51 **[Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 3; pages 000028, 000030, 000033, 000034.]**

98. The connection fee is intended to compensate the Town for future costs pertaining to its water and wastewater plants, to ensure there is sufficient capacity to meet service demands. This is made clear in the Town's Rural Utility Service Policy, which specifies that customers shall pay the Town "a contribution for treatment and trunk facilities at twice the rate established in Policy 13-002 – Fee Policy for In-Town Off Site Levies." In general, off-site levies can be imposed by municipalities *within their own borders* on new developments to account for the construction of new infrastructure, including water and wastewater facilities. While an amendment to the *MGA* in 2016 created a provision which allows for the establishment of intermunicipal offsite levies, this provision was not in force at the time the Water/Wastewater Agreement was executed, and no agreement has been reached between the Town and County with respect to the provision of such a levy. The connection fees in the Water/Wastewater Agreement are intended to provide a mechanism for the Town to collect fees from properties which use its water and wastewater facilities to fund future capacity expansion as developments proceed. This is also why the connection fees are limited to non-residential properties located in the Woodlands Business Park – they are not subject to the capacity restrictions that are in

place for the rest of the area of the County serviced by the Town, so it is reasonable that there be a mechanism for the Town to collect funds to pay for future capacity expansions for its water and wastewater facilities arising from the construction of new non-residential developments in the County that are not subject to existing capacity restrictions.

Policy 41-006 – Rural Utility Connection Standard [**Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 9; pages 000135-000136.]**

MGA, ss 648, 648.01 **[Town's Brief at Tab 1]**

99. The County has put forward evidence to suggest that the connection fee charged under the Water/Wastewater Agreement is unfair to the County. While it is true that the Town passed some changes to its Offsite Levy bylaw in 2017 which had the effect of increasing those rates, those increases affect developments in the Town in the same way as they affect developments in the Woodlands Business Park in calculating their connection fees. Examples of calculations showing how the 2017 revisions to the Town's Offsite Levies would affect businesses in the Town and businesses in the County which pay connection fees are shown at Appendix 11 of Ms. Loberg's witness statement. The 2017 changes to the Town's Offsite Levy bylaw were reviewed by Nichols Applied Management which was retained by both the Town and County to conduct a Regional Business Park Feasibility Study. This Study shows that the Town's offsite levies are lower than other comparative communities. In cross-examination, Ms. Slootweg confirmed that the purpose of the connection fee is to defray costs. She also confirmed that the Nichols report was completed at the request of both the Town and County, and she had no information to contradict the conclusions it reached pertaining to offsite levies. Further, she confirmed that the changes made by the Town in 2017 to its Offsite Levy Bylaw increased both the levies charged in the Town, along with the connection fees charged under the Water/Wastewater Agreement.

Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at paragraphs 8-10, Appendices 11-12; pages 000004. 000171-000172.

Cross-Examination of Joan Slootweg on August 16, 2021 starting at 00:48:00.

100. The suggestion that the connection fees are somehow unfair, or that the 2017 changes to the Offsite Levy bylaw were unfair or improper, is unfounded. Again, this connection

fee was negotiated and agreed-to under the Water/Wastewater Agreement, and there is a strong and principled rationale to include such a fee for non-residential developments located in the Woodlands Business Park, since those developments are not subject to the capacity restrictions the County is otherwise subject to. The Water/Wastewater Agreement calculated the connection fee with reference to its Offsite Levy bylaw, which it has the ability to amend from time-to-time. While it is true that the 2017 changes to the bylaw increased both offsite levies charged in the Town, and connection fees charged to the County, there is no basis to suggest this was discriminatory or unfair. It is fair and appropriate for properties within the Woodlands Business Park to pay connection fees as they are constructed in accordance with the same formula as was established in the Water/Wastewater Agreement, without modifications.

b. Relationship of Water/Wastewater Agreement to the Intermunicipal Development Plan

101. At the same time as the Water/Wastewater Agreement was executed, the Town and County also executed a Tax Sharing Agreement, amended the 2008 Cost Share Agreement to include new provisions on linear tax revenue sharing, and approved a new Intermunicipal Development Plan ("IDP"). The County unilaterally terminated the Tax Sharing Agreement by notice on June 20, 2019, and also served notice of terminating the Cost Share Agreement on July 15, 2019. The IDP, however, remains in force. The extension of water and wastewater services into the County is integrally connected to the IDP. The IDP linked the provision of water/wastewater services by the Town to the County to sharing tax revenues generated by developments in the County connected to the water/wastewater system. In this way, the IDP provides an express linkage between revenue sharing and the extension of the Town's water and wastewater services into the County.

Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at paragraphs 1-5; pages 000002-000003.

Intermunicipal Development Plan **[General Witness Statement of Peter Smyl dated June 30, 2021 at Appendix 15.**

Tax Sharing Agreement **[General Witness Statement of Peter Smyl dated June 30, 2021 at Appendix 16.]**

102. Section 708.36(7)(d) of the *MGA* confirms that the arbitrator cannot make an award "that is contrary to an intermunicipal development plan under Part 17". Accordingly, it is appropriate in these proceedings for the arbitrator to have consideration for the IDP which remains in force and binding on the Town and County, to ensure that any award made with respect to water and wastewater services is consistent with the IDP. The Town submits that its request with respect to an award for water and wastewater services is consistent with the IDP, is fair to both parties and is within the arbitrator's jurisdiction to consider.

MGA, s 708.36 **[Town's Brief at Tab 1]**

103. The IDP contains references to "servicing" within an area of the County surrounding the Town, and "servicing" is defined as "wastewater, water and stormwater". The IDP expressly recognizes that "[d]evelopment within close proximity of the Town boundary should be encouraged to connect into Town municipal services at standards acceptable to the Town of Whitecourt via a servicing agreement, tax sharing or other forms of compensation shall be negotiated between the two municipalities." The IDP then sets out various goals and objectives with respect to developing residential, commercial and industrial land uses throughout the Plan area, which includes the Town and an area of the County in close proximity to the Town. In section 3.5.2 describing "Servicing and Infrastructure" within the Plan Area (which deals with the extension of water and wastewater services from the Town into the area of the County as identified in the Plan Area), the IDP expressly states that one of the objectives is to "create cost and tax sharing opportunities between the Municipalities" in addition to providing "for orderly and cost effective extension of services." Further, one of the Policies agreed to by the Town and County with respect to Servicing and Infrastructure is:

> Development within close proximity of the Town boundary should be encouraged to connect into Town municipal services at standards acceptable by the Town of Whitecourt via a servicing agreement; taxes generated may be shared between the two Municipalities.

Intermunicipal Development Plan **[General Witness Statement of Peter Smyl dated June 30, 2021 at Appendix 15; pages 000056, 000061, 000070]**

104. The IDP further provides that development should be encouraged in other non-residential areas of the County, including adjacent to the Whitecourt Airport, by allowing these areas of the County to connect directly to the Town's water and wastewater system.

Intermunicipal Development Plan **[General Witness Statement of Peter Smyl dated June 30, 2021 at Appendix 15; page 000071]**

105. As the Town's evidence demonstrates, the Town had concerns about providing water and wastewater services to new non-residential developments in the County at the time as the Water/Wastewater Agreement, 2013 Amendments to the Cost Share Agreement, Tax Revenue Sharing Agreement and IDP were being negotiated. In particular, providing water and wastewater services enables more extensive industrial development in the County, which is a competitive threat to the Town's tax base (given that, at that time, land costs in the County were cheaper than in the Town, and the County's municipal taxes were lower than the Town's). The IDP expressly recognizes this, by linking the provision of water and wastewater services to tax revenue sharing within the IDP's area. This way, both the Town and County share in the benefit of new non-residential developments constructed in the County as a result of their connection to the Town's water and wastewater system.

General Witness Statement of Peter Smyl dated June 30, 2021 at paragraphs 12-15, 21-26; pages 000004-000008.

106. The IDP's boundary is not exactly contiguous with the boundary of the 2013 Water/Wastewater Agreement, but this is an irrelevant given that the non-residential developments in the County connected to the Town's water and wastewater systems are all within the IDP boundary area. Ms. Slootweg's reply evidence includes a map which superimposes the boundaries of the Water/Wastewater Agreement over the boundaries of the IDP, so the difference can be easily seen. The area north of the Athabasca River which is covered by the IDP but not the Water/Wastewater Agreement is currently undeveloped (which is clear by Ms. Slootweg's map in her reply statement), and in the IDP, this area is identified as an area for future Town growth. The area in the southeast

portion of Ms. Slootweg's map which is within the Water/Wastewater servicing agreement, but not the IDP, does not have any properties connected to the Town's Water/Wastewater system.

County/Town Map with IDP and Water/Wastewater Agreement Overlays **[Reply Water/Wastewater Witness Statement of Joan Slootweg dated July 31, 2021 at Appendix 1; page 000005.]**

Figure 3.0 of IDP **[General Witness Statement of Peter Smyl dated June 30, 2021 at Appendix 15; page 000079.]**

107. In his direct examination, Steve Hollett took the arbitrator through a map which showed the extent of water and wastewater services in the County connected to the Town. It is clear, based on this map, that all of the water and wastewater systems in the County connected to the Town are covered by both the IDP's area, and the Water/Wastewater Agreement's area. Accordingly, with respect to the existing Water and Wastewater developments in the County, those are also subject to the IDP which remains in force, and as such, the arbitrator ought to ensure that any award given with respect to the provision of Water and Wastewater services is consistent with the objectives outlined in the IDP.

Direct Examination of Steve Hollett on August 16, 2021 starting at 00:08:00.

c. Sharing Non-Residential Tax Revenues Connected to Water/Wastewater Services

108. Section 708.36(7)(f) of the *MGA* indicates that the arbitrator does not have jurisdiction to make an award "that directs a municipality to transfer revenue to another municipality, unless the revenue transfer is directly related to services provided by a municipality that the revenue-transferring municipality derives benefit from, and the arbitrator considers it equitable to do so." The Town submits that requiring the County to transfer 30% of non-residential tax revenues derived from properties connected to the Town's water and wastewater system meets these requirements.

MGA, s 708.36(7)(f) **[Town's Brief at Tab 1]**

109. First, it is clear that the non-residential developments constructed at the Woodlands Business Park and around the Whitecourt Airport would not exist without them being connected to water and wastewater utilities. Residential properties can conceivably be constructed without access to these municipal utilities, but industrial properties, such as those constructed in the Business Park and around the Airport, require access to a municipal water supply for fire suppression purposes, and to otherwise support their operations. For example, the necessity of an adequate water supply for these purposes is made clear in the report prepared by Stantec for the County in November 2018. While the Town was not provided with this report until these arbitration proceedings (as Mr. Bachand confirmed in cross-examination), the report does demonstrate at a high level that water and wastewater services are required for the industrial developments constructed in the County near the airport.

Reply Water/Wastewater Witness Statement of Andre Bachand dated July 31, 2021 at Appendix 2.

Cross-Examination of Andre Bachand on August 16, 2021 starting at 1:12:45.

110. Accordingly, by allowing these properties to connect to the Town's water and wastewater system, the County gets a direct benefit by receiving property taxes from these properties that it would not otherwise receive. These non-residential developments would not exist without the Town providing water and wastewater services to them. Section 708.36(7)(f) allows the arbitrator to make an award requiring revenue sharing if the "revenue transfer is directly related to services provided by a municipality that the revenue-transferring municipality derives benefit from" – that requirement is clearly met, since the tax revenues received by the County are directly linked and connected to the provision of water and wastewater services by the Town. The potential benefit to the County in the form of tax revenues derived from these non-residential properties is significant – if the Woodlands Business Park is fully developed, the County could realize $600,000 per year in property taxes from those developments. In the 2020 tax year alone, the County realized approximately $330,124 in municipal tax revenues from the Woodlands Business Park. The County would not receive the extent of these revenues in the absence of the water and wastewater services provided to non-residential properties in the County.

Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at paragraphs 14-15, Appendix 16; pages 000005, 000192.

111. Second, the Town submits it is fair and equitable to require the County to share 30% of tax revenues collected from non-residential properties connected to the Town's water and wastewater system, because that is consistent with the IDP agreed-to by the parties, and it recognizes a competitive imbalance as between the Town and County with respect to non-residential properties. The evidence is clear that the County's non-residential taxes are lower than the Town's, and land prices in the County are lower than in the Town. The IDP was developed to allow both parties to encourage development in either municipality to foster cooperation, instead of competition, which explains why tax revenue sharing is referenced multiple times throughout the IDP in connection with the delivery of water and wastewater services. In the absence of tax sharing, allowing County properties to connect to the Town's water and wastewater services acts as a detriment to the Town, since non-residential developments that might have otherwise been located in the Town (with the Town receiving all tax revenues) will instead be constructed in the County. It is fair and equitable to require the County to share a portion of its non-residential tax revenues derived from non-residential properties connected to the Town's water and wastewater system, because it properly recognizes the competitive pressures connected with the delivery of these services outside the Town's borders (and the impact that has on the Town's development and tax base), and thereby helps foster regional cooperation between the Town and County, instead of competition.

See, for example, the comparative mill-rate analysis prepared by Peter Smyl **[General Witness Statement of Peter Smyl dated June 30, 2021 at paragraphs 41-42, Appendix 35; pages 000012, 000124-000125.]**

Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 7; pages 000111-000116.

112. The Town is justifiably disappointed that the County unilaterally terminated the Tax Revenue Sharing Agreement, and the provision for the sharing of linear tax revenues under the previous Cost Share Agreement. Both of these were integrally connected to the development objectives of the IDP. Nevertheless, the Town is not asking for an award to reinstate the now-terminated Tax Revenue Sharing Agreement, nor the provision in the

2013 Cost Share Agreement which required the County to share 10.4% of its linear tax revenues, as doing so would be beyond the arbitrator's jurisdiction under section 708.36(7)(f). The Tax Revenue Sharing Agreement required the parties to share tax revenues for certain non-residential developments that met a particular construction cost threshold, and was not connected to the delivery of a particular service. Similarly, the sharing of linear tax revenues under the 2013 Cost Share Agreement is not connected to the delivery of a particular service. Since these forms of revenue sharing are not linked to the delivery of a municipal service, they fall outside the arbitrator's jurisdiction to include in an ICF. Section 708.36(7)(f) is intended to limit the arbitrator's jurisdiction to only order revenue sharing that is directly linked to the provision of a particular service by the recipient municipality, and as is shown above, the Town's request for revenue sharing with respect to non-residential properties in the County connected to its water and wastewater system falls within what is permitted under section 708.36(7)(f).

d. Utility Crossing Constructed by the County within the Town

113. The County has led evidence regarding a water/wastewater connection line constructed by the County within the Town's border, which the County largely paid for. It is true that the County paid for the construction of a utility line which crossed the CN rail tracks in the southwest corner of the Town, but the evidence is clear that this utility line was necessary to connect the County to the Town's water and wastewater system, and while it is technically located within the Town's municipal boundaries, it exclusively services the County. The only Town property which could connect to this service line is a single property owned by CN Rail south of the tracks which is vacant and undeveloped. As the Town's rebuttal evidence makes clear, the Town did reimburse the County for $85,800.00 in costs connected to other utilities constructed near this railway right-of-way. In cross-examination, Mr. Hollett agreed that it was necessary to construct this utility crossing to connect the County to the Town's water and wastewater system. The fact that the County paid for this utility crossing was in accordance with the Water/Wastewater Agreement, which states at clauses 7 and 33 that the County is responsible for all costs incurred to connect the County to the Town's water and wastewater system. The construction of this utility crossing occurred many years ago, and accordingly, it is beyond the arbitrator's

jurisdiction to make an order which retroactively modifies the payment arrangement with respect to that utility crossing.

Water/Wastewater Witness Statement of Steve Hollett dated June 30, 2021 at paragraph 11; page 00003.

Reply Witness Statement of Peter Smyl dated July 31, 2021 at paragraphs 28-32, Appendix 9; pages 000006, 000096.

Cross-Examination of Steve Hollett on August 16, 2021 starting at 00:13:00.

Water/Wastewater Agreement, clauses 7 and 33 **[Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 3; pages 000025, 000031.]**

e. Referral to the Alberta Utilities Commission

114. The Water/Wastewater Agreement was not submitted for approval to the Alberta Utilities Commission ("AUC"). Generally speaking, the AUC does not regulate or have jurisdiction over municipally owned and operated utilities, including water and wastewater utilities. Under section 1(h) of the *Public Utilities Act*, the definition of "owner of a public utility" does not include municipalities (unless they have voluntarily come under the Act). Section 78(2) further confirms that Part 2 of the Act "does not apply to a public utility owned or operated by a municipality unless the public utility is brought under this Act by a bylaw of the municipality as provided in this Part." The process by which a municipally owned and operated utility can be brought within the AUC's regulatory jurisdiction is further elaborated in section 111:

> 111(1) A municipality owning or operating a public utility may, by bylaw approved by the Lieutenant Governor in Council, provide that the public utility shall come under the operation of this Act and be subject to the control and orders of the Commission.
>
> (2) On the approval of the bylaw by the Lieutenant Governor in Council, the public utility owned or operated by the municipality afterwards comes under the operation of this Act and is subject to the control and orders of the Commission.

Public Utilities Act, ss 1(h), 78(2), 111 **[Town's Brief at Tab 4]**

115. These requirements have not been met to bring the Town under the AUC's jurisdiction such that the utility rates must be approved in advance by the AUC. The Town's bylaw pertaining to water and wastewater services does not meet the requirements set out in section 111 to bring those utilities under the AUC's jurisdiction. Accordingly, there was no need for either the Town or County to seek the AUC's approval of the Water/Wastewater Agreement when the agreement was executed, and there is no need to refer the agreement to the AUC for approval now.

Town Bylaw No. 411 **[Water/Wastewater Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 8; pages 000117-000133.]**

116. Section 45 of the *MGA* pertains to situations where a municipality grants another "person" the right to provide a utility service in all or part of the municipality, and when that occurs, any agreements pertaining to the provision of such services must be approved by the AUC in advance:

> 45(1) A council may, by agreement, grant a right, exclusive or otherwise, to a person to provide a utility service in all or part of the municipality, for not more than 20 years.
>
> (2) The agreement may grant a right, exclusive or otherwise, to use the municipality's property, including property under the direction, control and management of the municipality, for the construction, operation and extension of a public utility in the municipality for not more than 20 years.
>
> (3) Before the agreement is made, amended or renewed, the agreement, amendment or renewal must
>
> (a) be advertised, and
>
> (b) be approved by the Alberta Utilities Commission.

> (4) Subsection (3)(b) does not apply to an agreement to provide a utility service between a council and a regional services commission.
>
> (5) Subsection (3) does not apply to an agreement to provide a utility service between a council and a subsidiary of the municipality within the meaning of section 1(3) of the Electric Utilities Act.

MGA, s 45 **[Town's Brief at Tab 1]**

117. The Town submits that this section also does not apply to the Water/Wastewater Agreement established between the Town and County. The Water/Wastewater Agreement differentiates between the County's Water/Wastewater System, and the Town's Water/Wastewater System, and specifically indicates that both municipalities are responsible for their own systems within their municipal borders. As part of this arrangement, the Town supplies capacity to both send water to the County, and receive sewage from the County, but otherwise the Town is not directly "providing" these utility services in the County (which is what is contemplated in section 45). The services are provided by the County to individual ratepayers within the County, and the County otherwise is responsible for invoicing its ratepayers for services accessed. The Town invoices the County directly for all charges under the Water/Wastewater Agreement, and is not responsible for providing Water/Wastewater Services within the County's borders – that remains the County's responsibility even though it is purchasing water and wastewater capacity from the Town. This arrangement falls outside the parameters of section 45, because the Town is not providing its utility services within the County; as such, section 45(3) does not apply.

Water/Wastewater Agreement, Preamble, Clauses 1-5 **[Water/Wastewater Witness Statement of Jennine Loberg at Appendix 3; pages 000022-000025.]**

118. That said, section 30 of the *MGA* does confirm that, if a Council proposes to make an agreement to supply water to a public utility for a period that, with rights of renewal, could exceed five years, the agreement must be approved by the Alberta Utilities Commission. Accordingly, the water services provided by the Town to the County would be subject to

the AUC's approval (but this would not apply to wastewater services). As indicated, the previous Water/Wastewater Agreement was never submitted to the AUC for approval, but the Town submits that nothing turns on this. In these proceedings, the Town submits the arbitrator does have jurisdiction to review the terms of the Water/Wastewater Agreement and make an award with respect to the Water component of that agreement subject to later approval by the AUC. In any case, the limited revenue sharing requested by the Town connected with the Water/Wastewater Agreement is firmly within the arbitrator's jurisdiction and would be beyond the AUC's jurisdiction to consider (the AUC's jurisdiction would only extend to reviewing the rates and fees charged for the service itself).

119. Section 112 of the *Public Utilities Act* allows for applications to be brought to the AUC to decide disputes on the terms governing the delivery, supplying and furnishing of water by a proprietor municipality to another municipality outside its borders, where the proprietor municipality has already agreed to supply water services to another municipality outside its borders.

Public Utilities Act, s 112 **[Town's Brief at Tab 4]**

120. Similarly, section 44 of the *MGA* includes a mechanism for the AUC to resolve disputes between municipalities pertaining to rates, tolls or charges levied by the supplying municipality to the recipient municipality, and this section applied regardless of whether the municipal utility is otherwise subject to the AUC's jurisdiction under section 111 of the *Public Utilities Act*:

> 44(1) If
>
> (a) a municipality is supplying a utility service to a person outside the municipality, and
>
> (b) there is a dispute between the municipality supplying the utility service and any other municipality in connection with the rates, tolls or charges,
>
> the dispute may be submitted to the Alberta Utilities Commission.

> (2) The Commission may make an order on any terms and conditions that it considers proper.
>
> (3) This section applies whether or not a public utility is subject to the control and orders of the Alberta Utilities Commission pursuant to section 111 of the Public Utilities Act or section 4 of the Gas Utilities Act.

MGA, s 44 **[Town's Brief at Tab 1]**

121. While these sections arguably *could* apply to the present dispute between the Town and County pertaining to rates to be charged for the County to access capacity provided by the Town for water and wastewater services, they only provide that such disputes *may* be referred to the AUC. This permissive language suggests that the AUC may not have exclusive jurisdiction to decide these types of disputes, and in any event, it would be the County's responsibility to initiate such an application before the AUC. Further, the present dispute before the arbitrator remains within the arbitrator's jurisdiction to resolve, notwithstanding section 44, because it pertains to a service provided by one municipality to another which benefits the recipient municipality (which satisfies the requirements set in section 708.29 to be included in an ICF).

122. As indicated above, the Town is not asking to change any of the rates, charges or levies assessed under the Water/Wastewater Agreement, and is only asking for a limited form of revenue sharing which is within the arbitrator's jurisdiction to consider as part of an ICF, and would be outside the AUC's jurisdiction in any event. The AUC's jurisdiction over intermunicipal utilities is limited to disputes and agreements pertaining to charges and rates assessed to ratepayers, and does not extend to forms of revenue sharing connected to IDPs or ICFs, or to other types of charges assessed by a municipality to provide capacity to another municipality (where the other municipality then sets its own rates for individual users of the utilities). As that is the only substantive area which the Town is seeking to modify, that falls within the arbitrator's jurisdiction to consider in these proceedings.

MGA, ss 708.29, 708.36 **[Town's Brief at Tab 1]**

123. Overall, it is fair and equitable for the arbitrator to issue an award with respect to water and wastewater services provided by the Town to the County on the following terms:

- The County will continue to be invoiced by the Town for the same utility rates as Town customers for water and wastewater services;
- New non-residential developments within the Woodlands Business Park will continue to pay a connection fee to the Town calculated by multiplying the offsite levy rate established by the Town by two, which is consistent with the previous Water/Wastewater Agreement; and
- The County be required to pay 30% of property tax revenues derived from non-residential properties located in the County but capable of being connected to the Town's water and wastewater system to give effect to the IDP, and because this form of revenue sharing is directly linked to the provision of a service by the Town to the County, for which the County receives a direct benefit (property tax revenues) that it would not otherwise receive.

124. All other terms in the Water/Wastewater Agreement would remain the same going forward, and as noted above, the Town is not seeking any changes with respect to the Sak-de-Wah and Deer Park agreements which remain in force.

IV. Recreation, Arts and Culture

125. The Town is a major regional hub which provides specialized recreational, arts and cultural programming both to its residents, and residents in the County. Under the previous Cost Share Agreement, the County contributed to the Town's recreational, arts and culture services for those facilities and services that are "regional" in nature based on a catchment area. The Town views Recreation, Arts and Culture as particularly important to providing a high quality of life to its residents, and the same principle applies to residents in the County. As was stated by Colette Miller in her cross-examination:

> Recreation is always viewed as- not the loss leader, but it's the attraction to a community that's required, that brings up business, that brings up the assessment base, the tax revenue- because if you've got good recreation you've got all the collateral upside in a community.
>
> **Cross-Examination of Colette Miller on September 16, 2021 (Part 1) starting at 02:15:00.**

126. The Town agrees, and submits that the specialized recreational services it provides to residents in both the Town and County realizes significant residual benefits to both municipalities, and as such this is a particularly important aspect of the ICF. In this arbitration, the Town is asking for an award to require the County to contribute to the Town's facilities and services pertaining to recreation, arts and culture based on a catchment area which comprises electoral districts 1-6 (thereby excluding Fort Assiniboine in district 7) for those facilities and services that are regional in nature. These facilities and services include all operating and capital costs associated with the following:

- The Allan & Jean Millar Centre;
- Scott Safety Centre;
- Carlan Services Community Resource Centre;
- Mountain Bike Park;
- Eastlink Park;
- Curling Rink;
- Rotary Park;
- River Boat Park;
- Arts and Crafts Building;
- Sports Fields (including Graham Acres, and school grounds including school rinks as they pertain to community use); and

- Regional recreational and arts/cultural programming, including large-scale events targeted to the entire region, such as Canada Day celebrations and Party in the Park.

