



UTILITY MODIFICATION AGREEMENT

BETWEEN:

MUNICIPAL DISTRICT OF BIGHORN No. 8
(the "Municipality")

- and -

NAME: _____ **PHONE NO.:** _____
(the "Owner")

SERVICE LOCATION:

Municipal
Address

Municipality

Province Alberta Postal Code

Legal
Description

REQUEST AND TERMS

1. **Request** - The Owner hereby requests from the Municipality permission to physically alter or modify the part of the following systems (applicable as checked) located on or under public property, or any easement which grant ownership of the system to the Municipality (the "**Utility Modification**"): Water, Wastewater and/or Stormwater
2. **Terms and Conditions** - The Utility Modification shall be constructed upon and subject to the terms, covenants and conditions contained within this Agreement including, without restriction, the standard terms and conditions attached to this Agreement as Schedule "A" (the "**Terms & Conditions**").
3. **Bylaw(s)** - The Terms and Conditions may be overridden and replaced from time to time by the terms and conditions provided within any bylaw(s) which may be implemented from time to time by the Municipality respecting the construction of the Utility Modification (the "**Bylaw(s)**"), the terms of which Bylaws(s) shall thereafter form a part of this Agreement. In the event of any conflict between the terms of this Agreement and the Bylaw(s) respecting the Utility Modification, the terms of the Bylaw(s) shall prevail.
4. **Authorized Contractor** – The construction, installation and commissioning of the Utility Modification shall be completed by the contractor authorized by the Municipality in Schedule "B" to this Agreement (the "Authorized Contractor"). The Authorized Contractor is an agent of the Owner.
5. **Standards and Plans** – The Utility Modification shall be completed in accordance with the:
 - (a) *Site Servicing Standards* applicable for the Utility Modification as published separately by the Municipality (the "**Standards**");
 - (b) approved plans or specifications attached to this Agreement as Schedule "C" (the "**Plans**"); and
 - (c) any special terms or requirements, including the approved engineering variances, attached to this Agreement as Schedule "D" (the "**Special Terms**").
6. **Security** – The Owner has paid all required Security in respect of the Utility Modification to the System as attached in Schedule "E" (the "**Security**").
7. **Utility Modification Fees** – The Owner has paid all required fees and costs incurred by the Municipality in respect of the Utility Modification as established separately by Council.

- 8. **Notice** – all notices to the Owner may be sent to the Billing Address. Notices to the Municipality may be sent to PO Box 310, Exshaw, AB T0L 2C0. The Owner may amend the Billing Address, and the Municipality may amend its address for notice, upon written notice to the other party. All notices shall be sent by registered mail, courier, or personal delivery to the designated address.
- 9. **Information** – The information on this form is being collected for the purpose of a municipal operation or activity under the authority of the *Freedom of Information and Protection of Privacy Act*, Section 32(c). This information will be used at the discretion of the Municipality and may be released to the public. For more information contact the Executive Assistant, c/o the Municipality, at the above address for notices.
- 10. **Schedules** - The recital above and all schedules attached hereto shall be deemed to be part and included in this Agreement.
- 11. **Application & Acceptance** – The construction of the Utility Modification shall not commence until the Municipality’s acceptance of this application, by notice in writing confirming the acceptance, whereupon this Agreement shall come into effect.
- 12. **Owner Acknowledgment** - I have read and agree to the information outlined in this Agreement, the Terms and Conditions, and where applicable the Bylaws(s).

DATED as to be effective as of the ____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED in the presence of:

MUNICIPAL DISTRICT OF BIGHORN NO. 8

Per: _____
(corporate seal)

Per: _____

CORPORATE OWNER: _____

Per: _____
(corporate seal)

Per: _____

[OR, IF AN INDIVIDUAL OWNER:]