127. The Town is also seeking an award which recognizes that the County shall continue to have representation on the Town's Community Services Advisory Board, which provides recommendations to Town Council with respect to recreational services offered in the Town. While it is true that the Community Services Advisory Board does not have overall control over recreational services, it does provide fulsome input, and the County also has the ability to raise particular issues pertaining to the delivery of recreational services via the Joint Liaison Committee. The Town submits this form of oversight and involvement by the County gives the County adequate representation in providing input and making decisions on recreational services.

128. The Town's suggested approach to cost sharing for recreational facilities and services is consistent with the approach and objectives set out in the County's Recreation Master Plan, developed in April 2017. The County's Recreation Master Plan recognizes that some facilities and services are "regional" in nature, which is defined as "a specialized level of service or infrastructure that, due to its nature, is provided in a single location in order to most cost effectively and appropriately serve all county residents." The Master Plan further recognizes that "[i]t is not feasible for Woodlands County to directly deliver specialized recreation infrastructure such as aquatic, arena and fitness facilities as they require a large centralized population base (critical mass) to operate at a reasonable level of subsidy." It then notes that 61% of County residents use the Millar Centre, and 34% use the Scott Safety Centre, as examples of regional facilities (located in the Town) which are specialized and regional in nature. Accordingly, the County's own Master Plan recognizes that County residents use and benefit from regional recreational programming and facilities located in the Town, and that is precisely the basis upon which the Town is proposing that cost sharing for recreational services be determined.

129. In cross-examination, Ms. Kennedy confirmed that she agreed with the County's Recreation Master Plan in that it was not feasible for the County to provide all recreational services itself. She confirmed that the County's partners in providing recreational services to County residents included the Towns of Whitecourt, Mayerthorpe, and Barrhead. Barrhead is located to the southeast of Fort Assiniboine, and services offered there could only realistically be regularly accessed by County residents living in Fort Assiniboine or the far eastern portion of the County, which is outside the proposed cost share area for recreational services. With respect to the Town of Mayerthorpe, while it located closer to the Town of Whitecourt, its recreational facilities are far more limited than what is provided in the Town. For instance, it only has an outdoor pool, a single sheet arena, and some community halls. Ms. Kennedy confirmed that the County has budgeted approximately $55,000.00 to allocate to Mayerthorpe in recognition of shared recreational services offered by Mayerthorpe, which illustrates how limited those recreational services are in comparison with what is provided to County residents within the Town of Whitecourt. The Town submits that Ms. Kennedy's evidence, and the County's Master Plan, clearly shows that the Town is the County's most important partner in providing specialized recreational services and infrastructure to County residents, and that ought to be recognized in the ICF.

Cross-Examination of Kara Kennedy on August 23, 2021 starting at 00:41:30.

130. The Town also submits that, as a general principle, individuals are most likely to use and access recreational, arts, and cultural programming and facilities that are located closest to them. This was put to Kara Kennedy during her cross-examination, and she agreed that County residents are most likely to use and access facilities located closest to them. She also agreed that a large proportion of the County's population is located within close proximity to the Town, and that the closest recreational facilities for those residents (including indoor pools, rinks, the Curling rink, and other facilities) are all located in the Town, not the County. In fact, a majority of County residents live within a 30km radius around the Town. Applied to the inventory of recreational facilities supplied by Ms. Grande, the Town submits that it is reasonable to infer that County residents who live

close to the Town, and where no equivalent facilities or programing are available nearer to them in the County, will be most likely to access those facilities and services in the Town. Based on this, it is fair and equitable to require the County to contribute to operating and capital costs associated with those recreational services which County residents otherwise would have to travel greater distances to other population centers to access.

Cross-Examination of Kara Kennedy on August 23, 2021 starting at 00:17:30.

AUMA/AMSC Catchment Map; Map of Woodlands County Residential Areas **[General Witness Statement of Peter Smyl dated June 30, 2021 at Appendices 13 and 14; pages 000048-000049.]**

131. The catchment area proposed by the Town would include County populations located in electoral districts 1-6, and would not include Electoral District 7, which includes Fort Assiniboine. As is discussed in further detail below, all of the facilities and programming the Town is seeking cost sharing for are unique within the cost share area (and, in some cases, are unique within a larger area as well), consistent with the principle of "reciprocity" to recognize where the County offers its own facilities and programming. While imperfect, cost sharing on the basis of a catchment area provides a fair and predictable way to calculate the County's cost share percentages from year-to-year, based on the principle that users are most likely to access programs and services located closest to them.

AUMA/AMSC Catchment Map **[Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 24; page 000575.]**

132. Relying on specific user data for each facility and service would not provide the stability or fairness to the parties that they are seeking in an ICF with respect to Recreation services especially. Ms. Grande's evidence includes user statistics assembled from a variety of sources for different recreational facilities and programs, but the Town acknowledges there are problems with this data. For instance, the user statistics reported at Appendix 21 were derived from membership information, but in many cases, members only reported PO Box numbers and not residential addresses, making it difficult if not impossible to approximate where these individuals actually live. Further, statistics compiled on monthly passholders at the Allan & Jean Millar Centre do not include

statistics on daily users, which are not tracked, so these statistics are not comprehensive. Accordingly, while the Town has put effort into providing user statistics for its recreational facilities, these statistics are incomplete and would not be a sufficient basis to calculate a cost share contribution.

Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 34-38; Appendix 21; pages 000008-000009, 000414-000571.

133. What these statistics do demonstrate is that a significant portion of County residents purchase memberships to access these recreational facilities and services, lending support to the proposition that County users will access unique facilities in the Town where those facilities are not provided elsewhere nearby. Many of these County residents reside in Goose Lake and Fort Assiniboine, which demonstrates that, for some facilities and services, County residents are willing to travel greater distances to access those facilities and services. This also supports the Town's request for a larger catchment area comprising electoral districts 1-6, since the Town's recreational facilities and programming are accessed by and benefit County residents who live further than 30km from the Town.

134. At Appendix 16 of Chelsea Grande's witness statement pertaining to Recreation, Ms. Grande included a spreadsheet which summarized an inventory of recreational, arts and cultural facilities and programming in the Town, and includes details on whether these facilities and services were covered by the previous Cost Share Agreement, and whether they are "unique" within the proposed cost share area. With respect to the list above, all of the facilities and programming listed were previously included in the Cost Share Agreement, except for Mountain Bike Park and Eastlink Park (shown as the "Winter Recreation Park" in the inventory spreadsheet) which were constructed more recently. For Rotary Park, the County has historically contributed to operating costs under the previous Cost Share Agreement, but not capital costs. Further, all of these facilities and programs are "regional" and/or "unique" in nature, in that there is no equivalent facility or program located within the proposed cost share area (that is, excluding Fort Assiniboine). The Town, overall, submits that it is fair and appropriate for the County to contribute to recreational facilities and services that are unique within the cost share area, and for

which County residents are likely to access or otherwise benefit from the presence of these facilities and activities. As set out below, the Town submits that all of the facilities and programming which it is seeking cost sharing for are unique within the cost sharing area, and are therefore properly considered and included in the ICF.

Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 16; pages 000180-000181.

135. With respect to the Allan & Jean Millar Centre (the "Millar Centre"), it is a unique facility for which is there is no equivalent anywhere in the County or surrounding municipalities. It is state-of-the-art, and includes facilities such as three indoor pools, a lazy river, an indoor running track, fieldhouse, indoor playground and other fitness-related facilities that are unique in the Town and County. The County partnered with the Town to construct the Millar Centre in 2008, with both municipalities sharing in the construction costs, in recognition of the fact that it provides unique services to residents in both the Town and County. Accordingly, the facility was designed and constructed to accommodate anticipated demand from both the Town and County. While it was not possible for the Town to obtain comprehensive user statistics for the Millar Centre, approximately 27% of regular members and program registrants reside in the County, including in areas further away from the Town in Goose Lake and Fort Assiniboine. In the "State of Recreation" research report prepared for the County in December 2016 by RC Strategies, RC Strategies determined that over half of County households (58%) used the Millar Centre in the previous year, and it was by far the facility which County residents used most often among the "major facilities" included in RC Strategies' survey. There is no question that the Millar Centre is a unique recreational facility that provides facilities and programs not otherwise available anywhere else in the County; accordingly, the County should be required to contribute to ongoing capital and operating costs associated with it.

Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 5, 27, 35-36, Appendices 13, 16, 21; pages 000002, 000008-000009, 000100, 000134, 000188.

136. With respect to the Scott Safety Centre, it includes two indoor hockey arenas and associated change rooms and related services and facilities, and the County partnered in expanding and modernizing that facility. The Scott Safety Centre is the home of the AJHL

Wolverines, Whitecourt Minor Hockey, and the Whitecourt Figure Skating Club. One of its rinks (the Athabasca Rink) has seating capacity for 1120 people. In addition, hockey performance camps are run out of the Scott Safety Centre for residents in both the Town and County, and the facility is available for recreational leagues and drop-in skating as well. Fort Assiniboine also has an indoor rink, but that is outside the proposed catchment area, and otherwise, no other area of the County includes an indoor rink as an amenity. While the Town of Mayerthorpe (which is within Lac Ste. Anne County) also has an indoor rink, the report prepared by RC Strategies for the County in December 2016 on recreation services found that only 15% of County residents had used Mayerthorpe's indoor rink within the previous year. By comparison, the Scott Safety Centre was accessed by 33% of County residents, and was the second-most utilized "major facility" by County residents (after the Millar Centre) among the facilities surveyed by RC Strategies. Further, in 2019, minor hockey players who reside in the County constituted approximately 28% of all players, and 23% in 2020. Similarly, County residents participate in figure skating and other activities at the Scott Safety Centre. This facility is clearly unique within the cost-share area, and is regularly utilized by and benefits County residents.

Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 5, Appendices 13, 16, 21; pages 000002, 000134, 000183, 000414

137. With respect to the Carlan Services Community Resource Centre (the "Carlan Centre"), the County also participated in the conversion of that facility from an outdoor pool into the Carlan Centre by contributing to associated capital costs. The Carlan Centre provides multipurpose rooms which can be scheduled by different community groups, and also houses other non-profit community programs accessible to residents in both the Town and County, including the Whitecourt Food Bank, the Whitecourt Gymnastics Club, youth services and FCSS programming. As is set out in the section of this argument pertaining to FCSS programming, County residents regularly access and utilize FCSS services located in the Town (and, in fact, the Town is the primary provider of FCSS services for County residents). Given that the Carlan Centre provides unique community services to residents in both the Town and County, it is appropriate that it be included in the County's cost share obligations.

Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at paragraph 5, Appendices 16, 17; pages 000003, 000180, 000185, 000201

138. With respect to the Arts and Crafts Building, it is home to the Pottery Club (studio with kilns) which occupies 2/3 of the building, and the Whitecourt & District Preschool which occupies the remaining 1/3 of the building. This is the only pottery studio in the proposed cost share area, and the only preschool in that area. The County has always cost shared on this building, including under the previous Cost Share Agreement, and the County has put forward no evidence to suggest that it should no longer contribute to costs associated with this facility.

Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 16; page 000180.

139. With respect to Mountain Bike Park and Eastlink Park, both of those facilities were constructed recently (since 2016) and were not previously included in the Cost Share Agreement. For Mountain Bike Park, the Town and County were to split operating and capital costs for construction on a 50/50 basis, and at least initially, they each contributed equally to the Park's capital costs until the County unilaterally reduced its capital contribution in 2017. Similarly, for Eastlink Park, construction costs were initially split 65%/35% between the Town and County respectively, and its operating deficit was originally covered equally by the Town and County until the County unilaterally reduced its contribution in 2017. Both of these facilities are unique, as there is no equivalent to Mountain Bike Park or Eastlink Park located elsewhere in the County. In cross-examination, Kara Kennedy agreed that Mountain Bike Park and Eastlink Park are unique within the service area.

Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 6-12 (and associated Appendices); pages 000003-000004.

Cross-Examination of Kara Kennedy on August 23, 2021 starting at 00:11:00.

140. With respect to the Curling Rink, its operating costs are borne by the Whitecourt Curling Club, but maintenance and lifecycle costs pertaining to the facility itself are borne by the Town, which owns the facility. In cross-examination, Ms. Kennedy confirmed that the Curling Rink is unique within the cost share area, with the only other curling rink being

located in Fort Assiniboine. County residents are also members of the Whitecourt Curling Club, and the County has previously shared in capital and maintenance costs pertaining to the Whitecourt Curling Rink. Since this facility is unique within the proposed cost share area, it is fair and appropriate that County contribute to capital and lifecycle costs borne by the Town which it is responsible for.

Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 5, 13-14; pages 000003, 000005.

Cross-Examination of Kara Kennedy on August 23, 2021 starting at 00:14:30.

141. With respect to Rotary Park, it is a large multi-use public park located near the Millar Western plant in the Town. It is capable of hosting large regional events involving thousands of attendees, such as the Town's annual "Party in the Park", holiday celebrations including for Canada Day, and large outdoor concerts. It includes numerous recreational facilities, including volleyball courts, a forest themed adventure playground, a new "festival way" constructed in 2020, a pond with fishing, water slides, a splash park with picnic pavilion, a concession booth, and public washrooms. While some of these amenities, on their own, may have equivalents elsewhere in the County (such as the splash park), no other park in the County contains all of these amenities or is able to accommodate large events on the scale of Party in the Park or outdoor concerts. In its report to the County on recreation services in 2016, RC Strategies found that 63% of County residents had visited Rotary Park in the preceding year. In cross-examination, Ms. Kennedy confirmed that Party in the Park was a large event which is accessible to County residents, and for which there is no equivalent event that is hosted by the County, and that other large events are regularly hosted at Rotary Park. As a whole, Rotary Park represents a unique location within the Town and County, and as such the County ought to contribute to costs associated with it. Further, the County ought to be required to contribute to large-scale regional events hosted by the Town, such as Party in the Park and Canada Day celebrations, which are targeted to residents in both the Town and County, and for which no equivalent event is put on by the County within the proposed cost share area.

Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 5, 19, Appendices 11, 13, 16; pages 000003, 000006, 000070, 000133, 000182.

Cross-Examination of Kara Kennedy on August 23, 2021 starting at 00:39:00.

142. With respect to River Boat Park, it is the only facility in the Town or County which allows for the launch of jet boats; accordingly, while the County also has boat docks and launches, this particular boat launch is unique within the cost share area. Costs associated with River Boat Park were included under the previous Cost Share Agreement, and it is fair and appropriate that the County continue to contribute to those costs.

Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 16; page 000180.

143. With respect to sports fields located in the Town, the only school sites within the cost share area are located in the Town, and fields and outdoor rinks located on those school sites are available for wider public use. Furthermore, Graham Acres is an outdoor sports-oriented facility which contains slo-pitch, baseball and fastball diamonds, tournament facilities, score clocks, a football field and soccer pitches. It hosts the Whitecourt Minor Ball league, the Whitecourt Soccer Association, the Football League, a Slo-pitch League and various tournaments, all of which are open and accessible to County residents. While the County does have outdoor baseball diamonds in some locations, it lacks an outdoor facility as large as Graham Acres. Facilities associated with Graham Acres, as well as other outdoor sports fields in the Town, were included in the previous Cost Share Agreement, and it is fair and appropriate that the County continue to contribute to these facilities.

Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 16; pages 000180, 000186.

144. Ms. Grande's spreadsheet at Appendix 16 also shows other recreational facilities and activities which were both not included in the previous Cost Share Agreement, and for which the Town is not seeking cost sharing in an ICF. These facilities and programs include community halls, neighbourhood outdoor rinks, hiking trails, neighbourhood parks and playgrounds, tubing take-outs, and public campgrounds. Equivalent facilities and

associated programs are located in the County within the cost-share area, so the Town agrees that these facilities and programs ought not be included in the ICF for cost-sharing purposes, even though County residents do use these facilities as well.

145. The County has led evidence on recreational services and facilities within the County that it either funds or operates directly, which are summarized at paragraph 16 of Kara Kennedy's reply witness statement. In cross-examination, Ms. Kennedy acknowledged that similar recreational services and facilities as those listed in paragraph 16 are also present in the Town. The Town submits that, to the extent that equivalent facilities are located in both the Town and the proposed cost share area within the County, those ought not be included or considered in the ICF, which is the same principle which was used to determine what facilities and activities were included under the previous Cost Share Agreement. Since equivalent facilities to those facilities listed in Ms. Kennedy's witness statement also exist in the Town, the Town submits they ought not be considered in any cost share agreement pertaining to recreation facilities and services.

Reply Recreation Witness Statement of Kara Kennedy dated July 31, 2021 at paragraphs 8-10, 14, 16; pages 000003-000006.

Cross-Examination of Kara Kennedy on August 23, 2021 starting at 00:19:30.

146. Ms. Kennedy also led evidence of a user survey undertaken by the County with respect to several facilities located in the County, including the McLeod River Tubing put-in, Hard Luck Canyon, Blue Ridge Spray Park, the Blue Ridge Recreation Area, and Schuman Lake. Other than Hard Luck Canyon, none of these facilities are truly regional in nature since similar facilities exist within the Town, so the fact that Town residents do occasionally use these facilities is irrelevant. Just as County residents may use facilities located in the Town despite equivalent facilities being available in the County, Town residents may use facilities located in the County despite similar facilities being available in the Town. Otherwise, the Town submits that the particular statistics compiled by the County as reported in Ms. Kennedy's witness statement be given little to no weight. The survey was undertaken for only a limited amount of time (such that it cannot be considered representative of general usage patterns over the course of a year), and the survey

respondents were not asked for their home addresses to verify whether they do, in fact, reside in the Town or County. Ms. Kennedy confirmed in cross-examination that County residents who live on the fringe of the Town often say they are "from Whitecourt" when asked where they are from, which gives rise to the possibility that some respondents who are listed in the survey as residing in the Town may, in fact, reside in the County. At most, this survey demonstrates that some Town users may access facilities located in the County for which equivalent facilities are also present in the Town, but the extent to which this occurs cannot be properly ascertained, nor is this is a sufficient basis for requiring cost contributions from the Town for these facilities. The frailties in the County's user data also demonstrates, at a general level, the difficulties in obtaining reliable user data for recreational facilities.

Reply Recreation Witness Statement of Kara Kennedy dated July 31, 2021 at paragraphs 20-21; Appendix 5; pages 000007, 000133-000175.

2021 Visitor Tracker Information **[Entered as Exhibit 23]**

Cross-Examination of Kara Kennedy on August 23, 2021 starting at 00:49:00 (discussing process of collecting survey results), 00:57:00 (discussing questions put to survey respondents)

147. Under the previous Cost Share Agreement, the Town did contribute operating funds to the County for the Groat Creek Campground and to Hard Luck Canyon, totaling $10,000 per year. With respect to the Groat Creek Campground, the Town also has campgrounds within its municipal borders (and for which the Town is not seeking cost share contributions from the County). The Town submits it is fair in the circumstances to end contributions from the Town to the County for the Groat Creek Campground because the Town already has comparable facilities and services within its municipal borders. For Hard Luck Canyon, the Town proposes that the current arrangement of contributing $5000 per year to operating expenses is fair and ought to continue. The County has led no evidence to suggest there should be any departure from the status quo with respect to Hard Luck Canyon, and the Town has no representation on the County's recreational advisory board and no say in the operation or management of Hard Luck Canyon.

Reply Witness Statement of Judy Barney dated July 31, 2021 at paragraph 4; page 000002.

Recreation Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 13; page 000122.

148. For the Town's contribution to the Agricultural Society, the Town submits it is fair for it to continue paying $22,000 per year to the Agricultural Society, as was the case under the previous Cost Share Agreement. The County has led no evidence to suggest there should be any departure from the status quo with respect to Town contributions to the Agricultural Society. The Agricultural Society owns its own facilities and land, and it has not made any separate request to the Town to increase annual contributions.

149. Overall, the evidence clearly supports that the County ought to contribute to the recreational services and facilities located in the Town which are regional in nature, and which benefit residents in the County. This is consistent with the approach taken under the previous Cost Share Agreement, and there is no basis to suggest that this approach was unfair or should be changed going forward. The catchment area proposed by the Town is reasonable, because its recreational facilities and services are unique within the cost share area, and cost sharing on the basis of a catchment area provides a fair and predictable mechanism to calculate cost share contributions for recreational services. It is not possible or desirable to calculate cost share contributions for recreational services on the basis of actual user statistics, because the evidence shows such user statistics are incomplete, and are cumbersome and difficult to obtain and report reliably.

V. Family and Community Support Services

150. The Town is seeking an award requiring the County to contribute to direct costs associated with the Town's Family and Community Support Services ("FCSS") programming based on a catchment area that comprises electoral districts 1-6 (not including district 7 – Fort Assiniboine). The Town submits this is fair, because the Town is the most important provider of FCSS services to County residents (and has been for many years), and residents from all areas of the County regularly access the Town's FCSS services, especially those residents who reside close to the Town. The Town and County would continue to operate their own third-party grant programs for FCSS-related activities and services, which would not be subject to cost-sharing.

151. FCSS is a funding partnership between municipal governments and the Province of Alberta under the *Family and Community Support Services Act*. Approximately 59% of costs associated with the Town's FCSS programs come from the Province. The *Family and Community Support Services Regulation* sets out the service requirements of FCSS programming, including identifying the types of programming which are and are not eligible for Provincial FCSS funding:

> 2.1(1) Services provided under a program must
>
> (a) be of a preventive nature that enhances the social well-being of individuals and families through promotion or intervention strategies provided at the earliest opportunity, and
>
> (b) do one or more of the following:
>
> (i) help people to develop independence, strengthen coping skills and become more resistant to crisis;
>
> (ii) help people to develop an awareness of social needs;
>
> (iii) help people to develop interpersonal and group skills which enhance constructive relationships among people;
>
> (iv) help people and communities to assume responsibility for decisions and actions which affect them;
>
> (v) provide supports that help sustain people as active participants in the community.
>
> (2) Services provided under a program must not

> (a) provide primarily for the recreational needs or leisure time pursuits of individuals,
>
> (b) subject to subsection (3), offer direct assistance, including money, food, clothing or shelter, to sustain an individual or family,
>
> (c) be primarily rehabilitative in nature, or
>
> (d) duplicate services that are ordinarily provided by a government or government agency.
>
> (3) Services provided under a program may offer direct assistance including money, food, clothing or shelter to sustain an individual or family during a public health emergency under the Public Health Act or any extenuating circumstances such as fire or flood as the Minister may determine.

Family and Community Support Services Regulation, Alta Reg 218/1994, 2.1 **[Town's Brief at Tab 5]**

FCSS Witness Statement of Chelsea Grande dated June 30, 2021 at paragraph 5; page 000002.

152. The Town of Whitecourt has provided FCSS programming to County residents since the early 1990s, and it continues to be the most significant provider of FCSS programming to County residents. FCSS services were expressly referenced and incorporated into the 2008 Cost Share Agreement. A summary of FCSS programming operated by the Town is provided by Ms. Grande in a spreadsheet at Appendix 7 of her witness statement. The Town's FCSS services include preventative senior, volunteer, community, early childhood and youth programming. The Town also provides prevention, therapy, intervention and court case coordination services related to family violence, family support, and Food Bank services for which it receives separate Provincial grants, and which County residents also

have access to. In cross-examination, Ms. Anderson agreed that the Town is the most significant provider of FCSS programming to County residents, and that a majority of the County's residents who use FCSS services would access them in the Town.

FCSS Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 2-4, 13; Appendix 7; pages 000002, 000004, 000026.

Cross-Examination of Heather Anderson on August 17, 2021 starting at 00:39:00.

153. While the County does have FCSS programming agreements with other municipalities (including the Town of Barrhead, and the Town of Mayerthorpe), the FCSS programming provided by those municipalities is less extensive than the programming provided by the Town, and that is reflected in the relatively small amounts provided by the County to those municipalities for FCSS-related services. For example, in 2019, the County contributed $12,500 to Barrhead's FCSS program, $7,100 to Mayerthorpe's FCSS program, and $133,846 to the Town's FCSS program. Ms. Anderson acknowledged that most of the FCSS programming accessed by County residents is provided by the Town, and otherwise she had no knowledge of the level of FCSS programming that is provided by the Mayerthorpe or Barrhead FCSS programs. The Town has no direct knowledge of the FCSS services provided in Mayerthorpe or Barrhead (the extent of the Town's knowledge regarding the County's arrangements with these municipalities for FCSS programming is described at paragraph 7 of Ms. Grande's witness statement), and to the extent the County wishes to reduce its contribution to the Town's FCSS programming on the basis of other programming agreements it has with other municipalities, it ought to have led evidence on the extent of the services actually provided by those other municipalities. The evidence that has been filed shows that the Town is undisputedly the most significant provider of FCSS programs and services to County residents, and while some FCSS services are available to County residents in Mayerthorpe and Barrhead, those services are less extensive given the relatively small amounts contributed by the County to those municipalities for access to their FCSS programming.

Reply FCSS Witness Statement of Heather Anderson dated July 31, 2021 at Appendix 10; page 000139.

Cross-Examination of Heather Anderson on August 17, 2021 starting at 00:40:00.

FCSS Witness Statement of Chelsea Grande dated June 30, 2021 at paragraph 7, Appendices 4-5; pages 000003, 000011-000024.]

154. The Town has compiled statistics which show the number of unique clients which reside in the Town and County and registered for the Town's FCSS programming between 2018 and 2020. These statistics show that between approximately 22% and 42% of registered clients in different programs reside in the County, and the raw user data shows that County clients are located both close to the Town, as well as further away in Fort Assiniboine and elsewhere. The Town acknowledges there are deficiencies in this user data, similar to deficiencies in other user data compiled for other cost share areas. For example, some users report PO boxes instead of residential addresses when they register for services, so the Town was required to estimate the percentage of PO boxes which are attributable to County residents based on information provided by the post office. Also, these statistics do not track drop-in users or attendees at special events, nor does it track the frequency at which registered users attend programs. For these reasons, it would not be possible to fairly or accurately calculate a cost share percentage based on actual user statistics, given inherent flaws in the data. However, at a minimum, the data does show that County residents do access the Town's FCSS services, including County residents who live as far away as Fort Assiniboine. This provides ample justification to support the Town's request for a catchment area comprising electoral districts 1-6 in the County.

FCSS Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 16-17; Appendices 9 and 10; pages 000004, 000029-000034.

155. Ms. Anderson acknowledges in her witness statement that "County residents generally access FCSS programming and services in the most convenient location for their needs." In cross-examination, Ms. Anderson acknowledged that a majority of the County's population lived within a short drive of the Town of Whitecourt – it follows that, for a majority of the County's population, it would be most convenient for them to access the FCSS services provided by the Town, as opposed to another municipality.

Reply FCSS Witness Statement of Heather Anderson dated July 31, 2021 at paragraph 27; page 000009.

156. While the County does receive FCSS grants from the Province of its own, the County does not provide direct FCSS programming itself, and instead it provides grants to community groups in both the Town and County in addition to providing funding to partner municipalities, principally the Town. Ms. Anderson confirms in her witness statement that the County does not provide much direct FCSS programming itself because of the practical and logistical challenges of providing programming to a relatively small population spread over a wide geographic area. Ms. Anderson's witness statement includes details regarding various grants provided by the County to different community groups, but most of these grants are not related to FCSS programming, and are more properly characterized as recreational or cultural programming and services (which are expressly excluded from the ambit of FCSS programs pursuant to the *Family and Community Support Services Regulation*). Ms. Anderson acknowledged that her witness statement references policies and grants that are not related to FCSS, and that grants and policies related to recreation, arts and culture fall outside of what is eligible for Provincial FCSS funding.

FCSS Witness Statement of Chelsea Grande dated June 30, 2021 at paragraph 6; pages 000002-000003.

Reply FCSS Witness Statement of Heather Anderson dated July 31, 2021 at paragraphs 7, 17; pages 000002-000005.

Cross-Examination of Heather Anderson on August 17, 2021 starting at 00:37:30; 00:45:40.

157. The evidence does show that, currently, the County contributes grant funding to nine specific organizations which provide services to County residents (although it is unclear, based on the evidence provided, whether all of the grants pertaining to these organizations are for FCSS-related services, or if such grants include other services outside of FCSS). Historically, the County has also contributed FCSS grant funding to some organizations located in the Town as well. The Town and County have historically operated their own grant programs separately from one another, and the Town proposes that this continue. These grant programs should not be considered or incorporated into the ICF.

Reply FCSS Witness Statement of Heather Anderson dated July 31, 2021 at paragraphs 13-17; Appendices 8-9; pages 000004-000005; 000110-000112.

FCSS Witness Statement of Chelsea Grande dated June 30, 2021 at paragraph 8; page 000003.

158. Overall, the Town submits it is fair for the County to continue contributing to the FCSS services provided by the Town directly based on a catchment area comprising electoral districts 1-6, because the Town is the most significant provider of FCSS services to County residents (and has been for many years). The evidence shows that FCSS services provided in Mayerthorpe and Barrhead to County residents are less extensive than what is provided in the Town, and that clients from all areas of the County do register for FCSS programs in the Town. Given the critical role the Town plays in delivering FCSS services directly to County residents, a broad catchment area comprising electoral districts 1-6 is appropriate in calculating the percentage of FCSS costs to be borne by the County.

VI. Forest Interpretive Centre

159. With respect to the Forest Interpretive Centre, the Town is asking the Arbitrator for an award confirming that capital and operating costs associated with this facility continue to be shared on a 50/50 basis as between the Town and County, excluding capital and operating costs associated with the portion of the facility which houses the Town's Council Chambers. The Town also submits the ICF should reconstitute the Economic Development Committee, with equal representation from both the Town and County, to oversee the facility.

160. This is the same arrangement that governed cost sharing for the Forest Interpretive Centre under the previous Cost Share Agreement, as set out in Clause 6.1 of that agreement:

> The Town and County will ensure appropriate representation is made through the attendance of one or more representatives from both the Town and the County at all of the meeting of the Joint Economic Development Committee which provides the following

joint services for the Town and the County which are cost shared on a 50/50 basis:

(a) Operation of the Tourism Booth;

(b) Joint economic development; and

(c) Operation and ownership of the Forest Interpretive Centre located on the lands legally described as 5-12-59-24 SE and 5-12-59-24 SW;

(i) For the purpose of this Agreement, ownership of the Forest Interpretive Centre shall include the building (excluding the Town of Whitecourt's Council Chambers and adjoining anteroom) and associated lands containing approximately 3 acres.

2008 Cost Sharing Agreement **[General Witness Statement of Peter Smyl dated June 30, 2021 at Appendix 11, page 000030]**

161. The Forest Interpretative Centre, and its associated facilities including Heritage Park and the Visitor Information Centre, were conceived as a joint development between the Town and County from its inception in 2000. The original permits to construct the Forest Interpretative Centre were issued by the County, and the lands on which it is situated were originally provincial lands which were later transferred to the Town for nominal consideration. While it is true that legal title for the Forest Interpretive Centre is only in the Town's name, the Province registered an Agreement on title under section 21 of the *Public Lands Act* at the time of transfer which limits the use of the lands to specific public purposes, namely:

1. Council Chambers and meeting rooms for Town of Whitecourt

2. Tourist Information Services

3. Economic Development Offices for the Town of Whitecourt and Woodlands County

4. Museum and archives for the Town of Whitecourt and Woodlands County

5. Display Park for Whitecourt Heritage Society buildings and artifacts

6. Recreation trails

7. Picnic area

8. Campground

9. Utility systems and facilities

Land Sale Agreement for FIC and Land Title Certificate for FIC **[Forest Interpretive Centre Witness Statement of Chelsea Grande at Appendices 6 and 7, pages 000021-000029]**

162. It is clear that, at the time the FIC lands were transferred to the Town, the intended use of the property was to benefit both the Town and County, and the use of the lands are limited for those purposes as set out in Appendix B of the Land Sale Agreement registered on title to the Lands. This is supported by the history of the FIC and its related facilities – the Town and County have both been involved in operating this facility (and equally sharing related costs) for many years. For instance, during the time that the facility was operated by the Whitecourt & District Chamber of Commerce, the agreement for management and coordination of services at the FIC was executed by the Chamber of Commerce, the Town and the County. Further, decisions regarding the ongoing operations at the FIC were routinely brought to the Joint Liaison Committee for discussion and approval.

Forest Interpretive Centre Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 7-18, Appendix 5, pages 000003-000006; 000018-000019.

163. The evidence is clear that the operations of the FIC, the Visitor Information Centre, and Heritage Park are intended to benefit residents of both the Town and County. The Visitor Information Centre provides information and other support for tourists visiting both the Town and County. In fact, it was the only accredited tourist information facility in the County until the Province ceased accrediting these facilities. Staff at the Visitor

Information Centre provide services for other facilities located in the County, including booking and payment services for the Eagle River Staging Area, the Groat Creek Recreation Area (which is otherwise owned and operated by the County), and managing snowline operations in the winter.

Forest Interpretive Centre Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 3-4, pages 000002-000003.

164. While another Visitor Information Centre is located in Fort Assiniboine, it does not provide the specific services noted above to facilities located in the County. Also, Fort Assiniboine is approximately a one hour drive from Whitecourt, so to the extent it promotes similar tourist activities in the County as the Visitor Information Centre located in the Town, tourists visiting the County nearer to Whitecourt are better served by a Visitor Information Centre located in Whitecourt, as opposed to further away in Fort Assiniboine. Tourists travelling via Highway 43 would come upon the FIC, but not travel through Fort Assiniboine.

165. The FIC also includes a Heritage Park, which houses historical buildings from both the Town and County, and a museum which includes artifacts and exhibits relevant to both the Town and County. These facilities especially benefit school-aged children who reside in both the Town and County, and who visit Heritage Park and the museum on school field trips. This is a unique facility that benefits residents in both the Town and County.

Forest Interpretive Centre Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 1-2, page 000002.

166. While it is difficult to obtain reliable user data regarding who is accessing services at the FIC, the limited information the Town was able to obtain from the secretary who works at the FIC suggests that most of the services provided pertain to activities and facilities located in the County.

Forest Interpretive Centre Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 8, page 000030.

167. The County has not put forward any credible evidence that the FIC and its facilities are not used by or benefit residents in the County. The only evidence provided was by way

of a witness statement sworn by Shannon Wharton, an Executive Assistant employed by the County. Ms. Wharton's evidence summary suggests that "the County has very rarely utilized the FIC, despite being a co-owner of it and paying for half of all expenses attributed to it by the Town." In cross-examination, Ms. Wharton confirmed she was only referring to the County's staff and Council utilizing the facility, and she had little knowledge otherwise of other activities which take place at the FIC.

Reply Witness Statement on the Forest Interpretative Centre by Shannon Wharton dated July 31, 2021 at paragraph 7, page 000004.

Recording of Cross-Examination of Shannon Wharton on August 16, 2021 at 2:02:23; see also: Recording starting at 1:49:00.

168. With respect to the Economic Development Committee referenced in the 2008 Cost Share Agreement (more recently known as the "Whitecourt Woodlands Tourism Committee"), the County unilaterally dissolved this committee in early 2020, shortly after the Cost Share Agreement lapsed. No reason was given to the Town for this decision. The Town is asking for an order that this committee be reconstituted for the purpose of planning joint economic development and tourism activities which benefit residents in both the Town and County. The Town believes the previous terms of reference which governed the composition of this committee (as set out in Appendix 10 of Ms. Wharton's evidence summary on the Forest Interpretive Centre) are fair and should be maintained going forward. Reconstituting the committee will provide a useful forum for both the Town and County to collaboratively plan and make recommendations on joint tourism and economic development activities, which would then be forwarded to Town and County councils for final approval.

Reply Witness Statement on the Forest Interpretative Centre by Shannon Wharton dated July 31, 2021 at Appendices 10, 12; pages 000069-000070; 000086.

169. The history of the FIC and its related facilities demonstrate that it was always intended to be a joint undertaking between the Town and County, with both parties sharing in the operating and capital costs equally (except for the portion of the facility which houses the Town's Council Chambers, for which the Town is solely responsible for all costs). The FIC provides unique and essential services which benefit residents in both the Town and

County, and as such the previous cost sharing arrangement should be maintained on an ongoing basis. To the extent the County wishes to be officially recognized as a co-owner of the facility on the Certificate of Title, the Town is not opposed to that.

VII. Library Services

170. The Town is asking the arbitrator to make an award to require the County to contribute to direct costs incurred by the Town to maintain the Town's library facility (including maintenance and life cycle costs), and other costs related to the delivery of library services in the Town and incurred by the Town. The Town is asking that the County's contribution to these costs be calculated on a catchment area that comprises electoral districts 2, 3, and 4 (which are the districts which directly border the Town). This is fair and equitable, as these districts comprise those residents who live closest to the Town (and in the case of district 2, the Town is the closest urban municipality for the entirety of that district), but it does not include electoral district 5, which has its own library in the Hamlet of Blue Ridge.

171. It is unclear whether the County has, in fact, come to an agreement with the Whitecourt and District Library Board regarding ongoing operating funding contributions, and some suggestion has been made by Mr. Frank that the County could elect to reallocate those funds to other libraries in the County instead. The Town disputes that the County can do this, and is asking for an award that either requires the County to enter into an agreement with the Library Board regarding contributions to operating funds from January 1, 2020 onwards, or to allow that matter to come back before the arbitrator at a later date.

Library Witness Statement of Chelsea Grande dated June 30, 2021 at paragraph 7; page 000003.

Reply Witness Statement on Libraries of Gordon Frank dated July 31, 2021 at paragraphs 3-5; page 000002.

172. The Town's library has offered library services to the area now known as Woodlands County continuously since 1984. Library services were expressly incorporated into the 2008 Cost Share Agreement, and County contributions to library services were calculated based on a revised catchment area which reflected the fact that a library is located in the

Hamlet of Blue Ridge within the County. County residents have full access to the Town's library, on the same basis as Town residents.

Library Witness Statement of Chelsea Grande dated June 30, 2021 at paragraph 2-3; page 000002.

173. The *Libraries Act* contains provisions which allows for the establishment of Intermunicipal Library Boards (see Part 1.1 of the *Libraries Act*). If an Intermunicipal Library Board is established, section 17.1 of the *Libraries Regulation* requires the participating municipalities to enter into an agreement which includes details of how municipal contributions to the Library Board are to be calculated. If the municipalities have not entered into an agreement to create an Intermunicipal Library Board, then there is no mechanism in either the *Libraries Act* or the regulation to compel an outside municipality to contribute to library services, even if those library services are used by and benefit residents of that municipality.

***Libraries Regulation*, Alta Reg 141/1998, Part 3, s 17.1 [Town's Brief at Tab 6]**

174. Importantly, the Town of Whitecourt Library Board is *not* established as an Intermunicipal Library Board under the *Libraries Act*, despite the fact that it services and benefits County residents. Town Bylaw 1524 does provide for a representative from the County to serve on the Library Board, but otherwise, there is no Intermunicipal agreement in place which calculates what contributions the Town and County must make to library services. Since there is no express agreement or mechanism in place which addresses municipal contributions to library services, such contributions could be addressed through the ICF process.

Witness Statement of Chelsea Grande Concerning Library Services at paragraph 4, Appendix 5.

175. The Whitecourt and District Library Board is not responsible for costs associated with the library building and grounds, including lifecycle maintenance, custodial, groundskeeping and planning for the construction of a new library facility to replace the existing facility. It is these costs that the Town is seeking a specific award for, as the unexecuted agreement between the County and Library Board only deals with contributions to operating costs.

These costs are solely borne by the Town, and as they are directly related to the provision of a shared service, the County ought to be required to contribute to those costs.

Witness Statement of Chelsea Grande Concerning Library Services at paragraph 6; pages 000002-000003.

176. Once again, the unexecuted agreement between the County and Library Board only covers contributions to operating expenses over a five-year period, and it expressly does not reference contributions to maintenance and facility costs which are not the Library Board's responsibility to begin with. The Town takes issue with Mr. Frank's suggestion in his witness statement that the County could elect to not contribute to the Library Board's operating funds, and instead reallocate those funds to other libraries it runs. The Whitecourt and District Library Board has always been accessible to residents in the County, and no principled reason has been given for why the County ought to be able to withdraw from contributing to the Town's library now. As has been set out in the Town's legal brief filed in response to the County's application to exclude certain witness statements from evidence, ICFs can and should encompass shared services which are funded by municipalities but delivered by third parties. Accordingly, should the County purport to refuse to contribute to the Library Board's operating costs, that matter ought to be returned again for a determination by the arbitrator on what the County's fair contribution to operating costs should be.

VIII. Whitecourt Cemetery

177. The Town is asking the Arbitrator for an order requiring the County to contribute to capital and operating costs associated with the Whitecourt Cemetery based on a catchment area that comprises all of electoral districts 1-6 (which would include all residents within an approximately 30 minute drive from Whitecourt).

178. The County has contributed to operating and capital costs associated with the Whitecourt Cemetery since November 1999, and the 2008 Cost Share Agreement expressly included reference to the Whitecourt Cemetery as something to be cost-shared based on a catchment area.

Cemeteries Witness Statement of Jennine Scheck-Loberg dated June 30, 2021 at paragraph 3, Appendix 2; pages 000002, 000008.

179. The Whitecourt Cemetery clearly benefits residents of both the Town and County. All Town and County residents (including those County residents who reside outside of the catchment area) are charged lower "resident" rates to purchase plots and niches than others who reside outside the Town and County. The cemetery includes consecrated lots for use by Roman Catholic residents, a "Field of Honour" for the burial of veterans, and other lots for general use. The Town tracked sales of plots and niches in 2020, which showed that purchases in that year were approximately equal as between the Town and County. Data from prior to 2020 is unavailable.

Cemeteries Witness Statement of Jennine Scheck-Loberg dated June 30, 2021 at paragraphs 6-13, 16-17; pages 000002-000005.

180. The County's reply evidence confirms that it approved a request made by the Town in 2020 to contribute to the purchase of a new columbarium.

Reply Witness Statement on Whitecourt Cemetery of Gordon Frank dated July 31, 2021 at paragraph 11, Appendix 10; pages 000003, 000021-000022.

181. The County ought to be required to contribute to both operating and capital expenses associated with the Whitecourt Cemetery, from January 1, 2020 forward. Operating costs include maintenance, insurance and administrative costs borne by the Town, and capital costs include costs to maintain existing improvements (as shown in the lifecycle plan developed for the cemetery) and to construct new improvements to expand the cemetery. The Town's evidence shows that it has further land available to expand the cemetery as more space is required, and that approximately 10 cemetery plots and 13 columbarium niches are purchased each year. Accordingly, the Town has budgeted for a cemetery planner to review the cemetery in 2021 to develop a plan for further expansion. This is a prudent step to ensure that the Whitecourt Cemetery continues to have sufficient space to meet resident demand for many years to come. Since County residents have the same preferential access to this cemetery as Town residents, the County ought to contribute to capital costs associated with both maintaining the existing infrastructure, and to further

expansions of the cemetery to ensure its capacity is sufficient to meet the needs of both Town and County residents.

Cemeteries Witness Statement of Jennine Scheck-Loberg dated June 30, 2021 at paragraphs 11-12, 22-25; pages 000003, 000004-000006 and related appendices.

IX. Fringe Roads

182. The Town is asking the Arbitrator to order that the County be required to pay for all costs associated with the construction and maintenance of fringe roads which are located in the Town, but primarily service and benefit County residents who commute to the Town, including portions of West Mountain Road, Tower Road and Blue Ridge Road. This is the same arrangement that exists under the Public Highway Agreement between the Town and County, which in the Town's submission, was never terminated and remains in effect.

1988 Public Highway Agreement **[Arterial and Collector Roads Witness Statement of Peter Smyl dated June 30, 2021 at Appendix 5, pages 000009-000012.]**

183. Under the 1988 Public Highway Agreement, the County was responsible for all costs associated with West Mountain Road and Tower Road. The County also assumed responsibility for costs associated with Blue Ridge Road, which is also located in the Town. Mr. Smyl's evidence summary includes a map which highlights the portions of these roads which the County has historically been responsible for constructing and maintaining.

Fringe Road Map **[Arterial and Collector Roads Witness Statement of Peter Smyl dated June 30, 2021 at Appendix 10, page 000027.]**

184. Under the 1988 Public Highway Agreement, the Town assumed responsibility for costs associated with Flats Road, which at the time was located in the County. In 2020, that area of the County was formally annexed by the Town. Accordingly, the Town is still paying for all costs associated with Flats Road, and there is no need for a separate agreement with the County to recognize this.

Arterial and Collector Roads Witness Statement of Peter Smyl dated June 30, 2021 at paragraph 11, page 000003.

185. The County's rebuttal evidence, provided by Andre Bachand, suggests that the Public Highway Agreement was terminated sometime in 2020. While his rebuttal evidence summary appends meeting minutes from County Council which directs Administration to "send a formal letter to the Town of Whitecourt stating that as per previous notifications Woodlands County will be withdrawing services from the Public Highway Agreement," there is no evidence that such a letter was ever sent by the County or received by the Town. In any case, the Public Highway Agreement does not include a termination clause which would allow the County to terminate the agreement in this fashion.

Reply Evidence on Roads of Andre Bachand dated July 31, 2021 at Appendix 4, pages 000011-000012.

186. Mr. Bachand's reply evidence indicates he sent an email to Jennine Loberg in August 2020, before the motion pertaining to the Public Highway Agreement had been passed by County Council, advising that "the County did not have an agreement for the sand/salt shed and road maintenance in place at that time" and that the County "would not be providing winter maintenance on West Mountain Road, Tower Road, and the Old Blue Ridge Highway in the winter of 2020-21." Again, this was a unilateral representation made by the County to the Town, and the Town did respond by conducting winter maintenance on these roads. Since these roads are located in the Town, the Town could face liability in the event no winter maintenance was done on those roads. Under section 18 of the *Municipal Government Act*, municipalities have the direction, control and management of all roads within their borders. Section 531 of the *MGA* confirms municipalities may be liable for injuries to persons or damage to property caused by snow, ice or slush on roads if the municipality is grossly negligent. In the face of the County's refusal to honour the terms of the Public Highway Agreement, the Town had little choice but to conduct winter snow removal and maintenance on these fringe roads to avoid potentially being liable in an action for gross negligence.

***Municipal Government Act*, RSA 2000, c M-26, ss 18, 531 [Town's Brief at Tab 1]**

187. The surrounding evidence confirms that the County clearly saw some benefit to these fringe roads for its residents in recent years. Mr. Smyl's evidence shows that the County

conducted base work and paving on these roads as recently as 2014, and Mr. Bachand agreed in cross-examination that the County undertook these improvements without consultation with the Town. The Town does not dispute that the County has the right to upgrade fringe roads it is responsible for, including the work done on West Mountain Road and Tower Road, but it is clear the County would not have undertaken significant upgrades to these roads at its sole expense if it did not see a direct benefit to its residents.

Arterial and Collector Roads Witness Statement of Peter Smyl dated June 30, 2021 at paragraph 7, page 000003.

Recording of Cross-Examination of Andre Bachand on August 16, 2021 at 1:22:20.

188. Overall, the evidence supports that the County should continue to be responsible for all maintenance and construction costs associated with West Mountain Road, Tower Road and the Old Blue Ridge Highway. As was confirmed in Mr. Bachand's cross-examination, there is little development adjacent to these roads, and they connect the Town to residential areas in the County. Mr. Smyl's witness statement on fringe roads includes a map which shows residential developments in the County on the fringe of the Town highlighted in orange – it is clear that these roads play a critical function in connecting residential areas of the County to the Town. The fact there is little development within the Town adjacent to these roads supports their function as being connector roads to the County, as opposed to otherwise servicing or benefitting Town residents.

Arterial and Collector Roads Witness Statement of Peter Smyl dated June 30, 2021 at paragraph 12, Appendix 11 pages 000003; 000028.

Recording of Cross-Examination of Andre Bachand on August 16, 2021 at 1:18:50.

189. The County has put forward no credible evidence to suggest that it should no longer cover costs associated with West Mountain Road, Tower Road and the Old Blue Ridge Highway. In cross-examination, Mr. Bachand stated that "given that the Town annexed the portion of Flats Road that they were maintaining, basically, there was no reason for us to keep maintaining their roads if they were not maintaining any of our roads." If this is truly the reason why the County refused to honour its obligations under the Public Highways Agreement in 2020, that constitutes a particularly poor excuse that is not tied to any rational change in circumstances that would justify the County withdrawing from

obligations it had agreed to and abided by for many years. The Public Highways Agreement was not a "quid pro quo" whereby the Town arbitrarily agreed to maintain some of the County's roads, and the County agreed to maintain some of the Town's roads in exchange – rather, the agreement requires the parties to maintain specific roads that primarily benefit their own residents, regardless of which municipality they are located in. The fact that Flats Road was eventually annexed by the Town (which means the Town continues to service that road, as it has done for many years) has no bearing on the County's obligations to otherwise construct and maintain roads located within the Town that primarily service County residents.

Recording of Cross-Examination of Andre Bachand on August 16, 2021 at 1:27:51.

190. In both Mr. Bachand's and Mr. Smyl's cross-examinations, evidence was put forward suggesting that Town residents and businesses do make use of these fringe roads on occasion. The Town is not disputing that, but in any event, the evidence put forward is clear that these three roads are primarily used by County residents to access the Town. While some Town residents and businesses may make limited use of those roads on occasion, it is important to note that County residents regularly use other roads located in the Town for which the Town receives no cost contribution from the County. For instance, Mr. Smyl's evidence confirms that 44% of the Town's public road system is classified as "arterial and collector roads", and these roads are regularly used by County residents for various reasons (such as, for example, to attend schools located in the Town, or to shop or otherwise attend at businesses and services located in the Town). The majority of the County's residents live in close proximity to the Town, and it is clear they would make regular use of those roads in accessing such services. The Town is not seeking cost sharing for these other roads, but the Town submits conversely that any incidental use by Town residents of the fringe roads should not detract from the fact that these particular roads primarily benefit and are used by County residents, and the County ought to be responsible for their maintenance, construction and upkeep, as it has been doing since the 1980s.

Arterial and Collector Roads Witness Statement of Peter Smyl dated June 30, 2021at paragraph 13; page 000003.

191. The Town submits that it is equitable for the County to continue to be required to cover all maintenance and construction costs associated with these fringe roads, which the County has maintained and serviced for many years. If the arbitrator determines that the County ought to cover these costs, then the Town is asking for an award requiring the County to retroactively reimburse the Town for costs incurred to maintain these roads going back to January 1, 2020, since the Town had no choice but to step in and do this maintenance work itself at its own expense when the County indicated it no longer intended to abide by the terms of the Public Highways Agreement.

X. Ecole St. Joseph School

192. With respect to the Ecole St. Joseph School, the Town is asking for an award requiring the County to contribute to ongoing debenture payments associated with necessary infrastructure constructed by the Town to enable the expedited construction of the school based on a catchment area that comprises Electoral Districts 2, 3, and 4 (that is, those electoral districts which directly border the Town and from which students in the County who attend the school commute).