WITNESS

CUSTOMER

Schedule "A" - Terms and Conditions

1. Construction of Utility Modification

- (a) The Owner shall, within Thirty (30) days of the date of this Agreement, complete the design, construction, installation and commissioning of the Utility Modification. In this regard, the Utility Modification shall be designed, constructed, installed and commissioned:
 - i. in a good and workmanlike manner;
 - ii. at the sole cost and expense of the Owner;
 - iii. in accordance with the Standards, Plans and Special Terms; and
 - iv. in compliance with all Bylaw(s), permits, approvals, codes of practice, and guidelines of any government authority applicable to the Utility Modification.
- (b) The Owner covenants and agrees that during the construction and installation of the Utility Modification, and during the Warranty Period for the Utility Modification, the Owner shall pay all contractors and other parties hired by the Owner to fulfill the Owner's obligations under this Agreement and that the failure of the Owner to pay any such contractors or other parties shall constitute a breach of this Agreement by the Owner unless there is a bona fide dispute between the Owner and the contractor or other party.
- (c) The Owner shall protect the Municipality's property from damage and shall be responsible for any damage which occurs to the Municipality's property as the result of a breach in the performance of its obligations under this Agreement. Should any damage occur to the Municipality's property for which the Owner is responsible under applicable law, it shall repair such damage at its own expense, to the satisfaction of the Municipality.

2. Temporary Use of Roads Permit - The Utility Modification shall only commence additionally pursuant to a Temporary Use of Roads Permit as issued separately by the Municipality; and notwithstanding Clause 1(a) shall be completed within the term of the Temporary Use of Roads Permit.

3. Disruptions to Municipal Service

- (a) Unless approved otherwise by the Municipality in writing, the installation of the Utility Modification shall not disrupt service to other municipal customers.
- (b) Further to sub-section (a) above, the cost to provide temporary provisions necessary to maintain uninterrupted municipal service to other users shall be at the complete expense of the Owner. All such temporary provisions shall be approved by the Municipality.

4. Plans

- (a) The Owner acknowledges and agrees that the Municipality's approval of the Plans is in no way intended to be a warranty, representation or guarantee by the Municipality or its engineer respecting the content of the Plans, including, without restricting the generality of the foregoing whether the Plans are suitable for the intended purpose or whether the Plans comply with any required federal, provincial or municipal legislation or regulation, standards or engineering practices.
- (b) Under no such circumstance shall the Municipality's approval of the Plans be implied as an approval of any detail, qualification, term or condition which does not apply to the Standards; or acceptance of a variation of the Standards without the Municipality's written approval within the Special Terms.

5. Use of Professional Engineer

- (a) For the entire duration of this Agreement, the Owner shall employ a professional engineer who is a member in good standing of the Association of Professional Engineers, Geologists and Geophysicists of Alberta, (hereinafter called the "**Engineer of Record**") to design, supervise, inspect, monitor and certify the applicable work by, or at the expense of, the Owner.
- (b) The Engineer of Record shall be deemed to be an agent of the Owner for the purposes of this Agreement and the Engineer of Record shall ensure that all applicable materials supplied and all work performed conforms in all respects to the Standards, or as otherwise approved by the Municipality, and without limiting the generality of the foregoing, the Engineer of Record shall be deemed to be the agent of the Owner for:
 - i. ensuring the correction of all defects and deficiencies;
 - ii. carrying out inspections under this Agreement;
 - iii. the preparation, review, certification and submission of the Plans, Standards and Special Terms which the Owner is required to supply under this Agreement; and
 - iv. receiving communications from the Municipality both orally and in writing with respect to the foregoing.
- (c) The Owner shall vest adequate authority in the Engineer of Record such that in the absence of the Owner, the Engineer of Record can deal expeditiously and autonomously with emergency situations, as determined by the Municipality.

- (d) The Owner shall, during the course of the construction and installation of the Utility Modification provide and maintain adequate inspection services, supervised by the Engineer of Record.

6. Certificate of Completion by the Engineer of Record

- (a) Upon the completion of the work by the Owner, the Owner shall be entitled to apply to the Municipality for a certificate confirming completion of the Utility Modification (the "Certificate of Completion").
- (b) The application for the Certificate of Completion for the Utility Modification, shall be under the professional seal of the the Engineer of Record certifying that the Engineer of Record has provided adequate periodic inspection services during the course of the work and that the Engineer of Record is satisfied that the work has been completed in a good and workmanlike manner in accordance with the Standards, Plans and Special Terms and in accordance with accepted engineering and construction practices.
- (c) If the Municipality accepts that a Certificate of Completion should be issued, the Municipality shall issue the Certificate of Completion.
- (d) If the Municipality rejects the application for a Certificate of Completion, the Municipality shall notify the Owner of the reasons for rejection. If the Owner receives such a notice from the Municipality, the Owner shall correct the deficiencies identified in the notice and apply for a new Certificate of Completion. The Municipality shall again make such inspections and assessments as are necessary for the Municipality to determine if the Certificate of Completion should be issued until the Municipality is satisfied that the Owner is entitled to a Certificate of Completion.