193. The Town submits that this request is reasonable in the circumstances because the County at all times was a partner in tandem with the Town in planning for the school, and it was necessary for the Town to incur significant development costs on its own to service the school to proceed with this project, which is something which directly benefits County residents. The school clearly benefits the County, since students from the County attend this school, and others located in the Town. The school provides an essential service which benefits residents in the Town and County, and this particular piece of infrastructure could not have been constructed without the Town putting up significant capital funding in the form of debentures to finance related services, including utilities and roads. While it is true that the school itself is not funded or operated by either municipality, the infrastructure costs incurred by the Town to enable the school's construction represent a

significant outlay that is directly connected to the delivery of shared services out of the school, and therefore is properly considered in the context of an ICF.

Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at paragraphs 1-3; page 000002.

194. The Town submits these types of costs fall within the intended meaning of an "intermunicipal service" under Part 17.2 of the *MGA*. Section 708.27 of the *MGA* confirms that ICFs are intended:

a. To provide for the integrated and strategic planning, delivery and funding of intermunicipal services,

b. To steward scarce resources efficiently in providing local services, and

c. To ensure municipalities contribute funding to services that benefit their residents.

MGA, s 708.27 **[Town's Brief at Tab 1]**

195. Section 708.29 sets broad parameters for what must be included in an ICF:

> 708.29(1) A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.
>
> (2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.
>
> (3) Nothing in this Part prevents a framework from enabling an intermunicipal service to be provided in only part of a municipality.
>
> (3.1) Every framework must contain provisions establishing a process for resolving disputes that occur while the framework is in effect, other than during a review under section 708.32, with respect to
>
> (a) the interpretation, implementation or application of the framework, and

> (b) any contravention or alleged contravention of the framework.
>
> (4) No framework may contain a provision that conflicts or is inconsistent with a growth plan established under Part 17.1 or with an ALSA regional plan.
>
> (5) The existence of a framework relating to a service constitutes agreement among the municipalities that are parties to the framework for the purposes of section 54.

MGA, s 708.29 **[Town's Brief at Tab 2]**

196. Section 708.29 speaks to describing services "that benefit residents in more than one of the municipalities that are parties to the framework." The term "service" or "intermunicipal service" is not defined in the *MGA* or elsewhere (although it was previously defined under the now-repealed *Intermunicipal Collaboration Framework Regulation* as including "any program, facility or infrastructure necessary to provide a service"), but read in context, this term ought to be broadly interpreted to include any service which is intermunicipal in nature and benefits outside municipalities, which is consistent with the direction in section10 of the *Interpretation Act* (which calls for legislation to be interpreted broadly and purposively to achieve its objectives), and there is no limiting language in the legislation which expressly excludes capital costs, or costs associated with providing infrastructure which is essential to deliver a shared service to multiple municipalities from consideration in an ICF.

Intermunicipal Collaboration Framework Regulation, Alta Reg 191/2017 (repealed) **[Town's Brief at Tab 7]**

Interpretation Act, RSA 2000, c I-8, s 10 **[Town's Brief at Tab 8]**

197. It is true that section 708.29(5) indicates that "the existence of a framework relating to shared services constitutes agreement among the municipalities that are parties to the framework for the purposes of section 54." Section 54 of the *MGA* states:

> 54(1) A municipality may provide outside its municipal boundaries any service or thing that it provides within its municipal boundaries

> (a) in another municipality, but only with the agreement of the other municipality, and
>
> (b) in any other location within or adjoining Alberta, but only with the agreement of the authority whose jurisdiction includes the provision of the service or thing at that location.
>
> (2) Without limiting the generality of subsection (1)(b), a municipality may enter into an agreement respecting services with an Indian band or a Metis settlement.

MGA, s 54 **[Town's Brief at Tab 1]**

198. Section 54 refers to situations where a municipality provides services outside its borders with the consent of the neighbouring municipality. It makes sense that Part 17.2 references this section, since ICFs will in some cases allow for one municipality to provide services physically outside its borders, and in those cases, the ICF will act as an agreement under section 54. However, the inclusion of this reference cannot be read as limiting ICFs to only services that are physically offered by one municipality outside of its borders – that would frustrate the objective of ICFs set in section 708.27(c), which is "to ensure municipalities contribute funding to services that benefit their residents." There are many examples of services offered in one municipality which benefit residents in other municipalities, even where the services themselves are only offered within the physical borders of the "host" municipality. For instance, the Town's recreation services have, for many years, been accessible to and benefit residents in the County, even though the Town only operates its own recreational services within its borders. Accordingly, Part 17.2 (and, more specifically, the reference to section 54 of the *MGA*) cannot be read as limiting ICFs to only considering shared services offered by one municipality outside its physical borders – ICFs are intended to be broadly construed to encompass any service which benefits the residents of more than one municipality. Accordingly, the Town submits that, provided there is a demonstrative benefit to residents in another municipality, a service may be considered in the context of an ICF.

MGA, s 708.27 **[Town's Brief at Tab 1]**

199. Applied to the infrastructure costs incurred by the Town which were necessary to construct the St. Joseph's School, these costs clearly conferred a benefit on County residents by enabling the construction of a new school which services the County. In these circumstances, where one municipality incurs significant infrastructure costs directly connected to providing a service which benefits residents in another municipality, the Town submits that the requirements of Part 17.2 are met for the allocation and distribution of such costs to be considered in an ICF.

200. The costs incurred by the Town to construct necessary improvements in the Athabasca Flats East subdivision to allow for the school to be constructed are summarized at Appendices 25 and 26 of Ms. Loberg's witness statement. Overall, the Town took out three debentures to finance these improvements, which are summarized at Appendix 27. The calculations in Appendix 25 show that core costs for all infrastructure associated with the school (identified as "Institutional" on this spreadsheet) are $115,016 per acre, including all roads, pathways, power, sewage, storm and water improvements. Since the school site itself is 9.8 acres large, overall costs for these improvements attributable to the school are $1,127,152. As indicated above, the Town is seeking to have the County contribute its proportionate share of these costs based on a catchment area comprising electoral districts 2, 3 and 4.

Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at paragraphs 26-27, Appendices 25-27; pages 000006, 000125-000132.

201. The history of this school shows that the County was involved at the outset in planning for this school in conjunction with the Province, and the Living Waters Separate Schools division. In October 2006, the County expressed support for the Town's efforts to secure land on the fringe of the Town to construct "future joint projects." The Town subsequently circulated a Preliminary Discussion Paper to the County regarding the Athabasca Flats East development (where the Ecole St. Joseph School was ultimately constructed), which confirmed that a school would likely need to be constructed in this area. The Discussion Paper expressly stated that the proposed school site "will have students arriving from

throughout the community, not a neighbourhood level facility." The following year, an Area Structure Plan was passed by the Town with respect to the Athabasca Flats subdivision.

Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at paragraphs 5-8; pages 000002-000003.

October 19, 2006 Letter from County to Town **[Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 3; page 000009]**

Preliminary Discussion Paper **[Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 4; pages 000015;000019]**

Town of Whitecourt Bylaw 1403 **[Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 5; pages 000030-000031.]**

202. For a time, the Town and County discussed combining a high school with a Performing Arts Centre. The County's evidence includes meeting minutes from the Joint Liaison Committee and RFDs from both the Town and County from between 2006 and 2009 discussing this joint project, and these meeting minutes demonstrate that the County was actively involved in discussions concerning this project during this timeframe.

Reply Witness Statement of Shannon Wharton dated July 31, 2021 at paragraph 6, Appendices 2-14; pages 000002-000004, 000008-000096.

203. However, after the initial vision of the project was split into two components located at two sites (with the Performing Arts Centre becoming the Municipal Centre, and the school becoming the Ecole St. Joseph School), the County continued to be closely involved in the planning and development of both projects. Representatives from the Town and County, along with representatives from the school division and the Province, participated in a Value Scoping Workshop in November 2012 which ultimately led to the decision to construct the Ecole St. Joseph School.

Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at paragraph 9, Appendix 6; pages 000003, 000032-000033.

204. The Province announced funding to construct the Ecole St. Joseph School in January 2014, and the Town initiated discussions with respect to constructing necessary infrastructure improvements to allow for that construction, which included the County. The Town's letter to the Province dated January 24, 2014 indicated the Town will commit

to providing access and services to the future school site "once negotiations with Living Waters CRD No. 42, Woodlands County, and all other partners are finalized." In May 2014, both the Town and County agreed to cover costs to hire a Project Coordinator who would oversee the Ecole St. Joseph School development.

Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at paragraphs 10-12, 14, Appendices 7-8, 10-11, ; page 000003, 000034-000037.

205. The Town and County participated in a meeting with the Province and school district in September 2014 which committed the parties to a number of action items to allow for construction of the school to proceed. In November 2014, both the Town and County wrote a joint letter to the Minister of Education confirming that both municipalities "are committed to a 'community learning campus concept' which included the Ecole St. Joseph School site.

Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at paragraphs 13, Appendices 9, 12; pages 000003-000004, 000038, 000043.

206. A Business Case report was prepared in 2014 by the Community Learning Campus Partnership Committee (which included representatives from both the Town and County, and is referred to herein as the "CLCP"). At that time, the vision was still to create a single campus which would incorporate the Ecole St. Joseph School with the Performing Arts Centre and a branch of Norquest College. Nevertheless, the Business Case report discussed the Ecole St. Joseph School, and recognized that proceeding with construction would require the Town to construct infrastructure for that school in the short term. Accordingly, it was recognized that, while the final project at this site may incorporate other elements in the future, there was a need to construct infrastructure necessary for the school's construction to proceed based on the grant approval by the Province, and the needs of the school district.

> The initial approval of the replacement project for Ecole St Joseph School based completion of the project by June 2016. The location of the property for the new school is in a location that is currently under development. The site is large enough for the Community Campus and future growth opportunities; however it is in a raw state

> and still requires preparation and servicing. The Town of Whitecourt is currently engineering the project but a realistic timeframe for site readiness is not until May 2015. As such Living Waters sent a request to the Province, which was subsequently approved, to relax the timing of the completion of the project to a timeframe within the 2016/17 school year.

Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 13; page 000059.

207. The Business Case established a number of sub-committees which would manage the entire project, including a Steering Committee which had overall control over the project, and involved members from both the Town and County, and an Industry/P3 Sub-Committee which would meet with potential partners and deal with funding issues for the project.

Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 13; page 000061.

208. The Steering Committee of the CLCP met regularly between 2014 and 2015, and infrastructure required to service the Ecole St. Joseph School site was frequently discussed, including:

a. On June 17, 2014, the Town advised that it would move ahead with construction of this infrastructure and was looking into options for financing the infrastructure;

b. On July 7, 2014, the Town, County and school district agreed to a Partnership Cost sharing formula which saw each party agree to contribute funds towards the overall partnership. While this did not include the costs associated with infrastructure which the Town was pursuing, this clearly shows that the County acknowledged it was a partner in the overall project and was willing to share in costs associated with it. At that same meeting, the parties discussed the possibility of simply modernizing the old St.

Joseph School if site servicing could not proceed, and the entire Partnership (including the County) agreed that was not acceptable.

c. On August 11, 2014, the Town advised the committee that it was proceeding to tendering, and it would involve $10 million in carrying costs.

d. On September 3, 2014, the minutes reiterate that the County was included as a partner in the overall project, and that servicing would proceed as modernizing the old school was not a palatable option.

e. On January 9, 2015, the minutes reiterate that construction of the Ecole St. Joseph School needs to be completed before other phases are considered, given tight timelines for construction mandated by the Province, and included an action item for the Town and County to meet to discuss the overall site plan.

f. On March 11, 2015, the minutes show that work on the necessary infrastructure was proceeding, with water and sewer lines to be tendered in two weeks, and that a Master Plan for the area will need to be developed.

Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at Appendix 14; pages 000067-000101.

209. In 2015, the County passed motions supporting the Town's application for grants pertaining to the Athabasca Flats development, which included funds to help defray costs associated with necessary infrastructure to allow the school to be constructed. On May 8, 2015, the Town advised the Project Coordinator that was jointly retained by the Town and County and it would proceed with constructing the necessary infrastructure, and the County was copied on that correspondence.

Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at paragraphs 18-19, Appendices 15-17; pages 000004-000005, 000101-000111.

210. It is clear that, throughout the process leading to the construction of infrastructure by the Town to service the school site, the County was involved, and was recognized as being a partner with the Town in developing the school site. While it is true that, at the time the

infrastructure was constructed, the CLCP and its various members were still envisioning constructing the Performing Arts Centre and a satellite campus for Norquest College at the same site, the CLCP Steering Committee minutes are also clear that development of the Ecole St. Joseph School Site was accelerated (including construction of necessary infrastructure to allow for that construction to proceed) because of tight timelines imposed by the Province to construct the school. Accordingly, that portion of the project proceeded independently of the other components, and the fact that the Performing Arts Centre was later moved to a different location (at the Municipal Centre) is irrelevant to the fact that the County knew that infrastructure had to be expedited to accommodate construction of a school which they supported. The fact that the County also agreed that modernizing the old Ecole St. Joseph School was not acceptable demonstrates that it agreed to constructing the new school, and everything that entails.

211. It is also clear that the Town and County had no choice but to accelerate construction of this infrastructure in order to meet construction timelines imposed by the Province and school district for building the new school. As Ms. Loberg recognizes in her witness statement, the normal procedure for developing subdivisions would require the private developer to provide a fully-serviced school site to the municipality, without the municipality incurring costs for construction of that infrastructure. That was simply not possible in this case – all parties (including the County) agreed that a new school had to be constructed based on an accelerated timeline, so the natural consequence of that decision is that infrastructure that would normally be built by a private developer would instead have to be borne by the Town. This is a consequence that the County was fully aware of.

Ecole St. Joseph School Witness Statement of Jennine Loberg dated June 30, 2021 at paragraph 1, page 000002.

212. While it is true that no formal written agreement was drafted between the Town and County with respect to constructing infrastructure to allow for the Ecole St. Joseph School site to be developed, that is not a precondition established in Part 17.2 to require cost sharing between municipalities. All that is required is that one municipality provides services which benefit another municipality, and if so, the ICF is intended to determine

how costs pertaining to those services are to be fairly allocated. As indicated above, it is clear the County believed the development of the Ecole St. Joseph School was in its residents' interest (given its participation as a partner on the CLCP committee, and its numerous statements of support with respect to the school project). The Town incurred substantial costs that were necessary to construct this school, and those costs are ongoing in the form of debenture payments. It is fair and reasonable that the County be required to contribute to those costs, as they were incurred by the Town to provide services which directly benefit County residents, given students who reside in the County attend the school.

XI. Municipal Centre

213. For the Municipal Centre which is to be constructed in the Town, the Town is asking for an award to require the County to contribute to the construction costs of this facility, as it has been in development for over ten years (in conjunction with the County), and the facility demonstrably benefits residents of both the Town and County. In particular, the Town is asking that the County contribute to costs associated with the Performing Arts Centre component of the facility based on a catchment area comprising the entire County (since there is no equivalent facility anywhere in either municipality), and to contribute to costs associated with the new library component based on a catchment area comprising Electoral Districts 2, 3 and 4, as those electoral districts directly border the Town. The Town is not asking for any contribution from the County for the component of the Municipal Centre containing administration offices and Council Chambers to be used exclusively by the Town.

214. The Municipal Centre has been in development since 2008. Originally, the Performing Arts Centre portion of this project was conceived as part of a joint project incorporating what is now the Ecole St. Joseph School, and a branch campus of Norquest College (which will no longer be proceeding). As is detailed in the section of this argument pertaining to the Ecole St. Joseph School, that project has been constructed on lands in the Athabasca Flats subdivision. The Municipal Centre is intended to be constructed on municipally-owned lands in the center of Town. The history of the Municipal Centre

project is detailed in the witness statement of Chelsea Grande, as well as in the Reply evidence of Shannon Wharton filed by the County. The Town submits this evidence shows that the County has been intimately involved in this project from the outset, and that this project has always been conceived as a regional project intended to benefit residents of both the Town and County (save for the portion of the facility dedicated to administration offices and Council Chambers for the Town). Some important highlights from the history of this project are summarized below.

Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 1-20 and associated Appendices; pages 000002-000005.

Reply Municipal Centre Witness Statement of Shannon Wharton dated July 31, 2021.

215. The Municipal Centre includes principally three components:

a. A new public library for the Whitecourt and District Library Board;

b. A Performing Arts theatre seating up to 600 patrons, along with a multipurpose room, kitchen and bar facilities, and a community art gallery; and

c. New administration offices and Council Chambers for the Town of Whitecourt.

BR2 Municipal Centre Concept Design Report **[Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 16; pages 000520-000596.]**

216. The facility is intended to be used and accessible to residents in the Town and County (save for the administration office and Council Chambers), and to accommodate a diverse range of activities and programming for all ages, which are summarized in Ms. Grande's witness statement, and outlined in the Webb Management report.

Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 26-33 and associated Appendices; pages 000007-000008.

217. From this project's inception, both the Town and the County have commissioned reports and engaged in various community engagement activities to ascertain the need for a Performing Arts Facility, and the project ultimately proceeded based on a determination that there was sufficient demand in both the Town and County to justify the construction

of this facility. In 2008, community members in both the Town and County participated in an assessment led by consultants from the Alberta Recreation and Parks Association, which sought feedback on priorities for recreational and cultural facilities, both those that existed and into the future. This process ultimately identified an "Arts and Culture Centre" as being the top priority for future development, since the lack of arts and cultural programming was identified as a serious deficiency in amenities available to residents in the region. This process also identified that it was a priority to collaborate and "work together." It was in this spirit that efforts leading towards the construction of a Performing Arts Centre began.

Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at paragraph 7; Appendices 4 and 5; pages 000003, 000015-000031.

218. The Town formed an Arts and Culture Committee in 2009 which included representation from the County. This committee commissioned Bannister Research to undertake a survey of Town and County residents which found strong support for an Arts and Culture Centre. In particular, 72% of respondents confirmed either they or a member of their household had attended as a spectator to at least one arts-related activity in the preceding year. The survey also found that 42% of respondents were highly likely to use a performing arts facility, 32% were highly likely to use a visual arts facility, 29% were highly likely to use an art gallery, and 38% were likely to use multipurpose rooms and meeting space. The "performing arts" and "multipurpose and meeting space" components of the project were identified as the top two priorities in this survey.

Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 6; pages 000032-000033.

219. The Business Plan prepared by Webb Management Services Inc. in 2016 details the intended scope and use of the project, and its anticipated impact on the Town and County. This Business Plan was prepared at the express request of both the Town and County. It clearly shows that the project is intended to be used by and benefit residents in both the Town and County. Webb Management conducted a needs assessment which focused on the feasibility of constructing a Performing Arts Centre in the Town, and it concluded there was sufficient demand within both the Town and County to justify the facility's

construction, even without attaching the project to a school, and recommended that additional multi-purpose rooms be incorporated into the project.

Webb Consulting Arts and Culture Centre Business Plan [**Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 15; pages 000394-000395, 000441-000443.]**

Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at paragraph 13; Appendices 11-12; pages 000003, 000345-000347.]

220. The Webb report also refers to a feasibility study prepared by RC Strategies in 2011. This study was prepared at the request of both the Town and County to evaluate whether it was feasible to proceed with the construction of a performing arts facility in the Town to service residents in both the Town and County. RC Strategies found that "[r]esidents and groups within the Whitecourt region have requested that infrastructure be provided for performing arts activities", and this was demonstrated through a variety of engagement activities, including telephone surveys, open houses, and user group surveys. In reviewing the market as a whole, RC Strategies noted that the region's population is younger than the provincial average, and that existing facilities are not ideal for larger events or performing arts shows. RC Strategies also determined that this project aligned with the strategic planning of both the Town and County. In evaluating potential operating concepts and funding sources, RC Strategies noted that regional cost sharing and municipal funds would be required to fund construction. RC Strategies' conclusions were affirmed by Webb Consulting in its 2016 report.

Webb Consulting Arts and Culture Centre Business Plan [**Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 15; pages 000411-000414.]**

RC Strategies Feasibility Study **[Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 7; pages 000095, 000097, 000100]**

221. In reviewing comparative facilities in the Town and County, Webb Consulting found that the quality of existing facilities was poor, rent was low but cost of access was high, existing facilities lack technical accommodations for performances and meetings and few facilities also offer programs for active arts participation. This was cited as a strong rationale to construct a new facility which could house larger performances and events than what could be practically accommodated at existing facilities.

Webb Consulting Arts and Culture Centre Business Plan [**Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 15; page 000437.]**

222. The Webb Consulting Report and the report prepared by RC Strategies both concluded there was sufficient demand in both the Town and County to warrant constructing a Performing Arts Centre, and both reports entailed significant community engagement to reach those conclusions. In 2016, the design process was initiated, wherein BR2 Architecture was selected as the project consultant.

223. A needs assessment was also conducted by the Whitecourt Library to explore the need and feasibility of constructing a new library in the Town to service residents in both the Town and County. The County was consulted and interviewed as part of that assessment. The report, prepared by Group2 Architecture, concluded that the existing library was inadequate and at the end of its useful life, and recommended exploring several options to address this, including "[p]artnership with a new performing arts centre, town hall, school facility or senior's centre."

Group2 Architecture Library Needs Assessment Report [**Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 9; pages 000243-000244, 000248-000249].**

224. In 2018, the Town applied for ICIP funding to defray construction costs for the Municipal Centre, and it listed the County as a partner on the project. The Town and County held a joint Council retreat in June 2018 wherein the need for a new library was discussed (and the Group2 Architecture report was presented), as well as the progress to date on the Municipal Centre. As part of the action items discussed, a public education plan was proposed to begin in August 2018.

Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 17; pages 000597-000603.

225. In October 2018, the County sent a letter to the Town advising that it would not participate in public education efforts pertaining to the Municipal Centre because "Council is concerned that participation by Woodlands County in a joint public education program on the Municipal Centre might convey an implied message, to both Town and County residents, that the County supports all three components of the Municipal Centre."

Notably, the letter did not advise that the County was not willing to be a partner in the project at all, nor did it specify which portion of the Municipal Centre project it did not support. Despite these vague allusions to not being completely supportive of all aspects of the project, the County has continued to actively participate in committee meetings pertaining to the planning and development of the Municipal Centre, including as recently as June 2, 2021.

Reply Witness Statement of Shannon Wharton dated July 31, 2021 at Appendix 16; page 000099.

Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 18; page 000604.

226. Currently, detailed design of the Municipal Centre is underway, and the federal government confirmed $15.6 million in funding for the project in October 2020. In cross-examination, Ms. Grande confirmed that construction is anticipated to commence in 2022, with land purchasing and detailed design to be completed in 2021.

Municipal Centre Witness Statement of Chelsea Grande dated June 30, 2021 at paragraph 20; page 000005.

227. Overall, the record clearly shows that the Performing Arts and Library portions of the Municipal Centre project have always been conceived as benefitting residents of both the Town and County. The County has been involved from this project's inception in engaging residents and determining the feasibility of this project, and in designing it. At no time has the County expressly and unequivocally indicated it was uninterested in proceeding with this project, beyond the letter in October 2018 which vaguely alluded to the County not agreeing with every component of the project. Despite that letter, the County has continued to be actively represented and involved on joint committees working on planning and developing this project.

228. This project has been studied extensively, with the involvement of the Town and County, for over a decade. At this stage, with $15.6 million in federal funding already committed, the Town submits that it is in the best interests of the Town and County for the project to proceed.

229. This project meets the requirements set in Part 17.2 to require cost-sharing under the ICF – the project from its inception was conceived to be used by and benefit residents of both municipalities. As is detailed in the section of this argument pertaining to the Ecole St. Joseph School, as well as in the Town's Brief filed July 23, 2021 in response to the County's interim application to exclude evidence, feasibility studies confirm that the Performing Arts Centre would be unique within the Town and County, and confirmed interest among groups and individuals in both municipalities to use this type of facility. Given the clear benefits to both municipalities, the Town submits it is fair and appropriate that the County be required to contribute to project and construction costs for the Performing Arts Centre component of the project based on a catchment area that comprises the entire County. For the Library component, the Town recognizes that the County has its own libraries, so a more limited catchment area comprising the three electoral districts which directly border the Town is fair to calculate the County's contribution for that portion of the project. It is also fair that the County not be required to contribute to the portion of the project which houses the Town's administrative offices and Council Chambers.

XII. Rail Crossings

230. The Town is asking for an order to require the County to contribute to costs associated with maintaining rail crossings in the Town, shared on a 50/50 basis. This is fair because the rail crossings in the Town impose significant costs on the Town, while the County receives proportionately a greater benefit from the railway as businesses in the County utilize the railway more than businesses in the Town, and the County derives significant direct revenues from a gravel pit which increased rail traffic through the Town. Critically, these infrastructure costs were previously defrayed by linear revenue sharing which was incorporated into the previous Cost Share Agreement, and was unilaterally terminated by the County. Since linear revenue sharing was unilaterally terminated by the County (and it is beyond the arbitrator's jurisdiction to reinstate), it is fair and appropriate that costs associated with rail crossings borne by the Town be cost-shared with the County under the new ICF.

231. The Town is responsible for all costs associated with rail crossings over local roads, which includes three rail crossings in the Town (at 47 Street, Dahl Drive, and 51 Street). The Canadian Transportation Agency has the power to order the Town to construct improvements to these rail crossings as required for the railway to operate, and the Town is responsible for all regular maintenance associated with these rail crossings. For example, the Town was required to construct a new pedestrian overpass at the 47 Street crossing, and construct other related improvements to its rail crossings, all at its own expense to account for increased rail traffic (including a road crossing warning system, and fencing). The Town is also responsible for all regular maintenance which occurs at these rail crossings, which are invoiced to the Town by CN on a monthly basis.

Rail Crossings Witness Statement of Peter Smyl dated June 30, 2021 at paragraphs 3-4, 7, 10 Appendices 1, 9; pages 000003-000004, 000006-000009, 000034.

232. Overall, the availability of rail services in the region provides a greater benefit to businesses located in the County, as compared to the Town. While compiling comprehensive statistics on rail volumes attributed to businesses in the Town and County is difficult, the Town has compiled some statistics on estimated rail volumes from 2019. The Town estimates that approximately 80% of rail traffic used by businesses in the Town, the County and the MD of Greenview are attributable to businesses located in the County. While the Town acknowledges that its statistics are incomplete and are in some instances based on estimates provided by the companies themselves, these statistics do support the general proposition that businesses in the County utilize the region's rail system at a far higher rate than businesses in the Town.

Rail Crossings Witness Statement of Peter Smyl dated June 30, 2021 at paragraph 9, Appendix 8; pages 000004, 000031.

233. In 2009, the County established a new gravel pit in its borders, for which it receives significant revenues through the imposition of a Community Aggregate Payment Levy, but this also had the effect of increasing rail traffic and associated costs to maintain rail crossings in the Town. This increased rail traffic is what led to CN requiring the Town to construct a new pedestrian overpass. Increased costs borne by the Town as a result of increased rail traffic was discussed at the meeting of the Joint Liaison Committee on

January 29, 2009, and again at a meeting on October 20, 2011, wherein the following was noted in the minutes:

> The committee discussed the rail costs to the Town of Whitecourt including costs to install a pedestrian crossing and rail signals as required by CN. Other areas discussed included the potential for increased rail due to gravel extraction, CN's ownership of the land and their requirements and gravel levy.
>
> MOVED by Mayor Rennie that administration forward a request to Council for expense sharing for the pedestrian crossing.

Rail Crossings Witness Statement of Peter Smyl dated June 30, 2021 at paragraphs 5-6, Appendices 3, 6; pages 000003-000004, 000012-000016, 000024-000028.

234. The County's gravel pit, and associated royalties via the Community Aggregate Payment Levy, has resulted in the County receiving hundreds of thousands of dollars in revenues, while the Town continues to incur costs to maintain rail crossings within its borders, which have increased as a result of increased rail traffic connected to the development of the County's gravel pit.

Rail Crossings Witness Statement of Peter Smyl dated June 30, 2021 at paragraph 5, Appendix 4; pages 000003-000004, 000017-000018.

235. In these circumstances, it is fair that the County be required to contribute to maintenance and construction costs associated with rail crossings in the Town, since the railway benefits the County more than it does the Town (given that the County is receiving significant royalty revenues from gravel extraction, which imposes heavy uses on the railway, and its businesses utilize the railway more than businesses located in the Town). This is a situation where one municipality, the Town, has been required to shoulder all costs associated with a particular service (rail crossings), despite the fact that the railway itself provides a greater benefit to the County.

236. The Town is proposing that maintenance and construction costs pertaining to railway crossings be split on a 50/50 basis. A catchment area is not appropriate in this case, since the railways are used by businesses, and not residents. Since usage of the railway

cannot be estimated on the basis of population, a catchment area would not be appropriate. In the circumstances, a proposed 50/50 split of costs pertaining to railway crossings is more than fair, since the evidence shows that the County receives a far greater benefit from the railway than the Town. Splitting costs in this way recognizes that the Town is incurring significant costs associated with these rail crossings that ultimately provide a disproportionate benefit in favour of the County.

XIII. Transit

237. The Town is asking for an award requiring the County to contribute to operating and capital costs associated with its transit service, based on a catchment area that comprises all of electoral districts 2, 3 and 4 in the County (see catchment area map appended to Chelsea Grande's Transit Witness Statement at Appendix 16). These electoral districts are immediately adjacent to the Town, and County residents within that area are only a short drive from the Town, and regularly commute to the Town. While electoral district 2 is larger than districts 3 and 4, most of the County population which lives in electoral district 2 resides close to the Town (as can be seen in the map attached at Appendix 14 if Peter Smyl's General Witness Statement). Unlike other areas, for which the Town is seeking cost sharing based on a larger catchment area, the Town agrees that the catchment area which should be applied for transit services should necessarily be smaller, and only include electoral districts immediately adjacent to the Town, given that County residents who live further away are less likely to regularly access transit services in the Town.

Transit Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 14, 20, Appendix 16; pages 000004-000005, 000101.

General Witness Statement of Peter Smyl dated June 30, 2021 at Appendix 14, page 000049.

238. Transit services were not previously included in the 2008 Cost Share Agreement. Nevertheless, the Town submits that its transit service is regularly used by and benefits County residents, and as such it meets the criteria set in section 708.29 of the *MGA* for inclusion in the ICF. The Town's evidence shows that, between 2018 and 2021, 17% of unique purchasers of bus passes and ticket books were County residents. This data does

not include single fare purchases, which are not tracked. Further, the Whitecourt Seniors Circle, which charters the Town's transit services, has a membership which is comprised of 27% County residents. Accordingly, while the Town's transit system operates solely within the Town's borders, it is regularly used and accessed by County residents, and as such the County ought to contribute to costs associated with the operation of the transit system.

Transit Witness Statement of Chelsea Grande dated June 30, 2021 at paragraphs 17-18, Appendix 14; pages 000004, 000090-000098.

239. While it is true that users of the Town's transit service are required to pay fees to purchase fares and passes, these revenues do not cover all costs associated with the transit service. As the budget summary in Ms. Grande's evidence demonstrates, the transit service regularly incurs deficits, after fare revenues are accounted for. This is not unlike other municipal services, such as recreational services, which require users to pay a fee to access the service, but those fees do not cover all costs associated with operating that service. Ultimately, fares need to be priced at a level that allows users to access the service, and it is fair and appropriate that shortfalls in operating costs be covered by the municipalities which use and benefit from the service.

Transit Witness Statement of Chelsea Grande dated June 30, 2021 at Appendix 18; pages 000104-000105.

240. The history of transit services offered in the Town and County shows that the County previously funded the extension of a bus route into the County, but this service was discontinued in 2009. Again, the fact that the Town's transit system currently only operates within its own borders is not determinative of whether the service benefits and is used by County residents.

Transit Witness Statement of Chelsea Grande dated June 30, 2021 at paragraph 7; page 000003.

241. Currently, the Community Services Advisory Board, which includes representation from both the Town and County, reviews and provides recommendations on the operation of the Town's transit service. This is similar to how the same Board operates with respect to other shared service areas between the Town and County, including recreation

services. Further, both municipalities have the ability to raise issues regarding shared services at the Joint Liaison Committee, which is comprised of equal representation from both municipalities. In the Town's view, these provide the County with a fulsome ability to review all cost-shared areas, including transit services, and to provide input on the operation of these services going forward.

242. Overall, the evidence supports that County residents who live in close proximity to the Town use and benefit from the Town's transit system, and as such, the County ought to be required to contribute to operating and capital expenses associated with the delivery of that service in this ICF.

XIV. Whitecourt Airport

243. The Town is prepared to continue contributing to the costs of operating the Whitecourt Airport. Such contributions should be in proportion to the benefit received by Town residents as compared to the County and other municipalities which stand to receive greater benefit from this regional airport. The contributions must be based on the County's actual reasonable net costs of operating the airport, accounting also for the property tax revenue it derives from the Airport. Finally, the Town (and other regional partners) should have input into the Airport, its operations and financial decisions, reflective of such proportionate contributions.

a. Regional Benefits

244. The Whitecourt Airport Master Plan prepared for the County by WSP Canada Group Limited concludes that the Airport services a larger region, providing a variety of economic benefits to the County, Whitecourt, the Town of Fox Creek and the Municipal District of Greenview.

Whitecourt Airport 2020 Master Plan Update by WSP Canada Group Limited dated September 17, 2020 **[General Witness Statement of Gordon Frank dated June 30, 2021 at Appendix 14; page 000116]**

245. In particular, both the WSP Master Plan and the expert report prepared by HM Aero Inc. emphasize that the Airport services the resource extraction and forestry sectors. The

Airport may lower the costs of harvesting natural resources, accelerate the completion of extractive infrastructure and even allow the development of facilities that would otherwise be unfeasible.

Whitecourt Airport 2020 Master Plan Update by WSP Canada Group Limited, section 2.5
[General Witness Statement of Gordon Frank dated June 30, 2021 at Appendix 14; starting on page 000125]

Expert Report of HM Aero at section 4.3.1, starting at page 15.

246. Beyond those general conclusions, however, there is very little evidence with respect to the benefit to Town residents associated with the Airport. In assessing the economic impact of the Airport, the HM Aero Report essentially adopts the general statements found in the WSP Master Plan, and supplements it with a survey that received between 4-6 responses from tenants of the Airport (after the County followed-up with those tenants). That survey asked very general questions with respect to the location of their employees or their spending, with no associated information on the very limited number of employees and spending in question.

Cross-Examination of Adam Martin on August 27, 2021 starting at 1:18:30.

247. Mr. Martin has also conceded in cross-examination that other information about the usage of the Airport is purely anecdotal based on discussions with the County, including as it relates to usage by specific companies such as Pembina or Chevron. Mr. Martin conceded he has no idea if those companies make specific use of the Airport in connection with any offices located in the Town of Whitecourt, as opposed to using it for the purpose of accessing their extractive facilities located in the County or the MD of Greenview, or their larger offices in the Town of Fox Creek.

Cross-Examination of Adam Martin on August 27, 2021 starting at 1:33:00.

248. With the exception of Millar Western, the major forestry and resource extraction facilities are all located outside of the Town boundaries (including in particular in the Duvernay natural gas formation). This is reflected in the significant linear tax revenue received by the County and the MD of Greenview associated with those facilities. That means that the County and the other regional municipalities that benefit from the Airport receive the

property tax associated with those facilities and a directly enhanced benefit from the Airport. There is no evidence of the extent to which Millar Western uses the airport, if at all.

Whitecourt Airport 2020 Master Plan Update by WSP Canada Group Limited, section 2.5
[General Witness Statement of Gordon Frank dated June 30, 2021 at Appendix 14; starting on page 000125.]

Cross-Examination of Adam Martin on August 27, 2021 starting at 1:25:00.

249. Similarly, HM Aero has noted that the Airport offers a benefit in providing wildfire suppression operations to the Whitecourt Fire Area, which encompasses those other regional municipalities in addition to the County. To the extent the Airport is used for police operations, the limited information available to HM Aero again confirms that it is used to support other surrounding municipalities as well.

Expert Report of HM Aero at page 12.

Cross-Examination of Adam Martin on August 27, 2021 starting at 1:05:30.

250. HM Aero has also noted that the airport is used by STARS Ambulance service to airlift individuals to the Whitecourt Hospital. Clearly, however, those patients are being airlifted from outside of the Town to reach the hospital; whereas residents in the Town of Whitecourt would be transported by ground ambulance to the hospital. While there was some limited evidence about transporting patients from the Hospital to other locations including Edmonton, there was no analysis to compare to the much larger number of transports by ground ambulance that do not require any use of the Airport.

Expert Report of HM Aero at pages 9-10.

Cross-Examination of Adam Martin on August 27, 2021 starting at 1:00:00.

251. There is simply very little evidence with respect to any use of the Airport by Town residents or businesses. The evidence available confirms that the Airport services a larger region and offers benefits to other municipalities, in particular the MD of Greenview and the Town of Fox Creek. The Town has previously requested user statistics to help understand the extent to which the airport is used by Town residents and businesses, but those statistics have never been provided by the County, and the evidence filed in this

arbitration does not shed light on this issue. Accordingly, any contribution to the Airport by the Town should be based on its proportionate use and benefit arising from the Airport, which the Town submits is less than the benefit derived by the County and those other municipalities.

Reply Witness Statement of Peter Smyl dated July 31, 2021 at paragraph 7; pages 000002-000003.

252. The WSP Master Plan specifically recommends seeking such contributions from those other municipalities. However, Mr. Frank has confirmed that the County has not taken any steps to do so. It is important to note that as a result of the ICF provisions in the MGA, the County is the only party with an ability to compel contributions from any other such party in the event of a dispute, including through its ICF with the Municipality of Greenview (which in turn can negotiate through ICFs with the Town of Fox Creek and the Town of Valleyview in the absence of any regional agreement).

Whitecourt Airport 2020 Master Plan Update by WSP Canada Group Limited **[General Witness Statement of Gordon Frank dated June 30, 2021 at Appendix 14; pages 000125-000126.]**

Cross-Examination of Gordon Frank on August 17, 2021 starting at 3:26:00.

b. Costs to be Shared

253. It is also important to note that any contribution to a portion of the Airport's costs by other regional partners including the Town must properly account for the actual net costs associated with the operation of the Airport.

254. HM Aero has included in its report a financial analysis which suggests there are very large annual deficits associated with the Airport. However, that information should be taken with a grain of salt. Mr. Martin could not explain how the figures were adjusted for the purpose of comparison with other airports. The financial analysis itself appears to be of little benefit; it was based on "comparable" airports that would offer a favourable assessment for the County, as opposed to reviewing the surrounding airports that are actually comparable and which are identified as the airport's main competitors in the WSP Master Plan (Edson and Slave Lake).

Expert Report of HM Aero at pages 19-25.

Cross-Examination of Adam Martin on August 27, 2021 starting at 02-11:00.

Whitecourt Airport 2020 Master Plan Update by WSP Canada Group Limited **[General Witness Statement of Gordon Frank dated June 30, 2021 at Appendix 14; page 000103.]**

255. A review of the available financial information regarding the Airport that was disclosed by the County and that presumably formed the basis of HM Aero's calculations shows that annual deficits identified in their Report are not actually reflective of what Mr. Martin referred to as the "tax supported deficit" associated with the operation of the Airport. Instead, the expenditures include:

- Transfers to both operating and capital reserves;
- Payment of debentures for principal and interest, without clarity on the purpose of such borrowing; and
- Annual amortization and depreciation, which is a non-cash transaction.

General Witness Statement of Gordon Frank dated June 30, 2021 at Appendix 13; pages 000095-000099.

256. Adjusting for those issues, the deficits identified in the HM Aero report would be significantly smaller, and by way of comparison, would alter the numbers set out in Table 5.10 of the HM Aero Report as follows:

	2017	2018	2019	2020	2021	Average
Whitecourt - Report Amounts	- 917,124.00	- 1,126,615.00	- 834,004.00	- 636,704.00	- 703,271.00	- 843,543.60
Less Revenue Adjustments						
Debenture Proceeds	600,000.00	-	-	-	-	
Transfer from Reserves	-	377,567.01	261,829.00	-	-	
Plus Expenditure Adjustments						
Debenture Interest	4,003.68	12,208.06	9,573.39	6,887.73	7,679.00	
Debenture Principal	-	114,644.72	117,261.92	119,938.87	119,939.00	
Transfer to Operating Reserves	477,567.01	10,000.00	25,000.00	-	-	
Transfer to Capital Reserves	-	100,000.00	100,000.00	-	-	
Transfer to Capital Projects	330,618.50	492,967.20	128,086.23	-	-	
Amortization	293,074.79	290,692.16	292,786.88	305,025.85	293,077.00	
Revised Whitecourt Annual Deficit	**- 411,860.02**	**- 483,669.87**	**- 423,124.58**	**- 204,851.55**	**- 282,576.00**	**- 361,216.40**

257. Moreover, even correcting for those issues, these numbers do not reflect one of the primary direct benefits of the Airport to the County: property tax revenue associated with the airport properties.

258. Property tax rates are discussed in great detail in the WSP Master Plan (noting the error in the report which, despite Mr. Frank being evasive in cross-examination, was clearly made with respect to such tax rates). Revenue sources from the airport include rentals,

but whether properties are leased or sold, there is also the opportunity for the County to directly collect property tax revenue from those properties.

Whitecourt Airport 2020 Master Plan Update by WSP Canada Group Limited **[General Witness Statement of Gordon Frank dated June 30, 2021 at Appendix 14; pages 000101-000104.]**

General Witness Statement of Gordon Frank dated June 30, 2021 at paragraph 17; page 000007.

Reply Witness Statement of Peter Smyl dated July 31, 2021 at paragraphs 9-14; pages 000002-000003.

Cross-Examination of Gordon Frank on August 17, 2021 starting at 03:18:30.

259. The County cannot ask its partners to share in the costs of the Airport without accounting for all of the revenue it receives, which must include such property tax revenue. The benefit to surrounding areas in the County with respect to potential industrial or commercial development adjacent to airport lands speaks to the larger proportionate benefit the County receives. However, with respect to the property tax generated by the Airport properties themselves, such revenue should properly be accounted for before considering any "net taxpayer funded deficit" for the purpose of cost sharing with the other regional partners.

c. Governance

260. Finally, consistent with the other service areas in the ICF, the Town expects to have a role in the governance and future of the Airport that is consistent with its proportionate cost contribution.

261. The WSP Master Plan recommends the creation of an Airport Commission with representation based on financial contribution from the County, the Town, Fox Creek and the MD of Greenview.

Whitecourt Airport 2020 Master Plan Update by WSP Canada Group Limited **[General Witness Statement of Gordon Frank dated June 30, 2021 at Appendix 14; page 000118.]**

262. Regardless of the specific model that is used, it is clear that the Town must be afforded input into the Airport and its operations consistent with its contribution. Unlike the Community Services Advisory Board or other bodies, the Airport Advisory Committee in

its current form has met infrequently, and does not generally get the opportunity to review and provide input into operating or capital budgets for the Airport.

Reply Witness Statement of Peter Smyl dated July 31, 2021 at paragraphs 3-4; page 000002.

263. To the extent the Town is required to contribute to the costs of the Airport, that arrangement must change so that the Town has meaningful input based on its proportionate contribution, and with recourse to the dispute resolution provisions of the ICF in the event of any dispute with respect to the Airport in the future.

XV. Whitecourt Regional Solid Waste Management Authority

264. With respect to the Whitecourt Regional Solid Waste Management Authority, the Town is asking the arbitrator to confirm the existing agreement between the Town and County with no modifications. The existing framework which governs the Waste Management Authority is working fine, and provides quality waste management services to residents in both the Town and County. The County has put forward no credible evidence to suggest that the existing arrangement based on the contract establishing the Waste Management Authority is unfair, or should be changed.

265. The Waste Management Authority has delivered waste management services to residents in the Town and County since 1989. The current agreement, as modified in 1996, provides that deficit financing for the authority be allocated on a per capita basis, reflecting the relative populations of the Town and County. Currently, the percentage of liability carried by the Town based on its relative population is 68.2%. For this reason, the Town submits that it is fair for it to have one more representative on the Waste Management Authority's governing Board than the County (which reflects the present composition of the Board) – the Town bears greater responsibility for costs and risks associated with the Waste Management Authority, so it should get, proportionately, a greater voting share in operating the Authority.

Landfill Witness Statement of Juan Grande dated June 30, 2021 at paragraph 2, page 000002.

Agreement between MD of Woodlands and Town of Whitecourt regarding Solid Waste Management Services dated October 31, 1994 at Clauses 4, 6(c) **[Landfill Witness Statement of Juan Grande dated June 30, 2021 at Appendix 1; pages 000007-000008.]**

Amending Agreement dated January 11, 1996 **[Landfill Witness Statement of Juan Grande dated June 30, 2021 at Appendix 3; page 000021.]**

266. The County's evidence suggests that it is exposed to disproportionate liability with respect to the Solid Waste Management Authority, and that constitutes sufficient grounds to alter the voting structure of the Authority through this arbitration process. In support of this proposition, Mr. Frank cited some environmental regulatory offences levied against the Town and County related to the Solid Waste Management Authority, for which he claims that "Alberta Environment and Parks apportioned liability equally to each of the Town and County."

General Witness Statement of Gordon Frank dated June 30, 2021 at paragraph 65; page 00016.

267. Mr. Frank's statement that liability for this penalty was apportioned "equally" between the Town and County is incorrect. As is demonstrated in Mr. Smyl's reply evidence, the penalty assessed against the Town and County for environmental infractions in 2016 related to the operations of the Waste Management Authority was apportioned to each municipality based on its proportionate cost share percentage (resulting in the Town paying 69.63% of the penalty, with the County paying the remaining 30.37%). This was expressly set out in the Agreed Statement of Facts submitted to the Provincial Court on behalf of both the Town and County (see paragraphs 26 (d) and (e) of the Agreed Statement of Facts). The Sentencing Order issued by the Provincial Court imposed a number of different fine and payment obligations upon both the Town and County, and the total obligations reflected the cost share percentages for each municipality.

Reply Witness Statement of Peter Smyl dated July 31, 2021 at paragraphs 16-24; pages 000004-000005.

Agreed Statement of Facts Submitted to Provincial Court of Alberta, paragraph 26 **[Reply Witness Statement of Peter Smyl dated July 31, 2021 at Appendix 6; pages 000043-000044].**

Sentencing Order of the Provincial Court of Alberta **[Reply Witness Statement of Peter Smyl dated July 31, 2021 at Appendix 7; pages 000045-000050.**

268. In cross-examination, Mr. Frank confirmed that the Town is responsible for a greater share of the Waste Management Authority's deficits. Mr. Frank was asked whether the Town paid 69.63% of the penalty related to the environmental offences he cited in his witness statement, and Mr. Frank confirmed that the "Town did pick up the share in accordance with the agreement."

Cross-Examination of Gordon Frank on August 17, 2021 at 03:39:40-03:42:44.

269. The County has put forward no credible evidence to suggest that the voting structure of the Waste Management Authority is in any way unfair – the voting structure mirrors the proportionate liabilities of the Town and County for costs associated with the delivery of waste management services, including potential liability for regulatory offences. It would be unfair to give the County a greater vote on the Board when the Town bears the majority of the risk and liability with respect to the Waste Management Authority's operations.

270. Otherwise, the Town submits that the agreement pertaining to the Waste Management Authority is operating well, and there is no reason for any part of the agreement to be changed (and the County has not put forward any other evidence to suggest that other changes beyond the composition of the Board should be considered in these proceedings). The Town believes there is value for the parties in continuing to explore options to create a Regional Services Commission in place of the authority, and that this process should be allowed to continue. But there is currently no basis for altering the existing arrangement, and the Town is asking that the arbitrator confirm that the agreement between the Town and County pertaining to Waste Management Services continue in its current form.

D. Fiscal Sustainability

271. The Town has never been clear as to what the County is seeking in raising an issue it describes as "fiscal sustainability". The Town agrees that like many municipalities in Alberta, the County experienced a period of financial hardship starting in or around 2016. However, to the extent the County argues that it is unable to afford the commitments required under the ICF, or that its financial challenges should alter the equitable sharing

of costs as between the municipalities based on the principles otherwise outlined in our argument, the Town strongly disputes that there is any basis for that position.

272. There is simply no evidence to suggest the County is unable to afford its historical or future cost contributions required as a result of this ICF. Indeed, the evidence of the County's own financial expert does not support such a conclusion.

273. Ms. Colette Miller of Wilde and Company commented on the County's financial difficulties, but at no point suggests they are unable to afford the contributions being sought by the Town through this ICF. On the contrary, Ms. Miller found that the County was on a path to correcting its past financial problems.

Expert Report of Colette Miller dated August 13, 2021 at page 3.

274. In cross-examination, Ms. Miller agreed the County had plans in place to recover some of the taxes previously written off as uncollectable. She acknowledged that her report did not include any analysis of future projects planned in the County and how those could affect the County's future expected revenue.

275. She also acknowledged that following the downturn in the economy, it took the County several years before making any significant adjustment to its linear mill rate (there was no change from 2015 to 2016, and only minor adjustments in the following two years, despite the very significant drop in assessment). That effectively resulted in large tax decreases for the County's ratepayers instead of addressing the revenue shortfalls the County was experiencing.

276. Ms. Miller's report does not contain any analysis with respect to those mill rates or appropriate comparative tax rates, and (while it is not required for the County to fund its ICF contributions) there is no evidence to suggest the County is not in a position to increase its tax revenue if it chose to do so. She conceded in cross-examination that the County has an assessment class of Residential Improved Land that had a zero mill rate until 2017, and continues to have a reduced rate as compared to regular residential mill

rates. Again, this is a choice the County has made to provide advantages to its ratepayers, but which obviously has a corresponding impact on its revenues.

277. Having not conducted any analysis with respect to such decisions, Ms. Miller's report appropriately does not suggest the County is unable to fund its intermunicipal commitments. On the contrary, she specifically noted in response to questions from the Arbitrator that:

a. "When you have such a long history of cost sharing- to the extent that they have been contributing- that would indicate to me that there is a certain level of service required, and has been affordable";

b. When determining how to pay for a service, a party has "some wiggle room to increase revenue (a.k.a. the mill rate)," or by searching for other sources of income;

c. "Their [the County's] financial difficulty is related to the same period of time that many businesses in Alberta had financial difficulty or went bankrupt, so this too will pass";

d. "In the meantime, when you have the… Town of Whitecourt, when there is this major financial impact of unpaid taxes…that affects everybody and Town of Whitecourt was probably affected very dramatically by the downturn in the economy… We're in it together and we need to solve it together";

e. The Municipality responsible for providing the service (i.e. the Town in most cases) is the party that has to make the decision to cut costs; however, the municipality making the cost share contribution can cut its other costs. For example, the County could cut its road side mowing or road grading or re-gravelling programs instead of recreation.

Cross-Examination of Colette Miller on September 16, 2021 (Part 2) starting at 00:03:30.

278. Ultimately, there is every reason to accept Ms. Miller's conclusion with respect to the County's financial problems that "this too will pass." The County's financial statements reflect a budget with contributions to the Town in excess of three million dollars, despite having paid only $500,000 per year for 2020 and 2021. There is no basis for suggesting that the County will be unable to fund future commitments required under the ICF.

279. Moreover, it is unreasonable to expect that the Town should solely bear the burden of those financial difficulties by reducing what is otherwise the appropriate share of cost responsibility for the County based on the proportionate benefit of services under the ICF to each party.