7. Warranty

- (a) After acceptance of the Utility Modification by the Municipality evidenced by the issuance of the Certificate of Completion, the Utility Modification shall be subject to the Warranty Period. During this Period, the Municipality shall assume normal operation and maintenance (excluding repairs or matters arising from inadequate or deficient design or construction) of the Utility Modification.
- (b) The Owner and the Municipality agree that the warranty period for the Utility Modification shall be Two (2) years following the issuance of the Certificate of Completion (the "Warranty Period").
- (c) The Owner shall repair or replace the whole or any portion of the Utility Modification at its cost and expense during the Warranty Period where such repair or replacement is required in the opinion of the Municipality. In the event that the Owner fails to take steps to repair or replace the whole or portion of the Utility Modification the Municipality may undertake the repair or replacement, at the Owner's cost and expense.
- (d) The Owner covenants that it shall fully comply with the Standards and accepted engineering and construction practices, in undertaking and completing the repair or replacement of the Utility Modification pursuant to the requirements of this Section.
- (e) The Owner agrees that in the event of any emergency arising during the Warranty Period, the Municipality being the sole judge of what constitutes an emergency, the Municipality shall have the right in its discretion to undertake any repair or remedial work to the Utility Modification deemed necessary or appropriate by the Municipality and all costs and expenses incurred by the Municipality in that regard shall be paid by the Owner to the Municipality upon demand.
- (f) The Owner covenants and agrees that in the event that the Municipality is of the opinion that any repair or replacement required during the Warranty Period is of a major nature, the Municipality shall be entitled, in its discretion, to require a further full Warranty Period for the Utility Modification, or portion thereof, and such further Warranty Period shall commence upon the Municipality issuing a Certificate of Completion for the repair or replacement of the work.
- (g) The Owner shall, at its own cost, correct or pay for any damage to the Utility Modification resulting from any corrections which the Owner makes under the warranty provisions in this Agreement.
- (h) The Municipality and the Owner agree, notwithstanding the issuance of a Certificate of Completion for the Utility Modification, that the Owner shall be responsible, for a period of two (5) years following the issuance of the Certificate of Completion for the Utility Modification, to repair or replace any portion of the Utility Modification where there were any hidden or latent defects (which were reasonably not detected by inspections or tests actually undertaken) in the Utility Modification which were not discovered prior to the issuance of the Certificate of Completion.

8. Owner's Service Connection - The maintenance and repair of the portion of any water, wastewater or stormwater service connection located on or under the Owner's property shall at all times remain the responsibility of the Owner. The Municipality may require the inspection and/or testing of the Owner's Service Connection from time to time to ensure that the condition and quality remains satisfactory to the Municipality.

9. Indemnity - The Owner shall indemnify and save harmless the Municipality from any and all losses, costs (including, without restriction, all legal costs on a solicitor and his own client full indemnity basis), damages, actions, causes of action, suits, claims and demands resulting from anything done or omitted to be done by the Owner in pursuance or purported pursuance of this Agreement.

10. Default by the Owner

- (a) In the event that the Municipality claims that the Owner is in default in the observance and performance of any of the terms, covenants or conditions of this Agreement, the Municipality may give the Owner Thirty (30) days notice in writing of such claimed default and require the Owner to rectify same within the said period of Thirty (30) days.

- (b) Without limiting in any way the rights and remedies available to the Municipality pursuant to this Agreement, statute, or otherwise, upon a failure by the Owner to rectify a default, the Municipality shall have the option, but not any obligation, to perform the Owner's obligations in default without further notice and at the Owner's sole cost and expense. The Owner shall reimburse the Municipality for all such costs incurred by the Municipality immediately upon demand.
- (c) Notwithstanding the foregoing, in the event that the Municipality, in its discretion, considers a situation to be an emergency it may undertake or cause to be done any immediate work in Utility Modification with the construction, installation or repair of the Utility Modifications. The Owner shall reimburse the Municipality for all such costs incurred by the Municipality immediately upon demand.