280. Ms. Miller's observations with respect to the County's financial situation mirrors observations made by Mr. Smyl. Mr. Smyl observed that progress appears to have been made by the County and other municipalities in collecting tax arrears, and improving the assessment model, since the worst stages of the economic downturn, which suggests that the County's financial difficulties are not permanent and shall eventually pass, as confirmed by Ms. Miller. Mr. Smyl has also observed that the County's mill rates (especially for residential properties) remain well below the provincial average despite recent increases, and a "Tax Incentive Program" maintained by the County provides further discounts to residential and non-residential ratepayers if they pay their taxes early. The circumstances suggest that the County could increase its taxes to fund cost-share obligations if it chose to do so.

General Witness Statement of Peter Smyl dated June 30, 2021 at paragraphs 39-46; pages 000011-000013.

281. As Ms. Miller noted, the Town has also experienced financial hardship. It has also made different decisions with respect to taxation that its residents and businesses have paid for over time. To suggest that a party's contribution could be decreased based on their net financial position would create perverse incentives. A rural municipality required to contribute to the cost of services based on its financial position should simply decrease its property taxes to the point of claiming it can no longer afford its contributions. That

would allow its residents and businesses to benefit from the shared services without contributing, while also enjoying much lower taxes.

282. Clearly, that is inconsistent with the principles and factors to be considered in relation to an ICF under the MGA. Each party continues to have difficult decisions with respect to the stewardship of scarce financial resources. But having established a long history of shared services that continue to be enjoyed by residents in both municipalities, the parties must contribute to the cost of those services based on the proportionate benefit of those services, and based on the principles set out in these submissions.

283. While section 708.36(7)(e) of the MGA prohibits the arbitrator from making an award "that directs a municipality to raise revenue by imposing a specific tax rate, off-site levy or other rate, fee or charge", that does not mean that the arbitrator cannot make an award which may ultimately require the "paying" party in an ICF to increase taxes or seek out other forms of revenue such as grants. The arbitrator's primary task in these proceedings is to determine how to fairly allocate costs for shared services between the municipalities – once that is determined, the municipalities will need to make decisions on their own regarding how to fund their obligations under the ICF, just as they must do with all other budgetary responsibilities.

MGA, s 708.36(7)(e) **[Town's Brief at Tab 1]**

284. The Town recognizes that the County went through a period of financial hardship, but there is simply no basis for concluding it cannot (or should not) continue to contribute to the cost of those services, nor is there any basis to assume that the County's period of financial difficulty will be indefinite.

E. Costs of the Arbitration

285. Submissions pertaining to costs of the arbitration ought to be made and considered after the arbitrator has issued an award on the merits, including submissions pertaining to interest which ought to apply to any late payments for cost shared services going back to January 1, 2020.

F. List of Authorities

1. *Municipal Government Act*, RSA 2000, c M-26
2. *Police Act*, RSA 2000, c P-17
3. *Police Funding Regulation*, Alta Reg 7/2020
4. *Public Utilities Act*, RSA 2000 c P-45
5. *Family and Community Support Services Regulation*, Alta Reg 218/1994
6. *Libraries Regulation*, Alta Reg 141/1998
7. *Intermunicipal Collaboration Framework Regulation*, Alta Reg 191/2017 (repealed)
8. *Interpretation Act*, RSA 2000, c I-8

Tab 1

Province of Alberta

MUNICIPAL GOVERNMENT ACT

Revised Statutes of Alberta 2000
Chapter M-26

Current as of June 17, 2021

Office Consolidation

Alberta Queen's Printer
Suite 700, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

(4) The expropriation of an estate or interest in land that is outside the municipality is subject to section 72.

(5) When the council is of the opinion that the municipality can obtain a more reasonable price or other advantage by acquiring the whole or a larger portion of any parcel of land of which a part may be expropriated by the municipality, the municipality may expropriate the whole or the larger portion of the parcel.

RSA 2000 cM-26 s14;2016 c24 s7

Expropriating part of a parcel

15(1) If a municipality's notice of intention to expropriate proposes to expropriate a portion of a parcel of land, the owner of the parcel may apply to the Land and Property Rights Tribunal to direct the municipality to expropriate the whole of the parcel.

(2) The Tribunal may direct the municipality to expropriate the whole of the parcel of land if, in the opinion of the Tribunal, the expropriation of a part of the parcel is unfair to the owner of the parcel.

RSA 2000 cM-26 s15;2020 cL-2.3 s24(3)

Division 2
Roads

Title to roads

16(1) The title to all roads in a municipality, other than a city, is vested in the Crown in right of Alberta.

(2) The title to all roads in a city is vested in the city unless another Act or agreement provides otherwise.

(3) Nothing in this section gives a city title to mines and minerals.

1994 cM-26.1 s16

Disposal of estate or interest in roads

17(1) Subject to any other Act or agreement, the council of a city has the power and is deemed always to have had the power to dispose of an interest in a road in the city so long as the disposition does not amount to a sale or lease or require a road closure under section 22.

(2) No interest disposed of under subsection (1) may be registered in a land titles office.

1994 cM-26.1 s17

Control of roads

18(1) Subject to this or any other Act, a municipality has the direction, control and management of all roads within the municipality.

(2) Subject to this or any other Act, a municipal district also has the direction, control and management of roads and road diversions surveyed for the purpose of opening a road allowance as a diversion from the road allowance on the south or west boundary of the district although the roads or road diversions are outside the boundaries of the municipal district.

(3) Nothing in this section gives a municipality the direction, control and management of mines and minerals.

1994 cM-26.1 s18

Rocky Mountains Forest Reserve

19 In The Municipal District of Bighorn No. 8 and Clearwater County, the Minister of Transportation has the direction, control and management of roads within the Rocky Mountains Forest Reserve constituted under the *Forest Reserves Act*.

RSA 2000 cM-26 s19;2007 c16 s5;2013 c10 s21

Specialized municipalities

20(1) The Minister of Transportation has the direction, control and management of roads within a specialized municipality that has been formed in whole or in part from an improvement district.

(2) Despite subsection (1), the Minister of Transportation and the council of the specialized municipality may enter into an agreement providing that all or part of the direction, control and management of roads within the specialized municipality may be exercised by the specialized municipality.

(3) If there is an agreement under subsection (2), the Minister of Transportation may require that a specialized municipality pay for the cost of fulfilling the Minister's responsibilities with respect to roads within the specialized municipality, and the specialized municipality must pay the amount of the requisition as soon as practicable after the requisition is made.

RSA 2000 cM-26 s20;2007 c16 s5;2013 c10 s21

Land abutting roads

21 If a municipality acquires land abutting a road intending that the land will become part of the road and, before the land is incorporated into the road, the municipality grants to an adjoining land owner a licence or permit to occupy the land, the land subject to the licence or permit is deemed to be part of the road.

1994 cM-26.1 s21;1996 c30 s2

Road closure

22(1) No road in a municipality that is subject to the direction, control and management of the municipality may be closed except by bylaw.

to section 111 of the *Public Utilities Act* or section 4 of the *Gas Utilities Act*.

RSA 2000 cM-26 s44; 2007 cA-37.2 s82(17)

Non-municipal Public Utilities

Granting rights to provide utility service

45(1) A council may, by agreement, grant a right, exclusive or otherwise, to a person to provide a utility service in all or part of the municipality, for not more than 20 years.

(2) The agreement may grant a right, exclusive or otherwise, to use the municipality's property, including property under the direction, control and management of the municipality, for the construction, operation and extension of a public utility in the municipality for not more than 20 years.

(3) Before the agreement is made, amended or renewed, the agreement, amendment or renewal must

(a) be advertised, and

(b) be approved by the Alberta Utilities Commission.

(4) Subsection (3)(b) does not apply to an agreement to provide a utility service between a council and a regional services commission.

(5) Subsection (3) does not apply to an agreement to provide a utility service between a council and a subsidiary of the municipality within the meaning of section 1(3) of the *Electric Utilities Act*.

RSA 2000 cM-26 s45;2003 cE-5.1 s165; 2007 cA-37.2 s82(17)

Exception

45.1 An agreement made under section 45 shall not grant an exclusive right to provide to customers in all or any part of the municipality the functions or services that retailers are permitted to provide under the *Electric Utilities Act* or the regulations under that Act.

2003 cE-5.1 s165

Prohibiting other non-municipal public utilities

46 When a person provides a utility service in a municipality under an agreement referred to in section 45, the council may by bylaw prohibit any other person from providing the same or a similar utility service in all or part of the municipality.

1994 cM-26.1 s46

Part 13
Liability of Municipalities, Enforcement of Municipal Law and Other Legal Matters

Division 1
Liability of Municipalities

Acting in accordance with statutory authority

527.2 Subject to this and any other enactment, a municipality is not liable for damage caused by any thing done or not done by the municipality in accordance with the authority of this or any other enactment unless the cause of action is negligence or any other tort.

1999 c11 s29

Non-negligence actions

528 A municipality is not liable in an action based on nuisance, or on any other tort that does not require a finding of intention or negligence, if the damage arises, directly or indirectly, from roads or from the operation or non-operation of

(a) a public utility, or

(b) a dike, ditch or dam.

1994 cM-26.1 s528

Exercise of discretion

529 A municipality that has the discretion to do something is not liable for deciding not to do that thing in good faith or for not doing that thing.

1994 cM-26.1 s529

Inspections and maintenance

530(1) A municipality is not liable for damage caused by

(a) a system of inspection, or the manner in which inspections are to be performed, or the frequency, infrequency or absence of inspections, and

(b) a system of maintenance, or the manner in which maintenance is to be performed, or the frequency, infrequency or absence of maintenance.

(2) Repealed 1995 c24 s80.

1994 cM-26.1 s530;1995 c24 s80

Snow on roads

531(1) A municipality is only liable for an injury to a person or damage to property caused by snow, ice or slush on roads or

sidewalks in the municipality if the municipality is grossly negligent.

(2) A person who brings an action claiming gross negligence described in subsection (1) must notify the municipality of the event that gives rise to the action within 21 days after the occurrence of the event.

(3) Failure to notify the municipality bars the action unless

(a) there is a reasonable excuse for the lack of notice, and the municipality is not prejudiced by the lack of notice,

(b) death is the result of the event complained of, or

(c) the municipality waives in writing the requirement for notice.

1994 cM-26.1 s531;1996 c30 s49

Repair of roads, public places and public works

532(1) Every road or other public place that is subject to the direction, control and management of the municipality, including all public works in, on or above the roads or public place put there by the municipality or by any other person with the permission of the municipality, must be kept in a reasonable state of repair by the municipality, having regard to

(a) the character of the road, public place or public work, and

(b) the area of the municipality in which it is located.

(2) The municipality is liable for damage caused by the municipality failing to perform its duty under subsection (1).

(3) This section does not apply to any road made or laid out by a private person or any work made or done on a road or place by a private person until the road or work is subject to the direction, control and management of the municipality.

(4) A municipality is not liable under this section unless the claimant has suffered by reason of the default of the municipality a particular loss or damage beyond what is suffered by the claimant in common with all other persons affected by the state of repair.

(5) A municipality is not liable under this section in respect of acts done or omitted to be done by persons exercising powers or authorities conferred on them by law, and over which the municipality has no control, if the municipality is not a party to those acts or omissions.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the order has been complied with.

1995 c24 s95

Division 6
Development Levies and Conditions

Redevelopment levies

647(1) If a person applies for a development permit in respect of development in a redevelopment area and the area redevelopment plan contains proposals for residential, commercial or industrial development, a redevelopment levy may be imposed on the applicant in accordance with the bylaw adopting the area redevelopment plan.

(2) A redevelopment levy imposed and collected must be used to provide, in respect of the redevelopment area,

(a) land for a park or land for school buildings designed for the instruction or accommodation of students, or

(b) land for new or expanded recreation facilities,

or both.

(3) On September 1, 1995 a redevelopment levy under the former Act continues as a redevelopment levy under this Part.

(4) A redevelopment levy imposed and collected under this Part or the former Act may be imposed and collected only once in respect of a development.

(5) A redevelopment levy imposed pursuant to this Part may vary between one class of development and another in a redevelopment area.

(6) If a redevelopment levy is collected, the municipality must pay that portion of the levy imposed to provide land for school buildings designed for the instruction or accommodation of students to the one or more school boards.

RSA 2000 cM-26 s647;2008 c37 s11

Off-site levy

648(1) In this section and sections 648.01 to 648.4,

(a) "facility" includes the facility, the associated infrastructure, the land necessary for the facility and related appurtenances referred to in subsection (2.1);

(b) "infrastructure" means the infrastructure, facilities and land required for the purposes referred to in subsection (2)(a) to (c.1);

(c) "stakeholder" means any person that will be required to pay an off-site levy when the bylaw is passed, or any other person the municipality considers is affected.

(1.1) For the purposes referred to in subsections (2) and (2.1), a council may by bylaw

(a) provide for the imposition and payment of a levy in respect of land that is to be developed or subdivided, and

(b) authorize an agreement to be entered into in respect of the payment of the levy.

(1.2) A bylaw may not impose an off-site levy on land owned by a school board that is to be developed for a school building project within the meaning of the *Education Act*.

(2) An off-site levy may be used only to pay for all or part of the capital cost of any or all of the following:

(a) new or expanded facilities for the storage, transmission, treatment or supplying of water;

(b) new or expanded facilities for the treatment, movement or disposal of sanitary sewage;

(c) new or expanded storm sewer drainage facilities;

(c.1) new or expanded roads required for or impacted by a subdivision or development;

(c.2) subject to the regulations, new or expanded transportation infrastructure required to connect, or to improve the connection of, municipal roads to provincial highways resulting from a subdivision or development;

(d) land required for or in connection with any facilities described in clauses (a) to (c.2).

(2.1) In addition to the capital cost of facilities described in subsection (2), an off-site levy may be used to pay for all or part of the capital cost for any of the following purposes, including the cost of any related appurtenances and any land required for or in connection with the purpose:

(a) new or expanded community recreation facilities;

(b) new or expanded fire hall facilities;

(c) new or expanded police station facilities;

(d) new or expanded libraries.

(2.2) Subject to an appeal under section 648.1, an off-site levy may be imposed and collected for a purpose referred to in subsection (2.1) only if no off-site levy has been previously imposed under subsection (1) for the same purpose with respect to the land on which the off-site levy is being imposed.

(3) On September 1, 1995 an off-site levy under the former Act continues as an off-site levy under this Part.

(4) An off-site levy imposed under this section or the former Act may be collected once for each purpose described in subsection (2) or (2.1), in respect of land that is the subject of a development or subdivision, if

(a) the purpose of the off-site levy is authorized in the bylaw referred to in subsection (1), and

(b) the collection of the off-site levy for the purpose authorized in the bylaw is specified in the agreement referred to in subsection (1).

(4.1) Nothing in subsection (4) prohibits the collection of an off-site levy by instalments or otherwise over time.

(5) An off-site levy collected under this section, and any interest earned from the investment of the levy,

(a) must be accounted for separately from other levies collected under this section, and

(b) must be used only for the specific purpose described in subsection (2)(a) to (c.2) or (2.1)(a) to (d) for which it is collected or for the land required for or in connection with that purpose.

(6) A bylaw under subsection (1) must be advertised in accordance with section 606 unless

(a) the bylaw is passed before January 1, 2004, or

(b) the bylaw is passed on or after January 1, 2004 but at least one reading was given to the proposed bylaw before that date.

(7) Where after March 1, 1978 and before January 1, 2004 a fee or other charge was imposed on a developer by a municipality pursuant to a development agreement entered into by the developer and the municipality for the purpose described in subsection (2)(c.1), that fee or charge is deemed

(a) to have been imposed pursuant to a bylaw under this section, and

(b) to have been validly imposed and collected

effective from the date the fee or charge was imposed.

(8) If, before the coming into force of this subsection, a fee or other charge was imposed on a developer by a municipality pursuant to a development agreement entered into by the developer and the municipality for one or more purposes described in subsection (2) or (2.1), that fee or charge is deemed

(a) to have been imposed pursuant to a bylaw under this section, and

(b) to have been validly imposed and collected effective from the date the fee or charge was imposed.

(9) If, before the coming into force of this subsection, a bylaw was made that purported to impose a fee or other charge on a developer for a purpose described in subsection (2) or (2.1),

(a) that bylaw is deemed to have been valid and enforceable to the extent that it imposed a fee or charge for a purpose described in subsection (2) or (2.1) before the coming into force of this subsection, and

(b) any fee or charge imposed pursuant to the bylaw before the coming into force of this subsection is deemed to have been validly imposed and collected effective from the date the fee or charge was imposed.

RSA 2000 cM-26 s648;2003 c43 s3;2012 cE-0.3 s279;
2015 c8 s67; 2016 c24 s104;2017 c13 ss1(60),2(17);
2020 c39 s10(32)

Intermunicipal off-site levy

648.01(1) For the purpose of section 648(1) and subject to the requirements of section 12, 2 or more municipalities may provide for an off-site levy to be imposed on an intermunicipal basis.

(2) Where 2 or more municipalities provide for an off-site levy to be imposed on an intermunicipal basis, the municipalities shall enter into such agreements as are necessary to attain the purposes

described in section 648(2) or (2.1) that are to be funded by an off-site levy under section 648(1), by a framework made under Part 17.2 or by any other agreement.

(3) Repealed 2020 c39 s10(33).

(4) If a bylaw providing for an off-site levy to be imposed on an intermunicipal basis is appealed under section 648.1, the corresponding bylaws of the other participating municipalities are deemed to also be appealed.

2016 c24 s105;2020 c39 s10(33)

Appeal of off-site levy

648.1(1) Any person may, subject to and in accordance with the regulations, appeal any of the provisions of an off-site levy bylaw relating to an off-site levy for a purpose referred to in section 648(2) or (2.1) to the Land and Property Rights Tribunal on any of the following grounds:

(a) that the purpose for which the off-site levy is to be imposed is unlikely to benefit future occupants of the land who may be subject to the off-site levy to the extent required by the regulations;

(b) that the principles and criteria referred to in regulations made under section 694(4)(b) that must be applied by a municipality when passing the off-site levy bylaw have not been complied with;

(c) that the determination of the benefitting area was not determined in accordance with regulations made under section 694(4)(c);

(d) that the off-site levy or any portion of it is not for the payment of the capital costs of the purposes set out in section 648(2) or (2.1), as applicable;

(e) that the calculation of the off-site levy is inconsistent with regulations made under section 694(4) or is incorrect;

(f) that an off-site levy for the same purpose has already been imposed and collected with respect to the proposed development or subdivision.

(2) After hearing the appeal, the Land and Property Rights Tribunal may

(a) dismiss the appeal in whole or in part, or

Part 17.2
Intermunicipal Collaboration

Definitions

708.26(1) In this Part,

(a) "arbitrator" means a person who is chosen as an arbitrator under section 708.35;

(b) "framework" means an intermunicipal collaboration framework entered into between 2 or more municipalities in accordance with this Part, and includes any amendments to a framework.

(c) repealed 2020 c39 s10(67).

(2) A reference in this Part to a municipality includes an improvement district.

2016 c24 s134;2019 c22 s10(27);2020 c39 s10(67)

Purpose

708.27 The purpose of this Part is to provide for intermunicipal collaboration frameworks among 2 or more municipalities

(a) to provide for the integrated and strategic planning, delivery and funding of intermunicipal services,

(b) to steward scarce resources efficiently in providing local services, and

(c) to ensure municipalities contribute funding to services that benefit their residents.

2016 c24 s134;2019 c22 s10(28)

Division 1
Intermunicipal Collaboration Framework

Requirements for framework

708.28(1) Municipalities that have common boundaries must create a framework with each other by April 1, 2020 unless they are members of the same growth management board.

(2) Municipalities that are members of the same growth management board may create a framework with other members of the same growth management board in respect of matters that are not addressed in a growth plan.

(3) Municipalities that do not have common boundaries may be parties to a framework.

(4) A municipality may be a party to more than one framework.

(5) Despite subsection (1), the Minister may by order exempt, on any terms and conditions the Minister considers necessary, one or more municipalities from the requirement to create a framework.

(6) For greater certainty, a municipality that is a member of a growth management board must create a framework with a municipality that is not a member of the same growth management board if they have common boundaries.

2016 c24 s134;2018 c11 s13;2019 c22 s10(29);
2020 c39 s10(68)

Contents of framework

708.29(1) A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.

(2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.

(3) Nothing in this Part prevents a framework from enabling an intermunicipal service to be provided in only part of a municipality.

(3.1) Every framework must contain provisions establishing a process for resolving disputes that occur while the framework is in effect, other than during a review under section 708.32, with respect to

(a) the interpretation, implementation or application of the framework, and

(b) any contravention or alleged contravention of the framework.

(4) No framework may contain a provision that conflicts or is inconsistent with a growth plan established under Part 17.1 or with an ALSA regional plan.

(5) The existence of a framework relating to a service constitutes agreement among the municipalities that are parties to the framework for the purposes of section 54.

2016 c24 s134;2019 c22 s10(30)

Court order to comply

708.291 If a municipality that is a party to an intermunicipal collaboration framework fails to participate in the dispute resolution process set out in the framework or fails to comply with

an agreement reached by the parties as a result of that process, any other party to the framework may apply to the Court of Queen's Bench for an order directing the municipality to comply with the process or agreement.

2019 c22 s10(31)

708.3 Repealed 2019 c22 s10(32).

Conflict or inconsistency

708.31 If there is a conflict or inconsistency between a framework and an existing agreement between 2 or more municipalities that are parties to that framework, the framework must address the conflict or inconsistency and, if necessary, alter or rescind the agreement.

2016 c24 s134

Term and review

708.32(1) The municipalities that are parties to a framework must review the framework at least every 5 years after the framework is created, or within a shorter period of time as provided for in the framework.

(1.1) Unless a framework provides otherwise, it may be reviewed at any time by agreement of all the municipalities that are parties to it.

(2) Where, during a review, the municipalities do not agree that the framework continues to serve the interests of the municipalities, the municipalities must create a replacement framework in accordance with this Part.

(3) Subsection (2) applies only to municipalities that are required under section 708.28(1) to create a framework.

2016 c24 s134;2019 c22 s10(33)

Participation by Indian bands and Metis settlements

708.321 Municipalities that are parties to a framework may invite an Indian band or Metis settlement to participate in the delivery and funding of services to be provided under the framework.

2016 c24 s134;2017 c13 s2(22)

Method of creating framework

708.33(1) In order to create a framework, the municipalities that are to be parties to the framework must each adopt a bylaw or resolution that contains the framework.

(2) Repealed 2019 c22 s10(35).

(3) In creating or reviewing a framework, the municipalities must negotiate in good faith.

(4) Once the municipalities have created a framework, the municipalities must notify the Minister of the framework within 90 days of its creation.

2016 c24 s134;2019 c22 s10(35)

Division 2
Arbitration

Application

708.34 This Division applies to municipalities that are required under section 708.28(1) to create a framework where

(a) the municipalities are not able to create the framework within the time required under section 708.28,

(b) when reviewing a framework under section 708.32, the municipalities do not agree that the framework continues to serve the interests of the municipalities and one of the municipalities provides written notice to the other municipalities and the Minister stating that the municipalities are not able to agree on the creation of a replacement framework, or

(c) the municipalities

(i) have an intermunicipal framework,

(ii) have attempted to resolve a dispute referred to in section 708.29(3.1) using the dispute resolution process under the framework, and

(iii) have been unsuccessful in resolving the dispute within one year after starting the dispute resolution process.

2016 c24 s134;2019 c22 s10(37)

Arbitration

708.35(1) Where section 708.34(a), (b) or (c) applies, the municipalities must refer the matter to an arbitrator.

(2) The arbitrator must be chosen by the municipalities or, if they cannot agree, by the Minister.

(3) Any mediator who has assisted the municipalities in attempting to create a framework is eligible to be an arbitrator under this Division.

(4) In a case referred to in section 708.34(a) or (b), the arbitration process ends where the municipalities create a framework by agreement or the Minister terminates the arbitration and makes an order under section 708.412.

(5) In a case referred to in section 708.34(c), the arbitration process ends where the municipalities resolve their dispute by agreement, the arbitrator makes an award under section 708.36 or the Minister terminates the arbitration and makes an order under section 708.412.

(6) The *Arbitration Act* applies to an arbitration under this Division except to the extent of any conflict or inconsistency with this Division, in which case this Division prevails.

(7) No municipality may, by means of an intermunicipal collaboration framework or any other means, vary or exclude any provision of the *Arbitration Act* and, for greater certainty, section 3 of the *Arbitration Act* does not apply in respect of an arbitration under this Division.

(8) An arbitrator chosen by the Minister is not subject to challenge or removal under the *Arbitration Act* by the parties or any court, but any party may request the Minister to remove and replace the arbitrator and the Minister may do so if the Minister considers it appropriate after considering the reasons for the request and any response by the other parties and the arbitrator.

(9) Section 42(2)(b) of the *Arbitration Act* does not apply in respect of an arbitration under this Division but the Minister may, at the Minister's discretion or at the request of any party or the arbitrator, terminate the arbitration and make an order under section 708.412.

(10) For greater certainty, nothing in this Division applies to an arbitration that occurs under the dispute resolution terms of a framework before the expiry of the year referred to in section 708.34(c)(iii).

2016 c24 s134;2019 c22 s10(38)

Role of arbitrator

708.36(1) Where a dispute is referred to an arbitrator under section 708.35, the arbitrator must make an award that resolves the issues in dispute among the municipalities

(a) in the case of a framework that is required under section 708.28(1) to be created by April 1, 2020, within one year after that date, or

(b) in the case of a replacement framework, within one year from the date the arbitrator is chosen.

(2) Despite subsection (1), an arbitrator may, as part of the arbitration process,

(a) attempt mediation with the municipalities in an effort to resolve the issues in dispute, and

(b) if the mediation is successful, require the municipalities to complete the framework to reflect their resolution of the dispute within a specified time.

(3) An arbitrator's award may include provisions respecting the responsibility for parties to pay or to share in paying costs, fees and disbursements incurred in the arbitration process.

(4) An arbitrator may require a municipality to provide or to make available for the arbitrator's examination and inspection any books, records or other materials of the municipality, but nothing in this subsection requires the arbitrator to examine or inspect any books, records or other materials before making an award.

(5) Unless the arbitrator rules otherwise, hearings in the arbitration are open to the public.

(6) An arbitrator may solicit written submissions from the public and, if the arbitrator does so, the arbitrator must take into account any written submissions received.

(7) An arbitrator must not make an award

(a) that has the effect of granting, varying or otherwise affecting any licence, permit or approval that is subject to this Act or any other enactment,

(b) on any matter that is subject to the exclusive jurisdiction of the Land and Property Rights Tribunal,

(c) that is contrary to the *Alberta Land Stewardship Act* or an ALSA regional plan,

(d) that is contrary to an intermunicipal development plan under Part 17 or a growth plan,

(e) that directs a municipality to raise revenue by imposing a specific tax rate, off-site levy or other rate, fee or charge, or

(f) that directs a municipality to transfer revenue to another municipality, unless

(i) the revenue transfer is directly related to services provided by a municipality that the revenue-transferring municipality derives benefit from, and

(ii) the arbitrator considers it equitable to do so.

2016 c24 s134;2019 c22 s10(39);2020 cL-2.3 s24(41);
2020 c39 s10(69);

708.37 Repealed 2019 c22 s10(40).

Matters to be considered by arbitrator

708.38(1) In resolving a dispute, an arbitrator may have regard to

(a) the services and infrastructure provided for in other frameworks to which the municipalities are also parties,

(b) consistency of services provided to residents in the municipalities,

(c) equitable sharing of costs among municipalities,

(d) environmental concerns within the municipalities,

(e) the public interest, and

(f) any other matters that the arbitrator considers relevant.

(2) Repealed 2019 c22 s10(41).

2016 c24 s134;2019 c22 s10(41)

708.39 Repealed 2019 c22 s10(42).

Municipalities must adopt framework and amend bylaws

708.4(1) Where an arbitrator makes an award respecting a framework, the municipalities are bound by the award and must, within 60 days after the date of the award, adopt a framework in accordance with the award.

(1.1) A municipality must amend its bylaws, other than its land use bylaw, as necessary to reflect the framework within 2 years after adopting the framework.

(1.2) If there is a conflict or inconsistency between a bylaw and the framework, the framework prevails to the extent of the conflict or inconsistency.

(2) A municipality must not amend, repeal or revise its land use bylaw in a manner that is inconsistent with an intermunicipal development plan under section 631 to which the municipality is a party.

(3) A municipality must not amend, repeal or revise its bylaws to be inconsistent with a framework to which it is a party or an award of an arbitrator applicable to it.

2016 c24 s134;2019 c22 s10(43)

Costs of arbitrator

708.41(1) Subject to an award of the arbitrator or an agreement by the parties, the costs of an arbitrator under this Part must be paid on a proportional basis by the municipalities that are to be parties to the framework as set out in subsection (2).

(2) Each municipality's proportion of the costs must be determined by dividing the amount of that municipality's equalized assessment by the sum of the equalized assessments of all of the municipalities as set out in the most recent equalized assessment.

2016 c24 s134;2017 c13 s2(22);2019 c22 s10(44)

Remuneration of experts

708.411 Where an arbitrator appoints an expert, the expert must be paid on a proportional basis by the municipalities that are or will be parties to the framework, with each municipality's proportion of the costs to be determined in the same manner as is required under section 708.41(2) for an arbitrator.

2019 c22 s10(45)

Minister may make orders

708.412(1) Despite this Division or any arbitration occurring under this Division, the Minister may at any time make any order the Minister considers appropriate to further the development of a framework among 2 or more municipalities to carry out the purpose of this Part, including, without limitation, an order establishing a framework that is binding on the municipalities.

(2) If there is a conflict or inconsistency between an order made by the Minister under this section and an action taken by a municipality or a growth management board, the Minister's order prevails to the extent of the conflict or inconsistency.

2019 c22 s10(45)

708.42 Repealed 2019 c22 s10(46).

Measures to ensure compliance with award

708.43(1) If a municipality fails to comply with section 708.4(1), any other municipality that is or will be a party to the framework may apply to the Court of Queen's Bench for an order requiring that municipality to comply with section 708.4(1).

(2) If the Minister considers that a municipality has not complied with a framework, the Minister may take any necessary measures to ensure that the municipality complies with the framework.

(3) In subsection (2), all necessary measures includes, without limitation, an order by the Minister

(a) suspending the authority of a council to make bylaws in respect of any matter specified in the order;

(b) exercising bylaw-making authority in respect of all or any of the matters for which bylaw-making authority is suspended under clause (a);

(c) removing a suspension of bylaw-making authority, with or without conditions;

(d) withholding money otherwise payable by the Government to the municipality pending compliance with an order of the Minister;

(e) repealing, amending and making policies and procedures with respect to the municipality;

(f) suspending the authority of a development authority or subdivision authority and providing for a person to act in its place pending compliance with conditions specified in the order;

(g) requiring or prohibiting any other action as necessary to ensure that the municipality complies with the framework.

2016 c24 s134;2019 c22 s10(47)

708.44 to **708.46** Repealed 2019 c22 s10(48).

Division 3
General

Regulations Act does not apply

708.47 The *Regulations Act* does not apply to a framework or order made under this Part.

2016 c24 s134

Obligations continue during dispute

708.471 During a dispute in respect of a framework, the parties must continue to perform their obligations under the framework.

2019 c22 s10(50)

Jurisdiction of arbitrator

708.48(1) Repealed 2019 c22 s10(51).

(2) An arbitrator acting under this Part may make a determination

(a) on a matter of process,

(b) on the arbitrator's jurisdiction,

(c) on a matter of law, and

(d) on any other matter ancillary to a matter referred to the arbitrator.

(3) The arbitrator must make the findings and determinations the arbitrator determines to be necessary to decide the matters referred to the arbitrator.

(4) Except as provided in this Part, every award of an arbitrator is final and binding on all parties to the award and shall not be questioned, reviewed or restrained by any proceeding in the nature of an application for judicial review or otherwise in any court.

(5) An award of an arbitrator may be reviewed by the Court of Queen's Bench on a question of jurisdiction only and the application for judicial review must be made within 60 days after the award is made.

(6) For the purposes of a judicial review, the arbitrator is considered to be an expert in relation to all matters over which the arbitrator has jurisdiction.

(7) A person making an application to the Court of Queen's Bench under this section must give the arbitrator notice of the application.

2016 c24 s134;2019 c22 s10(51)

Limitation period

708.49 A person who wishes to have an order of the Minister under this Part declared invalid on any basis must make an application for judicial review within 60 days after the order is made.

2016 c24 s134;2019 c22 s10(52)

708.5 Repealed 2019 c22 s10(53).

Paramountcy of Part 17.2

708.51 In the event of a conflict or inconsistency between this Part and Parts 1, 2, 3, 5, 6, 7, 8 or 17, this Part prevails.

2016 c24 s134

Regulations

708.52 The Lieutenant Governor in Council may make regulations

(a) respecting a subsequent action before a court following a decision of an arbitrator;

(b) defining any term or expression that is used in this Part but not defined in this Act;

(c) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent of this Part.

2016 c24 s134;2019 c22 s10(54)

Part 18
Transitional Provisions

709 Repealed by Revision.

Transitional regulations

710(1) The Minister may make regulations

(a) respecting the conversion to this Act of anything from the former Acts or from any other Act repealed by this Act;

(b) to deal with any difficulty or impossibility resulting from this Act or the transition to this Act from the former Acts or from any other Act repealed by this Act.

(2) In this section, "former Acts" means

(a) the *Assessment Appeal Board Act*, RSA 1980 cA-46;

(b) the *County Act*, RSA 1980 cC-27;

(c) the *Improvement Districts Act*, RSA 1980 cI-1;

(d) the *Municipal Government Act*, RSA 1980 cM-26;

(e) the *Municipal Taxation Act*, RSA 1980 cM-31;

(f) the *Municipalities Assessment and Equalization Act*, RSA 1980 cM-32.

1994 cM-26.1 s617;1995 c24 ss94,96

711 to **740** OBNR – RSA.

Tab 2

Province of Alberta

POLICE ACT

Revised Statutes of Alberta 2000
Chapter P-17

Current as of June 30, 2021

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Responsibility of Government for policing

3 The Government of Alberta is responsible for ensuring that adequate and effective policing is maintained throughout Alberta.

RSA 2000 cP-17 s3;2005 c31 s4

Minister's responsibility for policing standards

3.1 The Minister may, subject to the regulations,

(a) establish standards for

(i) police services,

(ii) police commissions, and

(iii) policing committees,

and

(b) ensure that standards are met.

2005 c31 s5;2005 c43 s2

Responsibility for providing policing services

4(1) As part of providing provincial policing services generally,

(a) every municipal district and, subject to subsection (6), a specialized municipality, and

(b) every town, village and summer village that has a population that is not greater than 5000,

shall, subject to subsection (3), receive general policing services provided by the provincial police service and shall pay a cost for these services if required by the regulations.

(1.1) As part of providing provincial policing services generally, every Metis settlement shall, subject to subsection (3), receive general policing services provided by the provincial police service at no direct cost to the Metis settlement.

(2) Notwithstanding subsections (1) and (1.1), a municipality referred to in subsection (1) or (1.1) may, for the purpose of providing policing services specifically for the municipality, do one of the following:

(a) engage the provincial police service as a municipal police service under section 22(1);

(b) enter into an agreement for the provision of municipal policing services under section 22(3);

(c) establish a regional police service under section 24;

(d) establish a municipal police service under section 27.

(3) Subsections (1) and (1.1) do not apply to a municipality while it is receiving municipal policing services pursuant to subsection (2).

(4) Repealed 2005 c31 s6.

(5) A city, town, village or summer village that has a population that is greater than 5000 shall, for the purpose of providing policing services specifically for the municipality, do one of the following:

(a) enter into an agreement for the provision of municipal policing services under section 22(2) or (3);

(b) establish a regional police service under section 24;

(c) establish a municipal police service under section 27.

(6) A specialized municipality is responsible for the policing of an urban service area with a population greater than 5000 within that specialized municipality in accordance with subsection (5).

RSA 2000 cP-17 s4;2005 c31 s6;2019 c18 s11

Exceptions

5(1) The Minister may

(a) exempt any part of Alberta from the operation of all or any provision of this Act, and

(b) make any arrangements or agreements the Minister considers proper for the policing of that part of Alberta exempted under clause (a), including appointing police officers.

(2) and **(3)** Repealed 2005 c31 s7.

(4) When a town, village or summer village attains a population that is greater than 5000, that municipality shall assume responsibility for providing its policing services under section 4(5) on April 1 in the 2nd year following the year

(a) in which it was determined that the municipality had attained a population that is greater than 5000, or

(b) in the case where an order is made under subsection (5), in which the Minister is satisfied that the population of the municipality will continue to remain in excess of 5000.

Application

20.1 The amendments to sections 19 and 20 made by the *Police Amendment Act, 2005 (No. 2)* apply only to inquiries and appeals that commence after the coming into force of that Act.

2005 c43 s7

Part 3
Police Services and Commissions

Provincial police service

21(1) The Lieutenant Governor in Council may, from time to time, authorize the Minister on behalf of the Government of Alberta to enter into an agreement with the Government of Canada for the Royal Canadian Mounted Police to provide a provincial police service.

(2) When an agreement referred to in subsection (1) is in force, the Royal Canadian Mounted Police are responsible for the policing of all or any part of Alberta as provided for in the agreement.

(3) The Royal Canadian Mounted Police with respect to their duties as the provincial police service shall, subject to the terms of the agreement referred to in subsection (1), be under the general direction of the Minister in matters respecting the operations, policies and functions of the provincial police service other than those matters referred to in section 2(2).

1988 cP-12.01 s21;1994 cG-8.5 s54

Municipal policing by another police service

22(1) The Government of Alberta may enter into an agreement with the council of a municipality referred to in section 4(2) for the provision of policing services specifically for the municipality by the provincial police service subject to the sharing of costs as determined by the Minister.

(2) Notwithstanding subsection (1), where the Minister considers it necessary, the Minister may authorize a municipality that has a population that is greater than 5000 to enter into an agreement with the Government of Alberta for the provision of policing services specifically for the municipality by the provincial police service subject to the sharing of costs as determined by the Minister.

(3) Subject to the prior approval of the Minister, the council of a municipality may enter into an agreement with

(a) the Government of Canada for the employment of the Royal Canadian Mounted Police, or

(b) the council of another municipality,

for the provision of policing services to the municipality.

(4) If a municipality has entered into a policing agreement under subsection (1), (2) or (3), it shall not, without the prior approval of the Minister, withdraw from or alter the type of policing service that it is receiving.

(5) Repealed 2005 c31 s11.

RSA 2000 cP-17 s22;2005 c31 s11

Policing committees

23(1) In this section, "officer in charge" means the officer in charge of the unit of the police service that is providing policing services to a municipality under section 22.

(2) A council that has entered into an agreement under section 22 may establish a policing committee.

(3) A council that establishes a policing committee shall, subject to the regulations,

(a) prescribe the rules governing the operation of the policing committee, and

(b) appoint the members of the policing committee.

(4) A policing committee shall consist of not fewer than 3 nor more than 12 members.

(5) If

(a) 4 or fewer members are appointed under subsection (3), one of them may be a member of the council or an employee of the municipality, or

(b) 5 or more members are appointed under subsection (3), 2 of them may be members of the council or employees of the municipality.

(6) The council may provide for the payment of reasonable remuneration or of a gratuity or allowance to members of the policing committee.

(7) The term of office of a person appointed to a policing committee is

(a) 3 years, or

(b) a term of less than 3 years, but not less than 2 years, as may be fixed by bylaw.

Tab 3

Province of Alberta

POLICE ACT

POLICE FUNDING REGULATION

Alberta Regulation 7/2020

Current as of January 22, 2020

Extract

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(no amdt)

ALBERTA REGULATION 7/2020

Police Act

POLICE FUNDING REGULATION

Table of Contents

Definitions

1 In this Regulation,

(a) "fiscal year" means the period commencing April 1 of one year and ending on March 31 of the next year;

(b) "Minister" means the Minister designated under section 16 of the *Government Organization Act* as the Minister responsible for the Act;

(c) "municipality" means

(i) every municipal district and specialized municipality, and

(ii) every town, village and summer village that has a population that is not greater than 5000;

(d) "PPSA" means the Provincial Police Service Agreement between the Government of Canada and the Government of Alberta dated April 1, 2012 and extensions or renewals of that Agreement.

Requirement to pay for policing services

2 Pursuant to section 4(1) of the Act, each municipality shall, subject to section 4(3) of the Act, pay a cost in each fiscal year for receiving general policing services provided by the provincial police service in an amount determined by the Minister in accordance with this Regulation.

Cost formula

3(1) The cost that a municipality must pay in each fiscal year is the amount determined by the following formula:

(E + P) – (SP + CSI + D)

where

E is the Weighted Equalized Assessment for the municipality determined in accordance with subsection (2)(a);

P is the Weighted Population Amount of the municipality determined in accordance with subsection (2)(b);

SP is the Shadow Population Subsidy of the municipality determined in accordance with subsection (2)(c);

CSI is the Crime Severity Index Subsidy determined in accordance with subsection (2)(d);

D is the Police Detachment Subsidy determined in accordance with subsection (2)(e).

(2) For the purposes of this section,

(a) the Weighted Equalized Assessment for a municipality for a fiscal year is the amount determined by the following formula:

$$\frac{MEA}{TEA} \times ATS \times 50\%$$

where

MEA is the equalized assessment prepared by the Minister of Municipal Affairs for each municipality as sent to the municipality annually under section 320 of the *Municipal Government Act*;

TEA is the total of all of the equalized assessments prepared by the Minister of Municipal Affairs for the municipalities;

ATS is the annual total share of policing costs, which is

(i) for the 2020-2021 fiscal year, $23 250 000, representing 10% of frontline policing costs under the PPSA,

(ii) for the 2021-2022 fiscal year, $34 900 000, representing 15% of the frontline policing costs under the PPSA,

(iii) for the 2022-2023 fiscal year, $46 500 000, representing 20% of the frontline policing costs under the PPSA,

(iv) for the 2023-2024 and 2024-2025 fiscal years, $69 800 000, representing 30% of the frontline policing costs under the PPSA, and

(v) for a subsequent fiscal year, the total cost of the PPSA multiplied by the percentage of all positions funded by the PPSA that the Minister determines to be frontline policing costs, and then multiplied by a percentage to be determined by the Minister that is to be charged to the municipalities;

(b) the Weighted Population Amount for a municipality is the amount determined by the following formula:

$$\frac{MP}{TP} \times ATS \times 50\%$$

where

MP is the population of the municipality as determined by the President of Treasury Board and Minister of Finance;

TP is the total of the municipal populations of all the municipalities;

ATS has the same meaning as in clause (a);

(c) the Shadow Population Subsidy for a municipality is the amount determined by the following formula:

$$\frac{MSP}{MP} \times \_\_\% \times (E + P)$$

where

MSP is the shadow population of a municipality as determined by the President of Treasury Board and Minister of Finance;

MP has the same meaning as in clause (b);

_% is 5%, or a percentage determined by dividing the MSP by the MP and then multiplying that number by 5, whichever is lower;

E is the Weighted Equalized Assessment for the municipality determined in accordance with clause (a);

P is the Weighted Population Amount of the municipality determined in accordance with clause (b);

(d) the Crime Severity Index Subsidy is the amount determined by the following formula:

$$\frac{(MA - TA) \times 0.05\%}{100} \times (E + P)$$

where

MA is the 3-year average of the municipality's Crime Severity Index, as determined by the Minister;

TA is the 3-year average of the combined Crime Severity Indexes of all of the municipalities;

E is the Weighted Equalized Assessment for the municipality determined in accordance with clause (a);

P is the Weighted Population Amount of the municipality determined in accordance with clause (b);

(e) the Police Detachment Subsidy, where applicable, is determined by the following formula:

$$(E + P) \times 5\%$$

where

E is the Weighted Equalized Assessment for the municipality determined in accordance with clause (a);

P is the Weighted Population Amount of the municipality determined in accordance with clause (b).

(3) For the purposes of this section, if a specialized municipality has an urban service area with a population greater than 5000, the

population of the urban service area shall be excluded when determining the population or shadow population of the municipality.

(4) For the purposes of this section, the Police Detachment Subsidy is only applicable to a municipality identified in section 1(c)(ii) that does not have a police detachment within the municipality.

Obligation to pay

4(1) The Minister shall, in each fiscal year, send an invoice to each municipality stating the amount that the municipality shall pay for that fiscal year for receiving general policing services provided by the provincial police service.

(2) A municipality shall pay the amount determined by the Minister within 45 days of receiving the invoice and any unpaid amount after that time shall be recoverable as a debt owing to the Crown.

(3) Despite anything to the contrary in this Regulation, the Minister may by order exempt a municipality from paying a cost for receiving general policing services provided by the provincial police service, and the Minister shall not send an invoice to a municipality that has been exempted.

Enhanced policing

5 The Minister may exempt a municipality from paying a cost for full-time enhanced policing positions funded under an agreement entered into under section 22 of the Act.

Expiry

6 For the purposes of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on March 31, 2025.

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Tab 4

Province of Alberta

PUBLIC UTILITIES ACT

Revised Statutes of Alberta 2000
Chapter P-45

Current as of September 1, 2019

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(h) "owner of a public utility" means

(i) a person owning, operating, managing or controlling a public utility and whose business and operations are subject to the legislative authority of Alberta, and the lessees, trustees, liquidators of the public utility or any receivers of the public utility appointed by any court, but

(ii) does not include

(A) a municipality that has not voluntarily come under this Act in the manner provided in this Act, or

(B) a regional services commission;

(i) "public utility" means

(i), (ii) repealed 2007 c42 s5,

(iii) repealed RSA 2000 cR-4 s61 (2002 c30 s27),

(iv) a system, works, plant, equipment or service for the production, transmission, delivery or furnishing of water, heat, light or power supplied by means other than electricity, either directly or indirectly to or for the public,

(v) an oil pipeline the proprietor of which is declared by the Alberta Energy Regulator to be a common carrier, and

(vi) an electric utility;

(j) "regional services commission" means a regional services commission under Part 15.1 of the *Municipal Government Act*.

(k) repealed 2007 c42 s5.

RSA 2000 cP-45 s1;RSA 2000 cR-4 s61;2002 c30 s27;
2007 cA-37.2 s82(25);2007 c42 s5;2012 cE-0.3 s284;
2012 cR-17.3 s104;2018 c19 s76

Application includes complaint

2 An application to the Commission under this Act includes a complaint in writing made to the Commission.

RSA 2000 cP-45 s2;2007 cA-37.2 s82(25)

Part 1 Repealed 2007 cA-37.2 s82(25).

Part 2
Public and Other Utilities

Division 1
General

Application of Part

78(1) This Part applies

(a) to all public utilities owned or operated by or under the control of a company or corporation that is subject to the legislative authority of Alberta or that has, by virtue of an agreement with a municipality, submitted to the jurisdiction and control of the Commission;

(b) subject to subsection (2), to every person owning or operating a public utility to which the jurisdiction of the Legislature extends;

(c) to all public utilities owned or operated by or under the control of the Crown, or an agent of the Crown, in right of Alberta;

(d) to all utilities and other matters dealt with in Divisions 3 to 6 of this Part to the extent set out in those Divisions.

(2) This Part does not apply to a public utility owned or operated by a municipality unless the public utility is brought under this Act by a bylaw of the municipality as provided in this Part.

(3) When the *Water Act* is applicable to an owner of a public utility, this Part shall be applied to it as being subject to that Act and to the orders and regulations made under that Act.

RSA 2000 cP-45 s78;2007 cA-37.2 s82(25)

Jurisdiction and powers

78.1(1) The Commission has all the necessary jurisdiction and power

(a) to deal with public utilities and the owners of them as provided in this Act;

(b) to deal with public utilities and related matters as they concern suburban areas adjacent to a city, as provided in this Act.

(2) The Commission has, and is deemed at all times to have had, jurisdiction to fix and settle, on application, the price and terms of

Division 3
Pipeline Charges

Pipeline charges

110 The Commission, after notice to and hearing of the parties interested, may fix the just and reasonable rates, tolls and charges for the gathering, transporting, distributing, handling and delivery of oil or any specified kind of oil by means of any oil pipeline, or for any service performed by the proprietor of the oil pipeline in relation to the gathering, transporting, distributing, handling or delivery of any oil.

RSA 2000 cP-45 s110;2007 cA-37.2 s82(25)

Division 4
Municipally Owned Utilities

Municipality owned utilities

111(1) A municipality owning or operating a public utility may, by bylaw approved by the Lieutenant Governor in Council, provide that the public utility shall come under the operation of this Act and be subject to the control and orders of the Commission.

(2) On the approval of the bylaw by the Lieutenant Governor in Council, the public utility owned or operated by the municipality afterwards comes under the operation of this Act and is subject to the control and orders of the Commission.

RSA 2000 cP-45 s111;2007 cA-37.2 s82(25)

Supply of utilities on order

112(1) This section applies, with respect to a regional services commission, to the area within the boundaries of the members of the regional services commission.

(2) In this section,

(a) "proprietor commission" means a regional services commission that owns, operates, manages or controls a public utility;

(b) "proprietor municipality" means a municipality that owns, operates, manages or controls a public utility;

(c) "public utility" includes, in addition to its defined meaning under section 1, a sewerage or waste management system.

(3) On application by a municipality, a regional services commission or, in the case of an improvement district, the Minister responsible for the *Municipal Government Act*, the Commission

Tab 5

Province of Alberta

FAMILY AND COMMUNITY
SUPPORT SERVICES ACT

FAMILY AND COMMUNITY SUPPORT SERVICES REGULATION

Alberta Regulation 218/1994

With amendments up to and including Alberta Regulation 87/2021

Current as of July 1, 2021

Office Consolidation

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Copyright and Permission Statement

Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

(Consolidated up to 87/2021)

ALBERTA REGULATION 218/94

Family and Community Support Services Act

FAMILY AND COMMUNITY SUPPORT SERVICES REGULATION

Table of Contents

Program

Definitions

1 In this Regulation,

(a) "Act" means the *Family and Community Support Services Act*;

(b) "program" means an arrangement for the delivery of family and community support services that are of a preventive nature in accordance with an agreement entered into pursuant to section 3 of the Act.

AR 218/94 s1;102/97;199/2003

Responsibilities of municipality

2 In providing for the establishment, administration and operation of a program, a municipality must do all of the following:

(a) promote and facilitate the development of stronger communities;

(b) promote public participation in planning, delivering and governing the program and services provided under the program;

(c) promote and facilitate the involvement of volunteers;

(d) promote efficient and effective use of resources;

(e) promote and facilitate co-operation and co-ordination with allied service agencies operating within the municipality.

AR 218/94 s2;102/97;199/2003

Service requirements

2.1(1) Services provided under a program must

(a) be of a preventive nature that enhances the social well-being of individuals and families through promotion or intervention strategies provided at the earliest opportunity, and

(b) do one or more of the following:

(i) help people to develop independence, strengthen coping skills and become more resistant to crisis;

(ii) help people to develop an awareness of social needs;

(iii) help people to develop interpersonal and group skills which enhance constructive relationships among people;

(iv) help people and communities to assume responsibility for decisions and actions which affect them;

(v) provide supports that help sustain people as active participants in the community.

(2) Services provided under a program must not

(a) provide primarily for the recreational needs or leisure time pursuits of individuals,

(b) subject to subsection (3), offer direct assistance, including money, food, clothing or shelter, to sustain an individual or family,

(c) be primarily rehabilitative in nature, or

(d) duplicate services that are ordinarily provided by a government or government agency.