11. Insurance and Security

- (a) It is understood and agreed by the Owner that the Owner shall, during the currency of this Agreement (including the Warranty Period prescribed by this Agreement), maintain in full force and effect all Security and liability insurance prescribed herein.
- (b) The Owner covenants and agrees that it, or the Authorized Contractor, shall carry comprehensive liability insurance in the amount of \$2,000,000.00, which insurance shall name the Municipality as an additional insured (as its interest may appear, including with respect to any and all operations by the Owner or its contractors upon or affecting property owned by, or under the care, control and management of, the Municipality) and shall contain an undertaking by the Insurers to provide the Municipality Thirty (30) days notice of a change or cancellation.
- (c) The Security referred to above shall consist of an "Irrevocable Letter of Credit" issued by a "Chartered Bank" or the "Treasury Branch", or such other Security as may be approved by the solicitors for the Municipality, or a cash Security deposit, or a combination thereof, in the amount of the Security required from time to time as described above; PROVIDED, that all Security shall be in terms and form to be approved by the Municipality's solicitors.
- (d) Any Irrevocable Letter of Credit provided as Security by the Owner shall contain provisions for either:
 - i. a covenant by the issuer that if the issuer has not received a release from the Municipality Sixty (60) days prior to the expiry date of the Security, then the Security shall automatically be renewed, upon the same terms and conditions, for a further period of One (1) year; or
 - ii. a right on the part of the Municipality to draw upon the full amount of the Irrevocable Letter of Credit, or any portion thereof, in the event that the Municipality has not received a replacement letter, or confirmation of an extension or renewal of the existing letter, at least Sixty (60) days prior to the expiry of the Security.
- (e) In regards to the Security provided under this Agreement, the following terms and conditions shall apply:
 - i. any cash Security deposit, Irrevocable Letter of Credit, or other Security required or otherwise provided by the Owner to the Municipality pursuant to this Agreement is hereby assigned and pledged to the Municipality as Security for the performance of the Owner's obligations as contemplated herein (such assignment and pledge to be perfected by possession and/or registration);
 - ii. the Owner acknowledges having received a copy of this Agreement, and the Security terms contemplated herein, and waives any right it may have to receive a copy of any Financing Statement or Financing Charge Statement in relation hereto; and
 - iii. notwithstanding any other provision of this Agreement and further, without prejudice to any other right or remedy of the Municipality, the obligation of the Municipality or its solicitor to release any Security deposit funds held by it under or in Utility Modification with this Agreement (including, without restriction, any cash deposit) is subject to the Municipality's right to deduct or set off any amount which may be due by the Owner to the Municipality or the amount of any claim by the Municipality against the Owner under this Agreement (including, without limitation, the amount of any liquidated damages). Without limitation, if the Owner is in breach or default of any provision of this Agreement or of any provision of any contract with any project manager(s), subcontractor or supplier, and, after receiving notice thereof, the Owner does not promptly remedy such default or breach or commence and diligently prosecute the remedy of such breach or default, the Municipality may (but shall not be obligated to) take any measures it considers reasonably necessary to remedy such default or breach and any costs or liabilities incurred by the Municipality in respect thereof may be deducted from or set off against any amount(s) to be paid or released to the Owner under this Agreement. This provision shall survive the termination of this Agreement for any reason whatsoever.
- (f) In the event that the Municipality is of the opinion that:
 - i. a default by the Owner has not been rectified by the Owner in accordance with the provisions of this Agreement;
 - ii. a default by the Owner has been rectified by the Municipality in accordance with the provisions of this Agreement and the Owner has failed to pay the costs and expenses of such rectification within Thirty (30) days after receipt from the Municipality of an account therefore;
 - iii. emergency repair work has been done to Utility Modification by the Municipality in accordance with the provisions of this Agreement and the Owner fails to pay the costs and expenses of such repair work within Thirty (30) days after receipt from the Municipality of an account therefore;
 - iv. the Owner by any act or omission is in default of any term, condition or covenant of this Agreement; or
 - v. the Security to be provided by the Owner to the Municipality pursuant to this Agreement is due to expire within a period of Sixty (60) days and the Owner has not deposited with the Municipality a renewal or replacement of such Security in terms and form acceptable to the Municipality's solicitors;

the Municipality may invoke the provisions of this Section, and make demands as payee and beneficiary under the Security provided by the Owner to the Municipality pursuant to the requirements of this Agreement