(3) Services provided under a program may offer direct assistance including money, food, clothing or shelter to sustain an individual or family during a public health emergency under the *Public Health Act* or any extenuating circumstances such as fire or flood as the Minister may determine.

AR 102/97 s2;199/2003;87/2021

Financial Matters

Municipal costs

3 Municipal costs of a program may only include

(a) general administration and management of the municipal program,

(b) operation of a board or committee for the municipal program,

(c) planning and research regarding the overall program,

(d) general consulting by the municipality to services within the program,

(e) general consulting by the municipality to the community with regard to the program,

(f) monitoring and evaluation of the services provided under the program in the municipality,

(g) evaluating the service delivery effectiveness of the program,

(h) advertising and promoting the services to be provided under the program in the community,

(i) managing a specific service delivery mechanism,

(j) operating a board or committee for the delivery of the services under the program,

(k) providing training for staff and volunteers for the delivery of services under the program,

(l) reimbursing volunteers for incidental expenses necessarily incurred in providing volunteer services to the program but not including loss of wages, and

(m) employment of staff to deliver family and community support services under the program.

AR 218/94 s3;199/2003;87/2021

Prohibited costs

4 Expenditures of the program shall not include

(a) the purchase of land or buildings,

(b) the construction or renovation of a building,

(c) the purchase of motor vehicles,

(d) any costs required to sustain an organization that do not relate to direct service delivery under the program,

(e) municipal property taxes and levies, or

(f) any payments to a member of a board or committee referred to in section 3(b) or (j), other than reimbursement for expenses referred to in section 3(l).

AR 218/94 s4;199/2003

Use of money

5 A municipality that receives funds from the Minister for a program shall

(a) give priority to funding services under the program that are delivered by volunteer non-profit organizations,

(b) expend no less than 20% of the total budget in the program as a matching share of the total municipal funding and funding by the Minister as provided in the program agreement,

(b.1) allocate from the operating budget of the municipality the 20% matching share referred to in clause (b),

(c) not apply contributions from agencies towards the program, or funds collected through fees charged to

clients for services provided under the program, as a part of its matching share,

(d) repealed AR 102/97 s3,

(e) not use payments made by the Minister under this Act to secure reimbursement for municipal costs not a part of the program, and

(f) not use payments made by the Minister under this Act for any operating costs for the program not equally charged to its other municipal projects, work or service.

AR 218/94 s5;102/97;199/2003

Payment of $250 000 or less

6 The audited financial statement required under section 6 of the Act from a municipality that receives a payment under section 3 of the Act in the amount of $250 000 or less

(a) must set out the revenues and expenditures shown in the Schedule, and

(b) must contain the municipality's certification

(i) that the services provided under the program meet the conditions set out in section 2.1 of this Regulation,

(ii) that the expenditures set out in the financial report include only costs that are eligible under section 3 of this Regulation and do not include expenditures listed in section 4 of this Regulation,

(iii) that the funds provided for services under the program were expended for those services, except for the amount reported as surplus,

(iv) that the municipality's contribution is not less than 20% of the total budget as provided for in section 5(b) of this Regulation,

(v) that the 20% matching share has been allocated in accordance with section 5(b.1) of this Regulation, and

(vi) that any funds collected through fees charged to clients for services provided under the program have not been included as part of the municipality's contribution as provided for in section 5(c) of this Regulation.

AR 218/94 s6;102/97;87/2021

Payment of more than $250 000 and less than $500 000

6.1 The audited financial statement required under section 6 of the Act from a municipality that receives a payment under section 3 of the Act in the amount of more than $250 000 but less than $500 000 must contain

(a) the information referred to in section 6(a) and (b), and

(b) a review engagement report relating to the revenues and expenditures shown in the Schedule, prepared in accordance with the standards of the Chartered Professional Accountants of Canada for review engagement reports.

AR 102/97 s4;104/2017;87/2021

Payment of $500 000 or more

6.2 The audited financial statement required under section 6 of the Act from a municipality that receives a payment under section 3 of the Act in the amount of $500 000 or more must contain

(a) the information referred to in section 6(a) and (b), and

(b) an auditor's report relating to the revenues and expenditures shown in the Schedule, prepared in accordance with the standards of the Chartered Professional Accountants of Canada for auditors' reports.

AR 102/97 s4;104/2017

Auditor

6.3(1) The financial statements referred to in sections 6.1 and 6.2 may be prepared by an employee of the municipality but must be reviewed or audited, as the case may be, by an auditor who is not an employee of the municipality.

(2) The auditor referred to in subsection (1) may be the same person who audits the general financial statements of the municipality.

(3) Notwithstanding subsection (1), financial statements referred to in sections 6.1 and 6.2 may be reviewed or audited, as the case may be, by an employee of the municipality if the employee satisfies the conditions set by the Minister.

AR 102/97 s4

Agreements

Agreements

7 An agreement referred to in section 3 of the Act shall be in a form satisfactory to the Minister.

AR 218/94 s7;199/2003

Formal payments

8(1) Subject to section 3(3) of the Act, payment may be paid in accordance with the amount set out in the agreement.

(2) Advance payments to cover costs of the program may be made in accordance with the terms of the agreement.

Municipal signing officer

9 When a municipality as defined in section 1(b)(i) of the Act enters into an agreement the municipality shall sign the agreement, on a resolution by the municipal council authorizing the agreement.

Section 2(b) agreements

10(1) Where a municipality enters into an agreement with another municipality under section 2(b) of the Act, the agreement must specify which municipality is authorized, on behalf of the other municipality, to enter into an agreement with the Minister.

(2) If a municipality wishes to terminate an agreement between municipalities under section 2(b) of the Act, and the effect of the termination would be to withdraw the authority for a municipality to receive funding under this Regulation on behalf of another municipality, it shall provide the other municipality and the Minister with written notice 6 months prior to the termination date.

Agreement terms

11 It is a term of an agreement between the Minister and municipality that

(a) if in the opinion of the Minister a municipality's program fails to meet the requirements of section 2 or 2.1, or

(b) if the audited financial statement of a municipality

(i) has not been submitted to the Minister within 120 days of the end of the municipality's fiscal year,

(ii) does not meet the requirements prescribed in section 6, 6.1 or 6.2, as the case may be, or

(iii) shows that the municipality has wrongfully used funds provided to it under the Act,

the Minister may withhold amounts of funding under any new agreement or require the municipality to repay the amounts of funding that in the opinion of the Minister are equivalent to the value of the program components not met or the funds wrongfully used.

AR 218/94 s11;102/97

12 Repealed AR 87/2021 s6.

Expiry

Expiry

13 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be re-passed in its present or an amended form following a review, this Regulation expires on June 30, 2032.

AR 102/97 s6;41/2002;199/2003;128/2013;98/2015;104/2017;87/2021

Schedule

Revenues and Expenditures

Revenues
- Funding provided under the Act
- Municipal contribution
- Other revenues

Total Revenues

Expenditures
- Internal, directly funded services provided by the municipality under the program including administration
  - Funds provided to service providers who are external to the municipality
  - Less surpluses retained/returned by service providers who are external to the municipality

Net total funding to service providers who are external to the municipality

Total Expenditures

Surplus (Deficit)

AR 218/94 Sched.;102/97;199/2003

Tab 6

Province of Alberta

LIBRARIES ACT

LIBRARIES REGULATION

Alberta Regulation 141/1998

With amendments up to and including Alberta Regulation 134/2018

Current as of June 28, 2018

Office Consolidation

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the school authority for the operation of the library, including the responsibilities of the employees and volunteers of both,

(b) the board has its own bank account and signing officers, none of whom are employees of the school authority, and

(c) the library is open to the public outside of the hours during which the school is in operation for regular classes, including being open during evenings or weekends or both, and during the summer.

AR 141/98 s17;172/2007

Contents of intermunicipal agreement

17.1 An intermunicipal agreement shall, at a minimum, contain the following:

(a) a formal indication of each municipality's desire to enter into the intermunicipal agreement;

(b) a starting date for the intermunicipal agreement;

(c) provision for a third municipality to become a party to the intermunicipal agreement after the starting date if only 2 municipalities enter into the intermunicipal agreement initially;

(d) provision for the appointment of not more than 10 and not fewer than 7 members to the intermunicipal library board, with a requirement that only one member of council from each municipality that is a party to the agreement may be appointed as a member to the intermunicipal library board;

(e) terms respecting the terms of appointment of the members of the intermunicipal library board;

(f) the annual date by which the intermunicipal library board must submit a budget and an estimate of the money required during the ensuing fiscal year to each municipality that is a party to the intermunicipal agreement;

(g) terms specifying how the intermunicipal library board must calculate the estimate of the money required during the ensuing fiscal year and each municipality's share of that money, the date on which payment of the money becomes due from each municipality, and how the money is to be paid;

(h) terms specifying the form of the financial report to be prepared under section 12.7 of the Act and setting out a process for the approval of the qualifications of the person who will review the accounts of the intermunicipal library board and prepare the financial report;

(i) terms governing the process for amending and terminating the intermunicipal agreement;

(j) details of the assets and liabilities that each municipality that is a party to the intermunicipal agreement will transfer to the intermunicipal library board on the formation of the board;

(k) where the intermunicipal agreement is an agreement between 3 municipalities, terms respecting the transfer of assets and liabilities of the intermunicipal library board in the event that one of the 3 municipalities withdraws from the agreement;

(l) a procedure to be used to resolve or attempt to resolve any conflict between the municipalities that are parties to the intermunicipal agreement;

(m) terms respecting the notice that a municipality must give to the intermunicipal library board and to the other municipalities that are parties to the intermunicipal agreement before making an application under section 17.2.

AR 172/2007 s10

Dissolution of intermunicipal library board

17.2(1) The council of a municipality that is a party to an intermunicipal agreement may, by bylaw, authorize the municipality to apply to the Minister to dissolve the intermunicipal library board.

(2) An application to the Minister to dissolve an intermunicipal library board must contain a proposed winding-up plan that addresses the transfer of all of the assets and liabilities of the intermunicipal library board.

(3) If complete applications to dissolve an intermunicipal library board are received

(a) from one or both municipalities that are parties to an intermunicipal agreement that is between 2 municipalities, or

Tab 7

ALBERTA REGULATION 191/2017

Municipal Government Act

INTERMUNICIPAL COLLABORATION FRAMEWORK REGULATION

Definitions

1 In this Regulation,

(a) "party" means a municipality that creates a framework with one or more other municipalities;

(b) "representative" means a person selected by a party who

(i) holds a senior position with the party, and

(ii) has authority to negotiate for or settle a dispute on behalf of the party;

(c) "service" includes any program, facility or infrastructure necessary to provide a service.

Exemptions

2 The following improvement districts are exempt from Part 17.2 of the Act:

(a) Improvement District No. 13 (Elk Island);

(b) Improvement District No. 24 (Wood Buffalo);

(c) Improvement District No. 25 (Willmore Wilderness).

Duty to act in good faith

3(1) In creating or amending a framework, the parties must

(a) act honestly, respectfully and reasonably,

(b) have regard to the legitimate interests of each party,

(c) have an appropriate communication approach,

(d) look for the potential for joint benefit of all parties,

(e) disclose to each other information that is necessary to understand a position or formulate an intelligent response,

(f) meet through representatives who are equipped and fully authorized to engage in rational discussion, and

(g) be willing and be prepared to explore the issues presented by all parties and explain the rationale for their positions.

(2) In creating or amending a framework, the parties must not

(a) act in a manner that is arbitrary, capricious or intended to cause harm to any of the parties,

(b) make improper demands, or

(c) engage in a process that is intended to avoid reaching any agreement.

Proposal for other services

4(1) When a party proposes that a framework address a service referred to in section 708.29(2)(f) of the Act, the party must provide to the other parties a rationale as to why that service has a benefit to residents in the affected municipalities.

(2) In providing a rationale under subsection (1), the party must have regard to Part 17.2 of the Act.

Other bylaws must align with framework

5(1) For the purposes of section 708.4 of the Act, the parties must align their bylaws, other than their land use bylaws, with the framework within 2 years after the bylaw to create the framework is adopted.

(2) If there is a conflict or inconsistency between a bylaw and the framework, the framework prevails to the extent of the conflict or inconsistency.

Notice of amendment to framework

6 If a party wishes to amend the framework, the party must give 30 days' written notice to the other parties.

Part 1
Arbitration Process for Creating Framework

Application of Part

7 This Part applies to Division 3 of Part 17.2 of the Act.

Arbitrator must be independent and impartial

8(1) Unless the parties agree otherwise, an arbitrator must be independent of the parties and impartial as between the parties in respect of the process for creating the framework.

(2) An arbitrator must not act as an advocate for any party.

Disclosure of reasonable apprehension of bias

9(1) Before accepting an appointment as arbitrator, the person must disclose to the parties any circumstances of which that person is aware that may give rise to a reasonable apprehension of bias.

(2) An arbitrator who, during arbitration, becomes aware of circumstances that may give rise to a reasonable apprehension of bias must promptly disclose the circumstances to the parties.

Minister-appointed arbitrator's rates and payments

10 If, under section 708.35(2) of the Act, the Minister chooses the arbitrator, the Minister may specify the arbitrator's rates and payments by agreement with the arbitrator.

Conduct of the arbitration

11(1) Subject to this Part, the arbitrator may conduct the arbitration in any manner that the arbitrator considers appropriate to facilitate the just and timely resolution of the disputed issues.

(2) Without limiting the generality of subsection (1), the arbitrator may conduct the arbitration on the basis of documents, or he or she may hold a hearing for the presentation of evidence, including a full arbitration hearing with witnesses, expert testimony and oral argument.

(3) If the arbitrator holds a hearing, the arbitrator must give the parties sufficient notice of the hearing and any deadlines for the submission of evidence and written argument.

(4) Each party must be given an opportunity to present a case and to respond to the other parties' cases.

(5) The arbitrator may conduct the arbitration and make a decision based on the evidence presented if a party fails, without reasonable excuse in the sole discretion of the arbitrator,

(a) to appear at a scheduled oral hearing, or

(b) to produce evidence.

Preliminary meeting

12(1) The arbitrator must convene a preliminary meeting, in person or by electronic means, with the parties within 21 days of the selection or appointment of the arbitrator

(a) to discuss the reports provided to the arbitrator by the parties in accordance with section 708.37(1)(a) of the Act, and to identify the disputed issues,

(b) to discuss the process and procedures to be followed,

(c) to set time periods within which specified actions must be taken, and

(d) to discuss other matters that the arbitrator believes will facilitate the arbitration in an efficient and timely manner.

(2) The arbitrator must give the parties a written summary of the matters discussed at the preliminary meeting as soon as possible after the preliminary meeting.

Arbitrator not bound by rules of evidence

13 The arbitrator is not bound by the rules of evidence or any other law applicable to court proceedings, and has the power to determine the admissibility, relevance and weight of any evidence.

Witnesses

14(1) Unless the arbitrator decides otherwise, a witness's evidence must be presented orally or by a written statement or declaration affirmed or sworn for its truth.

(2) If evidence is not delivered orally, the arbitrator may order that the witness be present at an oral hearing for cross-examination.

Agreed statement of facts

15 Unless an arbitrator decides otherwise, the parties must identify facts they do not dispute, and deliver an agreed statement of facts to the arbitrator.

Production of documents

16(1) A party must provide to the arbitrator and to the other parties a copy of all documents it intends to rely on in the arbitration and allow the parties to make representations in respect to those documents.

(2) The arbitrator may order a party to produce, within a specified time, documents that

(a) the party has in its care, custody or control, and

(b) the arbitrator considers to be relevant.

(3) The arbitrator must not rely on any document of which the parties have not been provided a copy.

(4) If the arbitrator conducts independent information gathering, including written submissions from the public, regarding one or more of the disputed issues, the arbitrator must share that information with the parties and allow the parties to make representations in respect of that information.

(5) The arbitrator may require the parties to enter into a confidentiality agreement with respect to the sharing of confidential information for the purpose of arbitration.

Appointment of experts

17(1) An arbitrator may appoint one or more experts to report to the arbitrator on specific issues.

(2) The arbitrator may require the parties to give the expert any relevant information or to allow the expert to inspect property or documents.

(3) If the arbitrator holds a hearing, the expert, after making the report, must participate in the hearing, and the parties may question the expert and present the testimony of another expert on the subject-matter of the report.

(4) The remuneration for an expert is to be paid in a like manner as an arbitrator in accordance with section 708.41 of the Act.

Submissions from public

18(1) An arbitrator may solicit written submissions from the public.

(2) If the arbitrator solicits written submissions from the public, the arbitrator must take into consideration any written submissions received.

Hearings open to public

19 Subject to the arbitrator's discretion, hearings are open to the public.

Arbitrator's order

20(1) Unless the parties resolve the disputed issues during the arbitration, the arbitrator must make an order as soon as possible after the conclusion of the arbitration.

(2) The arbitrator's order must

(a) be in writing,

(b) be signed and dated,

(c) state the reasons on which it is based,

(d) if the arbitrator has created a framework, include the timelines for each party to pass a bylaw adopting the framework, and

(e) specify all expenditures incurred in the arbitration process for payment under section 708.41 of the Act.

(3) In addition to filing the order with the Minister in accordance with section 708.42 of the Act, the arbitrator must provide a copy of the order to each party.

(4) An arbitrator must not make an order

(a) that has the effect of granting, varying or otherwise affecting any licence, permit or approval that is subject to the Act or any other enactment,

(b) on any matter that is subject to the exclusive jurisdiction of the Municipal Government Board,

(c) that is contrary to the *Alberta Land Stewardship Act* or any ALSA regional plan,

(d) that is contrary to a growth plan made pursuant to section 708.02(2) of the Act,

(e) that directs a municipality to raise revenue by imposing a specific tax rate, offsite levy or other rate, fee or charge, or

(f) that directs a municipality to transfer revenue to another municipality unless the revenue transfer is directly related to services provided by a municipality that the revenue transferring municipality derives benefit from, and it is equitable to do so.

Amendment or variance of arbitrator's order

21 The arbitrator may amend or vary the arbitrator's order to correct

(a) a clerical, mathematical or typographical error, or

(b) an omission or other similar mistake.

Record of proceeding

22 On conclusion of the arbitration and issuance of an order, the arbitrator must proceed to compile a record of the arbitration and give a copy of the record to each of the parties.

Part 2
Dispute Resolution Process

Application of Part

23 This Part applies to Division 4 of Part 17.2 of the Act.

Requirements

24(1) A dispute resolution process under Division 4 of Part 17.2 of the Act must contain or address the following matters:

(a) how notice of the dispute will be given and to whom;

(b) when the parties are to meet and the process they will follow to resolve the dispute, including, without limitation, negotiation, facilitation and mediation;

(c) how a decision maker will be chosen and what powers, duties and functions the decision maker will have;

(d) the decision maker's practice and procedures;

(e) a binding dispute resolution mechanism;

(f) how any costs incurred as part of the dispute resolution process are to be shared among the parties;

(g) how records of the dispute resolution process are maintained, and who maintains the records;

(h) how parties or the public, or both, are identified;

(i) when parties or the public, or both, may be notified of the dispute;

(j) if and how parties or the public, or both, will be engaged in the dispute resolution process.

(2) If the dispute resolution process is not completed within one year from the date the notice of the dispute is given, any party may request the Minister to appoint an arbitrator pursuant to section 6(2) of the Schedule.

Model provisions

25 For the purposes of section 708.45(2) of the Act, the model dispute resolution provisions are those set out in the Schedule.

Framework remains in force

26 During a dispute in respect of a framework, the parties must continue to perform their obligations under the framework.

Part 3
Judicial Review

Arbitrator's order is final

27 Except as provided in this Part, every order of an arbitrator is final and binding on all parties to the order and shall not be questioned, reviewed or restrained by any proceeding in the nature of an application for judicial review or otherwise in any court.

Judicial review of order

28(1) An order of an arbitrator may be reviewed by the Court of Queen's Bench on a question of jurisdiction only.

(2) For the purposes of a judicial review, the arbitrator is considered to be an expert decision-maker in relation to all matters over which the arbitrator has jurisdiction.

Notice of application to arbitrator

29 Where an order of an arbitrator is the subject of any application to the Court of Queen's Bench under section 28, the person making the application must give the arbitrator notice of the application.

Part 4
Coming into Force

Coming into force

30 This Regulation comes into force on the coming into force of section 134 of the *Modernized Municipal Government Act*.

Schedule

Model Default Dispute Resolution Provisions

Definitions

1 In this Schedule,

(a) "initiating party" means a party who gives notice under section 2 of this Schedule;

(b) "mediation" means a process involving a neutral person as a mediator who assists the parties to a matter and any other person brought in with the agreement of the parties to reach their own mutually acceptable settlement of the matter by structuring negotiations, facilitating communication and identifying the issues and interests of the parties;

(c) "mediator" means the person or persons appointed to facilitate by mediation the resolution of a dispute between the parties.

Notice of dispute

2 When a party believes there is a dispute under a framework and wishes to engage in dispute resolution, the party must give written notice of the matters under dispute to the other parties.

Negotiation

3 Within 14 days after the notice is given under section 2 of this Schedule, each party must appoint a representative to participate in one or more meetings, in person or by electronic means, to attempt to negotiate a resolution of the dispute.

Mediation

4(1) If the dispute cannot be resolved through negotiations, the representatives must appoint a mediator to attempt to resolve the dispute by mediation.

(2) The initiating party must provide the mediator with an outline of the dispute and any agreed statement of facts.

(3) The parties must give the mediator access to all records, documents and information that the mediator may reasonably request.

(4) The parties must meet with the mediator at such reasonable times as may be required and must, through the intervention of the mediator, negotiate in good faith to resolve their dispute.

(5) All proceedings involving a mediator are without prejudice, and, unless the parties agree otherwise, the cost of the mediator must be shared equally between the parties.

Report

5(1) If the dispute has not been resolved within 6 months after the notice is given under section 2 of this Schedule, the initiating party must, within 21 days, prepare and provide to the other parties a report.

(2) Without limiting the generality of subsection (1), the report must contain a list of the matters agreed on and those on which there is no agreement between the parties.

(3) Despite subsection (1), the initiating party may prepare a report under subsection (1) before the 6 months have elapsed if

(a) the parties agree, or

(b) the parties are not able to appoint a mediator under section 4 of this Schedule.

Appointment of arbitrator

6(1) Within 14 days of a report being provided under section 5 of this Schedule, the representatives must appoint an arbitrator and the initiating party must provide the arbitrator with a copy of the report.

(2) If the representatives cannot agree on an arbitrator, the initiating party must forward a copy of the report referred to in section 5 of this Schedule to the Minister with a request to the Minister to appoint an arbitrator.

(3) In appointing an arbitrator under subsection (2), the Minister may place any conditions on the arbitration process as the Minister deems necessary.

Arbitration process

7(1) Where arbitration is used to resolve a dispute, the arbitration and arbitrator's powers, duties, functions, practices and procedures shall be the same as those in Division 3 of Part 17.2 of the Act and Part 1 of this Regulation.

(2) In addition to the arbitrator's powers under subsection (1), the arbitrator may do the following:

(a) require an amendment to a framework;

(b) require a party to cease any activity that is inconsistent with the framework;

(c) provide for how a party's bylaws must be amended to be consistent with the framework;

(d) award any costs, fees and disbursements incurred in respect of the dispute resolution process and who bears those costs.

Deadline for resolving dispute

8(1) The arbitrator must resolve the dispute within one year from the date the notice of dispute is given under section 2 of this Schedule.

(2) If an arbitrator does not resolve the dispute within the time described in subsection (1), the Minister may grant an extension of time or appoint a replacement arbitrator on such terms and conditions that the Minister considers appropriate.

Arbitrator's order

9(1) Unless the parties resolve the disputed issues during the arbitration, the arbitrator must make an order as soon as possible after the conclusion of the arbitration proceedings.

(2) The arbitrator's order must

(a) be in writing,

(b) be signed and dated,

(c) state the reasons on which it is based,

(d) include the timelines for the implementation of the order, and

(e) specify all expenditures incurred in the arbitration process for payment under section 708.41 of the Act.

(3) The arbitrator must provide a copy of the order to each party.

(4) If an order of the arbitrator under section (2) is silent as to costs, a party may apply to the arbitrator within 30 days of receiving the order for a separate order respecting costs.

Costs of arbitrator

10(1) Subject to an order of the arbitrator or an agreement by the parties, the costs of an arbitrator under this Schedule must be paid on a proportional basis by the municipalities that are to be parties to the framework as set out in subsection (2).

(2) Each municipality's proportion of the costs must be determined by dividing the amount of that municipality's equalized assessment by the sum of the equalized assessments of all of the municipalities' equalized assessments as set out in the most recent equalized assessment.

Tab 8

Province of Alberta

INTERPRETATION ACT

Revised Statutes of Alberta 2000
Chapter I-8

Current as of July 23, 2020

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Enactments always speaking

9 An enactment shall be construed as always speaking and shall be applied to circumstances as they arise.

RSA 1980 cI-7 s9

Enactments remedial

10 An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

RSA 1980 cI-7 s10

Enacting clause

11 The words "HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:" indicate the authority by virtue of which an Act is passed.

RSA 1980 cI-7 s11

Preambles and reference aids

12(1) The preamble of an enactment is a part of the enactment intended to assist in explaining the enactment.

(2) In an enactment,

(a) tables of contents,

(b) marginal notes and section headers, and

(c) statutory citations after the end of a section or schedule

are not part of the enactment, but are inserted for convenience of reference only.

RSA 2000 cI-8 s12;2002 c17 s3

Definitions and interpretation provisions

13 Definitions and other interpretation provisions in an enactment

(a) are applicable to the whole enactment, including the section containing the definitions or interpretation provisions, except to the extent that a contrary intention appears in the enactment, and

(b) apply to regulations made under the enactment except to the extent that a contrary intention appears in the enactment or in the regulations.

RSA 1980 cI-7 s13