- (g) In the event that the Municipality has negotiated, called upon, or otherwise received proceeds from, the Security to be deposited by the Owner for any reason contemplated within this Agreement, then the Municipality shall be entitled to hold and apply any such funds as a Security deposit in lieu of the original Security
 - (h) In the event that the Municipality has negotiated or called upon the Security to be deposited by the Owner with the Municipality, the Municipality may, at its option and discretion, use any funds thereby obtained in any manner the Municipality deems fit to discharge the obligations of the Owner pursuant to this Agreement.
- 12. Notices** - Whenever under the provisions of this Agreement any notice, demand or request is required to be given by either party to the other, such notice, demand or request may be given by delivery by hand to, or by registered mail sent to, the respective addresses of the parties being:
- i. if to the Municipality: PO Box 310, Exshaw, Alberta T0L 2C0, Attention: Director of Operations;
 - ii. if to the Owner: c/o the address of the Service Location; or
 - iii. to such other address as each party may from time to time direct in writing.
- 13. Governing Law** - This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Alberta.
- 14. Time of Essence** - Time shall be of the essence of this Agreement.
- 15. Headings** - The headings, captions, section numbers, subsection numbers, article numbers and indices appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, construct or enlarge the scope or meaning of this Agreement or any provisions hereof.
- 16. Relationship between Parties** - Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein nor any act of the parties hereto shall be deemed to create any relationship between the parties hereto other than an independent service agreement between the two parties at arm's length.
- 17. No Authority** - Except as may from time to time be expressly stated in writing by the one party, the other party has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the other party, nor to bind the other party in any manner whatsoever.
- 18. Agreement Entire Relationship** - This Agreement constitutes the entire agreement between the parties hereto and the parties acknowledge and agree that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement save as expressly set out in this Agreement.
- 19. Further Assurances** - Each of the parties do hereby agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.
- 20. Amendments** - This Agreement may not be altered or amended in any of its provisions, except where any such changes are reduced to writing and executed by the parties.
- 21. Waiver** - No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.
- 22. Counterparts** - This Agreement may be executed in several counterparts each of which when so executed shall be deemed to be an original, and such counterparts shall constitute the one and same instrument and notwithstanding their date of execution shall be deemed to bear date as of the date first above written.
- 23. Statutory Reference** - Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto and promulgated thereunder with all amendments made thereto and in force from time to time and any final judicial decisions interpreting the same, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.
- 24. Unenforceability** - If any term, covenant or condition of this Agreement or the application thereof to any party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.
- 25. Survival** - The parties acknowledge and agree that the provisions of this Agreement, which, by their context, are meant to survive the termination or expiry of the Term, shall survive the termination or expiry of the Term and shall not be merged therein or therewith.
- 26. Remedies Generally** - Mention in this Agreement of any particular remedy of a party in respect of a default by the other party does not

preclude the first party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No remedy shall be exclusive or dependent upon any other remedy, but a party may from time to time exercise any one of more of such remedies generally or in combination, such remedies being cumulative and not alternative.

- 27. **Payment of Monies** - The parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds and that any tender of monies or documents hereunder may be made upon the solicitors acting for the party upon whom the tender is desired and it shall be sufficient that a negotiable bank draft is tendered instead of cash.
- 28. **Singular, Plural and Gender** - Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires and the provisions hereof.
- 29. **Binding Effect** - This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.
- 30. **Assignment** - Neither party shall assign its interest in this Agreement, or any part hereof, in any manner whatsoever without having first received written consent from the other party which consent may be not be arbitrarily withheld.
- 31. **Requests for Consent** - Each party shall provide any decision with regard to a request for consent in a timely manner.
- 32. **Execution of Agreement** - The Owner hereby acknowledges that it is hereby executing this Agreement having been given the full opportunity to review the same and seek proper and independent legal advice and that the Owner is executing this Agreement freely and voluntarily and of its own accord without any duress or coercion whatsoever and that the Owner is fully aware of the terms, conditions and covenants contained herein and the legal effects thereof.

Schedule "B" - Authorized Contractor

The following contractor is authorized to construct, install and commission the Utility Modification:

Schedule "C" - Special Terms

The following special terms, conditions and requirements apply:

Schedule "D" - Plans

The following plans and or specifications are attached separately to this Agreement:

Title:

Approval Date:

Schedule "E" - Security

A security in the amount of \$ _____ has been paid.